

COMMENTARY

on the

SINGLE CONVENTION ON NARCOTIC DRUGS, 1961

*(Prepared by the Secretary-General
in accordance with paragraph 1 of Economic
and Social Council resolution 914 D (XXXIV)
of 3 August 1962)*



UNITED NATIONS

COMMENTARY
on the
SINGLE CONVENTION
ON NARCOTIC DRUGS, 1961

*(Prepared by the Secretary-General
in accordance with paragraph 1 of Economic
and Social Council resolution 914 D (XXXIV)
of 3 August 1962)*



UNITED NATIONS

New York, 1973

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

UNITED NATIONS PUBLICATION
<i>Sales No. E.73.XI.1</i>

Price: \$U.S. 12.00
(or equivalent in other currencies)

TABLE OF CONTENTS

	<i>Page</i>
Foreword	v
Abbreviations	vii
 <i>Article</i>	
<i>No.</i>	
1. Definitions	1
2. Substances Under Control	49
3. Changes in the Scope of Control	74
4. General Obligations	108
5. The International Control Organs	115
6. Expenses of the International Control Organs	117
7. Review of Decisions and Recommendations of the Commission	120
8. Functions of the Commission	125
9. Composition of the Board	131
10. Terms of Office and Remuneration of Members of the Board	143
11. Rules of Procedure of the Board	150
12. Administration of the Estimate System	155
13. Administration of the Statistical Returns System	169
14. Measures to Ensure Execution of Convention Provisions	176
15. Reports of the Board	198
16. Secretariat	204
17. Special Administration	206
18. Information to be Furnished by Parties	208
19. Estimates of Drug Requirements	221
20. Statistical Returns to be Furnished to the Board	243
21. Limitation of Manufacture and Importation	263
22. Special Provision Applicable to Cultivation	275
23. National Opium Agencies	278
24. Limitation on Production of Opium for International Trade ..	286
25. Control of Poppy Straw	301
26. The Coca Bush and Coca Leaves	306
27. Additional Provisions Relating to Coca Leaves	309
28. Control of Cannabis	312
29. Manufacture	317

<i>Article No.</i>	<i>Page</i>
30. Trade and Distribution	328
31. Special Provisions Relating to International Trade	348
32. Special Provisions Concerning the Carriage of Drugs in First- Aid Kits of Ships or Aircraft engaged in International Traffic	390
33. Possessions of Drugs	402
34. Measures of Supervision and Inspection	405
35. Action Against the Illicit Traffic	415
36. Penal Provisions	425
37. Seizure and Confiscation	442
38. Treatment of Drug Addicts	446
39. Application of Stricter National Control Measures than Those Required by This Convention	449
40. Languages of the Convention and Procedure for Signature, Ratification and Accession	451
41. Entry into Force	451
42. Territorial Application	453
43. Territories for the Purposes of Articles 19, 20, 21 and 31	455
44. Termination of Previous International Treaties	456
45. Transitional Provisions	459
46. Denunciation	460
47. Amendments	462
48. Disputes	465
49. Transitional Reservations	467
50. Other Reservations	475
51. Notifications	478
Schedules	480
Annex	486

FOREWORD

This Commentary has been issued in pursuance of paragraph 1 of Economic and Social Council resolution 914 D (XXXIV) of 3 August 1962. The Secretary-General wishes to express his thanks to Mr. Adolf Lande, former Secretary of the Permanent Central Narcotics Board and the Drug Supervisory Body, for his valuable assistance in preparing the Commentary.

ABBREVIATIONS

The following abbreviations are used in the commentary:

- The "Single Convention", for the Single Convention on Narcotic Drugs, 1961, done at New York on 30 March 1961, reproduced in United Nations, *Treaty Series*, vol. 520, p. 151
- The "Second Draft", for the second draft of the Single Convention, document E/CN.7/AC.3/7 and Corr.1 (English and Spanish only)
- The "Third Draft", for the third draft of the Single Convention, which served as the working document of the Plenipotentiary Conference, documents E/CN.7/AC.3/9 and E/CN.7/AC.3/9/Add.1, both documents being reproduced in the "Records", vol. II, pp. 1-31
- The "Records", for the Official Records of the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, documents E/CONF.34/24 and E/CONF.34/24/Add.1, reproduced respectively in United Nations publications, Sales Nos. 63.XI.4 and 63.XI.5
- The "Commentary on the 1931 Convention", for the publication entitled "Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of July 13th, 1931, Historical and Technical Study by the Opium Traffic Section of the Secretariat of the League of Nations", League of Nations, document C.191.M.136.1937.XI. (Series of League of Nations publications 1937.XI.3)
- The "Model Code", for the Model Administrative Codes to the International Opium Conventions of 1925 and 1931, League of Nations, document C.774.M.365.-1932.XI. (Series of League of Nations publications 1932.XI.8)

* * *

- The "Board", for the International Narcotics Control Board
- The "Commission", for the Commission on Narcotic Drugs of the Economic and Social Council
- The "Council", for the Economic and Social Council
- The "Permanent Central Board", for the organ which became known as the Permanent Central Opium Board and later the Permanent Central Narcotics Board [Permanent Central Board being the treaty name of that former international organ, established under chapter VI of the 1925 Convention]
- The "Plenipotentiary Conference", for the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, which met in New York from 24 January to 25 March 1961
- The "Supervisory Body", for the organ which became known as the Drug Supervisory Body [Supervisory Body being the treaty name of that former international organ, established under chapter II of the 1931 Convention]
- "WHO", for the World Health Organization

* * *

- The “1912 Convention”, for the International Opium Convention, signed at The Hague on 23 January 1912, referred to in article 44, para. 1, subpara. (a) of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. VIII, p. 187
- The “1925 Agreement”, for the Agreement concerning the Suppression of the Manufacture of, Internal Trade in, and Use of Prepared Opium, signed at Geneva on 11 February 1925, referred to in article 44, para. 1, subpara. (b), of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. LI, p. 337
- The “1925 Convention”, for the International Opium Convention, signed at Geneva on 19 February 1925, referred to in article 44, para. 1, subpara. (c) of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. LXXXI, p. 317
- The “1931 Convention”, for the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931, referred to in article 44, para. 1, subpara. (d) of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. CXXXIX, p. 301
- The “1931 Agreement”, for the Agreement concerning the Suppression of Opium Smoking, signed at Bangkok on 27 November 1931, referred to in article 44, para. 1, subpara. (e), of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. CLXXVII, p. 373.
- The “1936 Convention”, for the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signed at Geneva on 26 June 1936, referred to in article 44, para. 2, of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. CXCVIII, p. 299
- The “1946 Protocol”, for the Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, signed at Lake Success, New York, on 11 December 1946, referred to in article 44, para. 1, subpara. (f), of the Single Convention, and reproduced in United Nations, *Treaty Series*, vol. 12, p. 179
- The “1948 Protocol”, for the Protocol Bringing under International Control Drugs Outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol Signed at Lake Success, New York, on 11 December 1946, signed at Paris on 19 November 1948, referred to in article 44, para. 1, subpara. (h), of the Single Convention, and reproduced in United Nations, *Treaty Series*, vol. 44, p. 277
- The “1953 Protocol”, for the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, referred to in article 44, para. 1, subpara. (i), of the Single Convention, and reproduced in United Nations, *Treaty Series*, vol. 456, p. 3

Article 1 DEFINITIONS

Paragraph 1, introductory subparagraph and subparagraph (a)

1. Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout the Convention:

(a) "Board" means the International Narcotics Control Board.

Commentary

This abbreviation of the name of the International Narcotics Control Board is employed throughout the Single Convention except in article 5 where the full name is used. In article 45 qualifying words supplement the abbreviation to make clear that reference is made to that organ and not to the past Permanent Central Board which is also mentioned in that article. Article 45 refers to the International Narcotics Board by the following phrases: "the Board provided for in article 9" (of the Single Convention), "the new Board referred to in article 9" and "that Board". The Permanent Central Board had been constituted under the terms of chapter VI of the 1925 Convention and functioned from 15 January 1929 to 1 March 1968.¹ As from 2 March 1968 it was replaced by the International Narcotics Control Board by resolution 1106 (XL) of the Economic and Social Council of the United Nations adopted pursuant to article 45, paragraph 2 of the Single Convention. The name "Permanent Central Board" was that given by the 1925 Convention to the earlier organ which called itself first Permanent Central Opium Board and later (since 1965) Permanent Central Narcotics Board² in order to indicate in its name the nature of its work.

See below, comments on article 45.

¹ The 1925 Convention entered into force on 25 September 1928; the members of the first Permanent Central Board were elected on 14 December 1928 (*Official Journal of the League of Nations, 10th Year, No. 1* (January 1929), pp. 52-53); the Board held its first meeting on 15 January 1929 (League of Nations document C.C.P./1st session/P.V.1).

² The Permanent Central Board adopted this new name at its 86th session (26 May to 4 June 1965). (Document E/OB/W.1925; see also document E/OB/21.)

Paragraph 1, subparagraph (b)

(b) “Cannabis” means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated.

Commentary

1. “Cannabis” is a “drug” within the meaning of the Single Convention.¹ This treaty uses the word “cannabis” in place of the term “Indian hemp” used by earlier narcotics treaties.² It follows in this the practice adopted in the documentation of the United Nations and the World Health Organization.³ It may be noted that the term “cannabis” of the Single Convention does not refer only to the *dried* tops of the “pistillate” (female) cannabis plant—as did the term “Indian hemp” employed by the 1925 Convention—but covers all tops including those which are not yet dried, as well as those of the male plants. The term “Indian hemp” as used by the 1925 Convention covered only the dried or fruiting tops of the female plant. It was held that the tops of the female plants especially those which have not been fertilized are particularly rich in the pharmacologically strongly active resin.⁴ The authors of the Single Convention, however, wished to cover also the male plants even if they might yield lesser quantities of the potent material, *inter alia*, in order to facilitate the task of enforcement officers who would find it mostly impossible and in any event very difficult to distinguish material obtained from female plants from that derived from male plants. Recent studies undertaken after the adoption of the Single Convention appear to have shown that the male and female plants contain similar amounts of cannabins per weight of fresh plant material. However, the mature female plants have a more ample foliage and contain therefore more cannabins than the male plants.⁵ At the time of this writing intensive research on the chemical composition of cannabis and also of other parts of the cannabis plant is being carried on in several countries. It is definitely established that tetrahydrocannabinol, one of the cannabins,⁶ is a psychoactive principle of cannabis. Whether cannabis

¹ See article 1, para. 1, subpara. (j) of the Convention and the list of drugs included in Schedule I, annexed to the Convention.

² Articles 4 and 11 of the 1925 Convention and article 4 of the 1948 Protocol; see also *voeu* 2 included in the Final Protocol of the International Opium Conference, signed at The Hague, 23 January 1912, League of Nations, *Treaty Series*, vol. VIII, p. 213.

³ The Commission on Narcotic Drugs expressed the view in 1953 that the suggestion of the representative of the World Health Organization to use the term “cannabis” instead of “Indian hemp” should be followed; report of the eighth session of the Commission on Narcotic Drugs, *Official Records of the Economic and Social Council, Sixteenth Session, Supplement No. 4*, para. 181.

⁴ Anselmino, *ABC des Stupéfiants*: Comité central permanent de l’opium, Société des Nations, Genève, 1931, (League of Nations, document No.: C.C.P.44), p. 30.

⁵ Report of Professor S. Agurell (Department of Pharmacognosy, University of Uppsala, Sweden) to the Symposium held by the London Institute for the Study of Drug Dependence on the Botany and Chemistry of Cannabis and its Derivatives in London on 9 and 10 April 1969.

⁶ Others are cannabinal and cannabidiol.

contains other psychoactive principles appears to have not yet been established at the time of this writing. The cannabis plant is dioecious, i.e. unisexual flowers are on separate plants. It appears, however, that rare monoecious specimens have been found, i.e. cannabis plants each of which had simultaneously unisexual male as well as female flowers.⁷ The tops of such rare monoecious plants would also be covered by the Single Convention's definition of cannabis.

2. The seeds and the leaves of the plant when not accompanied by the tops are excluded from that definition. The provisions of the Convention concerning cannabis therefore do not apply to such leaves. "Marihuana" cigarettes containing material derived only from the leaves are consequently not subject to the provisions governing cannabis. It was suggested at the Plenipotentiary Conference that the leaves, unlike the tops, were not suitable for smoking "since they were green and burned very quickly if they were dried".⁸ It has, however, been found that marihuana cigarettes seized from the illicit traffic in fact contain leaves.

3. While the Parties to the Single Convention need not apply to the leaves when not accompanied by the tops the provisions governing cannabis, they are bound to adopt the necessary measures to prevent the misuse of, and the illicit traffic in, these leaves.⁹

4. The words "by whatever name they may be designated" contained in the Single Convention's definition of cannabis are legally superfluous. The name under which any drug—and not only cannabis—appears in commerce does not affect its control status under the Single Convention. These superabundant words were taken over from the definition of "Indian hemp" in the 1925 Convention which contains the phrase "under whatever name they may be designated in commerce".¹⁰ The Plenipotentiary Conference deleted the words "in commerce" from the Third Draft of the Single Convention¹¹ which it used as working document. The Draft had been prepared by the Commission on Narcotic Drugs which had included these words, following the text of the 1925 Convention. Very little cannabis is at present traded in the international legal commerce. Huge quantities of the drug appear however in the illicit traffic under many different designations. This seems to explain the deletion by the Plenipotentiary Conference.¹² The authors of the 1925 Convention apparently wished, by including the legally superabundant phrase, to alert the Governments to the fact that cannabis appears in commerce under numerous names. It may be noted that the Single Convention excludes from its definition of cannabis the tops of the plant from which the resin has

⁷ Information obtained from the Chief of the United Nations Laboratory of the Division of Narcotic Drugs of the United Nations Secretariat; see also *Encyclopædia Britannica*, revised edition (1969), vol. 11, p. 351.

⁸ *Records*, vol. II, p. 176.

⁹ Article 28, para. 3 of the Single Convention.

¹⁰ Article 1.

¹¹ *Records*, vol. II, pp. 1 *et seq.*

¹² For numerous names of cannabis see *Multilingual List of Narcotic Drugs under International Control*, New York, 1968 (document E/CN.7/513, United Nations publication, Sales No. 69.XI.1), pp. 34-36; see also p. 37 for different names of cannabis resin.

been extracted. The authors of the 1925 Convention did the same in their definition of “Indian hemp” as the drug was then commonly called. They used to this effect the same words as the Single Convention.¹³ This exclusion may be justified on the ground that the tops from which the resin has been extracted contain only a very insignificant quantity of the psychoactive principle. Tops from which the resin has been extracted appear to be of little practical importance; but the exclusion, if taken over by national legislation, may cause some difficulties in the fight against the illicit traffic.

5. It may finally be noted that it follows from the context that the term “cannabis” covers in article 2, paragraph 6, also “cannabis resin” and in article 49, paragraph 2, subparagraph (f) “cannabis”, “cannabis resin” and “extracts and tinctures of cannabis”.

¹³ Article 1 of the 1925 Convention.

Paragraph 1, subparagraph (c)

(c) “**Cannabis plant**” means any plant of the genus *cannabis*.

Commentary

1. The Single Convention uses the term “Cannabis plant” in place of the scientific name “*Cannabis sativa L.*” used in the 1925 Convention¹ or of “Indian hemp plant”. In choosing the word “cannabis plant” rather than “Indian hemp plant”, the authors of the Convention followed the practice adopted in documents of the United Nations and the World Health Organization.¹

2. It was formerly held that such a variety of the plant as *Cannabis indica L.* growing on the Indian-Pakistani subcontinent constitutes a separate species. The genus *Cannabis* is now considered by dominant opinion to be monotypic, i.e. consisting of a single species *Cannabis sativa L.* The different varieties cultivated for the drug, fibre or seeds or growing wild in various countries appear to owe their differences, including their divergent contents and potencies of the drug, to environmental and specially climatic differences. The definition of the Single Convention covers all forms of the cannabis plant, no matter whether they are considered to be different species or varieties. It would also include a species of the genus which might in future be discovered. It must be emphasized that the Single Convention’s definition also covers cannabis plants which are grown for the fibre or seeds, which may yield only insignificant amounts of the resin, if any, whose tops may contain only negligible quantities of the active principle and whose character as potential source of a dangerous drug may even be unknown to the local population.

3. As to the exemption from the provisions relating to cannabis plants of the cultivation of that plant grown exclusively for industrial or horticultural purposes, see below comments on article 28, paragraph 2.

¹ See comments on article 1, para. 1, subpara. (b).

Paragraph 1, subparagraph (d)

(d) “Cannabis resin” means the separated resin, whether crude or purified, obtained from the cannabis plant.

Commentary

1. “Cannabis resin” is a “drug” within the meaning of the Single Convention.¹ It is defined separately from “cannabis” although the Convention applies the same rules to cannabis resin as to cannabis.² The resin can be found principally in the tops of the plant. If the resin were not specifically subjected to international control—as is done by its express mentioning in Schedule I annexed to the Single Convention and its definition in the subparagraph under consideration—it might, if obtained from the tops, be considered to be covered by the Convention as part of the tops, i.e. of “cannabis”; but it is held that some resin—however small its quantity may be—might be obtained from some leaves and even from the upper part of the stalk whose capacity to yield resin is, however, said to disappear after the fruits are mature.³ It would be difficult to distinguish resin obtained from the tops from that derived from other parts of the plant. The specific subjection to control of the resin whatever its origin thus facilitates the tasks of enforcement.

2. The 1925 Convention distinguishes between cannabis, which it calls “Indian hemp” and which it defines, and cannabis resin, which it calls “the resin obtained from Indian hemp” and which it does not define. It applies somewhat stricter provisions to such resin than to cannabis. Since it limits its definition of “Indian hemp” to the tops of female plants and covers only resin obtained from these tops, it does not subject to its rather limited control measures resin which might be obtained from the tops of male plants or from other parts of the plant whether male or female.⁴ The Single Convention, on the other hand, applies its comprehensive control régime to cannabis resin of the male as well as the female plants. It does not exclude any part of the cannabis plant as source of the resin. It states that cannabis resin means the resin “obtained from the cannabis plant”.

3. The resin, however, becomes “cannabis resin” only when it is “separated” from the plant; without such a separation it remains a part of the cannabis plant, and if in the top part, of “cannabis”. The separated resin is “cannabis resin” not only when it is “purified”, but also in its “crude” state, i.e. when it is still mixed with other parts of the plant. It may sometimes be difficult to decide whether a substance is already “crude” cannabis resin or still “cannabis”, i.e. part of the tops of a cannabis plant.

¹ See article 1, para. 1, subpara. (j) of the Convention and the list of drugs included in Schedule I, annexed to the Convention.

² Article 2, paras. 1 and 5, article 28, para. 1 and article 49; article 49, para. 2, subpara. (f) omits a specific reference to cannabis resin, but this seems to have been an oversight; see below comments on this subparagraph.

³ Document E/CN.7/AC.3/4/Rev.1, United Nations publication, Sales No. 1952.XI.7, para. C.359, and Anselmino, *op. cit.*, page 30; this appears at least to have been the view at the time of the adoption of the Single Convention and might eventually have to be modified in the light of recent research.

⁴ Articles 1 and 11 of the 1925 Convention.

Paragraph 1, subparagraphs (e) and (f)

(e) “Coca bush” means the plant of any species of the genus *erythroxylon*.

(f) “Coca leaf” means the leaf of the coca bush except a leaf from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed.

Commentary

1. There are about 200 species belonging to the genus *erythroxylon* which is one of the three genera forming the family of *erythroxylaceæ*, the other two being the genus *nectaropetalum* to which four species belong, and the genus *aneulophus*, comprising only one species.

2. The “coca leaf” is a “drug” within the meaning of the Single Convention.¹ The leaves “from which all ecgonine, cocaine and other ecgonine alkaloids have been removed” are used for the manufacture of a flavouring substance of beverages, and therefore have been excluded from the definition of “coca leaf”. The provisions of the Single Convention governing drugs in Schedule I in which the “coca leaf” within the meaning of the definition of this term is included, and the additional special provisions² governing this leaf consequently do not apply to leaves from which the alkaloids have been extracted.³

3. It appears that many of the numerous species of the genus *erythroxylon* have at the time of this writing not yet been analyzed for their contents of alkaloids. Some of those which were examined have been found to contain only very small quantities of the dangerous substances.⁴ It does not seem probable, but it cannot be excluded, that a species covered by the Single Convention’s definition of “coca bush” would not contain any ecgonine, cocaine or any other ecgonine alkaloid. A leaf of such a bush would nevertheless be a “coca leaf” within the meaning of article 1, paragraph 1, subparagraph (f). Consequently, while a leaf from which the alkaloids have been extracted is excluded from that subparagraph’s definition, a leaf which never contained the alkaloids would not.

4. The definition of “coca leaf” in the Single Convention differs in this respect from those of the earlier narcotics treaties. The 1925 and 1931 Conventions contain the same definition which reads as follows:⁵

“‘Coca leaf’ means the leaf of the *Erythroxylon Coca Lamarck* and the *Erythroxylon novogranatense* (Morris) Hieronymus and their varieties, belonging to the family of *Erythroxylaceæ* and the leaf of other species of this genus from which it may be found possible to extract cocaine, either directly or by chemical transformation”.

¹ See article 1, para. 1, subpara. (j) of the Convention and the list of drugs included in Schedule I, annexed to the Convention.

² See article 2, para. 1, article 26, para. 1, articles 27 and 49.

³ As regards the obligation of Parties to furnish separate estimates and statistical information in respect of coca leaves used for the preparation of the flavouring agent see article 27, para. 2.

⁴ Document E/CN.7/W.34, pp. 1-5.

⁵ Article 1 of the 1925 Convention and article 1, para. 3 of the 1931 Convention.

5. *Erythroxylon coca* Lamarck and *Erythroxylon novogranatense* (Morris) Hieronymus are at present the only species of the genus *erythroxylon* which with their varieties are of practical importance as sources of the leaves which are of concern to international narcotics control. The leaves of these two species contain significant quantities of the dangerous alkaloids. Both species belonging to the genus *erythroxylon* are covered by the definition “coca bush” in article 1, paragraph 1, subparagraph (e) of the Single Convention, as are their leaves by the definition of “coca leaf” in article 1, paragraph 1, subparagraph (f); but while the leaves of any other species of the genus *erythroxylon*—no matter whether they contain any of the dangerous alkaloids in question—fall under the definition of the Single Convention, leaves of such a species which did not contain these alkaloids, or from which it was merely found impossible to extract them, would not be covered by the definition of the earlier narcotics treaties.

6. These two earlier treaties, on the other hand, do not exclude from their definition leaves from which the alkaloids have been removed. Since they do not limit the use of coca leaves to medical and scientific purposes, they do not contain a special provision to make possible the manufacture of the flavouring substance.

Paragraph 1, subparagraph (g)

(g) “Commission” means the Commission on Narcotic Drugs of the Council.

Commentary

1. “The Commission” to which this subparagraph refers is a “functional commission” of the Economic and Social Council set up pursuant to Article 68 of the Charter of the United Nations. Its composition and terms of reference are determined by the Economic and Social Council. The Commission is at present composed of representatives of Governments.¹ The Council could, however, change this character of the Commission and transform it into a body consisting of independent experts, or into a mixed organ composed in part of Government representatives and in part of such experts.²

2. It may be noted that under the existing rules, States non-members of the United Nations which are members of specialized agencies of the United Nations or Parties to the Single Convention may be elected to membership on the Commission.³

3. As regards the authority of the General Assembly and the Economic and Social Council over actions of the Commission under the provisions of the Single Convention see below comments on article 7; see also comments on article 3, paragraph 9.

¹ Twenty-four Governments at the time of this writing (Economic and Social Council resolution 1147 (XLI), para. 4).

² Leland M. Goodrich, Edvard Hambro and Anne Patricia Simons, *Charter of the United Nations, Commentary and Documents*, third edition, revised, New York, Columbia University Press, 1969, pp. 435-436.

³ Economic and Social Council resolution 845 (XXXII) of 3 August 1961, Section II, para. 1.

Paragraph 1, subparagraph (h)

(h) “Council” means the Economic and Social Council of the United Nations.

Commentary

1. This subparagraph refers to the Economic and Social Council as composed pursuant to Article 61 of the Charter of the United Nations in the version in force at a relevant time.

2. For the functions of the Council, see article 3, paragraph 8, article 7, article 9, article 10, paragraphs 4 and 5, article 14, paragraph 1, subparagraphs (a) and (c) and paragraph 2, article 15, paragraph 1, article 24, paragraph 2 and paragraph 4, subparagraph (a), clause (iii), article 40, paragraph 1, article 45, paragraph 2, and article 47.

Paragraph 1, subparagraph (i)

(i) “Cultivation” means the cultivation of the opium poppy, coca bush or cannabis plant.

Commentary

In all places¹ but two² in which the Single Convention employs the term “cultivation” or words derived therefrom, the provision itself indicates which plant is meant. The text states either explicitly³ or by an express⁴ or implied⁵ reference to a nearby mention of the plant, whether the term “cultivation” refers to the opium poppy, coca bush or cannabis plant,⁶ or to all three of them.⁷ Only in article 1, paragraph 1, subparagraph (i) and in article 36, paragraph 1, is the word “cultivation” used without such direct statement or reference. The definition of article 1, paragraph 1, subparagraph (i) clarifies the meaning of the term in these two cases; but even without the definition there could not be any doubt that the “cultivation” which under article 1, paragraph 1, subparagraph (i) constitutes “illicit traffic” or which under article 36, paragraph 1, is a punishable offence refers to cultivation of the opium poppy, the coca bush or cannabis plant. Both of these paragraphs qualify the “cultivation” with which they deal as being “contrary to the provisions”⁸

¹ Article 20, para. 3, article 22, article 23, para. 1 and para. 2, introductory subpara. and subparas. (a), (b), (c) and (d), article 25, para. 1, article 26, paras. 1 and 2 and article 28, paras. 1 and 2.

² Article 1, para. 1, subpara. (i) and article 36, para. 1.

³ All provisions mentioned in the preceding foot-note, except article 23, para. 2, subparas. (b) and (c).

⁴ Article 23, para. 2, subpara. (b).

⁵ Article 23, para. 2, subpara. (c).

⁶ All provisions mentioned in foot-note above, except article 22.

⁷ Article 22.

⁸ The French text of article 1, para. 1, subpara. (i) uses the phrase “*contraires aux buts de la présente Convention*”, see below comments on article 1, para. 1, subpara. (i).

of the Single Convention, which contains provisions regarding the opium poppy, the coca bush and cannabis plant only, and does not deal with any other plant.⁹

⁹ For a particular meaning of the word “cultivate” and terms “derived” therefrom see resolution III of the United Nations Opium Conference of 1953, document E/NT/8, United Nations publication, Sales No. 1953.XI.6.

Paragraph 1, subparagraph (j)

(j) “Drug” means any of the substances in Schedules I and II, whether natural or synthetic.

Commentary

1. The term “drug” as defined in this subparagraph covers all substances for which the Single Convention requires the application of control measures except:

(a) The opium poppy,¹ coca bush² and cannabis plant,³

(b) Poppy straw,⁴

(c) The leaves of the cannabis plant;⁵ and

(d) “Substances which do not fall” under the Single Convention, “but which may be used in the illicit manufacture of drugs”.⁶

2. All the substances in Schedules I and II are also “drugs” in the ordinary meaning of this English word. Contrary to the French text of some pre-war narcotics treaties,⁷ the French version of the Single Convention does not employ the word “*drogue*”, which was found to be inadequate, as an equivalent to “drug” in the English text.⁸ It uses instead the noun “*stupéfiant*” which corresponds to the English phrase “narcotic drug”. The Spanish text follows the French version in employing the word “*estupefaciente*”. The words

¹ Article 20, para. 3; article 23 and article 25, para. 1, subpara. (a).

² Article 26.

³ Article 28.

⁴ Article 20, para. 1 (b); article 25; article 29, para. 3; article 30, para. 2, subpara. (a).

⁵ Article 28, para. 3.

⁶ Article 2, para. 8; acetic anhydride used in the manufacture of heroin might be such a substance in some countries; *Records*, vol. I, p. 64.

⁷ Article 1, para. 2 of the 1931 Convention; title of the 1936 Convention.

⁸ The French and Spanish versions of the First Draft of the Single Convention prepared by the United Nations Secretariat use the words “*drogue*” and “*droga*” respectively (document E/CN.7/AC.3/3, section 1 (f)). The Second and Third Drafts employ the words “*stupéfiant*” and “*estupefaciente*” (document E/CN.7/AC.3/7, article 1 (k) and E/CN.7/AC.3/9, article 1 (k)). The second draft was prepared by the Secretariat on the basis of decisions of the Commission on Narcotic Drugs; the third draft was prepared by the Commission itself and served as the working document for the Plenipotentiary Conference. The Russian version of the Single Convention (article 1, para. 1, subpara. (k)) uses the term “*narkoticheskoe sredstvo*”, thus following the French and Spanish versions.

“*stupéfiant*” and “*estupefaciente*” mean inducing stupor or sleep, as does the English word “narcotic”. Cocaine, cannabis and cannabis resin, which are listed in Schedule I, nevertheless do not have the property of inducing sleep or stupor. There are, on the other hand, substances (e.g. ether) which have this property, but are not included in Schedules I or II, and cannot be added to them under article 3, whose criteria do not fit these substances. The words “*stupéfiant*” or “*estupefaciente*”, which cover all substances in Schedules I and II whether or not they induce sleep or stupor, have therefore in the Single Convention a legal sense which differs from their literal meaning.⁹

3. In accordance with the definition given below in article 1, paragraph 1, subparagraph (u), Schedules I and II, are the correspondingly numbered lists of drugs annexed to the Single Convention, as amended from time to time in accordance with article 3. A particular substance may thus become or cease to be a “drug”, by the operation of article 3 by which substances may be added to, or deleted from, the Schedules.

4. The term “natural” refers to those substances in the Schedules which are obtained from the opium poppy, coca bush or cannabis plant, and the term “synthetic” to drugs manufactured by a process of full chemical synthesis. The same drug may, however, be either “natural” or “synthetic”, e.g. morphine, which may be manufactured from opium or poppy straw, both products of the opium poppy, or may be made by a process of full chemical synthesis. The phrase “whether natural or synthetic” makes it clear that a “natural” drug does not cease to be a drug if it is manufactured synthetically. The chemical structure of the substance governs, and not the way in which it is obtained.¹⁰

⁹ The word “narcotic” is used in the same sense as “*stupéfiant*” and “*estupefaciente*” in the French and Spanish texts, in the title and preamble of the English version of the Single Convention, in the name of the International Narcotics Control Board and in article 35, para. (b) in the phrase “illicit traffic in narcotic drugs”; see also the title of resolution I of the Plenipotentiary Conference, *Records*, vol. II, p. 316, the name of the Commission on Narcotic Drugs and of the former Permanent Central Narcotics Board; see also the title and preamble of the 1931 Convention, articles 1 and 5 of the 1936 Convention and various provisions of the 1953 Protocol.

¹⁰ See also the provision of article 1, para. 2, penultimate subparagraph of the 1931 Convention, which reads: “The substances mentioned in this paragraph shall be considered as drugs even if produced by a synthetic process”.

Paragraph 1, subparagraph (k)

(k) “General Assembly” means the General Assembly of the United Nations.

Commentary

The “General Assembly” is mentioned in articles 6, 7 and 10, paragraph 6; see also comments on article 1, paragraph 1, subparagraph (h).

Paragraph 1, subparagraph (l)

(l) “Illicit traffic” means cultivation or trafficking in drugs contrary to the provisions of this Convention.

Commentary

1. The term “trafficking” not only includes all forms of trade and distribution, but also manufacture¹ and “production” i.e. “separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained”.²

2. The English text defines “illicit traffic” as cultivation or trafficking “contrary to the provisions” of the Single Convention, while the French version uses the phrase “*contraires aux buts*” of that treaty.³ The phrase “*trafic illicite*” of the French text has thus a somewhat broader meaning than the words “illicit traffic” in the English text; but this divergence is of little if any importance. It may in particular be noted that articles 36 and 37, which contain detailed provisions for action against illicit traffickers, do not even employ the term “illicit traffic” or “illicit trafficker” but enumerate in a casuistic manner the actions which are subject to penal law⁴ or refer to such an enumeration.⁵

3. The definition of subparagraph (l) limits the actions contrary to the provisions of the Single Convention⁶ which it declares to be “illicit traffic” to cultivation of the opium poppy, coca bush and cannabis plant⁷ and to trafficking in “drugs” (i.e. in substances listed in Schedules I and II).⁸ The term “illicit traffic” is, however, used in article 28, paragraph 3 in the phrase “illicit traffic in the leaves of the cannabis plant”, which is intended to mean “in the leaves of the cannabis plant not accompanied by the tops of that plant”. Such leaves are, however, excluded from the definition of cannabis, are not separately listed in Schedules I and II and are therefore not “drugs” within the meaning of that word in the Single Convention. The term “illicit traffic” as used in article 28, paragraph 3 therefore does not accord with its definition in article 1, paragraph 1, subparagraph (l); it is however employed in conformity with its ordinary meaning. See also comments on article 28, paragraph 3.⁹

¹ For the definition of manufacture, see below, article 1, para. 1, subpara. (n).

² Article 1, para. 1, subpara. (t).

³ The Spanish text uses the phrase “*contrarios a las disposiciones de la presente Convención*”, which corresponds exactly to the words of the English version.

⁴ Article 36.

⁵ Article 37.

⁶ In the French text “*contraires aux buts*”; see above.

⁷ Article 1, para. 1, subpara. (i).

⁸ Article 1, para. 1, subpara. (j).

⁹ Provisions of the Single Convention which use the term “illicit traffic” in accordance with its definition in article 1, para. 1, subpara. (l), article 18, para. 1 (c), article 22, article 24, para. 1, subpara. (b), para. 4, subpara. (b) and para. 5, subpara. (b) and article 35, paras. (a), (b) and (c).

Paragraph 1, subparagraph (m)

(m) “Import” and “export” mean in their respective connotations the physical transfer of drugs from one State to another State, or from one territory to another territory of the same State.

Commentary

1. The definition is in substance the same and textually nearly the same as that included in article 1 of the 1953 Protocol.¹ The term “State” denotes the whole area for which a “State”, within the meaning of this term in international law, has international responsibility. A “territory” is a part of a “State” which is treated as a separate entity for the purposes of narcotics control, in particular for the application of the import certificate and export authorization system provided for in article 31 of the Single Convention.² The question arises as to the exact moment at which an export or import has taken place. As regards an export, is it the moment at which the consignment has been dispatched, that at which it passes customs control, or that at which it crosses the frontier of the exporting country or territory? Similarly, as regards an import, is it the moment of crossing the border of the importing country or territory, that of customs clearance, or that of receipt by the consignee? The time of border crossing, customs clearance and dispatch or receipt—as the case may be—may not fall into the same quarter of the calendar year. A decision on this question is relevant because Parties to the Single Convention are required to furnish to the International Narcotics Control Board³ quarterly statistics on their imports and exports of drugs and poppy straw,⁴ and the choice of the moment at which the import and export are to be considered to have taken place may determine in which of the two succeeding quarterly statistical reports a given shipment is to be included. The International Narcotics Control Board is of the opinion that the time of actual movement across the frontiers should be considered as the moment of export or import for the purpose of statistics, and not the time of customs clearance or of issue of the export and import authorization.⁵

2. National authorities have stated on the other hand, that they were not in a position to know the particulars of an importation of narcotics until the importer transmitted the documents required for customs clearance. They were therefore not able to include in their statistical reports an import shipment at the moment at which it crossed the border of the importing country or territory but only after it received clearance.⁶

¹ It is identical with the definition of the Third Draft of the Single Convention (article 1, para. (p)) which was prepared by the Commission on Narcotic Drugs.

² For a definition of “territory” see below article 1, para. 1, subpara. (y). Express provision for territories as separate administrative entities for purposes of narcotics control has already been made in the 1931 Convention and 1953 Protocol, but not yet in the 1912 and 1925 Conventions.

³ Articles 5 and 9 of the Single Convention.

⁴ Article 20, para. 1, subpara. (d), para. 2, subpara. (b).

⁵ Form A/S of the International Narcotics Control Board, 5th edition (November 1969), instruction 10.

⁶ Document of the Permanent Central Narcotics Board, E/OB/W513, para. 59.

3. It is, however, very important that the border authorities should note without delay the arrival of a narcotics shipment for customs inspection, in order to ensure that pending clearance the required custodial precautions are taken to prevent theft. The copy of the export authorization which must accompany the shipment will enable the authorities to take such immediate notice.⁷ The authorization will also contain all particulars required for preparing the statistical reports. There is no need to wait for the customs clearance, which in some countries may take considerable time if the procedure depends on some action to be taken by the importer such as the production of documents.

4. Some national authorities may not be aware of the actual entry or exit of a narcotics shipment before its arrival for customs control. They are generally unable to note the exact moment of its movement over the frontier, nor to collect at that time the particulars needed for the purposes of narcotics control; but the interval between the crossing of the frontier by an import shipment and its receipt by the customs office can and should be very short, and so can and should be the time between the release by the customs office of an export consignment and its physical exit from the country or territory concerned. It appears that what the Board had in mind was not the actual moment of movement over the frontier, which the national authorities generally cannot exactly establish and at which moment in any case they can hardly establish the details which they need for the performance of their functions. What the Board seems to have intended is, in the case of an import, the earliest possible moment at which the authorities could become aware of the entry of the shipment, and, in the case of an export, a moment as near as possible to the actual movement over the frontier, i.e. in the former case, the arrival of the goods for customs control, and in the latter case, their departure from the customs house or customs control. In fact the Board did not require that *the actual moment* of the movement over the border should be taken into account in establishing the statistical figures, but only that the “statistics should be *based on actual movement* across frontiers”.⁸ It is, of course, necessary that the customs authorities should handle narcotics shipments with the greatest possible dispatch.

5. By accepting the foregoing proposed understanding of the terms “import” and “export”, such difficulties will also be avoided as that of determining the line which forms the legal frontier. The receipt and release by customs authorities are matters of fact, while the line of the frontier may be legally disputed.⁹

⁷ Article 31, para. 6 of the Single Convention; see also below comments on article 31, para. 6 and para. 7, subpara. (c).

⁸ Form A/S referred to in foot-note 5 above, instruction 10.

⁹ A difference of opinion may particularly arise in case of shipments entering or leaving the country or territory by sea, namely whether the outer line of the territorial sea forms the national border (theory of sovereignty over the territorial sea) or the low water mark on land (theory of servitude). The theory of sovereignty is now dominant; see articles 1 and 2 of the Convention of 1958 on the Territorial Sea and the Contiguous Zone, United Nations, *Treaty Series*, vol. 516, p. 205; the width of the territorial sea of a particular country and thus its outer line may also be controversial.

6. The Board also holds that for the purpose of determining whether an “export” and “import” has taken place, a bonded warehouse, free port or free zone is to be considered to be a part of the country or “territory” in which they are located. Shipments which are sent to a bonded warehouse, a free port or zone without leaving a country or territory are therefore not to be considered “exports” and “imports”, while those addressed to such a warehouse, port or zone in another country or territory fall within those terms. A consignment passing through a country or territory in transit and placed temporarily in a bonded warehouse, free port or free zone while in such transit, pending its further shipment, is not held to be an export to or import by the country or territory of transit.¹⁰ In the case of a shipment to a particular “territory” of another State, the import is to be considered to have taken place at the time at which the consignment crosses the border of the importing “territory”, and not at that at which it passes the frontier of the “State” to which that territory belongs.

7. Narcotic drugs or poppy straw which, for any reason whatsoever, are returned by the importing country or territory to the exporting country or territory are, for the purposes of the implementation of the Single Convention, to be considered as having been exported by the former and imported by the latter.¹¹

8. See below comments on article 1, paragraph 1, subparagraph (v); see also comments on article 31, paragraphs 9 and 12.

9. The terms “export” and “import” as used in article 24 appear to apply to shipments from one State to another State, but not to those from one “territory” to another “territory” of the same State.¹²

¹⁰ Form A/S referred to in foot-note 5, instruction 11.

¹¹ *Ibid.*

¹² See below, comments on article 24, para. 4; see also comments on article 23, para. 1.

Paragraph 1, subparagraph (n)

(n) “Manufacture” means all processes, other than production, by which drugs may be obtained and includes refining as well as the transformation of drugs into other drugs.

Commentary

1. Three technical terms are used in narcotics treaties which precede the Single Convention, for operations by which substances subject to the international narcotics régime are made:

(i) “Production”, which is defined in article 1 of the 1953 Protocol as “the cultivation of the (opium) poppy with a view to harvesting opium”. This term is, however, used in several other places of the Protocol¹ in the sense of

¹ See article 3, introductory paragraph, article 4, introductory paragraph and para. (a), subpara. (i), article 5, para. 1, introductory subparagraph and para. 2, subpara. (a) and article 19, para. 1, subpara. (b); the term “harvesting” is used in article 9, para. 1, subpara. (a), clause (i); see also the title of the Protocol.

“harvesting” (opium), i.e. in the sense of separating the opium from the plant, and thus in the same sense as in the Single Convention.² In this latter sense the term is also used in the 1912,³ 1925⁴ and 1936 Conventions.⁵

(ii) “Manufacture”, which is defined in article 1, paragraph 4 of the 1931 Convention to include “any process of refining”. As regards the process of making a drug falling under its régime from another drug also under its régime, the 1931 Convention calls this operation “manufacture” in relation to the former drug and “conversion” in relation to the latter.⁶ The Conventions of 1912, 1925 and 1936 and the Protocol of 1953 use the term “manufacture” in a sense identical or very similar to that given to it by the 1931 Convention.⁷

(iii) “Conversion”, which is defined in article 1, paragraph 4 of the 1931 Convention as “the transformation of a drug (under the régime of the Convention) by a chemical process with the exception of the transformation of alkaloids into their salts.” Not only the transformation into other “drugs”, i.e. into substances under the régime of the 1931 Convention, but also into uncontrolled substances, e.g. the transformation of morphine into apomorphine, is “conversion” under the terms of that treaty.⁸ The term “conversion” also occurs in the 1936 Convention⁹ and the 1948 Protocol,¹⁰ and the word “convert” in the 1953 Protocol,¹¹ in the sense in which they are used in the 1931 Convention.

2. The Single Convention uses only two terms for the operations by which “drugs”, i.e. substances falling under its régime, are obtained, namely “manufacture” and “production”. The difference between “manufacture” and “conversion” has not been taken over from the earlier treaties by the Single Convention. The term “manufacture” includes also what has been called “conversion” in earlier treaties. The definition of the Single Convention expressly provides that the term “includes... transformation of drugs into

² See below article 1, para. 1, subpara. (t).

³ Article 1.

⁴ Article 2 and 22, para. 1, subpara. (a).

⁵ Article 1, para. 2 and article 5; the term is also used in nearly all provisions of the earlier narcotics only in connexion with opium or coca leaves and not in connexion with cannabis or cannabis resin. Only in article 5 of the 1936 Convention may the term “production” be understood to include the production of these cannabis drugs. The 1912 and 1925 Conventions do not contain any definition of the term; the 1936 Convention (article 1) states that it applies the term production to “the processes whereby raw opium is obtained from the opium poppy”.

⁶ Article 1, para. 4 of the 1931 Convention.

⁷ Articles 9, 10 and 14 of the 1912 Convention (see also article 6), articles 5, 6 and 22, para. 1, subpara. (b) of the 1925 Convention (see also article 23, para. 1); article 1, para. 1 and article 2, para. (a) of the 1936 Convention; article 5, para. 1, subpara. (a) and (b), article 7, para. 2, 3 and 5, article 8, para. 1, subpara. (b) and article 9, para. 1, subpara. (a), clause (iii) of the 1953 Protocol.

⁸ See article 5, para. 2, subpara. (b), article 6, para. 1, subpara. (b), article 11, paras. 1, 3 and 4 (the latter 2 paras. for the term “convertible”), article 14, para. 3, subpara. (d) (for the term “converted”) and article 18 (for the term “converted”) of the 1931 Convention.

⁹ Article 1, para. 2 and article 2, para. (a) of the 1936 Convention.

¹⁰ Article 1, para. 2, introductory subparagraph.

¹¹ Article 7, para. 2.

other drugs". No mention is made in the definition of the transformation of "drugs" into substances which are not "drugs", i.e. substances not falling under the control of the Single Convention; but the word "manufacture" is also used for this kind of transformation in article 19, paragraph 1, subparagraph (b) in the phrase "drugs to be utilized for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention", and in a similar phrase of article 20, paragraph 1, subparagraph (b).¹²

3. While the Single Convention has not taken over from the earlier treaties the term "conversion", and includes part of what was formerly called "conversion" in the definition of its expanded term "manufacture", it still employs the term "convertible" in article 3, paragraph 3, subparagraph (iii).¹³ For the meaning of "convertible", see comments on this subparagraph below.

4. It is in several places "expressly indicated"¹⁴ by the Single Convention that the term "manufacture" applies also to the making from drugs of substances not covered by the Convention, and not only to the making of drugs; see article 1, paragraph 1, subparagraph (x), clause (ii), article 19, paragraph 1, subparagraph (b), article 20, paragraph 1, subparagraph (b) and article 21, paragraph 1, subparagraph (b).¹⁵ In article 4, paragraph (c) it is on the other hand explicitly stated that the required limitation of manufacture "exclusively to medical and scientific purposes" relates only to drugs. A general obligation of Parties to limit the manufacture of substances not covered by the Single Convention to such purposes would of course not make sense. Such an express restriction of the meaning of the term accords with its definition in article 1, paragraph 1, subparagraph (n), with the aims of the treaty and with the obvious will of the Parties, as expressed in article 4, paragraph (c) and several other provisions of the Single Convention.¹⁶ It appears, however, that in some other places it would be more in conformity with the aims of the Convention if the term "manufacture" could be understood in a broader meaning than that of making "drugs" only, although the provisions concerned expressly limit the term in that sense. Article 29, paragraph 1, and paragraph 2, subparagraph (a) and (b) require that the "manufacture of drugs" be undertaken only under licence or by a State enterprise, that all persons and enterprises engaged in the "manufacture of drugs" be controlled, and that control under

¹² The French text uses the word "*transformation*" and the Spanish text the word "*transformación*" for the English word "transformation". The French versions of the earlier narcotics treaties use the word "*transformation*" for the English word "conversion"; the Spanish text of the 1953 Protocol uses in article 7, para. 2 "*convertir*" for the English "convert".

¹³ The French text uses "*transformable*" and the Spanish text "*que puede ser transformada*".

¹⁴ Article 1, para. 1, introductory subparagraph.

¹⁵ In the provisions of articles 19, 20 and 21 the term "manufacture" refers also to the compounding of preparations in Schedule III.

¹⁶ Article 20, para. 1, subpara. (b) (phrase: "utilization of poppy straw for the manufacture of drugs"), article 21, para. 1, introductory para. and para. 3 (in para. 3 not only the definition of "manufacture" in article 1, para. 1, subpara. (n) but also the context requires that the word "manufactured" be applied only to drugs); and article 25, para. 1, subpara. (b); for the use of the phrase "manufacturers of opium alkaloids, medicinal opium or opium preparations" see article 23, para. 2, subpara. (e).

licence be exercised over the establishments and premises on which “such manufacture” (i.e. of drugs) may take place. It is, however, essential for the effective functioning of the control régime of the Single Convention that the measures prescribed by these provisions should be applied not only to the manufacture of “drugs”, but also to the making, from “drugs”, of substances not covered by the Single Convention. A serious gap in the control system would otherwise exist. It is on the other hand not necessary that the makers of such substances be required to “obtain periodical permits specifying the kinds and amounts” of the substances not covered by the Single Convention “which they shall be entitled” to make. Article 29, paragraph 2, subparagraph (c) requiring such periodical permits needs to be applied only to manufacturers of “drugs”, in accordance with its literal meaning. The provision of article 29, paragraph 3 restricting the quantities of drugs and poppy straw which “drug manufacturers” may hold in stock could usefully be applied also to makers, from drugs, of substances not covered by the Single Convention; but this does not appear to be as essential as the application of paragraph 1 and paragraph 2, subparagraphs (a) and (b); see below comments on article 29.

5. It is also important that makers, from drugs, of substances not covered by the Single Convention should keep detailed records of their transactions. Article 34, paragraph (b) requires Parties to impose such an obligation on “manufacturers”. If the definition of “manufacture” in article 1, paragraph 1, subparagraph (n) were used in interpreting the term “manufacturers” in article 34, paragraph (b), only manufacturers of “drugs”, and not makers of substances not covered by the Single Convention, would be obligated to keep these essential records; this was, however, undoubtedly not the intention of the authors of the Single Convention. See below comments on article 34, paragraph (b).

6. In two other places the term “manufacture”¹⁷ and “manufacturing”¹⁸ respectively are used without qualifying words. Looking at these provisions in the light of the objects and purpose of the Single Convention it appears not to be necessary to apply these terms to other substances than “drugs”. The provision employing the term “manufacture”¹⁷ stipulates that the Parties to the Single Convention should apply penal measures to “manufacture” and other enumerated activities which are contrary to the provisions of the Convention. The manufacture of substances not covered by the Convention, i.e. not causing harm whose prevention is the aim of the treaty, is obviously not an activity which the authors of the Single Convention intended should be penalized. The other provision¹⁸ requires that the Economic and Social Council “shall give consideration to the importance of including on the (International Narcotics Control) Board, in equitable proportion, persons possessing a knowledge of the drug situation in the producing, manufacturing and consuming countries, and connected with such countries”.¹⁹ There is no reason to assume that the authors of the Single Convention wished to extend

¹⁷ Article 36, para. 1.

¹⁸ Article 9, para. 3.

¹⁹ These words follow the corresponding text of the fourth para. of article 19 of the 1925 Convention as amended by the 1946 Protocol (fifth para. of the unamended text).

the application of this provision to countries other than those manufacturing “drugs”. The terms “manufacture” and “manufacturing” used respectively in these two provisions must be understood in the narrow sense given to the word “manufacture” in the definition in article 1, paragraph 1, subparagraph (n), i.e. as applying only to drugs; see below comments on article 9, paragraph 3 and article 36, paragraph 1.

7. The term “manufacture”, as defined in article 1, paragraph 1, subparagraph (n), does not include those processes of making drugs which the Convention calls “production”, i.e. the separation of the drugs opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained. If by the procedure foreseen in article 3 of the Single Convention a substance obtained from another plant than the opium poppy, cannabis plant or coca bush is in the future added to Schedule I or II, and thus obtains the legal character of a “drug” within the meaning of the Convention, the separation of such a substance from the plant would not be “production”, but “manufacture” in the sense in which this term is defined in article 1, paragraph 1, subparagraph (n). If, by the procedure of article 3, particular kinds of cannabis leaves found to be specially potent are added to Schedule I or II, and thus become “drugs” although not accompanied by the tops,²⁰ their separation from the cannabis plant would also not be “production” but “manufacture”.

8. The definition of “manufacture” in the subparagraph (n) includes “refining”. In this it follows the definition of the 1931 Convention.²¹ It will be recalled in this connexion that the 1925 Convention gives separate definitions for “crude cocaine” and “cocaine”.²² The fact that only “crude cocaine” is there treated as a separate drug may perhaps be because at the time of the adoption of the 1925 Convention, “crude cocaine” was the only crude drug which was normally exported and imported by countries for the purpose of refinement.²³ It is still so exported and imported. Governments were in the past required to furnish to the Permanent Central Narcotics Board²⁴ separate statistics on the manufacture of crude morphine and refined morphine, and quite recently, of crude and refined cocaine.²⁵

9. “Refining”, by being included in the definition, has been subjected to the provisions of the Single Convention providing for the control of the “manufacture” of “drugs”; it must thus not be undertaken except for medical and scientific purposes,²⁶ nor otherwise than by licensed persons or state enterprises, and only in licensed establishments and premises²⁷ etc. The special mention of “refining” in the definition of “manufacture” also makes clear that the International Narcotics Control Board can request separate

²⁰ Article 1, para. 1, subpara. (b).

²¹ Article 1, para. 4.

²² Article 1.

²³ 1931 Commentary, para. 6, note 2 (p. 18).

²⁴ See above comments on article 1, para. 1, introductory para. and subpara. (a).

²⁵ Document of the International Narcotics Control Board, E/INCB/7, annex B, synoptic tables, table IV, foot-note *.

²⁶ Article 4, para. (c).

²⁷ Article 29, para. 1 and para. 2, subparas. (a) and (b).

statistics on the manufacture of crude and refined drugs²⁸ if it should find it necessary for the performance of its functions. The Board may perhaps in the future arrive at such a conclusion in respect of particular drugs. Such a separate counting would hardly be useful where the crude stage occurs only as an intermediary product in a factory manufacturing the refined drug; but where the crude substance is made available in trade, and particularly where it is made in another country than that which refines it, separate figures may possibly be of interest to the Board. In fact, the Single Convention as adopted by the Plenipotentiary Conference expressly requires the furnishing of such separate data in one particular case. The Conference included in Schedule I “concentrate of poppy straw”, defining it as “the material arising when poppy straw has entered into a process for the concentration of its alkaloids, when such material is made available in trade.” The concentrate, which is in fact crude morphine, is thus considered to be a drug separate from morphine, and the Parties to the Single Convention are consequently required to furnish separate statistical information for morphine and “concentrate of poppy straw”,²⁹ but only if the concentrate is made available in trade, i.e. if it does not merely constitute an intermediary product in a factory’s process of making morphine. Before 1966, the concentrate was considered by the Permanent Central Narcotics Board to be crude morphine.³⁰ That Board did not publish separate figures for morphine and the concentrate, but included the morphine content of the concentrate in the figures which it published on morphine.³¹ If by operation of article 3 of the Single Convention “concentrate of poppy straw” is deleted from Schedule I and ceases to be a separate “drug”, the International Narcotics Control Board would still be entitled to require the Parties to furnish separate data on morphine and on the concentrate, which would in this case be held to be “crude morphine”. The Board may do the same in respect of other crude and refined drugs if it decides to consider the making of the crude product and its “refining” as two separate manufacturing processes. The Board could in such cases avoid double-counting by including appropriate instructions in the form which Parties to the Single Convention are obligated to use in making their statistical reports.³²

10. The 1931 Convention excludes from the term “conversion” “the transformation of alkaloids into their salts”.³³ The term “manufacture” as defined in article 1, paragraph 1, subparagraph (n) includes a part of what is called “conversion” in the 1931 Convention and in particular the “transformation of drugs into other drugs”, but it does not exclude from that transformation that of alkaloids into their salts. The salts of the drugs listed in Schedule I,

²⁸ Article 20, para. 1, subpara. (a).

²⁹ Form C/S of the International Narcotics Control Board (4th edition, November 1969), instruction No. 2 and foot-note (1) on page 7, and Form A/S of the Board (5th edition, November 1969), instruction No. 2 and foot-note (e) on page 7.

³⁰ Document of the International Narcotics Control Board, E/INCB/7, annex B, synoptic tables, table III, foot-note *.

³¹ Document of the Permanent Central Narcotics Board, E/OB/21, annex B, synoptic tables, table III.

³² Article 20, para. 1, introductory subpara. and article 13, para. 1; see also article 19, para. 1, introductory subpara. and article 12, para. 1.

³³ Article 1, para. 4 of the Single Convention.

including the salts of possible esters, ethers and isomers of those drugs whenever the existence of such salts is possible, and the salts of drugs in Schedule II, including the salts of possible isomers of drugs in Schedule II whenever the existence of such salts is possible, are expressly listed respectively in Schedules I and II.³⁴ The salts are thus “drugs” in the meaning of the Single Convention.³⁵ The transformation of basic drugs into their salts, whether of the basic drugs listed individually in Schedules I and II or of their esters, ethers or isomers, is thus “transformation of drugs into other drugs” and consequently “manufacture” of “drugs”. The provisions of the Single Convention controlling the “manufacture” of “drugs” govern therefore also the making of the salts. In regard to the salts, however, the International Narcotics Control Board does not need separate estimates of the requirements of drugs or separate statistical reports. Parties to the Single Convention are required to furnish to the Board annual estimates and, if necessary, supplementary estimates of their “drug” requirements, and statistical reports in the form and manner prescribed by the Board on forms prepared by that organ under the terms of articles 19 and 20. On the basis of the letter of the provisions of the Single Convention,³⁶ the Board could perhaps require the Parties to furnish separate estimates and statistical data in respect of the salts. The “drugs” are, however, generally not used in form of pure basic drugs and their salts, but much more often in form of preparations³⁷ of the basic drugs and in particular of their salts. The Board does not need separate data on the various forms in which the drugs are used, and thus requires the Parties to the Single Convention to furnish information covering all forms of each drug without distinguishing between them. The Board has therefore inserted in its forms for Government reports instructions³⁸ to the effect that the figures included in estimates and statistical returns should cover the quantities of pure drugs contained in refined drugs, crude drugs, salts and preparations, which must also be taken into account in compiling reports. The pure drug content is thus the common factor of the various categories of substances which must be considered in computing the global figures. Separate estimates must, however, be furnished for the quantities of drugs (i.e. pure drug content) to be utilized for the making (manufacture) of preparations listed in Schedule III annexed to the Single Convention,³⁹ and separate statistics must be supplied in respect to the quantities of drugs (i.e. pure drug content) so utilized.⁴⁰ Preparations listed in Schedule III are exempted from several control provisions of the Single Convention.⁴¹ The Board, however, does not require the Parties to the Single

³⁴ Last paragraphs of Schedules I and II.

³⁵ Article 1, para. 1, subpara. (j).

³⁶ Article 1, para. 1, subpara. (j) and (n), the last paragraphs of Schedules I and II, article 19 and article 20.

³⁷ “Preparation” is defined in article 1, para. 1, subpara. (s) as “a mixture, solid or liquid, containing a drug”.

³⁸ Form C/S (4th edition, November 1969), Form A/S (5th edition, November 1969) and Form B/S (6th edition, March 1970) of the Board, instructions No. 3; article 2, para. 3 of the Single Convention.

³⁹ Article 19, para. 1, subpara. (b).

⁴⁰ Article 20, para. 1, subpara. (b).

⁴¹ Article 2, para. 4.

Convention to furnish estimates under article 19, paragraph 1, subparagraph (b) of the quantities of drugs to be utilized for the manufacture of salts, although salts are “other drugs” within the meaning of this phrase, nor does it request the Government to supply under article 20, paragraph 1, subparagraph (b) statistical information on the utilization of drugs for such manufacture.

11. “The isomers, unless specifically excepted, of the drugs” in Schedule I “whenever the existence of such isomers is possible within the specific chemical designation”, “the esters and ethers, unless appearing in another Schedule, of the drugs in this Schedule whenever the existence of such esters or ethers is possible”, and “the isomers, unless specifically excepted, of the drugs” in Schedule II “whenever the existence of such isomers is possible within the specific chemical designation”, are included in Schedules I and II respectively.⁴² They are therefore “drugs” within the meaning of this term in the Single Convention.⁴³ The manufacture of such isomers, esters and ethers is thus “manufacture” of drugs in the sense of article 1, paragraph 1, subparagraph (n) and therefore subject to the provisions of the Single Convention governing the manufacture of drugs.

12. The manufacture of preparations of drugs is, however, not “manufacture” of drugs in the sense of article 1, paragraph 1, subparagraph (n).⁴⁴ The Single Convention provides that preparations should be subjected to the same measures of control as the drugs which they contain. There are a few exceptions.⁴⁵ The making of preparations is therefore subject to those control provisions which apply to the manufacture of drugs. Manufacturers of preparations need not obtain the periodical permits which manufacturers of drugs must have, and which indicate the kind and amounts of drugs which the latter are entitled to make.⁴⁶

⁴² Third and second para. from the bottom of Schedule I and penultimate para. of Schedule II as adopted by the Plenipotentiary Conference.

⁴³ Article 1, para. 1, subpara. (j).

⁴⁴ The term “manufacture” is however applied to the making of preparations in Schedule III in article 2, para. 4, article 19, para. 1, subpara. (b), article 20, para. 1, subpara. (b) and article 21, para. 1, subpara. (b). The term “manufacturers” is used in article 23, para. 2, subpara. (e) for makers of opium preparations; see also above foot-note 15.

⁴⁵ Article 2, para. 3.

⁴⁶ Article 2, para. 3 and article 29, para. 2, subpara. (c).

Paragraph 1, subparagraph (o)

(o) “Medicinal opium” means opium which has undergone the processes necessary to adapt it for medicinal use.

Commentary

1. The Single Convention follows earlier narcotics treaties¹ in defining “medicinal opium” as a special form of opium in which that drug is used in

¹ Chapter III, introductory paragraph of the 1912 Convention; article 1 of the 1925 Convention; and article 1 of the 1931 Convention. The term is also used, but not defined in the 1948 Protocol (article 4) and the 1953 Protocol (article 1) (in the definition of opium) and article 7, para. 5.

medical treatment. The early treaties ² defined three forms of opium i.e. “raw opium”, “prepared opium”, and “medicinal opium”, because they provided different régimes for each of them. The 1953 Protocol abolished these differences, subjecting all three forms to the same control measures. The Protocol made this clear by expressly stating in its definition of opium that it meant “the coagulated juice of the poppy in whatever form including raw opium, medicinal opium and prepared opium”.³ The Single Convention subjects opium in all its forms to the same régime, opium being listed in Schedule I and consequently falling under the same régime as other drugs in the Schedule.⁴ It uses the term “medicinal opium” in a single provision, article 23, paragraph 2, subparagraph (e). This subparagraph requires a Party to the Single Convention which permits the cultivation of the opium poppy for the production⁵ of opium, to limit the right of maintaining (wholesale) stocks of opium⁶ to its “National Opium Agency”.⁷ It authorizes the Party to except from this exclusive right of the Agency opium stocks “held by manufacturers of opium alkaloids, medicinal opium⁸ or opium preparations”.

2. Lactose is generally added to the opium to reduce its morphine content to the standard of about 10 percent prescribed for “medicinal opium”. When containing lactose or other admixtures such as burnt sugar or powdered cocoa husk, medicinal opium is in fact a “preparation”⁹ of opium. In any event, whether it is an opium preparation or only manipulated opium, it is subject to the provisions of the Single Convention controlling opium.¹⁰

² The 1912 introductory paras. of Chapters I, II and III and the 1925 (article 1). Conventions.

³ Article 1.

⁴ Article 2, para. 1.

⁵ For a definition of production see below article 1, para. 1, subpara. (t); see also above the comments on article 1, para. 1, subpara. (n).

⁶ For a definition of “stocks” see below article 1, para. 1, subpara. (x); the definition excludes stocks held by retail outlets.

⁷ The “national opium agency” is the “one or more government agencies” which a Party permitting the cultivation of the opium poppy for the production of opium must charge with carrying out the functions described in article 23, para. 2.

⁸ The fifth edition of the *Pharmacopœa Helvetica* (1949), p. 765, defines “medicinal opium” as opium powder reduced to a content of 9.2 to 10.2 per cent of anhydrous morphine by the addition of lactose. This pharmacopœa calls “medicinal opium” also “powdered opium”. The term “medicinal opium” has been abandoned in several new pharmacopœas, e.g. the *British Pharmacopœa* of 1968, p. 686, which uses the term “Powdered Opium”; and *Pharmacopœa Internationalis*, first edition, vol. I, p. 164 which uses the term “Standardized Powdered Opium”; the same name is used in its second edition (1967), p. 403.

⁹ Article 1, para. 1, subpara. (s).

¹⁰ Article 2, paras. 1 and 3.

Paragraph 1, subparagraphs (p), (q) and (r)

(p) “Opium” means the coagulated juice of the opium poppy.

(q) “Opium poppy” means the plant of the species *Papaver somniferum* L

(r) “Poppy straw” means all parts (except the seeds) of the opium poppy, after mowing.

Commentary

1. It is sometimes difficult to decide, and therefore a difference of opinion exists whether different forms of a plant constitute different varieties of the same species or different species of the same genus, e.g. “*Papaver setigerum*” is by some considered to be a variety of the species *Papaver somniferum* L. and by others a separate species.¹ It appears that some, albeit insignificant, quantities of morphine can be obtained from *Papaver setigerum*.

2. The authors of the Single Convention appear to have assumed that all plants from which opium can be obtained in significant quantities are only varieties of a single species, *Papaver somniferum* L. They therefore defined “opium poppy” as the plant of the species *Papaver somniferum* L. The 1953 Protocol, on the other hand, defines “Poppy” to mean “the plant *Papaver somniferum* L., and any other species of *Papaver* which may be used for the production of opium”.²

3. Should any plant which is considered not to be a variety of the species *Papaver somniferum* L., but another species of the genus *Papaver*, be found to yield opium,³ the plant itself and its product would not be covered by the control provisions of the Single Convention, but only by those of the Protocol. The coagulated juice of the plant would for the purposes of the Single Convention not be “opium” but could by the operation of article 3 of the Single Convention be listed in Schedule I and become a “drug” of Schedule I—like the “opium” obtained from the species “*Papaver somniferum* L.”—and thus be placed under the régime provided by the Single Convention for drugs in this Schedule. Its separation from the plant, not being “opium poppy” within the meaning of the Single Convention, would also not be “production”,⁴ but

¹ United States of America. Treasury Department. Bureau of Narcotics, *The Opium Poppy and Other Poppies*, Washington D.C., United States Government Printing Office, 1944, pp. 33, 37 and 38.

² The 1912 Convention (chapter I, introductory paragraph), the 1925 Convention (article 1) and the 1931 Convention (article 1, para. 3) do not give a separate definition of the plant, but name “*Papaver somniferum*” (1912) or “*Papaver somniferum* L” (1925 and 1931) as source of the “raw opium” which they define.

³ In the general sense, since the coagulated latex in question would not be “opium” within the meaning of the definition of this term in the Single Convention although it would be opium under the terms of the 1953 Protocol; it is held to be improbable that a plant not belonging to the species *Papaver somniferum* would be found to yield opium or, in significant quantities, morphine; see United States of America, Treasury Department, Bureau of Narcotics, op. cit. p. 55; but this opinion may be challenged in view of the possibilities of breeding and of mutations created by exposure to radio-activity.

⁴ Article 1, para. 1, subpara. (t); see above, comments on article 1, para. 1, subpara. (n).

“manufacture”.⁵ Another way of handling such a situation would be an amendment of the definition of opium poppy so as to cover the additional species found to yield opium. It might in such a case be possible to obtain for such a revision the consensus of the Parties to the Single Convention required for the application of the simplified procedure foreseen in article 47.⁶

4. The straw of a plant which is not a variety of the species *Papaver somniferum* L., but which nevertheless contains morphine for extraction, would not be “poppy straw” within the meaning of article 1, paragraph 1, subparagraph (r). The special provisions⁷ of the Single Convention governing “poppy straw” would therefore not apply to such straw. If a plant which, although not belonging to the species *Papaver somniferum*, is any other species of *Papaver*, has straw containing morphine, but cannot be used for the production of opium, its straw would also not be “poppy straw” under the terms of the 1953 Protocol, and therefore would not be controlled by its provisions governing that straw.⁸ If *Papaver setigerum* is considered to be only a variety of *Papaver somniferum*, its capsules and stems would after mowing be “poppy straw” in the sense of the Single Convention. If the plant is held, however, to be a separate species, its capsules and stems would not be subject to the provisions of the Convention relating to “poppy straw”. The same conclusion must be drawn in respect of the 1953 Protocol. The capsules and straw would be “poppy straw” under the terms of the Protocol if the plant is held to be only a variety, and would not have that legal character if it is considered a separate species. Under the definitions of the Protocol, the capsules and stems of *Papaver somniferum* L. are “poppy straw” no matter whether the plant can be used for the production of opium; those of any other species of *Papaver*, however, would be “poppy straw” only if that species can be used for such production. While the plant *Papaver somniferum* L. properly so called yields opium, *Papaver setigerum* does not.

5. The legal position of the capsules and stems of the *Papaver setigerum* is however hardly of any practical importance, since they contain only insignificant quantities of morphine. The legal problems involved become, however, very relevant in the case of *Papaver bracteatum*. It has been found that the two-year-old roots of this plant contain 0.7 to 1.3 per cent thebaine of their dried weight. A hectare of land cultivated with *Papaver bracteatum* could yield a quantity of roots sufficient for the extraction of thirty kilograms of thebaine,⁹ a drug listed in Schedule I of the Single Convention.¹⁰

⁵ Article 1, para. 1, subpara. (n).

⁶ Article 47, para. 2, first sentence.

⁷ Article 20, para. 1, subparas. (b) and (d), article 25, article 29, para. 3 and article 30, para. 2, subpara. (a).

⁸ Article 4 in connexion with the definitions of “poppy” and “poppy straw” in article 1.

⁹ Neubauer, D and Mothes K., *Über Papaver Bracteatum in Planta Medica* (Stuttgart), vol. II (1963), pp. 387-391.

¹⁰ Thebaine, being toxic, can itself not be misused; it was included in Schedule I because it is “convertible” (article 3, para. 3, subpara. (iii)) into such “drugs” as hydrocodone, oxycodone and thebicon (listed in Schedule I), and codeine and dihydrocodeine (listed in Schedule II).

6. *Papaver bracteatum* and its close relative *Papaver orientale*¹¹ are considered to be another species of the genus *Papaver* than *Papaver somniferum*.¹² If this opinion is accepted, no parts of *Papaver bracteatum* can be considered to be “poppy straw” as defined in the Single Convention. They are, however, also not poppy straw under the terms of the 1953 Protocol, because *Papaver bracteatum* cannot be used for the production of opium; but the extraction of thebaine from the roots of this plant would be “manufacture”¹³ of a “drug” and thus be controlled by the provisions of the Single Convention governing “manufacture”.

7. “Poppy straw” is defined in subparagraph (r) under consideration to mean “all parts (except the seeds) of the opium poppy, after mowing”.¹⁴ The authors of the Single Convention appear to have used the term “mowing” because they thought only of the capsule and the stem (particularly its upper part) as source of “drugs”. It may be assumed that they would have used another term than “mowing” if they had thought of the roots, which must be dug out, as possible raw material for the manufacture of drugs. They might have used words to make clear that all parts of the plant, except the seeds, after having been removed from the land on which they are grown, are included in the definition. It is, however, suggested that it is possible to understand the present text as including the roots. They are still a part of the plant after mowing has taken place, although they have to be dug out to be used for the manufacture of the drug. If, however, it is found desirable to revise the Convention in order to extend its régime to such plants as *Papaver bracteatum* and their parts, it may be advisable not only to broaden the definition of opium poppy so as to include other species of the genus *Papaver* than *Papaver somniferum*, but also to modify the definition of “poppy straw” so as to remove any possible doubt that it also comprises the roots of the plant.

8. It may be noted that “poppy straw” is not a “drug”¹⁵ under the terms of the Single Convention. It appears neither in Schedule I nor in Schedule II as a separate entry. It is, however, subject to a few rules.¹⁶

9. The Single Convention follows the 1953 Protocol¹⁷ in giving a definition of opium which covers all three varieties of this drug, namely “raw opium”, “medicinal opium” and “prepared opium”, which earlier narcotics

¹¹ This plant also contains some thebaine; United States Treasury Department, Bureau of Narcotics, op. cit., p. 70.

¹² United States Treasury Department, Bureau of Narcotics, op. cit., p. 33.

¹³ Article 1, para. 1, subpara. (n).

¹⁴ The 1953 Protocol also uses the term “mowing” in its definition (article 1): “‘Poppy straw’ means all parts of the poppy after mowing (except the seeds) from which narcotics can be extracted.”

¹⁵ Article 1, para. 1, subpara. (j); the “concentrate of poppy straw” which is listed in Schedule I and is thus a “drug”, is not “poppy straw”.

¹⁶ See above, foot-note 7.

¹⁷ The 1953 Protocol (article 1) expressly states in its definition of “opium” that it includes raw opium, medicinal opium and prepared opium; the 1912 Convention (introductory paragraphs of chapters I, II and III) defined “raw opium” “prepared opium” and “medicinal opium”; the 1925 Convention (article 1) and the 1931 Convention (article 1, para. 3) define “raw opium” and “medicinal opium”. The Single Convention defines separately (article 1, para. 1, subpara. (o)) “medicinal opium”. See also article 4 of the 1948 Protocol.

treaties defined separately and subjected to different rules. The treaties prior to the 1953 Protocol did not contain one single term covering all three types of opium.

10. See also above comments on article 1, paragraph 1, subparagraph (o).

Paragraph 1, subparagraph (s)

(s) “Preparation” means a mixture, solid or liquid, containing a drug.

Commentary

1. The earlier narcotics treaties use the term “preparation”, but do not define it. The definition of subparagraph (s) appears to exclude gaseous mixtures containing a “drug”.¹ It cannot be excluded that some gaseous preparations will in the future come to have practical importance. The problem which would arise could be handled by an amendment to the Single Convention, deleting from the definition of subparagraph (s) the words “solid or liquid”. Such a revision could be accomplished by the simplified amendment procedure of article 47² if—as can be expected—no Party to the Single Convention objects. It is, however, suggested that such a gaseous preparation could also be placed under the régime of the Convention by separately including it, by operation of article 3, in Schedule I or II, or I and IV, or by adding in the relevant Schedule words indicating that gaseous mixtures are included.

2. The régime governing preparations is described in article 2, paragraphs 3 and 4 of the Single Convention.³

¹ Article 1, para. 1, subpara. (j).

² Para. 2, first sentence.

³ See also article 3, para. 4 and para. 6, introductory subparagraph, and subpara. (b), article 19, para. 1, subpara. (b), article 20, para. 1, subpara. (b), article 23, para. 2, subpara. (e), article 29, para. 2, subpara. (c) and article 30, para. 1, subpara. (b), clause (ii).

Paragraph 1, subparagraph (t)

(t) “Production” means the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained.

Commentary

1. The industrial activities by which drugs may be obtained have throughout the history of international narcotics control been distinguished from the agricultural operations by which this can be done, different terms being applied to these two classes of operations, the former being called “manufacture”, the latter “production”.¹ This distinction was first made

¹ See above comments on article 1, para. 1, subpara. (n), foot-notes 1-5.

because it was for a long time considered unfeasible to subject the agricultural operations to a comprehensive system of control,² and has later been maintained because it is held that the régime to be applied to agricultural operations must be different from that governing industrial activities.

2. The word “production” by itself, in its ordinary meaning does not indicate that it refers only to agriculture, and has not infrequently been used in documents of intergovernmental organs dealing with narcotic drugs as a synonym of the word (industrial) “manufacture”; it is however consistently employed in the Single Convention to designate only the separation of agricultural products from the plants from which they are obtained.

3. Only four substances, namely the coca leaf, cannabis, cannabis resin and opium which are directly obtained by a separation from plants, i.e. from the coca bush, cannabis plant and opium poppy respectively are entered in Schedule I and thus are “drugs”³ within the meaning of the Single Convention; no such substance appears in Schedule II. The term “production” has therefore been limited to apply to the separation of these four drugs from three plants just mentioned. Delegates to the Plenipotentiary Conference which adopted the Single Convention were undoubtedly aware of the theoretical possibility that some other substances obtained by separation from other plants might in the future be found to have such dangerous properties as to justify their addition to Schedule I or II by operation of article 3, and thus become subject to the control régime applicable to “drugs” in the Schedule in question. It could not, however, be foreseen which plants would yield such substances, and whether the régime applicable to the opium poppy, coca bush and cannabis plant would be suitable for the possibly quite different circumstances of cultivation and growth of these additional plants.

4. The separation of “drugs” from other plants than the opium poppy, cannabis plant and coca bush would therefore not be “production”, but “manufacture” within the meaning of the Single Convention, and consequently would not be subject to the provisions relating to “production”, but rather to those governing “manufacture”. The same would be the case of other “drugs” than opium, cannabis, cannabis resin and coca leaf which hypothetically might be obtained by separation from the opium poppy, cannabis plant or coca bush.⁴

5. The separation of “poppy straw” from the opium poppy, and that of cannabis leaves not accompanied by the tops from the cannabis plant, are neither “production” nor “manufacture” because the straw and the leaves are not listed in Schedule I or II and therefore are not “drugs”. They are, however, subject to the special rules expressly applicable to them.⁵

6. The rules governing “production” can be found in article 2, paragraphs 6 and 7, article 4, paragraph (c), article 20, paragraph 1, subparagraph (a)

² The production of opium has first been subjected to a comprehensive control régime by the 1953 Protocol and the production of coca leaves, cannabis and cannabis resin by the Single Convention.

³ Article 1, para. 1, subpara. (j).

⁴ See above comments on article 1, para. 1, subparas. (n), (p), (q) and (r).

⁵ As regards poppy straw see above foot-note 7 of comments on subparas. (p), (q) and (r); article 28, para. 3 applies to cannabis leaves.

and paragraph 3, article 22, article 23, article 24, article 25, paragraph 1, subparagraph (a), article 26, article 27, article 28, paragraphs 1 and 2, article 36, article 37, and article 49, paragraph 1, subparagraph (e), paragraph 2, subparagraphs (a) and (g), paragraph 3, paragraph 4, subparagraph (a), clauses (i) and (iii) and subparagraph (b) and paragraph 5.

Paragraph 1, subparagraph (u)

(u) “Schedule I”, “Schedule II”, “Schedule III” and Schedule IV” mean the correspondingly numbered list of drugs or preparations annexed to this Convention, as amended from time to time in accordance with article 3.

Commentary

1. In addition to rules applying to particular plants¹ and substances,² the Single Convention contains provisions governing whole groups of substances and the mixtures containing them. These latter substances are called “drugs”³ and the mixtures “preparations”.⁴ All drugs are listed either in Schedule I or II. Those included in Schedule I, such as morphine, are subject to all rules applicable to “drugs” except article 2, paragraph 5; those in Schedule II such as codeine are exempted from some of these provisions. A few drugs listed in Schedule I, such as heroin, are also included in Schedule IV. They are governed, in addition to all rules applicable to drugs in Schedule I, by the provisions of article 2, paragraph 5. While preparations are generally controlled by the same régime as applies to the drug which they contain,⁵ preparations listed in Schedule III, whether or not they contain a drug in Schedule I or Schedule II, fall under the provisions applying to drugs in Schedule II, and are moreover exempted from some of them; e.g. a preparation “containing not more than 0.2 per cent of morphine calculated as anhydrous morphine base and compounded with one or more other ingredients in such a way that the drug cannot be recovered by readily applicable means or in a yield which would constitute a risk to public health”.⁶

2. The Single Convention thus distinguishes four groups of substances for which it provides four general régimes of differing strictness. The Schedule in which a drug or preparation is included determines the particular régime by which it is governed. For a general description of these four régimes, see article 2, paragraphs 1-5 and comments thereto.

¹ Opium poppy, coca bush and cannabis plant.

² Opium, coca leaf, cannabis and cannabis resin which, being listed in Schedule I, are also subject to the general rules applicable to drugs in Schedule I, and poppy straw and cannabis leaves, subject only to the rules specially applicable to them.

³ Article 1, para. 1, subpara. (j).

⁴ Article 1, para. 1, subpara. (s).

⁵ For exceptions, see article 2, paras. 3 and 4; see also foot-note 3 to comments on article 1, para. 1, subpara. (s).

⁶ Entry in Schedule III as amended by the Commission on Narcotic Drugs under article 3, at its twenty-first session; Commission on Narcotic Drugs, report on the twenty-first session, para. 68, document E/4294, *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 2*.

3. Schedules I, II and IV list “drugs”, and Schedule III lists “preparations”. A drug listed in Schedule IV must also be included in Schedule I.⁷ The “drugs” included in Schedules I, II and IV are at present “pure” drugs, i.e. not mixtures containing a drug; but there appears to be no legal obstacle to placing in one of these Schedules, as appropriate, a preparation⁸ containing a drug appearing in another Schedule. Such a mixture would for the purposes of the Single Convention become a “drug” different from the drug which it contains. If included in Schedule IV, it would also have to be added to Schedule I.

4. The Schedules may be amended in a different way than the other parts of the Single Convention. A special procedure, that of article 3, is provided for their revision. Amendments of the Schedules, but not that of other sections of the Single Convention, can become binding on Parties to that treaty⁹ without their express or implied consent.¹⁰

5. In addition to article 1, paragraph 1, subparagraphs (*j*) and (*u*), the following provisions use the term “Schedule”: article 2, paragraphs 1-5; article 3, paragraphs 1 and 3 to 6; article 8, paragraph (*a*), article 19, paragraph 1, subparagraph (*b*); article 20, paragraph 1, subparagraph (*b*); article 21, paragraph 1, subparagraph (*b*); article 30, paragraph 2, subparagraph (*b*), clause (*ii*) and paragraph 6; article 31, paragraph 16 and article 39.

⁷ In order to be a “drug” a substance must be listed either in Schedule I or II (Article 1, para. 1, subpara. (*j*); it would not make sense to list in Schedule II a drug in Schedule IV because it would be subject to all provisions applicable to drugs in Schedule I and thus could not enjoy the exemptions which are the reason for listing a drug in Schedule II (article 2, para. 5).

⁸ I.e. a mixture containing a drug, i.e. a substance listed either in Schedule I or II.

⁹ For the procedure of amending the Single Convention see article 47, which could hypothetically also be applied to the Schedules.

¹⁰ Article 47.

Paragraph 1, subparagraph (v)

(v) “Secretary-General” means the Secretary-General of the United Nations.

Commentary

The Single Convention confers upon the Secretary-General two different types of functions: those relating to the implementation of the international control régime (control functions), and those of a “ministerial” character, i.e. relating to signatures, ratifications, accessions, reservations, territorial application and amendments. He is in particular also the depositary of the Single Convention.¹ His ministerial functions are laid down in that part of the Convention which contains the “final” or “formal clauses”, i.e.

¹ Being the administrator of the “archives of the United Nations”; last para. of the Single Convention.

articles 40-51,² except article 49³ which provides for some modifications of the control régime prescribed in the main body of the treaty, i.e. in articles 2 to 39. In view of his control functions provided for in the main body of the treaty⁴ and in article 49,⁵ the Secretary-General must be considered to be one of the control organs of the international narcotics régime, although he is not listed among such organs in article 5.⁶ He is, in particular, responsible for furnishing the secretariat services of the Commission on Narcotic Drugs and of the International Narcotics Control Board.⁷ Those of the Board are subject to arrangements which the Economic and Social Council is required to make, in consultation with the Board, in order to ensure the full technical independence of that organ in carrying out its functions.⁸

² Article 40, paras. 2 and 3; article 42, article 43, paras. 1 and 2, article 44, para. 2, article 46, paras. 1 and 2, article 47, para. 1, introductory subparagraph, article 50, para. 3 and article 51; see also article 49, para. 3, subpara. (a) and para. 4, subparas. (a) and (b).

³ The Secretary-General is referred to as having control functions in para. 3, subpara. (a) and in para. 4, subpara. (a), clause (iii) and para. (b).

⁴ Article 3, paras. 1, 2, 7 and 8, subparas. (a) and (b), article 15, para. 2, article 16 and article 18, para. 1, introductory subparagraph.

⁵ See foot-note 3; see also article 43, paras. 1 and 2.

⁶ Article 5 headed "The International Control Organs" lists only the Commission on Narcotic Drugs and the International Narcotics Control Board; but the General Assembly, in view of article 7, and the Economic and Social Council, in view of article 3, para. 8, article 7, article 9, para. 2, article 14, para. 2, article 15, para. 1 and article 24, para. 2, subpara. (b), are also undoubtedly "control organs" of the system. The "Secretariat" was referred to as one of the international control organs in section 6 of the first draft of the Single Convention, prepared by the United Nations Secretariat, document E/CN.7/AC3/3, United Nations publication, Sales No. 1951.XI.13.

⁷ Article 16.

⁸ Article 9, para. 2.

Paragraph 1, subparagraphs (w) and (x)

(w) "Special stocks" means the amounts of drugs held in a country or territory by the government of such country or territory for special Government purposes and to meet exceptional circumstances; and the expression "special purposes" shall be construed accordingly.

(x) "Stocks" means the amounts of drugs held in a country or territory and intended for:

(i) Consumption in the country or territory for medical and scientific purposes,

(ii) Utilization in the country or territory for the manufacture of drugs and other substances, or

(iii) Export;

but does not include the amounts of drugs held in the country or territory,

(iv) By retail pharmacists or other authorized retail distributors and by institutions or qualified persons in the duly authorized exercise of therapeutic or scientific functions, or

(v) As “special stocks”.

Commentary

1. The terms “stocks and “special stocks” of the Single Convention correspond to the term “reserve stocks” and “Government stocks” of the 1931 Convention.¹ The 1931 Convention defines as “reserve stocks” the stocks required:

- (i) For the normal domestic consumption of the country or territory in which they are maintained,
- (ii) For conversion ² in that country or territory, and
- (iii) For export.

The term “Government stocks” was defined by that Convention as “stocks kept under Government control for the use of the Government to meet exceptional circumstances”.

2. At the time of the adoption of the 1931 Convention, most Governments did not hold in stock drugs destined for normal civilian consumption, but only for military and emergency purposes. The terms “Government stocks”, “government purposes”³ and “use of the Government” therefore conveyed the idea of relation to military purposes and to “exceptional circumstances” such as epidemics. But since then, a considerable number of countries have become socialist and many more have adopted governmental (“socialist”) systems of medical services. In the world as a whole the terms “Government stocks”, “use of the Government” and “Government purposes” have acquired a new meaning; they no longer exclude the normal civilian consumption, as they still did in most countries in 1931. The authors of the Single Convention found it necessary therefore to employ the term “special stocks” instead of the earlier term “Government stocks”, and the phrase “special Government purposes” instead of the phrases “use of the Government”⁴ or “Government purposes”.⁵

¹ The 1925 Convention does not contain specific provisions directly applying to “Government stocks”. Like the Single Convention, it uses the single word “stocks” for what the 1931 Convention calls “reserve stocks”. It requires Governments to furnish statistical information only on stocks “in the hands of *wholesalers* or held by the Government for consumption in the country for *other than Government purposes*” (article 22, para. 1, subpara. (c)), i.e. only on what the Single Convention calls “stocks” and the 1931 Convention calls “reserve stocks”, excluding what the 1931 Convention names “Government stocks” and the Single Convention “Special stocks”. The 1931 Convention does not, however, expressly exclude stocks held by retailers from its term “reserve stocks”, although this was in practice done by international control organs as well as by Governments. The 1953 Protocol gives its term “stocks” about the same meaning as the 1925 and 1931 Conventions gave to their terms “stocks” and “reserve stocks” respectively. It expressly excludes stocks held by retailers, but not opium held by, or under the control of the Government, for Government purposes other than “military purposes” (article 1). The 1912 Convention does not use the term “stocks” (article 21).

² I.e. corresponding to what the Single Convention calls “utilization . . . for the manufacture of drugs and other substances”; see also above comments on article 1, para. 1, subpara. (n).

³ Article 22, para. 1, subpara. (c) and para. 3 of the 1925 Convention.

⁴ Article 1, para. 4 of the 1931 Convention.

⁵ Article 22, para. 1, subpara. (c) of the 1925 Convention.

3. It will be noted that the Single Convention excludes⁶ drugs held by retail outlets from its definition of “stocks”, while the 1931 Convention does not expressly do the same in regard to its corresponding term “reserve stocks”.⁷ The League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs⁸ recommended, however, that the term “reserve stocks” should be taken to mean only the stocks maintained by manufactures and wholesalers.⁹ The Permanent Central Board¹⁰ also recommended that Governments take the same view.¹¹

4. The meaning of the phrase “special purposes” is not made quite clear in subparagraph (w). The phrase is used in article 20, paragraph 4, where the context shows that its meaning is the same as that of the words “special Government purposes and to meet exceptional circumstances”.¹² Moreover this paragraph applies the phrase only to drugs imported or procured within the country *by the Government* and coming under its control. The phrase is also used with the same meaning in article 12, paragraph 4, article 13, paragraph 4 and article 21, paragraph 1, subparagraph (e). The Board interprets the words “special purposes” in the same way.¹³ See also below, comments on article 20, paragraph 4.

5. The term “special Government purposes” is understood to “include in particular drugs procured for the use of the armed forces”. It does not include the purpose of meeting “exceptional circumstances”,¹⁴ since this phrase is used separately in the definition of subparagraph (w). It will be noted that the definition of stocks in subparagraph (x) does not exclude stocks

⁶ Article 1, para. 1, subpara. (x), clause (iv).

⁷ The 1925 Convention did exclude drugs held by retailers from the information it required Governments to furnish on “stocks”; article 22, para. 1, subpara. (c); see above foot-note 1.

⁸ The Advisory Committee was the predecessor of the present Commission on Narcotic Drugs. It had been established by a resolution adopted by the Assembly of the League of Nations on 15 December 1920; League of Nations, *Records of the First Assembly, Plenary Meetings* (Geneva, 1920) pp. 538-539. The Advisory Committee had been made responsible by the unamended versions of the pre-war narcotics treaties with those functions which were transferred to the United Nations Commission on Narcotic Drugs by the amendment of these treaties by the 1946 Protocol.

⁹ League of Nations, *Model Administrative Codes to the International Opium Conventions of 1925 and 1931*, p. 4, (League of Nations, document C.774.M.365, Sales No. 1932.XI.8).

¹⁰ See above comments to article 1, para. 1, introductory subparagraph and subpara. (a).

¹¹ Statistical Form of the Permanent Central Board B (L), Note 6; the Form is reproduced in the *Commentary* on the 1931 Convention as Annex I.

¹² This view is supported by the text of article 22, para. 3 of the 1925 Convention whose substance is resumed by article 20, para. 4 of the Single Convention. The term “Government purposes” as used by the 1925 Convention was interpreted to mean “use of the armed forces of the Country or to meet exceptional circumstances” (Form C/1 of the Permanent Central Board, 12 edition (November 1962), instruction No. 6).

¹³ Forms of the Board: A/S (5th edition, November 1969), instruction 12, and C/S (4th edition, November 1969), note (c) to table II, p. 9.

¹⁴ As the term “Government purposes” used by the 1925 Convention did; see above foot-note 12.

held by the Government other than “special stocks”.¹⁵ The term “special Government purposes” does not include “the normal needs of the civilian population”.¹⁶ Since Parties to the Single Convention are not required to furnish statistical returns¹⁷ respecting “special stocks”, the contrary interpretation would remove stocks held by the Government and required for normal civilian needs from the scope of their obligation to furnish to the Board annual statistics on their stocks of drugs.¹⁸ Such an interpretation would result in a considerable weakening of the international narcotics régime as it existed before the Single Convention,¹⁹ which was not the intention of the Plenipotentiary Conference. Moreover, to apply the phrase “special Government purposes” to the normal needs of the civilian population could not be reconciled with the ordinary meaning of the word “special”. It may be concluded that the phrase “special Government purposes” can cover all purposes other than the normal needs of the civilian population and those “to meet exceptional circumstances”. In practice the phrase is generally synonymous with “military purposes”.

6. The expression “exceptional circumstances” is meant to cover such catastrophic events as large-scale epidemics and major earthquakes.²⁰ Since the term “special stocks” refers only to drugs held by the Government, it does not include stocks *not* held by the Government even if they are intended “for special Government purposes and to meet exceptional circumstances”. Stocks held by a private business man with the intention of keeping them for sale to the Government for military needs and emergency requirements are not “special stocks” within the meaning of subparagraph (w), but “stocks” as defined in subparagraph (x).

7. It is, however, not necessary that the “special stocks” “held” by the Government be technically owned by it. The Spanish text uses the words “*en poder del gobierno*” (meaning “in the power of the Government”) for the English words “held . . . by the Government”.²¹ While ownership by the Government is not necessarily required, the power which the sovereign has over everything in its territory (eminent domain) is of course not sufficient. The “special stocks” must be under the control of the Government in such a way that it can at discretion dispose of them for “special Government purposes” or “to meet special circumstances”, or can withdraw from them drugs for the needs of the civilian population whether by sale to a private trader or otherwise.²² Drugs so withdrawn would of course cease to be a part of the “special stocks”.

¹⁵ Article 1, para. 1, subpara. (x), clause (v).

¹⁶ Form C/S, referred to in foot-note 13, note *b* to Table II, p. 9.

¹⁷ Article 20, para. 4.

¹⁸ Article 20, para. 1, subpara. (f) and para. 2, subpara. (a).

¹⁹ The term “stocks” as used in the 1925 Convention and the term “reserve stocks” in the 1931 do not exclude stocks held by the Government for normal needs of the civilian population.

²⁰ Form C/S, referred to in foot-note 13, note *c* to table II, p. 9.

²¹ The French text employs the words “*détenues . . . par le gouvernement*”.

²² Article 20, para. 4; the 1931 Convention (article 1, para. 4) defines “Government stocks” as stocks “kept under Government control”; the 1953 Protocol excludes from its turn “stocks” opium “stocks” “held by, or under the control of, the Government for military purposes.”

8. The Single Convention requires Governments to furnish much more limited information on “special stocks”²³ than on other stocks,²⁴ as did the 1931 Convention in respect of “Government stocks”²⁵ and the 1925 Convention in regard to stocks held by the Government for Government purposes.²⁶ This distinction was motivated by the desire to protect confidential information which might have military value. That stocks held “to meet exceptional circumstances”, i.e. to provide for catastrophic conditions, have been given the same privileged position as military stocks may be explained by the fact that the armed forces very often furnish relief in such situations, with supplies (including drugs) taken from stocks stored for their own use. This motivation of the distinction between “stocks” and “special stocks”, like that between the corresponding provisions of the earlier narcotics treaties, may also indicate why only stocks held by the Government, and not those under the control of a private business man even if intended for the armed forces, enjoy this privileged position. It has apparently been assumed that stocks held by private business men will generally not involve significant military secrets.

9. In view of what has been said above, the term “consumption” in subparagraph (x) clause (i) not only includes the “normal” consumption of the civilian population, but also that of the armed forces as well as the increased consumption in “exceptional circumstances”, i.e. under catastrophic conditions, provided always that the stocks in question are not held by the Government. The term “normal” qualifying the word “consumption” in the definition of the term “reserve stocks” in the 1931 Convention has not been taken over in the Single Convention.

10. Only those drugs held for “consumption” which are intended for consumption “for medical and scientific purposes” are to be included in the stocks as defined in subparagraph (x). This limitation is not contained in the definition of “reserve stocks” in the 1931 Convention, nor in that of the draft prepared by the Commission on Narcotic Drugs and used by the Plenipotentiary Conference as working document.²⁷ The words “for medical and scientific purposes” appear to have been inserted to indicate that the obligation of Parties to the Single Convention to supply information refers only to legal stocks, and not to those held by illicit traffickers and thus unknown to the Governments. Legal stocks intended for consumption are in fact generally held only for medical and scientific purposes as the Single Convention requires;²⁸ but Parties which under the terms of article 49 temporarily permit the quasi-medical use of opium, opium smoking, coca leaf chewing or the use of cannabis drugs²⁹ for non-medical purposes are under an obligation to furnish

²³ See article 19, para. 1, subpara. (d) and article 20, para. 4.

²⁴ Article 19, para. 1, subpara. (c) and article 20, para. 1, subpara. (f).

²⁵ Article 5, para. 2, subparas. (c) and (d).

²⁶ Article 22, para. 1, subpara. (c) and para. 3; see also the 1953 Protocol, article 8, para. 1, subparas. (c) and (d) and article 9, para. 1, subparas. (c) and (d) and article 9, para. 1, subpara. (b).

²⁷ Document E/CN7/AC3/9, reproduced in *Records*, vol. II, pp. 1 *et seq.*, see article 1, para. (z).

²⁸ Article 4, para. (c).

²⁹ I.e. cannabis, cannabis resin, extracts and tinctures of cannabis; article 49, para. 1, subpara. (d).

separate statistical information, *inter alia*, on the “stocks” of these drugs held for non-medical consumption.³⁰ The “stocks” which are the object of this obligation are strictly speaking not “stocks” within the meaning of article 1, paragraph 1, subparagraph (x), since the consumption for which they are intended is neither medical nor scientific.³¹

11. The stocks in respect of which Parties authorizing the non-medical use of drugs have to furnish annual estimates under article 49, paragraph 3, subparagraph (b) are also not “stocks” within the meaning of the definition of article 1, paragraph 1, subparagraph (x).

12. Parties which use the coca leaves for the preparation of a flavouring agent for beverages but which destroy the extracted alkaloids must also annually furnish in regard to such leaves separate estimates and statistical information, including estimates of the stocks which they intend to hold and statistical information on the stocks which they actually hold.³² These stocks of coca leaves not intended for medical and scientific purposes are equally not “stocks” within the meaning of this term in article 1.

13. The use of the term “consumption” in clause (i) is consistent with its definition in article 1, paragraph 2. The word is not used in its ordinary meaning, but denotes for the purposes of the Single Convention the transfer of drugs from the wholesale (including manufacturing) phase of the drug economy to the retail stage. Drugs transferred to this stage are considered to be consumed and are consequently excluded from “stocks” under article, paragraph 1, subparagraph (x), clause (iv).

14. The term “other substances” in clause (ii) includes drugs not covered by this Convention, such as nalorphine or apomorphine,³³ but would also apply to any drugs which eventually come to be “commonly used in industry for other than medical and scientific purposes” and which would have to be “denatured” or subjected to such other means of treatment as would ensure that they could not be abused or in practice be recovered in a form liable to abuse. See below comments to article 2, paragraph 9.

15. The term includes also preparations in Schedule III,³⁴ but not other preparations of drugs. It covers all substances whose manufacture would make the drugs used in the process go outside the statistical accounting system of the Single Convention. The drugs contained in manufactured preparations other than preparations in Schedule III must, however, continue to be counted in calculating the figures on stocks as long as the preparations are not trans-

³⁰ Article 49, para. 3, subpara. (b).

³¹ Such a special exception from the obligation of limiting the possession of drugs “exclusively to medical and scientific purposes” is authorized by the text of article 4, para. (c).

³² Article 27, para. 2 together with article 19, para. 1, subpara. (c) and article 20, para. 1, subpara. (f).

³³ Made from “drugs” (article 1, para. 1, subpara. (j)), see above comments on article 1, para. 1, subpara. (n).

³⁴ See below comments on article 2, para. 4, article 19, para. 1, subpara. (b) and article 20, para. 1, subpara. (b).

ferred to the retail level of the drug economy,³⁵ i.e. are not “consumed”.³⁶ The drugs contained in preparations in Schedule III are on the other hand not to be included in the computation of “stocks”.³⁷

16. The French text uses the words “*à la fabrication et à la préparation*” and the Spanish text similarly the words “*para la fabricación y preparación*” for the English words “for the manufacture” in article 1, paragraph 1, subparagraph (x) clause (ii). The meaning of all three texts is the same. The words “*préparation*” and “*preparación*” were apparently added because the drafters of the French and Spanish versions were taking into account the fact that the term “other substances” was intended to include preparations in Schedule III. It will also be recalled that the definition of “manufacture” in article 1, paragraph 1, subparagraph (n)³⁸ does not include the making of other substances than drugs.

17. The Board holds that quantities held in bonded warehouses, free ports or free zones of a country or territory should be included in the calculation of the stocks of that country or territory, but not drugs passing in transit through the country or territory and placed temporarily in such a warehouse, port or zone, pending the continuation of their transportation.³⁹ The same must be assumed in regard to “special stocks”, i.e. in regard to drugs held by the Government for “special Government purposes and to meet exceptional circumstances” and placed temporarily in a bonded warehouse, free port or free zone. While Parties to the Single Convention are not bound to report to the Board the size of their special stocks,⁴⁰ they might be required to compute their amount in order to be able to furnish to the Board an exact estimate of the quantities which might be necessary for addition to their special stocks.⁴¹ In making this computation Governments should of course apply the rules of the Single Convention and if necessary the above-mentioned views of the Board on the legal position of drugs temporarily placed in warehouses, free ports or free zones.

18. By the provision of article 1, paragraph 1, subparagraph (x), clause (iv) those drugs which under the statistical system of the Single Convention are considered to have been “consumed” are excluded from the calculation of “stocks”.⁴² They must be excluded to prevent double counting, since the amounts transferred from the wholesale level of the drug economy to its retail phase are reported by Governments in their statistical returns on consump-

³⁵ Article 1, para. 1, subpara. (x) (clause (iv)); see also article 2, para. 3 and comments on article 1, para. 1, subpara. (n), in particular foot-note 38.

³⁶ Article 1, para. 2.

³⁷ Article 2, para. 4; see also Form C/S of Board, 4th edition (November 1969), Instruction No. 3.

³⁸ See above comments on this subparagraph.

³⁹ Form C/S (4th edition, November 1969) of the Board note *b* to table II, p. 9; this accords with the Board's understanding of the terms “import” and “export”; see above comments on article 1, para. 1, subpara. (m).

⁴⁰ Article 20, para. 1; see also para. 4.

⁴¹ Article 19, para. 1, subpara. (d).

⁴² Article 1, para. 2.

tion.⁴³ Considerations of statistical convenience were, however, also a factor in the exclusion from “stocks” of the quantities held by retail outlets.

19. It follows from the foregoing that all drugs held in a country or territory for whatever purposes other than (a) “special stocks”, (b) those held by retail outlets and (c) those intended for non-medical consumption are “stocks” within the meaning of subparagraph (x). Quantities held for temporarily authorized non-medical consumption⁴⁴ as well as coca leaves intended only for preparation of a flavouring agent and whose alkaloids are to be destroyed⁴⁵ must, however, separately be reported. Although they are not “stocks” as defined in subparagraph (x), they must be considered to be “stocks” for the purpose of article 27, paragraph 2 and article 49, paragraph 3, subparagraph (b)⁴⁶ which require Parties to the Single Convention which use coca leaves for the manufacture of a flavouring agent (and destroy the alkaloids), as well as those temporarily authorizing the non-medical use of drugs pursuant to article 49, paragraph 1, to report *inter alia* annually to the Board the stocks of drugs actually held specifically for such uses as well as those which they intend to hold by the end of the next year. See also below comments on article 19, paragraph 1, subparagraph (c), article 20, paragraph 1, subparagraph (f), and article 49, paragraph 3, subparagraph (b).

20. The definition of “special stocks” in subparagraph (w), as well as the definition of stocks in subparagraph (x), take into account that Governments may treat a part of their national area as a separate entity for purposes of their narcotics régime, i.e. as a “territory” within the meaning of article 1, paragraph 1, subparagraph (y), and consequently may hold in such a territory “special stocks” and “stocks” which are separate from those of the metropolitan country or of other “territories” of that country.

21. For provisions relating to stocks and special stocks, see article 12 paragraph 4, article 13, paragraph 4, article 19, paragraph 1, subparagraphs (c) and (d) and paragraph 2, article 20, paragraph 1, subparagraph (f) and paragraph 4, article 21, paragraph 1, subparagraphs (d) and (e) and paragraph 2, article 23, paragraph 2, subparagraph (e), article 27, paragraph 2 and article 49, paragraph 3, subparagraph (b).

22. For provisions relating to stocks, but not using this term, see article 29, paragraph 3 and article 30, paragraph 2, subparagraph (a).

⁴³ Article 20, para. 1, subpara. (c).

⁴⁴ Article 49, para. 1.

⁴⁵ Article 27, para. 2.

⁴⁶ Together with article 19, para. 1, subpara. (c) and article 20, para. 1, subpara (f).

Paragraph 1, subparagraph (y)

(y) “Territory” means any part of a State which is treated as a separate entity for the application of the system of import certificates and export authorizations provided for in article 31. This definition shall not apply to the term “territory” as used in articles 42 and 46.

Commentary

1. According to subparagraph (y), the term “territory” is employed in the Single Convention in two different meanings, in an *administrative* sense as defined in the subparagraph and used everywhere except in articles 42 and 46, and in another sense in those two articles. This second meaning required by the context may be called “*political*”. It must, however, be borne in mind that all terms defined in article 1 have the meaning given to them in their definitions only where it is not otherwise expressly indicated or where the context does not otherwise require.¹ As will be pointed out further below, the term “territory” is also, according to the context, used in different senses in some other provisions than articles 42 and 46. The political notion² appears in earlier narcotics treaties³ which contain “territorial clauses”.⁴ The administrative term appears first in the 1931 Convention.⁵ The 1925 Convention does not expressly provide for the possibility of dividing the area of a contracting State into separate administrative units for purposes of international narcotics control, but Parties to that Convention have in fact treated parts of their national area as separate entities for the application of the system of import certificates and export authorizations established by Chapter V of that Convention.⁶ The 1953 Protocol provides for “territories” in the administrative sense.⁷ It gives a definition of the term “territory” in this meaning which is substantively and nearly literally the same as that of the Single Convention.

¹ Article 1, para. 1, introductory subparagraph.

² Different terms have been used for different forms of “territories”: possessions, colonies, protectorates, leased territories, overseas possessions, overseas territories under (the country’s) sovereignty or authority, territories under suzerainty or mandate, territories for which (the Party) has international responsibility, non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Party is responsible. The Single Convention (article 42) uses the general phrase: “non-metropolitan territories for the international relations of which any Party is responsible”.

³ All except the 1946 Protocol.

⁴ Article 23 of the 1912 Convention, article 39 of the 1925 Convention, article 26 of the 1931 Convention, article 18 of the 1936 Convention, article 8 of the 1948 Protocol and article 20 of the 1953 Protocol; see also article XIII of the 1925 Agreement and article V of the 1931 Agreement (referring only to “any territory over which it (the Party) exercises only a protectorate”); the territorial clauses were formerly often referred to as “colonial clauses”.

⁵ See article 1, para. 4, articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15.

⁶ The system was applied by a number of States prior to the 1925 Convention, on the recommendation of the League of Nations Advisory Committee on the Traffic in Opium and Other Dangerous Drugs. For the Advisory Committee, see above, comments on subparagraphs (w) and (x), foot-note 8.

⁷ Article 1 (definition), article 6, para. 3, articles 8, 9, 11, 12 and 19.

2. The narcotics treaties are only incidentally concerned with the economic aspects of the domestic and international drug trade. The provisions governing imports, exports and the transit of international shipments through third countries⁸ were not adopted for economic reasons, but because such international transactions have been considered to constitute particularly dangerous situations in which drugs can be diverted into illicit channels; but shipments which are economically exports and imports are not the only ones that are exposed to such a danger, but also those consignments from one part to another non-contiguous part of the same State which pass over the open sea or through another State. It is the similarity of the risk of diversion which has been instrumental in moving the authors of the narcotics treaties to provide for the application of the import certificate and export authorization system not only to shipments from one State to another State, but also to some consignments dispatched from one part to another part of the same State, to combine both of these categories under the terms "import and export" and to introduce the institution of "territory" in the administrative meaning of subparagraph (y).⁹

3. There has been another reason for this. Territories separated from their metropolitan countries by the open sea or by the territory of other States have often considerable internal autonomy, generally including an independent separate administration of health and police matters, and thus of drug control. This internal organization is reflected in the treaty provisions allowing a Party to treat some part or parts of its national area as separate entities for purposes of international narcotics control.

4. The geographic and administrative conditions of narcotics control in different countries differ too much to make it feasible to establish binding treaty rules which would determine what kind of area should be treated by a party as a territory within the meaning of the definition of subparagraph (y). In any event, it would be extremely difficult to obtain general agreement on such rules. The authors of the Single Convention have therefore left it to the discretion of each Party to decide in the light of its particular national conditions whether it wishes to make provision for "territories" as defined in subparagraph (y), and which parts of its area it desires to treat as such; but if a Party permits the shipment of drugs from one to another of its areas through a foreign country, it must apply the import certificate and export authorization system to such consignments and therefore treat the two areas as two different territories or as parts of two different territories within the meaning of article 1, paragraph 1, subparagraph (y), unless the drugs are dispatched by aircraft which does not make a landing in the foreign country.¹⁰

5. The Single Convention also expressly foresees that Parties may change the division of their national area or parts of their area into "territories", particularly by dividing one of their "territories" into two or more, or by consolidating two or more of them into one. It is provided that Parties must notify to the Secretary-General of the United Nations such administrative actions.¹¹

⁸ Chapter V of the 1925 Convention and article 31 of the Single Convention.

⁹ See above comments on article 1, para. 1, subpara. (m).

¹⁰ Article 31, paras. 6, 10, 11 and 14.

¹¹ Article 43, para. 1; see also para. 2 of this article.

6. Taking into account the existence of customs unions and anticipating the establishment of more such associations, the Plenipotentiary Conference also included in the Single Convention a provision allowing two or more Parties to notify the Secretary-General that they constitute a single "territory" as result of the establishment of a customs union between them. The provisions regarding the two types of notifications just mentioned state that they are made for the purpose of article 19, 20, 21 and 31.

7. These articles require that they be applied by a Party separately to its different "territories"¹² (to the metropolitan country and to each of its "territories"). Article 31 contains special provisions relating to the international trade in drugs and poppy straw¹³ and in particular the rules of the system of import certificates and export authorizations; article 19 requires Parties to furnish estimates of their requirements of drugs, article 20 provides for the statistical returns which Parties must furnish to the International Narcotics Control Board and article 21 contains the rules by which the maximum quantities of drugs are determined which Parties (i.e. each of their "territories" separately) may annually obtain by manufacture and/or import. These rules also authorize the Board to require Parties to discontinue exports of drugs to any country or territory whose imports have exceeded certain limits.¹⁴

8. The implementation of these four articles is closely interrelated; but there are other provisions which expressly or by their nature require that Parties apply them separately to each of their territories. Article 18 paragraph 1, subparagraph (a) stipulates that each Party should furnish to the Secretary-General an annual report on the working of the Single Convention within each of its *territories*. Article 17 which obligates Parties to maintain a special administration for the purpose of applying the Single Convention does not expressly indicate that it must be separately implemented in each of a Party's territories, but such separate administrations will generally be the consequence of the obligation to implement separately basic provisions of the Single Convention.¹⁵

9. It is therefore suggested that Governments should apply the same territorial arrangement in carrying out not only articles 19, 20, 21 and 31 but also those other provisions where separate implementation in regard to different territories is required by the terms of the Single Convention or may be advisable for other reasons. An unnecessarily complex administrative situation may otherwise arise.

¹² The term "territory" as used in these provisions refers also to the metropolitan country; the term "country" (articles 20, 21 and 31) to a State whose area is not divided into "territories"; see below.

¹³ Poppy straw is not a "drug" within the meaning of article 1, para. 1, subpara. (j); see above comments on this subparagraph.

¹⁴ The Board may in such cases even require a Party to discontinue shipments from its metropolitan country to one of its territories or vice versa or from one of its territories to another; see below comments on article 21, para. 4.

¹⁵ Article 14 provides for measures by the Board to ensure the execution of provisions of the Single Convention. In acting under this article the Board must also base itself on the territorial organization indicated in the notifications under consideration, i.e. in its assumption that a "territory" has failed to carry out the provisions of the Single Convention (Article 14, para. 1, subpara. (a)) and in making a recommendation to impose an import and/or export embargo of drugs on a territory (Article 14, para. 2); see also article 12, paras. 2, 3 and 4.

10. Article 43 provides that Parties “may” make the notifications under consideration. It appears however that Parties “may” make the administrative changes in question, i.e. have full discretion in respect to them, but *must* make the notifications if they wish to carry out the provisions of the Single Convention in accordance with the new territorial arrangements. Any other interpretation would be incompatible with paragraph 3 which stipulates that any of these notifications “shall take effect on 1 January of the year following the year in which the notification was made”. It follows that the changes in the territorial arrangements do not take effect for the purposes of the Single Convention unless the notifications concerned are made in time.

11. As long as its territorial organization existing at the time of its becoming a Party¹⁶ continues, a State is not required by any express provision of the Single Convention to notify the Secretary-General of which parts of its area it treats as territories as defined in subparagraph (y). The provision of article 43, paragraph 1 regarding the notification of territorial arrangements appears to apply only to *changes* in the situation as it existed at that time. The Commission on Narcotic Drugs may however require Parties to furnish to the Secretary-General information on the original territorial organization if it considers this as being necessary for the performance of its functions.¹⁷ The Commission may in particular insert a question to this effect in the form which it is entitled to prepare and which Governments must use in furnishing to the Secretary-General their annual reports on the working of the Single Convention “within each of their territories.”¹⁸

12. The Secretary-General and the Board would also in any event obtain the information on the territorial organization of those Parties which send in separate annual reports for their different territories or which carry out their obligation to supply annual estimates¹⁹ of their drug requirements and statistical returns²⁰ “for each of their territories”. The information which Parties must furnish “on the names and addresses of governmental authorities empowered to issue export and import authorizations or certificates”²¹ will also often indicate their territorial organization for purposes of narcotics control.

13. Members of a customs union, on the other hand, which wish to constitute a single “territory” for the purpose of implementing articles 19, 20, 21, and 31 of the Single Convention must, under article 43, paragraph 2, notify the Secretary-General of such an arrangement in order to make it effective under that treaty even if it already existed at the time of their becoming Parties.

¹⁶ Article 41.

¹⁷ Article 18, para. 1, introductory subparagraph.

¹⁸ Article 18, para. 1, subpara. (a) and para. 2; Governments must also use a form prepared by the Commission in furnishing the other data which they are bound to supply under article 18, para. 1, subparas (b)-(d) or any other information which the Commission may request as being necessary for the performance of its functions.

¹⁹ Article 19, particularly para. 1, introductory subparagraph.

²⁰ Article 20, particularly para. 1, introductory subparagraph.

²¹ Article 18, para. 1, subpara. (d).

14. The administrative term as defined in subparagraph (y) applies to a part of a State treated as *separate* entity for the application of the system of import certificates and export authorizations whether or not this part is the metropolitan county, i.e. the “territory” in which the Central Government has its seat; but as defined it does not apply to a State whose total area forms a single entity for the application of the above-mentioned system. The context requires however in several places of the Single Convention that the term “territory” be understood to cover not only parts of a State treated as separate entities for purposes of narcotics control, including metropolitan countries so treated, but also undivided States forming single entities; see article 4, paragraph (a),²² article 12, paragraph 3; article 18, paragraph 1, subparagraph (a), article 19, paragraph 1, introductory subparagraph and paragraph 2; article 20, paragraph 1 introductory subparagraph and paragraph 3; article 31, paragraph 2;²³ article 43, paragraph 1; and article 49, paragraph 1, introductory subparagraph and paragraph 2, subparagraph (a).

15. In several other places where the term “territory” appears in association with the word “country” it is clear that it does not cover undivided States, but only parts of States treated as separate administrative entities as defined in subparagraph (y), including those parts which contain the seat of the central Government (i.e. “metropolitan countries”), an undivided State being called “country”; see article 1, paragraph 1, subparagraphs (w) and (x), introductory clause and clauses (i) and (ii); article 12, paragraphs 2²³ and 4; article 14, paragraph 1, subparagraph (a) and paragraph 2; article 20, paragraph 4; article 21, paragraph 1, introductory subparagraph, and paragraph 4, subparagraph (a) and subparagraph (b), introductory clause and clause (i); article 24, paragraph 4, subparagraph (a), introductory clause; and article 31, paragraph 1, introductory subparagraph and subparagraphs (a) and (b), paragraph 5, paragraph 7, subparagraph (a), paragraph 12 and paragraph 14.²⁴ In all these provisions the term “territory” is employed in the sense of the definition of article 1, paragraph 1, subparagraph (y). This is also the case in article 1, paragraph 1, subparagraph (m) where the word “territory” does not appear in association with the term “country”.

16. It may be noted in this place that the word “country” is employed in a number of articles, alone, i.e. without association with the term “territory”. It denotes in these provisions “State as a whole” whether divided in territories as defined in article 1, paragraph 1, subparagraph (y) or not; see article 24, paragraph 2, subparagraph (a), clause (ii) and subparagraph (b), clause (iii), paragraph 3 and paragraph 4, subparagraph (b); article 31, paragraphs 9

²² The word “territories” could in this place also be understood to mean “areas”.

²³ The term “territories” in this paragraph appears to be the one defined in subpara. (y) and not the one used in article 42. A “territory” within the meaning of article 42 can form a single territory as defined in subpara. (y) but could also be divided in two or more such territories.

²⁴ The meaning of these provisions would however not be affected if the word “country” would be interpreted to cover an undivided State as well as the metropolitan country of a State divided for purposes of narcotics control.

and 11;²⁵ article 32, paragraphs 1, 2 and 3;²⁶ and article 36, paragraph 2, subparagraph (a), clause (i).

17. Under the express terms of article 43, paragraph 2, the area of several States which form a customs union may constitute one “territory” as defined in article 1, paragraph 1, subparagraph (y).

18. It was also the understanding of the Plenipotentiary Conference that an enclave of a State within the customs boundaries of another State surrounding it would for purposes of the Single Convention be administered as part of the surrounding State or of one of its “territories” within the definition of article 1, paragraph 1, subparagraph (y).²⁷

19. The word “territory” may according to its context also mean “area of a State”. It is used in this sense in article 24, paragraph 1, subparagraph (b) and paragraph 4, subparagraph (a), introductory clause;²⁸ article 31, paragraphs 10, 11 and 14, and article 36, paragraph 2, subparagraph (a), clause (iv).²⁹

20. Article 1, paragraph 1, subparagraph (y) expressly states that its definition of the word “territory” does not apply to the use of this word in articles 42 and 46. The meaning of “territory” as employed in these articles is nowhere expressly defined. The qualifying word “non-metropolitan” which is used in article 42³⁰ appears to indicate that the term “territory” in articles 42 and 46 applies to an area which is separated by the sea or by a third State from the motherland.³¹ The phrase in article 42 referring to the term “for the international relations of which any Party is responsible”³² shows moreover that a territory within the meaning of these articles must have some political identity different from that of the mother country. The same or a similar phrase is also used in the “territorial” clauses of a number of other treaties³³ in which the territories with which these clauses deal are understood to have such a separate identity.

21. Article 42 distinguishes two different categories of territories those to whom the Single Convention cannot be applied without their previous consent as required by their respective Constitution or that of the mother country concerned or by custom, and the others whose previous consent is not required. It applies different rules to each of these two groups.

²⁵ See below, comments to article 31, para. 11.

²⁶ See below, comments on article 32, para. 1.

²⁷ *Records*, vol. I, pp. 167 and 170.

²⁸ In the phrase “in the territory of”; in the phrase “from any country or territory” used in this clause the term “territory” has the administrative meaning defined in article 1, para. 1, subpara. (y).

²⁹ See also foot-note 19 above and the provisions to which it refers.

³⁰ See also article 20 of the 1953 Protocol.

³¹ *Records*, vol. I, p. 167. Statement of the Legal Adviser of the Plenipotentiary Conference.

³² Or the equivalent phrase used in article 46, para. 1: “for which it (i.e. any Party) has international responsibility”.

³³ E.g. article 20 of the 1953 Protocol; for the use of this phrase, see territorial clauses in *Multilateral Treaties in Respect of which the Secretary-General Performs Depositary Functions*, Annex: Final Clauses, document ST/LEG/SER.D/1, Annex, Supplement No. 2 (31 December 1969), United Nations publication, Sales No. E.70.V.4.

22. A territory within the meaning of articles 42 and 46 may form one or more administrative territories as defined in article 1, paragraph 1, subparagraph (y); it may also hypothetically be combined with one or more other territories in the sense of articles 42 and 46 to constitute a single administrative territory for purposes of narcotics control. It may however be assumed that a territory within the meaning of articles 42 and 46, particularly also one to which the Single Convention cannot be applied without its consent will as a rule also at the same time be a territory as defined in article 1, paragraph 1, subparagraph (y). Its autonomous powers will include the police and health functions involved in narcotics control.

23. Article 1, paragraph 1, subparagraph (y) does not mention article 49, paragraph 2, subparagraph (b) as one of the provisions to which its definition does not apply. It appears however that the term "territory" used in the latter subparagraph has in view of its context the same meaning as in articles 42 and 46.³⁴ See also below, comments on article 42.

³⁴ In view of the text of article 1, para. 1, subpara. (y) the term "territory" used in article 49, para. 2, subpara. (b) could also be understood to mean a "territory" as defined in article 1 which is a part of, or identical with a territory in the sense of article 42; this may however be a somewhat forced interpretation; both interpretations would have the same practical effect.

Paragraph 2

2. For the purposes of this Convention a drug shall be regarded as "consumed" when it has been supplied to any person or enterprise for retail distribution, medical use or scientific research; and "consumption" shall be construed accordingly.

Commentary

1. The words defined in this paragraph are given a meaning which corresponds to the sense in which even prior to the 1953 Protocol and the Single Convention Governments generally interpreted the term "consumption" for the purpose of carrying out their obligation to furnish statistical information. "Consumption" was not defined in the treaties preceding the 1953 Protocol. Parties to the 1925 Convention assumed the obligation to furnish annual statistics on the "consumption", other than for Government purposes,¹ of a number of narcotic drugs.² They used three different methods in order to obtain figures as close as possible to actual "consumption" as this term would be understood in its ordinary sense:

¹ See above comments on article 1, para. 1, subparas. (w) and (x).

² Article 22, para. 1, subpara. (d); this obligation was extended to all drugs of Group I of the 1931 Convention by article 13, para. 1 of that treaty, and by the 1948 Protocol to additional drugs assimilated to drugs of Group I of the 1931 Convention; the 1912 Convention required Parties to furnish statistics as regards "the trade" in some narcotic drugs (article 21, para (b)). The figures supplied under the terms of this treaty also contained information on "consumption".

- (a) Establishing the actual sales by retail pharmacists,³
- (b) Establishing the quantities actually delivered by manufacturers or wholesalers to retail outlets, or
- (c) Establishing the difference between
 - (aa) The sum of
 - (i) The quantities in stock in the hands of manufacturers and wholesalers (including Government monopolies)⁴ at the beginning of the year.
 - (ii) The quantities manufactured or “produced” (harvested) as the case may be,
 - (iii) The quantities imported, and
 - (iv) The quantities confiscated from the illicit traffic and not destroyed, but released for licit purposes other than “Government purposes” during the year in question, and
 - (bb) The sum of
 - (i) The quantities in the hands of manufacturers and wholesalers (including Government monopolies)⁵ at the end of the year,
 - (ii) The quantities utilized for the manufacture of other “drugs”, of preparations for the export of which export authorizations were not required⁶ and of uncontrolled substances, and
 - (iii) The quantities exported during the year in question.

The methods mentioned under (b) and (c) were sometimes used simultaneously, one checking the other.⁷

2. Prior to the coming in operation of the 1953 Protocol and the Single Convention, the Permanent Central Board advised Governments to supply their “consumption” statistics as follows:

“Unless a Government has established a more exact method of calculating consumption, the Board recommends that in column 1⁸ should be reported the quantities supplied to pharmacists, doctors, dentists, veterinarians and to hospitals, dispensaries and similar health institutions both public and private, that have authority to supply narcotic drugs to patients. Quantities of drugs

³ This method was occasionally used before the coming into force of the 1931 Convention; whether it was used later was not known to the Secretariat of the Permanent Central Board in 1966 (Doc.E/OB/W500, p. 3) nor is it known to the Secretariat of the International Narcotics Control Board at the time of this writing.

⁴ For other than “Government purposes”; see above comments on para. 1, subparas. (w) and (x).

⁵ For other than “Government purposes”.

⁶ The class of these preparations under the earlier narcotics treaties corresponds to the category of preparations listed in Schedule III of the Single Convention, see article 8 together with article 4 of the 1925 Convention; article 13, para. 2, article 5, para. 2, subpara. (a), article 6, para. 1, subpara. (a), article 14, para. 3, clause (g) article 17, closing para. and article 22 of the 1931 Convention; and article 1, para. 4 of the 1948 Protocol. The preparations in this class have often loosely but inaccurately been called “exempted preparations”.

⁷ Model Code, pp. 10 and 11; document of the Permanent Central (Opium) (Narcotics) Board E/OB/W500, pp. 2-3.

⁸ Headed “Consumption other than for Government purposes”.

dispensed through a national health scheme would also figure in this column, regardless of the fact that the system is administered by the State.

"The figures in column 1 should not include amounts consumed in the form of exempted preparations. . .".⁹

3. Under the earlier narcotics treaties as well as under the Single Convention the international organs receive information only on the stocks held by manufacturers and wholesalers, and not on those in the hands of retail outlets.¹⁰ They obtain also separate data on the quantities acquired by the various countries or territories by way of manufacture, production¹¹ and import, and by means of seizure from the illicit traffic and appropriation for legal purposes. They are also provided with information on the quantities which were disposed of in each country and territory by utilization for the manufacture of the other "drugs"¹² and substances, by exports and "consumption".¹³ If "consumption" were understood to denote "sales by retail pharmacists", a gap in the statistical system of the international narcotics régime would exist. The international organs would not know the quantities of drugs which passed from the wholesale level to the retail level of the drug economy and thus would not obtain a complete picture of the drug movements in the various countries and territories. They could not strike the balance which would show whether significant quantities of drugs were diverted from manufacture and wholesale trade into illicit channels. It is therefore suggested that of the three methods mentioned above as having been used in the calculation of "consumption" that described under (a) (actual sales by retail pharmacists), although more accurately reflecting the actual consumption by patients than the method outlined under (b) and described in greater detail in the Permanent Central Board's¹⁴ recommendation, was inconsistent with the statistical system of the narcotics treaties which preceded the 1953 Protocol and the Single Convention. The gap just mentioned was closed by giving the term "consumption" on the amount of which Governments were required to furnish figures the meaning of transfer from the wholesale to the retail level of the national or territorial drug economy in question.

4. By knowing the quantities sold to retail outlets each year, the international organs can also obtain a reasonably accurate picture of the actual quantities used in medical, veterinary and dental practice. While the amount sold to retail outlets in a particular year may differ considerably from the quantity used up in the practice of the medical professions, i.e. from actual "consumption" as this term is ordinarily understood, the average annual sale during three to five years will be rather close to such consumption.

5. As the Single Convention also limits the information which Governments are required to furnish on "stocks" to that regarding drugs held by

⁹ Form C/1 of the Permanent Central Board, entitled "Annual Statistics of Consumption" (9th edition, November 1959), Instruction No. 4.

¹⁰ See above comments on subparas. (w) and (x).

¹¹ Article 1, para. 1, subpara. (i).

¹² Article 1, para. 1, subpara. (j).

¹³ Article 22 of the 1925 Convention and article 20 of the Single Convention.

¹⁴ See above comments on article 1, para. 1, subpara. (a).

manufacturers and wholesalers,¹⁵ it has to call for information from the Parties on the quantity of drugs transferred each year from the wholesale level to the retail level of their trade. This requirement is met by defining “consumption”, on which Governments have to supply annual statistics, to mean such transfer.¹⁶ By incorporating this definition in the Single Convention, the Plenipotentiary Conference accepted what had already been done in practice by Governments under the earlier narcotics treaties.

6. “Consumption” of preparations other than preparations in Schedule III is considered to be “consumption” of the “drugs” which they contain. Since the International Narcotics Control Board does not need separate data on the consumption of a “drug” and its preparations,¹⁷ it inserted in the form which Governments must employ in making their annual statistical reports an instruction, requiring that the figures (including those on consumption) should cover the pure drug content of the drugs or preparations.¹⁸ The drugs contained in preparations in Schedule III which are “supplied to any person or enterprise for retail distribution, medical use or scientific research” (i.e. transferred from the wholesale level to the retail level of the drug economy) are, however, not counted in the computation of the “consumption” statistics.¹⁹ Preparations listed in Schedule III, and consequently the drugs which they contain, are never “consumed” within the meaning given to this term in article 1, paragraph 2.²⁰ The International Narcotics Control Board has advised to consider as “consumed”

“the amounts supplied for retail distribution, medical use or scientific research, to any person, enterprise or institute (retail pharmacists, other authorized retail distributors, institutions or qualified persons duly authorized to exercise the therapeutic or scientific functions: doctors, dentists, veterinarians, hospitals, dispensaries, and similar health institutions, both public and private; scientific institutes)”.

The Board also added that

“quantities dispensed through a national health scheme should also be included” in the consumption figures, “regardless of the fact that the system is administered by the State”.²¹

It will be noted that this instruction of the Board under the Single Convention is essentially the same as that quoted above given by the Permanent Central Board under the earlier narcotics treaties.

¹⁵ Article 1, para. 1, subpara. (x), clause (iv); see also comments on article 1, para. 1, subparas. (w) and (x).

¹⁶ Article 20, para. 1, subpara. (c) and para. 2; article 9, para. 1, subpara. (a), clause (ii) of the 1953 Protocol gives in substance the same meaning to consumption as article 1, para. 2 of the Single Convention.

¹⁷ Article 2, para. 3 of the Single Convention.

¹⁸ Form C/S of the Board, 4th edition (Nov. 1969), instruction No. 3; see also comments on article 1, para. 1, subpara. (n).

¹⁹ Article 2, para. 4.

²⁰ The drugs contained in such preparations are however separately recorded in the statistics which Governments must supply on the quantities of drugs used in the manufacture of preparations of Schedule III; article 2, para. 4 and article 20, para. 1, subpara. (b); Governments must also furnish separate estimates of the quantities of drugs which they require for the manufacture of such preparations, art. 2, para. 4 and art. 19, para. 1, subpara. (b).

²¹ Form referred to in foot-note 18, note *a* to table II, p. 9.

7. The term “medical use” in paragraph 2 means only medical administration or dispensation and not personal “consumption” in the ordinary sense of this word.

8. It may be noted that the Single Convention sometimes applies the word “use” for consumption by individual patients or animals, i.e. for “consumption” in its common meaning. See article 2, paragraph 5, article 4, subparagraph (c), article 32, paragraph 2, and article 49, paragraph 1, subparagraphs (a) and (d), paragraph 2, subparagraphs (d), (f), and (g) and paragraph 3, subparagraph (a).

9. The word “use” is, however, also employed in other meanings.²² For the use of the term “consumed” in the meaning of the definition of article 1, paragraph 2, see article 19, paragraph 1, subparagraph (a) and article 21, paragraph 1, subparagraph (a); for the use of the word “consumption” in the same meaning see article 1, paragraph 1, subparagraph (x), clause (i) and article 20, paragraph 1, subparagraph (c).

10. For the meaning of the word “consuming” in article 9, paragraph 3, see below, comments on that paragraph.

²² E.g., article 1, para. 2 (medical administration or dispensation); article 2, para. 9 (“used in industry”), article 18, para. 2 (“use such forms”), article 19, para. 4 (“methods used” for making estimates), article 21, para. 1, subpara. (b) (“used . . . for the manufacture”), article 21, para. 2 (“released for licit use” (including use in treatment and research, but also other uses such as in manufacture)), article 27, (“such use” (for the preparation of a flavouring agent)); (“used for the extraction of alkaloids and the flavouring agent”) and article 30, para. 2 subpara. (b) (“use” in medical treatment); for use of such terms as “abuse” and “misuse” see article 3, para. 3, subpara. (iii) and paras. 4 and 5 and article 28, para. 3.

Article 2

SUBSTANCES UNDER CONTROL

General comments

1. Article 2 offers a synopsis of the various régimes which the Single Convention provides for different categories of “drugs”¹ and their “preparations”^{2 3} the other substances⁴ and the three plants which it controls, namely the opium poppy, coca bush and cannabis plant.⁵ This is done by citation of the relevant articles and in a few cases by giving the substantive rules themselves.⁶ The following different régimes are provided for:

- (1) The régime applicable to drugs in Schedule I with the exception of opium, the coca leaf and extracts and tinctures of cannabis in territories in respect of which they have been made the object of a reservation under article 49 by the Parties concerned and of the drugs also listed in Schedule IV.⁷
- (2) The régime applicable to preparations, other than preparations in Schedule III, of the drugs subject to the régime mentioned under (1).
- (3) The régime applicable to opium and the coca leaf in territories in respect of which the Parties concerned have not made a reservation under article 49; as opium and the coca leaf are listed in Schedule I, they are subject to the rules governing the drugs listed in that schedule and to some additional provisions.⁸
- (4) The régime applicable to preparations, other than those in Schedule III, of opium and the coca leaf referred to under (3).
- (5) The régime applicable to opium and the coca leaf in territories in respect of which they have been made the object of a reservation under article 49 by the Parties concerned.
- (6) The régime applicable to preparations, other than those listed in Schedule III, of the opium and the coca leaf, in the circumstances referred to under (5).

¹ As defined in article 1, para. 1, subpara. (j).

² As defined in article 1, para. 1, subpara. (s).

³ For the survey of the régimes of “drugs” and “preparations” see article 2, paras. 1-6 and 9.

⁴ Paras. 7 (poppy straw and cannabis leaves) and 8.

⁵ Para. 7.

⁶ Paras. 5, 8 and 9.

⁷ Cannabis and cannabis resin listed in Schedule IV are subject to some provisions not applicable to the other drugs in this Schedule; see article 2, para. 6. Cannabis resin is not separately referred to in this paragraph although it is considered to be a drug separate from cannabis in the relevant provisions. It is subjected to the same régime as cannabis; see article 1, para. 1, subparas. (b) and (d), article 28, para. 1, article 49, para. 1 (d) and Schedule IV.

⁸ Article 2, para. 6.

- (7) The régime applicable to extracts and tinctures of cannabis in territories in respect of which they have been made the object of a reservation under article 49 by the Parties concerned.
- (8) The régime applicable to preparations, other than those included in Schedule III (if any) of such extracts and tinctures.
- (9) The régime applicable to drugs in Schedule II.
- (10) The régime applicable to preparations of drugs in Schedule II, with the exception of preparations included in Schedule III.
- (11) The régime applicable to drugs in Schedule IV, with the exception of cannabis and cannabis resin.⁹
- (12) The régime applicable to preparations, other than preparations listed in Schedule III (if any)¹⁰ of drugs in Schedule IV, with the exception of cannabis and cannabis resin.
- (13) The régime applicable to cannabis and cannabis resin in territories in respect of which they have not been made the object of a reservation under article 49 by the Parties concerned.
- (14) The régime applicable to preparations, other than preparations in Schedule III (if any)¹⁰ of the cannabis and cannabis resin referred to under (13).
- (15) The régime applicable to cannabis and cannabis resin in territories in respect of which they have been made the object of a reservation under article 49 by the Parties concerned.
- (16) The régime applicable to preparations, other than preparations in Schedule III if any,¹⁰ of the cannabis and cannabis resin mentioned in (15) above.
- (17) The régime applicable to preparations in Schedule III.¹¹
- (18) The régime applicable to poppy straw.¹²
- (19) The régime applicable to cannabis leaves.¹³
- (20) The régime applicable to the opium poppy.¹⁴
- (21) The régime applicable to the coca bush.¹⁵
- (22) The régime applicable to the cannabis plant.¹⁶
- (23) The régime applicable to substances which do not fall under the drug régime of the Single Convention, but which may be used in the illicit manufacture of drugs.¹⁷

⁹ See above, foot-note 7.

¹⁰ As to the question whether preparations of drugs in Schedule IV can be included in Schedule III see below comments on article 3, para. 4. At present no preparations of drugs in Schedule IV are listed in Schedule III.

¹¹ Article 2, para. 4.

¹² Article 2, para. 7, article 20, para. 1, subpara. (b), article 29, para. 3 and article 30, para. 2, subpara. (a), and article 25.

¹³ Article 2, para. 7 and article 28, para. 3.

¹⁴ Article 23, article 24, and article 25, para. 1.

¹⁵ Article 26.

¹⁶ Article 28, paras. 1 and 2.

¹⁷ Article 2, para. 8.

(24) The régime applicable to drugs which are commonly used in industry for other than medical or scientific purposes.¹⁸

2. This enumeration includes the different basic régimes expressly referred to in article 2,¹⁹ and it also mentions the various régimes governing preparations containing the various kinds of drugs.²⁰ These régimes governing preparations not only differ, however slightly, from the controls applicable to the drugs concerned, but also from each other.²¹ The list also mentions several régimes which are neither expressly nor impliedly referred to in article 2, but which result from the application of article 49 concerning “transitional reservations”.²²

3. The divergences between many of these régimes are only very minor. The long list, could, however, even be extended if some additional small distinctions were taken into account, e.g. between the provisions governing opium and those regarding the coca leaf.²³ The authors of the Single Convention found it necessary to provide for such a great variety of controls because they wished to take into account the conditions prevailing in all countries of the world. National laws enacted to implement the Single Convention may contain a smaller number of different régimes—and indeed they generally do—provided always that they thereby do not establish a less “strict” or “severe” control system than that required by the Convention.²⁴

¹⁸ Article 2, para. 9.

¹⁹ I.e. the régimes numbered 1, 3, 9, 11, 13, 17, 18, 19, 20, 21, 22, 23 and 24.

²⁰ Under numbers 2, 4, 10, 12 and 14, see also numbers 6, 8 and 16.

²¹ Article 2, para. 3.

²² The régimes numbered 5, 6, 7, 8, 15 and 16.

²³ Article 26, para. 1, article 27 and article 49, para. 2, subparas. (c), (d) and (e); see the régimes listed under numbers 3, 4, 5 and 6.

²⁴ Article 39.

Paragraph 1

1. Except as to measures of control which are limited to specified drugs, the drugs in Schedule I are subject to all measures of control applicable to drugs under this Convention and in particular to those prescribed in articles 4 (c), 19, 20, 21, 29, 30, 31, 32, 33, 34 and 37.

Commentary

1. The control provisions applicable to drugs in Schedule I constitute the standard régime under the Single Convention. The principal features of that régime are: limitation to medical and scientific purposes of all phases of narcotics trade (manufacture,¹ domestic trade, both wholesale and retail, and international trade) in, and of the possession and use of, drugs; requirement of governmental authorization (licensing or state ownership) of participation

¹ “Production”, i.e. harvesting of opium, coca leaves, cannabis and cannabis resin (article 1, para. 1, subpara. (i)) must also in principle be limited to such purposes (see article 4 (c) and article 49); but this is a provision of a specific régime and not part of the standard régime.

in any phase of the narcotics trade and of a specific authorization (import ² and export authorization) of each individual international transaction; obligation of all participants in the narcotics trade to keep detailed records of their transactions in drugs; requirement of a medical prescriptions for the supply or dispensation of drugs to individuals; and a system of limiting the quantities of drugs available, by manufacture or import or both, in each country and territory, ³ to those needed for medical and scientific purposes.

2. All “drugs” are included either in Schedule I or II; ⁴ drugs in Schedule IV *must* simultaneously be in Schedule I. ⁵

3. As regards the criteria for including a drug in Schedule I, see below, comments on article 3, paragraph 3, subparagraph (iii).

4. The term “drug” is defined to mean any of the substances in Schedules I and II. ⁴ Consequently all provisions concerning “drugs” apply to drugs in Schedule I and II unless it is expressly indicated otherwise. The only general provision applicable to “drugs” which does not govern all drugs listed in Schedule I, but only those of them which are simultaneously included in Schedule IV, is that of article 2, paragraph 5. The Single Convention does not state in any other place that a provision concerning “drugs” does not apply to all drugs in Schedule I; but some drugs in Schedule I which are not listed in Schedule IV, namely opium and the coca leaf, are subject to special provisions in addition to those applicable to all drugs in Schedule I. Cannabis and cannabis resin, which appear in both Schedule I and IV, are also governed by some additional special provisions. ⁶

5. These additional provisions do not refer to the general term “drugs”, but state specifically that they apply respectively to opium, coca leaves or cannabis and cannabis resin. ⁷ Article 2, paragraph 1 sums up this situation by stating that “Except as to measures of control which are limited to *specific drugs*, the drugs in Schedule I are subject to all measures of control applicable to drugs”. The “specific drugs” are those listed in Schedule IV and opium, the coca leaf, cannabis and cannabis resin. ⁸

6. The paragraph under consideration enumerates the principal control provisions applicable to *all* drugs in Schedule I including the “specific” drugs just mentioned. It is clear from the text that this enumeration is not meant to be exhaustive; see article 14, paragraph 2, article 18, paragraph 1, subparagraph (c), article 25, paragraph 1, subparagraph (b) and article 36, paragraph 1. ⁹

7. Schedule I of the Single Convention corresponds to Group I of the

² As regards the use of the term “import certificate” see also article 31, para. 5,

³ Article 1, para. 1, subpara. (y).

⁴ Article 1, para. 1, subpara. (j).

⁵ Article 2, para. 5, introductory subparagraph; see also articles 3, para. 5.

⁶ Article 2, para. 6, articles 23, 24, 26, 27 and 28, para. 1; see also article 49 which refers also to extracts and tinctures of cannabis also listed in Schedule I.

⁷ For the specific reference to “extracts and tinctures of cannabis” see article 49, para. 1, subpara. (d).

⁸ Cannabis and cannabis resin are moreover included in Schedule IV.

⁹ See also articles 22, 37 and 38 and article 9, para. 3.

1931 Convention¹⁰ and the 1948 Protocol.¹¹ The régime applicable to the drugs in Schedule I corresponds to that governing drugs in Group I under the earlier treaties. The 1931 Convention divided¹² Group I into two subgroups, subgroup (a) and (b), subgroup (a)¹³ including drugs considered to be “capable of producing addiction”, and subgroup (b) consisting of drugs not themselves capable of producing addiction, but convertible into addictive drugs which are not much used in medical practice.¹⁴ The same control régime applies to both subgroups. The Single Convention does not divide Schedule I into two sections.¹⁵

¹⁰ Article 1, para. 2, article 11, paras. 3, 4 and 6, article 13, para. 1 and article 18.

¹¹ Article 1, para. 2 and article 2.

¹² Article 1, para. 2.

¹³ Article 11, paras. 3 and 4 of the 1931 Convention.

¹⁴ *Commentary* on the 1931 Convention, para. 8, section 2 (p. 30); such convertible drugs extensively used in medicine are in Group II of the narcotics régime preceding the Single Convention.

¹⁵ The 1948 Protocol does not distinguish between subgroups (a) and (b) of Group I.

Paragraph 2

2. The drugs in Schedule II are subject to the same measures of control as drugs in Schedule I with the exception of the measures prescribed in article 30, paragraphs 2 and 5, in respect of the retail trade.

Commentary

1. It may first be noted that no drug in Schedule II can simultaneously be listed in Schedule IV. All drugs in Schedule IV must also appear in Schedule I.¹

2. Schedule II corresponds to Group II of the 1931 Convention² and the 1948 Protocol.³ The drugs in Group II are those which are considered not to be capable by themselves of producing “addiction”,⁴ but to be convertible into such drugs, and which are widely used in medicine.⁵

3. As regards the criteria applied by the Plenipotentiary Conference for inclusion in Schedule II, see below, comments on article 3, paragraph 3, subparagraph (iii).

4. For practical reasons, i.e. in order not to place too great a burden on medical practitioners, retail pharmacists and patients, drugs in Group II of the earlier narcotics treaties were exempted from several controls applicable

¹ Article 2, para. 5.

² Article 1, para. 2, article 11, paras. 3, 4 and 6 and article 13, para. 2.

³ Article 1, para. 2.

⁴ As to the term “addiction”, see below, comments on article 38.

⁵ Drugs of this nature of no or limited medical use are in subgroup (b) of Group I of the earlier narcotics treaties; see above, comments on article 2, para. 1 and *Commentary* on the 1931 Convention, para. 8, Section 2, pp. 29-30; see article 11, paras. 3 and 4 of that Convention and article 1, para. 2 of the 1948 Protocol. Codeine, which is slightly addiction-producing, was included in Group II of the 1931 Convention, not because of this property, but because of its capacity to be converted into “addiction”-producing drugs and of its wide use in medicine.

to drugs in Group I. The relevant provision of the 1931 Convention,⁶ which contains the régime governing drugs in Group II prior to the coming into force of the Single Convention, exempted the retail trade in these drugs from the system of international narcotics control. This means that under the treaties preceding the Single Convention, retail distributors of such drugs did not require a licence and did not have to keep records⁷ of their transactions, as they were required to do in respect of drugs in Group I. Medical prescriptions were also not needed for the supply or dispensation of drugs in Group II. Moreover Governments were not required to furnish⁸ in regard to such drugs quarterly import and export statistics, but only annual statistics, and did not have to report figures on their consumption. The estimates of their requirements of drugs in Group II which Governments were bound to furnish under the 1931 Convention⁹ could include a wider margin than in the case of drugs in Group I.¹⁰ If requested¹¹ to explain the estimates of drugs in Group II, Governments could limit their reply to a "summary statement", i.e. they did not have to go into the same detail as in the case of a request for explanations in respect of drugs in Group I.¹² Finally, preparations of drugs of Group II "adapted to a normal therapeutic use" were exempted from the administrative controls of the 1925 Convention, in particular from its import certificate and export authorization system¹³ (i.e. from the requirement of a special government authorization of each import and export). Under the conventions preceding the Single Convention, such preparations of Group II drugs had the same exempted position as preparations exempted from the controls of the 1925 Convention¹⁴ by a decision of the World Health Organization under article 8¹⁵ of that Convention. They were in fact exempted from control as regards both internal distribution (wholesale and retail) and international trade.¹⁶

5. The Single Convention places drugs in Schedule II under a considerably stricter régime than the earlier treaties for the drugs of Group II. Drugs in

⁶ Article 13, para. 2; "the interpretation of this paragraph presents certain difficulties"; *Commentary* on the 1931 Convention, para. 135, p. 174. The description of the régime governing drugs in Group II accepts the interpretation of the *Commentary*, paras. 135-138.

⁷ By entries in books or retaining the medical prescriptions; article 6, para. (c) of the 1925 Convention together with article 13, para. 2, subpara. (a) of the 1931 Convention.

⁸ Formerly to the Permanent Central Board and now to the International Narcotics Control Board; see article 45 of the Single Convention; see also above comments on article 1, para. 1, subpara. (a).

⁹ Articles 2-5.

¹⁰ Article 5, para. 3.

¹¹ Formerly by the Drug Supervisory Body now by the International Narcotics Control Board, article 45 of the Single Convention; see comments on this article.

¹² Article 5, para. 6, second subpara. of the 1931 Convention; *Commentary* on the 1931 Convention, para. 74, p. 121.

¹³ Chapter V of the 1925 Convention, article 13, para. 2 of the 1931 Convention.

¹⁴ Requirement of licensing, import and export authorization, statistical reporting, record keeping, medical prescription, limitation of trade and use to medical and scientific purposes.

¹⁵ Article 8 as amended by the 1946 Protocol; the decision to exempt was, under terms of the unamended text, taken by the Health Committee of the League of Nations.

¹⁶ *Commentary* on the 1931 Convention, para. 50, p. 80.

Schedule II are subject to the same measures of control as drugs in Schedule I, with only a few exceptions indicated in article 2, paragraph 2,¹⁷ i.e. they are not subject to the provisions of article 30, paragraphs 2 and 5, as regards the retail trade. Governments are thus not bound to prevent the accumulation of drugs in Schedule II in the possession of retail distributors, in excess of the quantities required for the normal conduct of business.¹⁸ Medical prescriptions for the supply or dispensation of these drugs to individuals are not obligatory.¹⁹ Such drugs are also exempted from the provision—which in fact is no more than a suggestion—concerning the use of official prescription forms in the shape of counterfoil books issued by the competent governmental authorities or by authorized professional associations.²⁰ Furthermore, Parties to the Single Convention need not require that the label under which a drug in Schedule II is offered for sale in the retail trade show the exact content by weight or percentage.²¹ No express provision is made for a privileged position for preparations of drugs in Schedule II which are “adapted to a normal therapeutic use”, but the same effect is obtained by including in Schedule III preparations of drugs in Schedule II which, as defined in that Schedule, are in fact “adapted to a normal therapeutic use”; see below, comments on article 2, paragraph 4.

6. Contrary to the situation as it existed in regard to drugs of Group II under the earlier treaties, the Single Convention requires a licence for the retail trade in, or retail distribution of, drugs in Schedule II, except where such trade or distribution is carried out by a State enterprise. It even prescribes “control under license” for the establishments and premises in which the retail trade in, or retail distribution of, drugs in Schedule II takes place. This provision does not, however, apply to any preparations, including preparations of drugs in Schedule II. Governments must also quite generally control all persons and enterprises carrying on or engaged in the trade in or distribution of all drugs, including drugs in Schedule II and the *retail* trade and distribution.²²

¹⁷ See also article 30, para. 6.

¹⁸ Article 30, para. 2, subpara. (a). The corresponding, but somewhat different provisions of article 16, para. 1, subparas. (a) and (b) and para. 2 of the 1931 Convention apply only to manufacturers and not to distributors, neither wholesale nor retail. See below, comments on article 30, para. 2, subpara. (a).

¹⁹ Article 30, para. 2, subpara. (b), clause (i).

²⁰ Article 30, para. 2, subpara. (b), clause (ii); see below, comments on this clause.

²¹ Article 30, para. 5. The provision applies only to drugs in Schedule I other than drugs dispensed to individuals on medical prescription. The corresponding but somewhat different provision of article 19 of the 1931 Convention applies to all narcotic drugs and their preparations, including drugs of Group II and their preparations whether “adapted to a normal therapeutic use” or not, and even to preparations exempted by a decision under article 8 of the 1925 Convention. Article 19 requires that “the labels under which any of the drugs, or preparations containing those drugs, are offered for sale, shall show the percentage of the drugs”; see below, comments on article 30, para. 5; see also *Commentary* on the 1931 Convention, para. 189, page 208.

²² Article 30, para. 1, subpara. (b), clauses (i) and (ii) together with para. 6; see below comments on these clauses. The requirement of licensing of “establish-

7. It may in particular be noted that, contrary to the régime applicable under the earlier treaties to drugs of Group II such as codeine and ethylmorphine, Parties to the Single Convention must furnish figures on the consumption of drugs in Schedule II and *quarterly* statistics concerning their imports and exports of these drugs.²³

8. The fact that only annual import and export statistics of drugs in Group II had to be supplied by Parties to the earlier treaties excluded these drugs from the application of article 14, paragraph 2 of the 1931 Convention. Under this paragraph the Permanent Central Board²⁴ could, as the International Narcotics Control Board²⁵ can still do at present, order the discontinuation of the export of narcotic drugs to any country or territory during the current year in question if it learned from the information which it obtained under article 14, paragraph 1²⁶ of the 1931 Convention and in particular also from the (quarterly) import and export statistics which it received, that the quantity of the drugs in question exported or authorized to be exported to that country or territory exceeded its import limits, as defined in article 14, paragraph 2, for the year concerned. The Permanent Central Board could not apply this provision to drugs in Group II, in respect of which it received import and export statistics only annually, since it did not receive the data and therefore could not act during the year in which the excessive imports occurred, and it was only for the duration of that year that the Board was authorized to impose the embargo.

9. Article 21, paragraph 4 of the Single Convention is basically the same provision.²⁷ The International Narcotics Control Board, however,

ments and premises" applies only to the manufacture of drugs under the earlier conventions; the general requirement of "control" just mentioned in the main body of the text does not apply to the retail trade in drugs of Group II under these treaties. See article 6 of the 1925 Convention together with article 13, para. 2 of the 1931 Convention; see also article 10 of the 1912 Convention. This article, forming a part of Chapter III of the Convention, was replaced by the provisions of the 1925 Convention as between Parties to this Convention; article 31 of the 1925 Convention.

²³ Article 20, para. 1, subparas. (c) and (d) and para. 2, subpara. (b) together with article 2, para. 2 of the Single Convention.

²⁴ See above comments on article 1, para. 1, subpara. (a).

²⁵ Article 45 of the Single Convention.

²⁶ Article 14, para. 1 is in this procedure only of minor importance. Its provisions are obsolete and were not taken over by the Single Convention. It requires a Party which has authorized the export of any of the drugs in Group I of the 1931 Convention to a country or territory to which neither this Convention nor the 1925 Convention applies to inform immediately the Permanent Central Board of this authorization provided that if the amount to be exported is five kilogram or more the authorization shall not be issued until the Party concerned has ascertained from the Permanent Central Board that the export to be authorized will not cause "the estimates" i.e. the import limits of the importing country or territory to be exceeded. The functions of the Permanent Central Board under this para. have been taken over by the International Narcotics Control Board (Article 45 of the Single Convention). As regards the use of the word "estimates" in article 14, para. 1 in the sense of "the total of the estimates" see *Commentary* on the 1931 Convention, para. 144, p. 183; see also below foot-note 4 to the comments on article 19, para. 5 of the Single Convention; see also *Commentary* on the 1931 Convention, para. 146, p. 184.

²⁷ The embargo foreseen in article 14, para. 2 of the 1931 Convention has often been referred to as "automatic embargo" because the Permanent Central Narcotics Board was under an obligation to impose the embargo which was binding upon the

can apply this provision to drugs in Schedule II, since it receives quarterly import and export statistics in respect of them.²⁸ See below, comments on article 24, paragraph 4.

10. Drugs in Schedule II are exempted only from those controls applicable to drugs in Schedule I which are expressly mentioned in article 2, paragraph 2. They are, in particular, not exempted from the application of article 34, paragraph (b) which requires, *inter alia*, “traders”, including retail traders, “to keep such records as will show the quantities. . . of each individual acquisition and disposal of drugs”. Medical practitioners (physicians, surgeons, dentists and veterinarians) are not “traders” in the sense in which this word is used in this paragraph. This is confirmed by the fact that it was suggested at the Plenipotentiary Conference to include medical practitioners in addition to “traders” in the enumeration of those required to keep records. This suggestion was not adopted because medical practitioners “were too busy to keep records of every administration of narcotic drugs”.²⁹ The Single Convention does not provide for the keeping of records by medical practitioners, either in respect of drugs in Schedule II or of those in Schedule I.

11. The term “traders” as used in article 34, paragraph (b) undoubtedly includes, however, pharmacists, who are therefore bound to keep records of each individual acquisition and disposal of drugs. The necessity for such a provision regarding drugs in Schedule I can hardly be questioned; but it is nowhere stated in the Single Convention that it does not also apply to drugs in Schedule II. It is, however, suggested that it was hardly the intention of the Plenipotentiary Conference to require the keeping of records of the retail distribution of drugs in Schedule II, in particular not of that by pharmacists. The records of the sale of drugs to individuals are mostly maintained by retaining and preserving the medical prescriptions or copies of them.³⁰ Medical prescriptions are however not required by the Single Convention for drugs in Schedule II. Moreover, to obligate pharmacists to keep a record of each sale of such widely used drugs in Schedule II as codeine might in some countries impose a burden which would affect adversely the achievement of one of the purposes of the Single Convention expressed in its Preamble, namely that of making “adequate provision. . . to ensure the availability of narcotic drugs” “for the relief of pain and suffering”. In fact, a number of Parties to the Single Convention do not require pharmacists to keep records of their retail sale of drugs in Schedule II, and other Parties have not objected to this. It may be assumed that a kind of understanding exists that Governments are not bound to impose such an obligation on pharmacists. It would seem to have been by oversight that the Plenipotentiary Conference did not expressly

exporting Parties, in contradistinction to the cases of articles 24 and 26 of the 1925 Convention and of article 14, para. 3 of the 1931 Convention in which the Permanent Central Board could only *recommend* the embargo and had the discretion to do so or not. For the “mandatory embargo” in respect of opium see art. 12, para. 3 of the 1953 Protocol; for the recommendation of an opium embargo see para. 2 of this article, see also article 8, para. 11 of the Protocol.

²⁸ The International Narcotics Control Board is, however, not bound to impose the embargo—it may choose not to do it.

²⁹ *Records*, vol. II, pp. 145-146, in particular page 145; see also vol. I, p. 36.

³⁰ See also article 6 (c) of the 1925 Convention.

exempt retail sales of drugs in Schedule II from the requirement of keeping records. There is, however, no doubt about the need for obligating pharmacists to keep exact records of their acquisitions of drugs in Schedule II. See also comments to article 34, paragraph (b).

12. Attention is finally drawn to article 39, which expressly states that Parties are not precluded from adopting more strict or severe controls than those provided by the Single Convention and in particular from requiring that drugs in Schedule II be subject to measures of control applicable to drugs in Schedule I from which they are exempted by the Convention.

Paragraph 3

3. Preparations other than those in Schedule III are subject to the same measures of control as the drugs which they contain, but estimates (article 19) and statistics (article 20) distinct from those dealing with these drugs shall not be required in the case of such preparations, and article 29, paragraph 2 (c) and article 30, paragraph 1 (b) (ii) need not apply.

Commentary

1. Drugs are mostly not used in their pure state for medical purposes, but rather in form of their salts and particularly of "preparations", i.e. of mixtures which contain other substances in addition to the drugs or their salts.¹ The effect of a preparation, and thus its possible harmful character, generally depend on the nature of the drug which it contains. Paragraph 3 therefore provides that preparations are "subject to the same control measures as the drugs which they contain". If a preparation contains two drugs falling under different régimes, it is to be controlled by the more strict control system. This means that if a preparation contains one drug listed in Schedule I and another one listed in Schedule II, it would be controlled by the régime applicable to drugs in Schedule I. It would thus be subject to the provisions governing drugs in Schedule I as well as to those governing drugs in Schedule II, since the measures prescribed for drugs in the former Schedule include all those applicable to drugs in the latter Schedule.

2. The estimates of their drug requirements² and the statistical returns³ which Governments must furnish to the Board should include the quantities of the pure drug contained in crude drugs, refined drugs and their salts and preparations.⁴ This reduction to a common denominator makes it possible to avoid multiple counting. Paragraph 3 stipulates therefore that estimates and statistics distinct from those relating to the drugs which they contain are not required.⁵ See below comments on articles 19 and 20 and above comments on article 1, paragraph 1, subparagraph (n).

¹ Article 1, para. 1, subpara. (s).

² Article 19.

³ Article 20.

⁴ See Forms of Board B/S (6th edition, March 1970), instruction No. 4 and C/S (4th edition, November 1969), instruction No. 3 and A/S (5th edition, November 1969), instruction No. 3.

⁵ See also article 5, para. 2, introductory subparagraph of the 1931 Convention.

3. Licensed drug manufacturers must obtain periodical permits specifying the kinds and amounts of drugs which they are entitled to make.⁶ This provision enables Governments to assign manufacturing quotas to each authorized drug factory in order to prevent the quantities which are manufactured from exceeding the limits allowed under the terms of the Single Convention. The limits of drug supplies which countries and territories⁷ may obtain by manufacture or import or both are expressed in terms of the pure drug content of the crude and refined drugs and of their salts and preparations, as are the above-mentioned estimates of drug requirements which Governments must furnish and on the basis of which the limits are computed.⁸ Since the Single Convention prescribes no limits for the supply of preparations apart from those for the drugs which they contain, no provision is made requiring periodical permits to be obtained by licensed manufacturers of preparations. See also comments on article 29, paragraph 2, subparagraph (c).

4. Under the narcotics treaties preceding the Single Convention, establishments and premises in which the manufacture of drugs takes place require a licence. This licence is in addition to that which the manufacturers themselves (natural or legal persons) must obtain. The requirement of licensing of establishments and premises does not apply to the manufacture of preparations, nor to the trade in drugs and their preparations.⁹ This licensing is prescribed under the Single Convention not only for the manufacture of drugs, but also for that of preparations and for the trade in drugs but not in preparations¹⁰ See also below, comments on article 29, paragraph 2, subparagraph (b) and on article 30, paragraph 1, subparagraph (b).

5. As regards preparations listed in Schedule III, see article 2, paragraph 4 and comments thereon.

⁶ Article 29, para. 2, subpara. (c).

⁷ Article 1, para. 1, subpara. (v).

⁸ Article 21, para. 1.

⁹ Article 6, subparas. (a) and (b) of the 1925 Convention and article 13 of the 1931 Convention.

¹⁰ Article 29, para. 2, subpara. (b), article 30, para. 1, subpara. (b), clause (ii) and article 2, para. 3.

Paragraph 4

4. Preparations in Schedule III are subject to the same measures of control as preparations containing drugs in Schedule II except that article 31, paragraphs 1 (b) and 4 to 15 need not apply, and that for the purpose of estimates (article 19) and statistics (article 20) the information required shall be restricted to the quantities of drugs used in the manufacture of such preparations.

Commentary

1. Schedule III contains preparations which enjoy a privileged position under the Single Convention, i.e. are subject to a less strict régime than other preparations. They form a category which corresponds to those preparations

which are referred to in the 1931 Convention¹ as “preparations for the export of which export authorizations are not required” and which are often somewhat inexactly called “exempted preparations”.

2. The “exempted preparations” under the treaties preceding the Single Convention are:

(a) Preparations expressly exempted from the provisions of the 1925 Convention;²

(b) Preparations of drugs in Group II of the 1931 Convention (and of the 1948 Protocol) which are “adapted to a normal therapeutic use”;³

(c) Preparations exempted from the 1925 Convention by a decision of the Health Committee of the League of Nations (under the unamended text of article 8 of the 1925 Convention) or by the World Health Organization (under that article as amended by the 1946 Protocol).

3. These preparations were exempted from the application of the 1925 Convention and were subject to only a few rules of the 1931 Convention. Governments had to include the quantities of drugs required for the manufacture of these preparations in the estimates which they furnished of the quantities of drugs which they needed “for use as such for medical and scientific needs”.⁴ They were bound to require wholesalers within their territories to make, at the close of each year, reports stating the amount of each drug contained in those preparations which they had exported or imported during the year.⁵ Governments were obliged to include in their annual statistics the amounts of drugs used by their manufacturers and wholesalers for the compounding of preparations mentioned above under (a) and (c). This obligation to furnish information did not cover preparations of drugs in Group II “adapted to a normal therapeutic use”, mentioned under (b).⁶ Finally, Governments were obliged to require that the labels under which the preparations listed under (a), (b) and (c) above are offered for sale show the percentage of the drugs which they contain.⁷

4. The Single Convention places the preparations in Schedule III under a considerably stricter régime than applied under the earlier treaties to “preparations for the export of which authorizations are not required”.

¹ Article 5, para. 2, subpara. (a), article 6, para. 1, subpara. (a), article 14, para. 3, subpara. (g), article 17, last para. and article 22; see also the forms of the Board A/S (5th edition, November 1969), instruction No. 5, B/S (6th edition, March 1970), instruction No. 6 and heading of column 2 (b), and Annex to the statistical forms (“Yellow List”) (14th edition, March 1970), Part II, p. 4.

² Article 4 (c) of the 1925 Convention and article 13, para. 1 of the 1931 Convention; see also article 9 of the 1925 Convention.

³ Article 13, para. 2, subpara. (b) and *Commentary* on the 1931 Convention, para. 135, p. 175.

⁴ Article 5, para. 2, subpara. (a) of the 1931 Convention; see also article 6, para. 1, subpara. (a).

⁵ Article 17, last para. of the 1931 Convention, *Commentary* on the 1931 Convention, para. 183, pp. 204-205.

⁶ Article 22, first para. of the 1931 Convention; *Commentary* on the 1931 Convention, para. 193, p. 213.

⁷ Article 19 of the 1931 Convention, *Commentary* on the 1931 Convention, para. 189, p. 208.

5. The number of the former is much smaller than that of the latter.⁸ As regards the criteria for including a preparation in Schedule III, and as to the question of placing in that Schedule preparations of drugs in Schedule IV, see below, comments on article 3, paragraph 4.

6. The Single Convention does not contain any express provision concerning preparations of drugs in Schedule II "adapted to a normal therapeutic use" which would correspond to the provision of the 1931 Convention exempting from the controls of the 1925 Convention such preparations of drugs in Group II. Nor does Schedule III contain a general entry regarding preparations of drugs in Schedule II "adapted to a normal therapeutic use". It includes, however, at the time of this writing⁹ preparations of most drugs in Schedule II listed individually. The common characteristics which these preparations must have to be part of the Schedule are described. They indicate that the preparations are in fact "adapted to a normal therapeutic use".

7. Preparations in Schedule III are subject to the same régime as preparations of drugs in Schedule II, with the exceptions mentioned in article 2, paragraph 4.¹⁰ For the régime applicable to preparations of drugs in Schedule II, see above comments on article 2, paragraphs 2 and 3.

8. As regards the exceptions, they are: (i) government authorizations are not required for each import or export of preparations in Schedule III. The import certificate and export authorization system laid down in article 31, paragraphs 4 to 15, which governs the international transactions in drugs and their preparations, does not apply to the preparations in Schedule III; (ii) parties to the Single Convention must include in the estimates of their drug requirements which they must furnish to the Board an estimate of the quantities of drugs to be utilized for the compounding of preparations in Schedule III,¹¹ and in their statistical returns information on the amounts of drugs actually so used;¹² but apart from that, the estimates and statistical returns need not contain any information on preparations in Schedule III.¹³

9. The following measures must be applied to preparations in Schedule III because of their being subject to the régime governing preparations of substances in Schedule II: licensing of manufacture and trade (wholesale

⁸ For the long list of preparations "exempted" under the earlier treaties see Schedule III of the Third Draft of the Single Convention on Narcotic Drugs (document E/CN.7/AC.3/9/Add.1), which included the "exemptions" as they existed at the time of the preparation of the addendum to that Draft in 1958. See *Records*, vol. II, pp. 23 *et seq.*; for the deletion of numerous entries from the draft list of exemptions by the Technical Committee of the Plenipotentiary Conference, see *Records*, vol. II, pp. 101-106.

⁹ At the time of the adoption of the Single Convention by the Plenipotentiary Conference Schedule III included preparations of all drugs in Schedule II.

¹⁰ See also article 31, para. 16.

¹¹ Article 19, para. 1, subpara. (b).

¹² Article 20, para. 1, subpara. (b).

¹³ Parties to the Single Convention would however have to furnish, in addition to the limited information just mentioned, such other data regarding preparations in Schedule III as the Commission may request as being necessary for the performance of its functions; article 18, para. 1, introductory subparagraph.

and retail) except when carried out by a State enterprise;¹⁴ control under licence of the establishment and premises in which manufacture takes place;¹⁵ in general, control of all persons and enterprises engaged in manufacture, trade or distribution;¹⁶ the requirement that manufacturers and traders keep detailed records;¹⁷ the limitation to medical and scientific purposes of manufacture, trade, possession and use.¹⁸

10. On the other hand, Governments are not bound to prevent the accumulation of preparations in Schedule III in the possession of retail traders in excess of the quantities required for the normal conduct of business. Medical prescriptions are not required for the supply or dispensation of these preparations.¹⁹ It is also expressly stated that the provision of article 31, paragraph 1, subparagraph (b) does not apply to preparations in Schedule III. Under this provision Parties must not knowingly permit the export of drugs and preparations to a country or territory in excess of the total of the estimates of the drug requirements of the importing country or territory concerned, as defined in article 19, paragraph 2 of the Single Convention.²⁰ Preparations in Schedule III are also exempted from the provisions regarding the use of official forms for medical prescriptions and from those concerning labels of drugs offered for retail sale.²¹

11. For the reasons given in the comments on article 2, paragraph 2, medical practitioners are not "traders" within the meaning of article 34, paragraph (b). The Single Convention, therefore does not require the keeping of records by medical practitioners in respect of preparations in Schedule III, or indeed concerning any drug or other preparation.

12. The Single Convention does not, however, contain any provision which would exempt pharmacists, who are undoubtedly "traders" in the sense in which this term is used in article 34, paragraph (b), from the obligations arising under this provision in respect to preparations in Schedule III. If the Single Convention is taken literally, Parties would have to require pharmacists to keep "such records" as would "show the quantities. . . of each individual

¹⁴ Article 29, para. 1, article 30, para. 1, subpara (a); for article 31, para. 3, subpara. (a) see farther below and comments on this paragraph.

¹⁵ Article 29, para. 2, subpara. (b).

¹⁶ Article 29, para. 2, subpara. (a), article 30, para. 1, subpara. (b), clause (i) for article 31, para. 3, subpara. (b), see below, comments on article 31, para. 3, subpara. (a).

¹⁷ Article 34, para. (b).

¹⁸ Article 4, para. (c); article 30, para. 4 concerning the marking of the interior package or wrapping thereof also appears to apply to preparations in Schedule III.

¹⁹ Article 30, paras. 2 and 6 in connexion with articles 2, paras. 3 and 4.

²⁰ It appears on the other hand that a Party may not manufacture a quantity of preparations in Schedule III which contain a larger quantity of drugs than that given in its estimate of the amounts to be utilized for that manufacture; see article 19, para. 1, subpara. (b) and para. 5: see below comments on that para. 5. The preparations in Schedule III made by retail pharmacists are, however, not to be taken into account, since the drugs contained in them are considered to be "consumed"; see article 1, para. 2 and comments thereon.

²¹ Article 30, para. 2, subpara. (b) clause (ii) and para. 5 in connexion with article 2, paras. 3 and 4. The provision of article 19 of the 1931 Convention regarding labels applies, however, to preparations "exempted" under the earlier treaties; see *Commentary* on the 1931 Convention, para. 189, p. 208.

acquisition and disposal” of preparations in Schedule III. While keeping the record of acquisitions would mostly not be a very onerous requirement, to maintain records of the disposal of such preparations may be very burdensome, and would, in the case of those preparations which the pharmacists do not compound themselves but acquire in ready form, also be entirely unnecessary from the viewpoint of narcotics control.

13. For the reasons given in the comments on article 2, paragraph 2, concerning the exemption of drugs in Schedule II and their preparations, from the obligation of pharmacists to keep records of individual sales, but *a fortiori*, it is suggested that Parties to the Single Convention need not require pharmacists to maintain records of their sales of ready-made preparations in Schedule III. The Single Convention exempts such preparations from the requirement of a medical prescription. As mentioned in these comments, the sales records of pharmacists are often composed of the original medical prescriptions and sometimes of copies which are retained and filed. In view of the exemption from the prescription requirement, it can hardly be assumed that the authors of the Single Convention wished to provide for the maintenance of these records. Their failure to exclude from article 34, paragraph (b) the retail sale of preparations in Schedule III was obviously an oversight. Moreover, numerous Parties to the Single Convention—without objection from other Parties—continue not to require the maintenance of records of such sales by pharmacists. It seems to be generally agreed that Parties need not require these records.

14. Maintenance by pharmacists of records of the acquisition of preparations in Schedule III appears, however, to have some value. Such records enable the authorities to verify the correctness of the records of the manufacturers or wholesalers who compounded the preparations and from whom the pharmacists bought them.

15. The compounding by retail pharmacists of preparations, including preparations in Schedule III, has now become rather rare. The pharmacists normally buy the preparations in ready form from those who manufacture them. As mentioned before, records of retail sales of preparations in Schedule III sold in ready-made form are without value; but each supply or dispensation to an individual of a preparation listed in Schedule III of a drug in Schedule I,²² and which the pharmacist compounds himself, should be recorded. Otherwise a gap in the control system would exist through which dishonest retail traders could divert into illicit channels dangerous drugs which they could pretend to have used for the manufacture of preparations in Schedule III and sold without records. This does not apply to preparations of drugs in Schedule II, which are not considered to be very dangerous by themselves, and whose retail sale is therefore not subject to the requirements of a medical prescription or of record-keeping by pharmacists.²³

16. It has been mentioned above that Governments must limit to medical and scientific purposes the manufacture of, trade in, possession and use of preparations in Schedule III. The Single Convention does not contain any

²² Preparations of opium, morphine, cocaine and diphenoxylate, all four drugs in Schedule I, are included in Schedule III at the time of writing.

²³ See above comments on article 2, para. 2.

provision exempting such preparations from article 4, paragraph (c) which provides for this obligation. Since the preparations are, however, not subject to the requirement of medical prescription or to the import certificate and export authorization system, it results that Governments need do no more than apply the licensing system and require the keeping of records,²⁴ and enforce both requirements by adequate penal sanctions,²⁵ in order to carry out their obligation under article 4, paragraph (c) in respect of the international and retail trade in, and of use and possession of, preparations in Schedule III. As regards the unauthorized possession of preparations in Schedule III for personal consumption, see below, comments on article 33.

17. Attention is drawn to article 39 expressly stating that a Party is not precluded "from adopting measures of control more strict or severe than those provided by this Convention and in particular from requiring that preparations in Schedule III. . . be subject to all or such of the measures of control applicable to drugs in Schedule I as in its opinion is necessary or desirable for the protection of the public health and welfare".

18. It will be noted that the English text of article 2, paragraph 4 differs from the French and Spanish versions. The English text exempts preparations in Schedule III from the application of article 31, paragraphs 4 to 15 while the two other language versions exempt them from article 31, paragraphs 3 to 15. For a discussion of this divergence see below, comments on article 31, paragraph 3, subparagraph (a).

²⁴ See however above the comments on the question of records of retail sales.

²⁵ Article 36.

Paragraph 5

5. The drugs in Schedule IV 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:

(a) A Party shall adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties of a drug so included; and

(b) A Party shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only, including clinical trials therewith to be conducted under or subject to the direct supervision and control of the Party.

Commentary

1. It will be recalled that while drugs in Schedule IV are also listed in Schedule I, drugs in Schedule II are not.¹

¹ See above comments on article 2, para. 2.

2. As regards the criteria for including drugs in Schedule IV and for placing preparations of such drugs in Schedule III, see below, comments on article 3, paragraphs 4 and 5.

3. The introductory paragraph expressly states that “the drugs in Schedule IV shall also be... subject to all measures of control applicable to drugs” in Schedule I. This refers, of course, only to the general measures applicable to all drugs in Schedule I, and not to those specially provided for, and limited to, specified drugs.² Cannabis and cannabis resin, which the Plenipotentiary Conference included in Schedule IV and which at the time of this writing are still listed in that Schedule, are subject to such special provisions³ in addition to those governing all drugs in Schedule I and to those of article 2, paragraph 5 relating to all drugs in Schedule IV. Two rules are provided for all drugs in Schedule IV, one general rule in subparagraph (a), and a specific rule in subparagraph (b) relating to measures of prohibition.

4. The general rule of subparagraph (a) requires a Party “to adopt any special measures of control which in its opinion are necessary having regard to the particularly dangerous properties” of the drug concerned. Such special measures might be, for example, a requirement that manufacturers draw the special attention of physicians to the dangerous properties, particular restrictions on the therapeutic use, or even measures of prohibition such as those referred to in subparagraph (b). A Party is obliged to apply such special measures only if it believes them to be necessary. Its opinion on this matter could generally not be challenged by another Party; but the provision of subparagraph (a) must be carried out in good faith, like other treaty provisions. If a Party believed, in reality, that special measures were required, but refused to adopt them and claimed they were unnecessary, it would not be acting in good faith and thus would violate its obligation under subparagraph (a).

5. A Party is likewise obligated to take measures under subparagraph (b) only if it believes them to be “the most appropriate means of protecting public health and welfare”. Here again the Party would have to act in good faith. Its “opinion” would have to be *bona fide*. Its refusal on whatever pretext to adopt measures under subparagraph (b) which it considers necessary would constitute a treaty violation.

6. Whether the prohibition of drugs in Schedule IV (Cannabis and cannabis resin, desomorphine, heroin, ketobemidone) should be mandatory or only recommended was a controversial question at the Plenipotentiary Conference.⁴ This was a continuation of a long-lasting international controversy regarding the usefulness of prohibiting particularly dangerous drugs without therapeutic properties not obtainable from other less dangerous substances. A proposal to abolish the use of heroin was made as early as 1923 in the League of Nations’ Advisory Committee on Traffic in Opium and Other

² See article 2, para. 1 and comments thereon.

³ Article 28, para. 1, and article 49.

⁴ *Records*, vol. I, pp. 20-22, 63 and 65, vol. II, pp. 3 (article 2, para. 1, subpara. (e) of the Third Draft), 33 (Canadian redraft, article 2, para. 5), 76, 80-83, 261 (foot-note 3).

Dangerous Drugs.⁵ Such proposals were also made at the Geneva Conferences of 1924/25 and of 1931, which respectively concluded the 1925 and 1931 Convention, but were not adopted.⁶ The 1931 Conference, by way of compromise, included article 10 in the 1931 Convention, imposing a particularly restrictive régime on the international trade in heroin (diacetylmorphine).⁶ Under this provision exports of diacetylmorphine and of its preparations were prohibited. The only exception was for shipments to a country which did not manufacture the drug. Moreover only such quantities could be exported as were necessary for the importing country's medical and scientific needs. The shipment had to be specially requested by the Government of that country, and consigned to the Government Department indicated in the import certificate. The Conference also adopted a recommendation (VI) to the effect that each Government should examine in conjunction with the medical profession the possibility of abolishing or restricting the use of heroin.⁷ While opposition to the discontinuation of the use of heroin was formerly based on the assertion that it still had some specific medical value not obtainable from other less dangerous drugs, more recent objections rested on the belief that the decision regarding prohibition should be left to the judgment of each Government, and that international organs should limit themselves to recommending prohibition where advisable, but should not be authorized to prescribe it in a mandatory manner. In fact, this was also the position of those delegates to the Plenipotentiary Conference who opposed a provision in the Third Draft of the Single Convention⁸ which would have established a mandatory prohibition of the production,⁹ manufacture of, trade in, possession and use of drugs in Schedule IV except for small amounts for research purposes. The opponents included representatives of States which in fact had adopted the prohibitions in question. Article 2, paragraph 5, subparagraph (b) constitutes a compromise which leaves prohibition to the *judgement*, though theoretically not to the *discretion*, of each Party.

7. In the post-war period, international efforts to bring about the discontinuation of the use of heroin¹⁰ were extended to other drugs. In line with those endeavours, the Plenipotentiary Conference included in

⁵ The Advisory Committee was the League equivalent of the United Nations Commission on Narcotic Drugs. Its functions in the international narcotics régime were transferred to the Commission by the 1946 Protocol.

⁶ *Commentary* on the 1931 Convention, para. 101, p. 144.

⁷ Reproduced on page 231 of the *Commentary* on the 1931 Convention containing the Final Act of the 1931 Conference, pp. 227 *et seq.*

⁸ Article 2, para. 1 (e). The Third Draft is reproduced in the *Records*, vol. II, pp. 1 *et seq.* It served as working document of the Plenipotentiary Conference.

⁹ Article 1, para. 1, subpara. (t).

¹⁰ Resolution WHA/6 of 14 May 1952 of the World Health Assembly; resolution 548 G (XVIII) of the Council; see also reports of the Commission on Narcotic Drugs, *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 8*, annex A, and *Twentieth Session, Supplement No. 8*, annex B, resolution No. III; reports of the WHO Expert Committee on Dependence Producing Drugs (formerly "on Drugs Liable to Produce Addiction"), WHO Technical Reports Series No. 21, p. 5; No. 57, pp. 5-6; No. 76, p. 5; No. 95, p. 5; No. 102, p. 4; No. 116, p. 5; No. 142, p. 5; see also Official Records of WHO, No. 19, p. 31.

Schedule IV cannabis and cannabis resin,¹¹ desomorphine (dihydrodesoxy-morphine)¹² and ketobemidone.¹³

8. For a considerable period of time—and still at the time of writing—there has been no significant diversion of legally manufactured drugs from legal trade into illicit channels; but if a Government were unable to prevent such a diversion of drugs in Schedule IV, a situation would arise in which the measures of prohibition mentioned in subparagraph (b) would be “the most appropriate means of protecting the public health and welfare”. Whether this was or was not the case would be left to the judgement of the Party concerned whose *bona fide* opinion on this matter could not be challenged by any other Party.

9. Another situation in which measures of prohibition would be “appropriate” for the protection of public health and welfare might exist where the members of the medical profession administered or prescribed drugs in Schedule IV in an unduly extensive way, and other less radical measures, such as warnings by public authorities, professional associations or manufacturers, were ineffective. It may however be assumed that such a situation could rarely if ever arise.

10. It is also suggested that the prohibition of manufacture referred to in subparagraph (b) will generally not cover the manufacture of heroin as an intermediary product in the manufacture of nalorphine. Heroin in such cases is often only an intermediary stage in a continuous process of manufacture of nalorphine, and such heroin presents no real risk of diversion. Should, however, this risk be considerable, it would become an appropriate public health measure to extend the prohibition of manufacture to the intermediary product.

11. While medical purposes authorized by the Single Convention¹⁴ include use in veterinary medicine, it may be pointed out that the protection of human health,¹⁵ and not that of animals, however desirable from a general view point, is the aim of the treaty. Where the trade in and use of drugs in Schedule IV for veterinary purposes do not affect the appropriate protection of public health and welfare, they do not need to be subjected to the prohibitions of subparagraph (b). It is evident that a prohibition covering only

¹¹ See resolution 548 (XVIII) of the Council; reports of the Commission on Narcotic Drugs, *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 8*, annex A; *Twentieth Session, Supplement No. 8*, annex D (contents of proposed schedule IV); reports of the WHO Expert Committee referred to in the preceding para., WHO Technical Reports Series No. 57, p. 11; No. 76, p. 10; No. 95, p. 13.

¹² WHO document WHO/APO/54 (1955), Report of the WHO Expert Committee referred to in foot-note 9 (Sixth Report), *WHO Technical Report*, Series No. 102, p. 6; Report of the Commission on Narcotic Drugs on the tenth Session, *Official Records of the Economic and Social Council, Twentieth Session, Supplement No. 8*, annex D (contents of proposed Schedule IV).

¹³ Resolution of the Economic and Social Council 548 H (XVIII) II, reports of the Commission on Narcotic Drugs. *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 8*, annex A; *Twentieth Session, Supplement No. 8*, annex D (contents of proposed Schedule IV).

¹⁴ Article 4, para. (c).

¹⁵ See the phrase of the preamble “Concerned with the health and welfare of mankind”.

production or manufacture of, trade in, and use of, drugs in Schedule IV for the purpose of treating human beings would not be the same as the measure defined in subparagraph (b), since the only exception allowed is that for “medical and scientific research” “including clinical trials”, which does not include treatment in veterinary practice; but where prohibition for purposes of veterinary medicine is not needed, the full measure of prohibition defined in subparagraph (b) might not always be “the most appropriate means of protecting the public health and welfare”, and an exception from the prohibition for veterinary purposes might be more “appropriate”. Such a limited prohibition not applied to veterinary medicine might be one of the “special measures” referred to in subparagraph (a); but it would obviously not suffice where the reason for the prohibition was a significant risk of diversion of drugs into the illicit traffic, and not merely their unduly extensive use in the treatment of human beings.

12. The phrase “clinical trials” refers to the use of the drugs on human beings. It may be noted that only “clinical trials”, and not any other medical or scientific research with drugs in Schedule IV, must under subparagraph (b) be “under or subject to the direct supervision and control of the Party” concerned. Purely chemical research or research on animals need not be “under or subject to” such “supervision and control”.

13. The phrase of subparagraph (b) describing the supervision and control which must be exercised over clinical trials uses three different expressions to indicate that the steps required of Governments go beyond the control measures which the Parties are normally required to take to control the trade in and use of drugs under the terms of the Single Convention.

(a) First, the clinical trials must be “*under or subject to*” the direct supervision and control of the Party concerned. The word “under” refers to continuous measures of supervision and control, while the alternative phrase “or subject to” relates to intermittent governmental actions. Where a system of continuous supervision and control is not applied, intermittent steps of surveillance would be sufficient.

(b) The supervision and control must be “*direct*”. This appears to indicate that reporting to the authorities on clinical trials and keeping detailed records of the research activities and of the drugs used would not be sufficient. It appears that Governments would also from time to time, have to inspect, by visits of officials, the execution of the clinical trials in question.

(c) Measures of “*supervision and control*” are required. It would not be sufficient if Governments limited themselves to a “supervisory” role, i.e. to obtaining information on the execution of the clinical trials and of the use of drugs therein. They would, in addition, have to exercise an influence, by general regulations or particular instructions, on the way in which the clinical trials were carried out, that is, they would also have to take measures of “control”.

14. Cannabis and cannabis resin were, at the time of the adoption of the Single Convention and still at the time of this writing, the only drugs in Schedule IV whose “production”, i.e. separation ¹⁶ from the cannabis plant, ¹⁷

¹⁶ Article 1, para. 1, subpara. (t).

¹⁷ Article 1, para. 1, subpara. (c).

might have to be prohibited under article 2, paragraph 5, subparagraph (b). The other drugs¹⁸ which were included in that Schedule by the Plenipotentiary Conference and those added thereto by the Commission are obtained by “manufacture”¹⁹ and not by “production”. Extracts and tinctures of cannabis which are manufactured from cannabis are listed only in Schedule I and not in Schedule IV.²⁰

15. A prohibition of “production” of cannabis and cannabis resin would not necessarily imply a prohibition of the cultivation of the plant itself. Cultivation itself might, however, have to be prohibited under the conditions of article 22.²¹

16. The French text of article 2, paragraph 5, subparagraph (b) differs from the English text by requiring only that the measure must be the most appropriate means for the protection of “la santé publique”, while the English text uses the phrase “public health and welfare” and the Spanish text the phrase “la salud y el bienestar públicos”. The French text omits any word for the words “welfare” and “bienestar” in the two other texts. It is, however, suggested that the meaning of the three versions is nevertheless the same. The protection of “public health” is simultaneously a protection of “public welfare”.

¹⁸ Desomorphine, heroin and ketobemidone.

¹⁹ Article 1, para. 1, subpara. (n); see comments on Schedule IV.

²⁰ They were included in Schedule IV of the third draft, but were excluded by that Conference, *Records*, vol. II, p. 31.

²¹ See below, comments on article 22.

Paragraph 6

6. In addition to the measures of control applicable to all drugs in Schedule I, opium is subject to the provisions of articles 23 and 24, the coca leaf to those of articles 26 and 27 and cannabis to those of article 28.

Commentary

Not only cannabis, but also cannabis resin, is subject to the additional measures of article 28, paragraph 1.¹ Both these drugs, listed at present in Schedule I as well as IV, are, in addition to the measures applicable to all drugs in Schedule I, also governed by the provisions of article 2, paragraph 5 controlling drugs in Schedule IV. Opium,² the coca leaf, cannabis and cannabis resin are also subject to those “transitional” provisions of article 49 which are respectively applicable to them; so are extracts and tinctures of cannabis, at present listed only in Schedule I.

¹ See above comments on article 1, para. 1, subpara. (b).

² As regards opium see also article 25, para. 1, subpara. (a).

Paragraph 7

7. The opium poppy, the coca bush, the cannabis plant, poppy straw and cannabis leaves are subject to the control measures prescribed in articles 22 to 24; 22, 26 and 27; 22 and 28; 25; and 28, respectively.

Commentary

1. The enumeration of references in this subparagraph does not appear to be complete.

2. Article 20, paragraph 1, subparagraph (d) and paragraph 2, subparagraph (b) and article 31, paragraphs 4 to 15, which apply to poppy straw, are indirectly covered by this subparagraph because they are mentioned in article 25, which is listed; however, article 29, paragraph 3 and article 30, paragraph 2, subparagraph (a) also govern poppy straw, but are not mentioned either in article 2, paragraph 7 or in article 25.

3. In addition to the provisions mentioned in article 2, paragraph 7, article 20, paragraph 3 also applies to the opium poppy, and various transitional provisions in article 49 apply to each of the three plants. Article 25 not only contains provisions for poppy straw but also (in paragraph 1, subparagraph (a)) for the opium poppy.

Paragraph 8

8. 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 practicable.

Commentary

1. The Single Convention provides for the application of control measures to two types of substances which, as such, do not cause the kind of damage to human health the prevention of which is the aim of the treaty. The first group consists of substances readily "convertible" into drugs under the narcotics régime. Substances of this nature were included by the Plenipotentiary Conference in Schedules I and II, and are thus subject to the régime governing "drugs".¹ Moreover, the Single Convention provides for the addition to the Schedules of substances of this kind by the procedure provided for making changes in the Schedules. As regards this first group, see below, comments on article 3, paragraph 3, subparagraph (iii).

2. The second group consists of the substances dealt with in article 2, paragraph 8.² Their definition is very broad and undoubtedly rather vague.

¹ Article 1, para. 1, subpara. (j).

² In addition, "poppy straw" is subject to some measures of control; see above, comments on article 2, para. 7 and below, comments on article 25. Concoctions of poppy straw (poppy straw tea) may contain morphine. The leaves of the cannabis plant governed by article 28, para. 3, may have the same kind of effect as cannabis, however weak.

It was pointed out in the discussion of this paragraph by the Plenipotentiary Conference that the phrase “substances . . . which may be used in the illicit manufacture of drugs” might be interpreted to include water, which was used in such manufacture.³ It is, however, clear that the application of control measures to water would not be “practicable”. It cannot, however, be foreseen what kind of substance could in the future be employed in the illicit manufacture of narcotic drugs, and which by “practicable” measures could be made unavailable or much more difficult to obtain for clandestine manufacturers. It is this impossibility to foresee the substances which might require the application of control measures which led to the adoption of this very broad and vague provision.

3. Measures which may be practicable in one country may be very difficult or even impossible to apply in another country. Acetic anhydride was mentioned in the discussions of the Plenipotentiary Conference⁴ as a substance to which paragraph 8 could be applied. It is used in the conversion of morphine into heroin, but also very widely in the chemical industry for industrial purposes. Countries which do not have a chemical industry may find practicable the application to acetic anhydride of control measures which industrial countries may find impractical or even impossible to impose. Countries without a chemical industry, in which the clandestine manufacture of heroin nevertheless takes place, may find it practicable to prohibit the importation and possession of acetic anhydride. Other countries may consider it impractical to go so far, but may find it possible to take measures against the exportation of acetic anhydride to countries which obviously have no legitimate use for this substance, and in which the clandestine manufacture of heroin takes place or from which the chemical may be exported to other countries which have a problem of such manufacture.

4. The vagueness of the wording of paragraph 8 leaves it practically to the discretion of each Party to decide to what substances it should apply the control provided in this paragraph, and what measures it would be practicable to take.

³ *Records*, vol. II, p. 78.

⁴ *Records*, vol. I, p. 64.

Paragraph 9

9. Parties are not required to apply the provisions of this Convention to drugs which are commonly used in industry for other than medical or scientific purposes, provided that:

(a) They ensure by appropriate methods of denaturing or by other means that the drugs so used are not liable to be abused or have ill effects (article 3, paragraph 3) and that the harmful substances cannot in practice be recovered; and

(b) They include in the statistical information (article 20) furnished by them the amount of each drug so used.

Commentary

1. The provisions of this paragraph were already included in the Second

Draft of the Single Convention on Narcotic Drugs,¹ prepared by the Secretariat of the United Nations in accordance with decisions of the Commission on Narcotic Drugs. When the Commission decided at its tenth session to incorporate these provisions in the Draft Treaty,² it was mentioned in the discussion that morphine was used in certain processes of photography.³ How frequent this use was, and whether it still exists at present, are not known to the Secretariat of the United Nations; but cases certainly occur in which chemicals commonly used in industry for other than medical or scientific purposes turn out also to have useful medical properties.² It cannot therefore be excluded that a drug falling under the international narcotics régime, or a substance which because of its dangerous properties should be placed under that régime by operation of article 3, might be needed for wide use in industrial processes other than those of pharmaceutical factories. It would hardly be feasible to apply to drugs used in industrial processes the restrictive controls of the international narcotics régime.

2. It was mentioned in the Plenipotentiary Conference, during the discussion of the draft of the paragraph under consideration,⁴ that the provision was of no immediate practical importance, but had been inserted to anticipate possible future developments.⁵ The developments appear still to be in the future at the time of this writing.

3. The liability "to be abused" or to "have ill effects" which is mentioned in subparagraph (a) and which must be prevented by the Government concerned "by appropriate methods of denaturing or by other means", is the same dangerous property as that which under article 3, paragraph 3, subparagraph (iii) justifies the placement of a substance under the international narcotics régime. See below, comments on that subparagraph. Not only must Governments ensure that the recovery of drugs used up in manufacture is prevented or made impracticable, but it must also be made impossible or impracticable to restore the dangerous properties of those drugs which are not used up in the industrial process, but only transformed for use for harmless non-medical purposes, e.g. as dyes.

4. Under article 20, paragraph 1, subparagraph (b), Governments must include in their annual statistical reports to the Board the quantity of each drug⁶ utilized for the manufacture of any substance not covered by the Single Convention, and the name of the substance obtained.⁷ The Board could therefore require information on the quantities of drugs used up in the manufacture of other substances not only under the special provision of article 2,

¹ Document E/CN.7/AC.3/7.

² Commission on Narcotic Drugs. Report on the tenth session, *Official Records of the Economic and Social Council, Twentieth Session, Supplement No. 8*, para. 112 and annex D, p. 8.

³ *Ibid.*, para. 111.

⁴ The final text is literally the same as the draft; see article 2, para. 4 of the Third Draft, *Records*, vol. II, p. 3. The bracketed references differ in their numbers, but point to the same substantive provisions.

⁵ *Records*, vol. II, p. 79.

⁶ Article 1, para. 1, subpara. (j).

⁷ Form C/S of the Board (4th edition, November 1969), table I, column C, sub-column 3.

paragraph 9, subparagraph (b) but also under the general rule of article 20. It is, however, suggested that Parties, under the special provision would also have to furnish data on the amount of drugs which are not used up, but retain their separate identity and are made harmless—as required by article 2, paragraph 9, subparagraph (a)—for employment for other than medical or scientific purposes, i.e. for common industrial uses.

5. Failure to furnish information under article 2, paragraph 9, subparagraph (b) would not only constitute a violation of this provision and possibly of article 20, paragraph 1, subparagraph (b), but would also render illegal the non-application of the full narcotics régime prescribed by the Single Convention to the use of the drugs.

Article 3

CHANGES IN THE SCOPE OF CONTROL

General comments

1. The need for extending international control to additional drugs, without the delay which would be caused by the need to conclude a new treaty each time the occasion arises, was already felt at an early stage of the evolution of the international narcotics régime. The first narcotics treaty which has a procedure for placing additional drugs under control is the 1925 Convention. Two other treaties preceding the Single Convention, namely, the 1931 Convention and the 1948 Protocol, also had provisions to this effect.

2. The 1925 Convention as amended by the 1946 Protocol authorized the World Health Organization¹ to extend its application to "any narcotic drug" which it found to be "liable to similar abuse and productive of similar ill effects as the substances"² to which Chapter III of the Convention applied (i.e., similar to those of medicinal opium, cocaine, ecgonine, morphine, heroin and galenical preparations (extracts and tinctures) of Indian hemp (cannabis)).³ The control régime of the Convention could thus be extended to morphine-like, cocaine-like and cannabis-like drugs, whatever may be their chemical structure, but the World Health Organization's action was only a "recommendation" which became binding solely upon those Parties to the 1925 Convention which expressly accepted it.

3. The World Health Organization was also empowered⁴ to exempt from the application of the 1925 Convention a preparation of a drug controlled by Chapter III of that Treaty if it found that the preparation "cannot give rise to the drug habit" on account of the medicament or medicaments with which the drug was compounded and which in practice precluded the recovery of the drug.⁵

4. The 1925 Convention did not provide for revision of these two kinds of decisions.

5. The 1931 Convention provided⁶ for extension of control to additional drugs by decisions of international organs which did not require acceptance by the Parties but were automatically binding upon them. This authority

¹ Article 10; the unamended text gave this authority to the Health Committee of the League of Nations.

² As to the language describing the additional drugs see also the wording of article 14, para. (d) of the 1912 Convention; article 1, para. 1 of the 1948 Protocol and also article 3, para. 3, subpara. (iii) of the Single Convention.

³ Article 4 of the 1925 Convention.

⁴ Article 8 as amended by the 1946 Protocol; the unamended article gave this power to the Health Committee of the League of Nations.

⁵ For substantially the same conditions for placing a preparation in Schedule III of the Single Convention, see article 3, para. 4.

⁶ Article 11.

was however, limited to two narrowly defined chemical groups, namely to products “obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf”. A finding by the World Health Organization⁷ that such a product was “capable of producing addiction” obliged Governments to place the drug under the régime applicable to drugs in Group I of the 1931 Convention.⁸ If the World Health Organization⁷ found however, that the produce was “not itself a drug capable of producing addiction, but is convertible into such a drug”, the decision whether the régime for drugs in Group I or that for drugs in Group II should be applied was taken by an *ad hoc* Expert Committee of three members, of whom one member was selected by the Government “concerned” (i.e. which initiated the procedure by its notification to the Secretary-General of the United Nations),⁹ one by the Commission on Narcotic Drugs¹⁰ and the third member by the two members so selected. Parties to the 1931 Convention were bound by the Expert Commission’s decision, but could, of course, apply the stricter régime of drugs in Group I if the Expert Committee had decided for the régime of drugs in Group II. Any decision taken by this procedure could be revised by the same procedure.

6. The 1931 Convention also provided for a system of provisional control pending completion of the procedure just outlined. No trade in or manufacture for trade of any product obtained from the two chemical groups in question, which was not in use on 13 July 1931¹¹ for medical or scientific purposes and had not yet been placed under the régime of the 1931 Convention either directly by its article 1 or by the procedure of its article 11, could take place unless and until the Government concerned was satisfied that the product in question was of medical or scientific value. If such a Government permitted trade or manufacture, it was obliged, pending the World Health Organization’s or Expert Committee’s action, to apply to the product involved the régime of the 1931 Convention regarding drugs in Group I unless it determined that the drug was not capable of producing addiction or of conversion into a product capable of producing addiction. The Government was obliged in any event to notify the Secretary-General of the United Nations⁹ of its authorization of trade or manufacture. The Secretary-General,⁹ on his part, informed the World Health Organization¹² and the other Parties to the 1931 Convention. It may be noted that the World Health Organization¹² could not act unless the procedure had been initiated by a Government’s notification.¹³

⁷ Under article 11 as amended by the 1946 Protocol; the finding was made under the amended text by the Health Committee of the League of Nations.

⁸ Regarding Groups I and II of the 1931 Convention and the division of Group I into subgroup (a) and (b) see above comments on article 2, paras. 1 and 2.

⁹ Prior to the 1946 Protocol, the notification was addressed to the Secretary-General of the League of Nations.

¹⁰ Prior to the 1946 Protocol, by the League’s Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

¹¹ I.e. date of conclusion of the 1931 Convention.

¹² Prior to the 1946 Protocol the Health Committee of the League of Nations.

¹³ Under articles 8 and 10 of the 1925 Convention, the procedure could be initiated by the World Health Organization itself (and could be so initiated by the Health

7. Notification by any Government permitting trade or manufacture and the decisions of the World Health Organization¹² and Expert Committee were mandatory under this procedure.

8. Chemical progress since the conclusion of the 1931 Convention has led to the discovery of an increasing number of drugs which are "addiction-producing" or "convertible into addiction-producing drugs", but which are not obtained "from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf", and therefore cannot be placed under international control by the procedure of article 11 of the 1931 Convention. Governments reacted to this development by adopting the 1948 Protocol, which created a machinery for extending the controls of the 1931 Convention¹⁴ to synthetically manufactured drugs. Under the provisions of this treaty, if a Party considered that a drug "which is or *may be* used for medical or scientific purposes" and to which the 1931 Convention did not apply¹⁵ "is liable to the same kind of abuse and productive of the same kind of harmful effects as the drugs" under the régime of the 1931 Convention, i.e. had morphine-like or cocaine-like effects or was convertible into drugs having these effects,¹⁶ that Party was bound to notify the Secretary-General of the United Nations accordingly and to send to him "all material information in its possession" relating to the matter. The Secretary-General, on his part, was required "immediately" to transmit the notification and information to the other Parties, to the Commission on Narcotic Drugs and to the World Health Organization.¹⁷ If that Organization found that the drug involved was "capable of producing addiction or of conversion into a product capable of producing addiction", it had to decide whether the régime of the 1931 Convention governing drugs in Group I or that governing drugs in Group II should apply.¹⁸ The World Health Organization's decision bound the Parties to the Protocol,¹⁹ which might, however, apply the stricter régime applicable to drugs in Group I to a substance placed by the World Health Organization under the régime governing drugs in Group II. The Commission on Narcotic Drugs was empowered pending the procedure before the World Health Organization, to place the drug in question under provisional control. The Parties to the Protocol were bound by this decision of the Commission, and were obligated to apply provisionally to the substance involved the régime of the 1931 Convention governing drugs in Group I.²⁰ It may be noted that under the 1948 Protocol the procedure could be initiated only by a Party,

Committee of the League of Nations prior to the 1946 Protocol); the World Health Organization also could not act under the 1948 Protocol without a notification by a Party, but it may itself initiate the procedure of article 3 of the Single Convention.

¹⁴ And thus also of the 1925 Convention; see article 13 of the 1931 Convention.

¹⁵ And cannot be extended by the procedure of article 11 of that Convention.

¹⁶ Opium, coca leaf and cannabis (Indian hemp) are expressly excluded from the scope of the 1948 Protocol; see article 4 of that Protocol.

¹⁷ Article 1, para. 1 of the 1948 Protocol.

¹⁸ Article 1, para. 2. The application of the régime of the 1931 Convention includes the application of provisions of the 1925 Convention; see article 13 of the 1931 Convention.

¹⁹ Article 1, paras. 3 and 4 of the 1948 Protocol.

²⁰ Article 2 of the 1948 Protocol; see also above, foot-note 18.

and that the notifications of Parties as well as the decisions of the World Health Organization to place drugs under control were, under the conditions of that treaty, mandatory. A Party which considered that a drug had the harmful effects envisaged by the Protocol had an *obligation* to make the notification which initiated the procedure, and the World Health Organization had an *obligation* to decide to place the drug under international control if it found that it had such properties. Its discretion was restricted to choosing between two régimes, the one applicable to drugs in Group I and the other governing drugs in Group II. The chemical structure of the drug was irrelevant for the World Health Organization's decision. According to the letter of the Protocol, a Party would have to make the notification even in the case of a drug which was still in the laboratory stage, and which was thus neither manufactured for trade nor admitted in trade nor likely to appear in the illicit traffic. Parties, however, very often failed to make notifications concerning drugs which were addiction-producing or convertible into addiction-producing drugs, but which existed only in the laboratory stage and were thus unlikely to be made by clandestine manufactures or to be traded illicitly. They did this without any objection raised by other Parties. The number of drugs which have the dangerous properties envisaged by the 1948 Protocol, but which exist only at the laboratory stage and which, since their chemical and pharmacological properties are known only to the manufacturers and scientists concerned, are not likely to be abused is very great indeed, and continuously increasing. To place all of them under control, without any consideration of such practical factors, would unduly encumber the procedures and administrative machinery of the international narcotics régime.

9. The decisions taken under the terms of the 1948 Protocol could be revised in the light of subsequent experience by the same procedure as that by which they were taken.²¹

10. The procedure of the Single Convention²² for placing additional drugs under control, changing their régime, freeing drugs from control, exempting preparations from measures of control and abolishing such exemptions took over several features from the preceding narcotics treaties; it differs, however, from each of the earlier procedures in some respects.

11. As under all three of the preceding treaties, control under the Single Convention can be extended only to substances which have similar dangerous properties to those of drugs already under control.²³

12. As under the 1925 Convention and the 1948 Protocol, but unlike the 1931 Convention, the control of the Single Convention may be extended to a substance of any chemical structure whatsoever. Unlike the 1931 Convention and the 1948 Protocol, but similarly to the 1925 Convention,²⁴ the procedure of the Single Convention may be initiated not only by a Party, but also by the World Health Organization.

²¹ Article 3 of the 1948 Protocol.

²² Article 3.

²³ Under article 1, para. 1 of the 1948 Protocol the additional drugs must be liable to the *same* kind of abuse and productive of the *same* kind of harmful effects as the drugs already under control.

²⁴ Under articles 8 and 10 as amended by the 1946 Protocol; under the unamended version the initiative could be taken by the Health Committee of the League of Nations.

13. The 1925 Convention did not require Governments to notify an international organ of the need for control of additional drugs²⁵ or of the desirability of exempting preparations,²⁶ although it did not prevent a State from making such a notification in order to set in motion the required procedure. The 1931 Convention and 1948 Protocol required Parties, under the conditions specified therein,²⁷ to notify to the Secretary-General²⁸ the drug involved. This notification initiating the procedure was thus “mandatory”. Under the Single Convention, Parties are obliged to furnish to the Secretary-General only such information as in their *opinion* may require changes in control, i.e. changes in the Convention’s “Schedules”.²⁹ Onerous decisions taken under article 3 of the Single Convention are automatically binding upon Parties, as were the corresponding decisions under the 1931 Convention and the 1948 Protocol, but not under the 1925 Convention. The Single Convention expressly authorizes³⁰ Parties to apply stricter controls than those which it requires, but this is undoubtedly also the case under the earlier treaties, although they do not contain such an express provision.

14. The Single Convention authorizes the Commission on Narcotic Drugs to order, pending the outcome of the procedure on the control status of the drug involved, the provisional application of control.³¹ The 1948 Protocol contained the same provision,³² while the 1925 Convention did not provide for provisional control and the 1931 Convention defines the drugs to which provisional control had automatically to be applied.³³

15. Decisions under article 3 of the Single Convention can subsequently be revised. Provision for revision of the corresponding decisions existed in the 1931 Convention³⁴ and in the 1948 Protocol,³⁵ but not in the 1925 Convention. Like the 1925 Convention,³⁶ the Single Convention permits decisions³⁷ exempting preparations from measures of control, which are however not so far reaching³⁸ as those of the older treaty.

16. The Commission on Narcotic Drugs takes the final as well as the provisional decisions under article 3 of the Single Convention while under the earlier treaties the only decisions of this kind it could take were the pro-

²⁵ Article 10.

²⁶ Article 8.

²⁷ Article 11, para. 2 of the 1931 Convention; article 1, para. 1 of the 1948 Protocol.

²⁸ Under the text of the 1931 Convention as amended by the 1946 Protocol, to the Secretary-General of the United Nations, under the original text to the Secretary-General of the League of Nations.

²⁹ Article 3, para. 1.

³⁰ Article 39.

³¹ Article 3, para. 3, subpara. (ii); see also subpara. (i).

³² Article 2.

³³ Article 11, para. 1.

³⁴ Article 11, para. 7.

³⁵ Article 3.

³⁶ Article 8.

³⁷ Article 3, para. 4.

³⁸ Article 2, para. 4; see above, comments on that paragraph.

visional decisions under the 1948 Protocol.³⁹ The decisions under the 1925 Convention were taken by the World Health Organization,⁴⁰ and under the 1931 Convention by that Organization⁴¹ and by the *ad hoc* Expert Committees⁴² respectively. The 1948 Protocol makes the World Health Organization responsible for final decisions⁴³ and the Commission on Narcotic Drugs⁴⁴ for those regarding provisional control.

17. The Commission can make changes in the Schedules of the Single Convention only in accordance with recommendations of the World Health Organization, but it can refuse to make changes recommended by that Organization; see below comments on article 3, paragraph 3, subparagraph (iii); and paragraphs 4, 5 and 6.

18. An appeals procedure is provided only in the Single Convention.⁴⁵ Decisions of the Commission on Narcotic Drugs amending any of the schedules of the Convention are subject to review by the Economic and Social Council upon the request of any Party. Decisions of the Commission to place a drug under provisional control are, however, not subject to this review.⁴⁶

19. The Commission at its twentieth session adopted a resolution⁴⁷ providing that if a recommendation is made by the World Health Organization for the control of a new narcotic substance, and the Commission is not in session and will not within a period of three months be in session, a decision should be taken by the Commission before its next session.⁴⁸ The resolution requests the Secretary-General⁴⁹ for that purpose to arrange in those exceptional circumstances for a decision of the Commission to be taken by a vote by mail or telegram. Each member of the Commission, on being consulted, may indicate his agreement or disagreement or propose that the decision be deferred pending full discussion of the matter at the Commission's next session.

20. It is submitted that if a member "proposes" that the decision be deferred until the next session, no action can be taken on the matter involved

³⁹ Article 2.

⁴⁰ Articles 8 and 10 as amended; prior to the 1946 Protocol, the decisions were taken by the Health Committee of the League of Nations.

⁴¹ Article 11, paras. 3 and 4 as amended by the 1946 Protocol; prior to this Protocol the decisions were taken by the Health Committee of the League of Nations (and *ad hoc* Expert Committee).

⁴² Article 11, para. 4.

⁴³ Article 1, paras. 2-4.

⁴⁴ Article 2.

⁴⁵ Article 3, para. 8; see however, article 12, para. 3, subpara. (b) of the 1953 Protocol for a different appeals procedure, i.e. for appeal against the imposition of a mandatory opium embargo by the Permanent Central Board. This mandatory embargo can now be imposed by the International Narcotics Control Board; see article 45, para. 2 of the Single Convention.

⁴⁶ Article 3, para. 3, subpara. (ii) of the Single Convention.

⁴⁷ Resolution I (XX), Commission on Narcotic Drugs, report on the twentieth session. *Official Records of the Economic and Social Council, Fortieth Session, Supplement No. 2*, paras. 60 and 61; see also below comments on article 7.

⁴⁸ Operative para. 1 of the resolution.

⁴⁹ Operative para. 2 of the resolution.

before that session. This view accords with the practice of the Commission.⁵⁰

21. It is obvious that the application of this procedure is generally feasible only in respect to non-controversial questions.

22. The Commission's resolution does not appear to apply to action on provisional control pursuant to article 3, paragraph 3, subparagraph (ii) prior to the recommendation of the World Health Organization.⁵¹

⁵⁰ Commission on Narcotic Drugs, report on the twenty-first session (1966), *Official Records of the Economic and Social Council, Forty-Second Session, Supplement No. 2*, paras. 61 and 62.

⁵¹ See below comments on article 3, para. 3, subparas. (i) and (ii).

Paragraph 1

1. Where a Party or the World Health Organization has information which in its opinion may require an amendment to any of the Schedules, it shall notify the Secretary-General and furnish him with the information in support of the notification.

Commentary

1. The procedure under article 3 for a change in a schedule requires a notification either by a Party to the Convention or by the World Health Organization to the Secretary-General of the United Nations that such a change is in its opinion needed. The procedure cannot be set in motion without such a notification.

2. The amendment which may be required in the opinion of the Party or the World Health Organization, and consequently is made the subject of a notification to the Secretary-General, may involve:

Placing an uncontrolled substance under international control by inserting it in Schedule I or II or by inserting it simultaneously in Schedules I and IV and thus subjecting it to the stricter régime applicable to drugs in Schedule IV;

Changing the régime applicable to a drug by:

Transferring a drug from Schedule I to Schedule II or vice-versa,

Placing in Schedule IV a drug already in Schedule I,

Deleting a drug listed in Schedules I and IV from the latter Schedule;

Exempting a prescription from certain controls by including it in Schedule III;

Cancelling such an exemption by deleting from Schedule III a preparation listed therein;

Freeing a drug from international control by deleting it from Schedule I or II and, if the action concerns a drug which is in Schedule I as well as in Schedule IV, by removing it from both these Schedules.

3. It is left to the judgement of the Party or World Health Organization to decide whether such an amendment is required; but if either is of the opinion that an amendment is required, it is bound to make the notification mentioned in the paragraph. This provision, like all the other provisions of the Single Convention, must of course be carried out in good faith.

4. An amendment to a Schedule is “required” if it is needed to combat the abuse of “narcotic” drugs, or to facilitate the availability of the drugs for the relief of pain and suffering without endangering the basic aim of the Single Convention, i.e. that of fighting drug abuse.¹

5. Not every newly discovered “narcotic”² drug needs to be placed under international control. If a Government does not intend to permit the commercial manufacture of, or trade in, such a drug, if it is highly improbable that any other Government would do so and if there is moreover no danger that the drug could be made by clandestine manufacturers, the opinion might be justified that the discovery does not “require an amendment to any of the Schedules”. The Government concerned would in such a case be justified in not making the notification mentioned in the paragraph. In fact, numerous “narcotic drugs” existing only in laboratories are not subject to international control, and, not being in trade, do not present a significant risk of abuse or of illicit traffic.³

6. The notification should contain the exact chemical structure (formula) of the substance and all its names known to the Party or to the World Health Organization, as the case may be.

7. The information which must be furnished “in support of the notification” should include all the data which could assist the Commission on Narcotic Drugs, and if furnished by a Government, also the World Health Organization, in performing its functions under article 3. The information should also enable the Parties to the Convention, other than the Government furnishing it, to take a position on the control problem involved, and to send to the World Health Organization or to the Commission or to both such comments as they consider useful. It should include data on relevant research, and in particular on clinical experiments. The texts or adequate summaries of useful publications dealing with the matter should be enclosed, and exact bibliographical references should be given. The notification should be furnished in one of the official languages of the United Nations. Speedy action to extend the narcotics régime to the uncontrolled substance involved often being very important, it would be helpful if Governments would supply the notification and at least the most essential parts of the supporting information in all languages which at that particular moment are the working languages of the United Nations Secretariat for documents of this kind.

¹ See preamble of the Single Convention.

² I.e. having harmful properties of the kind of those justifying international control (article 3, para. 3, subpara. (iii)).

³ See above the general comments on article 3.

Paragraph 2

2. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where the notification is made by a Party, to the World Health Organization.

Commentary

1. The Secretary-General must forward the full text of the notification. He may add such explanatory comments as he considers fit. He may suggest to the Party concerned or to the World Health Organization revisions which, if accepted, he may incorporate in the document which he dispatches. He may himself correct obvious typing mistakes to avoid delay which an inquiry may cause in a procedure which should be expeditious.

2. The notification must be sent by the Secretary-General to all Parties, to the Commission on Narcotic Drugs and, if it is made by a Party, to the World Health Organization. It would, however, be useful to send it also to the International Narcotics Control Board, which would thus be enabled to take all preparatory steps necessary to put its control of the drug involved immediately into effect if the Commission takes a decision to control.

3. The supporting information which Governments furnish is sometimes very bulky and contains repetitions or irrelevant data or both. The Single Convention authorizes therefore the Secretary-General to forward only information which he considers relevant,¹ to avoid the unnecessary burden of bulky reproductions and heavy costs of translation. He may transmit excerpts or summaries. He may choose to transmit only a part of the information to Governments, but the whole or a larger part to the World Health Organization, since the latter transmission may not require any work of translation. The Secretary-General may also choose to forward in the original language, without translation, the whole or parts of the supporting information, in particular that of a scientific nature such as scientific articles, on the assumption that the scientific advisers of the Governments are able to read in the foreign language involved, the technical literature in their special field.

4. The question arises whether the Secretary-General can reject *a limine* a notification by a Government of a State which is not a Party and inform the notifying Government that he will not take action under article 3, paragraph 2, since only Parties to the Single Convention or the World Health Organization may make notifications pursuant to article 3, paragraph 1. The text of paragraph 2 appears to justify such action by the Secretary-General since he is required only to transmit to the addressees mentioned in that paragraph "such notification", which clearly refers to a notification made under paragraph 1, i.e. a notification by a Party or the World Health Organization.

¹ Under article 1, para. 1 of the 1948 Protocol the Party concerned had to send the notification "with all material information in its possession" to the Secretary-General of the United Nations, who must "transmit it immediately" to the other Parties, to the Commission on Narcotic Drugs and to the World Health Organization. Although he had no express treaty authority to do so, the Secretary-General has in fact under this provision sometimes transmitted only a part of the bulky information received, omitting what he considered irrelevant.

It is, however, suggested that it would be preferable if he would forward the notification of a State not a Party to the Governments and organizations mentioned in paragraph 2, and thus leave it to the Commission to refuse to take action. By such a course of action the Secretary-General might bring to the attention of the Parties and the World Health Organization information which may in fact "require an amendment to any of the Schedules", ² and thus enable a Party or that Organization to make the formal step which would be needed to commence the procedure. It may, moreover, sometimes be difficult to decide whether the notifying country is a Party or not. This may be a controversial question which the Secretary-General may wish to avoid.

5. It would not, however, be appropriate for the Secretary-General to circulate any notification emanating from a private person, firm or society. If the information transmitted appeared to have any value, it could be informally communicated to the World Health Organization.

² Article 3, para. 1.

Paragraph 3, subparagraphs (i) and (ii)

3. Where a notification relates to a substance not already in Schedule I or in Schedule II,

(i) The Parties shall examine in the light of the available information the possibility of the provisional application to the substance of all 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 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.

Commentary

Provisional control

1. Placing an uncontrolled dangerous substance under the international narcotics régime may sometimes be very urgent in order to prevent a wide spread of abuse before it is brought under control. The procedure of article 3 of the Single Convention, requiring action by the World Health Organization as well as by the Commission, may, however, be too time-consuming to prevent extensive addiction to an uncontrolled substance. ¹ It is for this reason that the Single Convention, following the example of earlier narcotics treaties, ² provides for provisional control measures pending the procedure for placing a substance under the international régime.

¹ Under the earlier narcotics treaties, the functions of the World Health Organization regarding the control status of a drug have been delegated by the World Health Assembly to the Director General of the Organization to facilitate speedy action; see resolution of the World Health Assembly WHA 7.6 (May 1954).

² I.e. the 1931 Convention (article 11, para. 1) and the 1948 Protocol (article 2); see above the general comments on article 3.

2. The Convention has two different provisions dealing with this subject; a discretionary one by which the application of provisional control measures is left to the judgement of each Party (article 3, paragraph 3, subparagraph (i)), and a mandatory one which binds the Parties to carry out a decision of the Commission on Narcotic Drugs to place a substance under provisional control (article 3, paragraph 3, subparagraph (ii)).

3. The provisional control in question is in both cases the régime applicable to drugs in Schedule I, i.e. the standard régime of the Single Convention.³

4. The discretionary rule requires the Parties to “examine in the light of the available information the possibility” of applying this provisional control to a substance respecting which the procedure has begun under article 3 of the Single Convention to apply the international narcotics régime. The “available information” which should be the basis of a Government’s examination consists not only of the notification and supporting data which it receives from the Secretary-General of the United Nations in accordance with article 3, paragraphs 1 and 2, but also of such data which it already possesses or may obtain from other sources.⁴

5. Under the mandatory⁵ rule, the Commission on Narcotic Drugs may require that, pending its final decision which it can take only after it has received a recommendation of the World Health Organization on the matter,⁶ the Parties place the substance in question under provisional control. This rule is substantially the same as that of the corresponding provision of the 1948 Protocol.⁷

6. The Commission can take the decision on provisional control on the basis of notification and supporting data which it receives from the Secretary-General of the United Nations under article 3, paragraph 2, but also in the light of such other information as may be put at its disposal by the Secretariat of the United Nations, by the World Health Organization whose representative regularly attends the sessions of the Commission, by Governments which as Commission members⁸ or observers participate in the deliberations of the Commission, or by the representatives of these Governments in their capacity as experts in the field.

³ See above comments on article 2, para. 1; similarly the provisional régime of the 1931 Convention and of the 1948 Protocol is that applicable to drugs in Group I; see article 2 of the 1948 Protocol and the *Commentary* on the 1931 Convention, para. 114 (p. 156); see also above the general comments on article 3.

⁴ See also resolution 730 D (XXVIII) of the Economic and Social Council.

⁵ Article 3, para. 3, subpara. (ii).

⁶ Article 3, para. 3, subpara. (iii); see also para. 5.

⁷ Article 2 of that Protocol; the provisional control decreed by the Commission under this provision must be applied pending the procedure on the control status of the substance involved, before the World Health Organization, which takes the final decision under that treaty, and not the Commission.

⁸ The Commission is at present composed of Governments; see resolution 9 (I) of the Economic and Social Council, as amended up to and including the Council resolution 1147 (XLI); see also below comments on articles 5 and 7 and foot-note 3 to the comments on article 8.

7. By a resolution ⁹ of the Commission in force at the time of this writing, the Commission under certain circumstances may vote by mail or telegraph regarding the extension of international control to an additional drug. Though the resolution does not apply to decisions on provisional control, in any event, prior to the World Health Organization's recommendation, there seems to be no legal obstacle to adopting, by such voting, decisions on provisional control, provided always that the right of members of the Commission to participate fully in the decision-making process is not thereby impaired, and in particular provided that they are not prevented from bringing, if they so wish, their views on the question to the attention of the other members before the vote is taken. Voting by mail or telegraph on provisional control would, however, generally be feasible only in regard to non-controversial matters.

8. The Commission's decision on provisional control must be communicated by the Secretary-General to all Members of the United Nations, to other States Parties to the Single Convention, to the World Health Organization and to the International Narcotics Control Board, as provided for in paragraph 7 of article 3.

9. Decisions pursuant to article 3, paragraph 3, subparagraph (ii) are not subject to review under article 3, paragraph 8 nor under article 7.

⁹ Resolution 1 (XX) adopted during the twentieth session of the Commission; *Official Records of the Economic and Social Council, Fortieth Session, Supplement No. 2*, para. 60; see also above general comments on article 3.

Paragraph 3, subparagraph (iii)

(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.

Commentary

Placing uncontrolled substances under the international narcotics régime

1. Two bodies must act under subparagraph (iii) to submit an uncontrolled substance to the controls of the Single Convention: the World Health Organization and the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations.

2. It is left to the World Health Organization to determine which of its organs should exercise the functions with which it is entrusted under the Single Convention. At the time of this writing, it is the Director General of the Organization who is authorized to perform the functions under article 3. ¹ He may act on the advice of such bodies or experts as he chooses

¹ Resolution WHA 18.46 (May 1965) of the World Health Assembly; see also the Assembly's resolution WHA 7.6 (May 1954).

to consult. As a rule he acts at present on the recommendation of the WHO Expert Committee on Drug Dependence.²

3. The action of the World Health Organization under subparagraph (iii) consists of two parts, both of which are mandatory. It must first make a finding whether the substance in question has harmful effects which justify its subjection to international control. It must determine whether the substance is "liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or II", i.e. as substances already subject to the narcotics régime of the Single Convention, *or* whether it "is convertible into a drug", i.e. into such a controlled substance. Secondly, if its finding is affirmative, the World Health Organization must make a recommendation as to the régime, i.e. whether the rules applicable to drugs in Schedule I or those applicable to drugs in Schedule II should be applied. If it recommends the régime governing drugs in Schedule I, it may, under the conditions set out in article 3, paragraph 5, also make a recommendation to place the substance in Schedule IV. See below, comments on that paragraph.

4. The Technical Committee of the Plenipotentiary Conference applied two general criteria in preparing the lists of substances in the Schedules of the Single Convention: the substance's "degree of liability to abuse", and its "risk to public health and social welfare". The Committee stated also more specifically that the substances which it listed for Schedule I were those:

"(a) Having addiction-producing or addiction-sustaining properties greater than those of codeine and more or less comparable to those of morphine;

"(b) Convertible into substances having addiction-producing or addiction-sustaining properties with an ease or yield such as to constitute a risk of abuse greater than codeine; or

"(c) Having a liability to abuse comparable to that of cannabis, cannabis resin or cocaine; or

"(d) Convertible into substances having a liability to abuse comparable to that of cannabis, cannabis resin or cocaine".

The Committee also reported that it listed for inclusion in Schedule II substances:

"(a) Having addiction-producing or addiction-sustaining properties not greater than those of codeine but at least as great as those of dextropropoxyphene;³ or

"(b) Convertible into a substance having addiction-producing or addiction-sustaining properties with an ease and yield such as to constitute a risk of abuse not greater than that of codeine".⁴

5. To sum up, it results that the substances in these two Schedules, i.e. the drugs under the narcotics régime, have morphine-like, cocaine-like or cannabis-like effects or are convertible into "drugs" having such effects.

² Formerly called successively WHO Expert Committee on Habit-Forming Drugs, WHO Expert Committee on Drugs Liable to Produce Addiction and WHO Expert Committee on Dependence-Producing Drugs.

³ Dextropropoxyphene was freed from control by the Commission on Narcotic Drugs. It had been inserted in Schedule II by the Plenipotentiary Conference; Commission on Narcotic Drugs, report on the nineteenth session, *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 9*, para. 157.

⁴ *Records*, vol. II, p. 263-264; see also vol. I, pp. 190-191.

6. The similarity of abuse and ill-effects which the World Health Organization must determine is therefore the similarity to those of morphine-type, cocaine-type or cannabis-type drugs; but there may be varying degrees of “similarity”, and the Single Convention does not indicate what degree is required. It is therefore generally left to the judgement of the World Health Organization to decide what it considers as “similarity” for the purposes of article 3, paragraph 3, subparagraph (iii). It will be guided in this evaluation by the risk which in its opinion the substance involved presents for “public health and social welfare”; but it follows from the history of the drafting of the Single Convention that a very important restriction is imposed on this discretion of the World Health Organization. The Office of Legal Affairs of the United Nations ruled, in an opinion given to the Commission on Narcotic Drugs at its twenty-third session, that barbiturates, tranquillizers and amphetamines were outside the scope of the Single Convention. It pointed out that there was an understanding at all stages of the drafting of the Single Convention, in particular at the Plenipotentiary Conference of 1961 which adopted that treaty, that the Convention was not applicable to these three types of substances, although the effects of amphetamines have some degree of similarity to cocaine, and those of barbiturates and tranquillizers to morphine. The Legal Office also mentioned that this obstacle to extending the application of the Single Convention to these drugs could informally be removed by agreement of the Parties on the matter, but no such agreement existed.⁵

7. Hallucinogenic drugs such as mescaline, psilocine, tetrahydrocannabinols, or LSD-25 are, however, not excluded from the scope of article 3, paragraph 3, subparagraph (iii) if the World Health Organization should find that they present the “similarity” to cannabis and cannabis resin required under that subparagraph. The fact that a substance considered for international control under the procedure of subparagraph (iii) is much more potent than the already controlled drug with which it is compared does not affect the “similarity” required for its placement under the narcotics régime. Etorphine and acetorphine, which are many times more potent than morphine, have been placed in Schedule I by the Commission on Narcotic Drugs in accordance with the recommendation of the World Health Organization, because they were found to have morphine-like effects.⁶ Being particularly harmful and not having any known value in the treatment of human beings, they have also been included in Schedule IV.⁷ It appears that the fact that

⁵ Commission on Narcotic Drugs, report on the twenty-third session, *Official Records of the Economic and Social Council, Forty-sixth Session*, paras. 351-357; some members of the Commission disagreed with the opinion of the Legal Office. See also the final report of the Permanent Central Board and Drug Supervisory Body (E/OB/23-E/DSB/25) paras. 131-142; these two organs had the same opinion as the Legal Office; for the full text of opinion of the Legal Office see United Nations document E/CN.7/L.306.

⁶ WHO Expert Committee on Dependence-Producing Drugs, 15th Report, sections 1.1 and 1.3, WHO Technical Report Series No. 343; Commission on Narcotic Drugs, report of the twenty-first session, paras. 61-64, *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 2*.

⁷ Commission on Narcotic Drugs, report on the twenty-second session, *Official Records of the Economic and Social Council, Forty-fourth Session, Supplement No. 2*, para. 43.

the potent hallucinogenics whose abuse has spread in recent years have not been brought under international narcotics control does not result from legal reasons, but rather from the view of Governments that a régime different from that offered by the Single Convention would be more adequate.⁸

8. The character of the Schedules may be gradually changed, since the substances which may be included in them need not have the same,⁹ but only “similar” dangerous properties to those of substances already listed. As a consequence, the range of different substances which could be brought under the narcotic régime by the operation of subparagraph (iii) would correspondingly be increased. Some adjustment to changing conditions might be brought about by this gradual process.

9. Not only substances which have harmful effects themselves, but also those which are “convertible” into such dangerous substances, were included by the Plenipotentiary Conference in the Schedules of the Single Convention and can be added to them by the procedure of subparagraph (iii). The 1931 Convention and 1948 Protocol already provided for the control of such “convertible” substances;¹⁰ but when the 1931 Convention introduced in the international field the idea of controlling “convertible” substances, the possibilities of chemical synthesis were not as advanced as they were in 1948, nor particularly as advanced as they are today. Moreover, the “convertible” substances which could be placed under international control under article 11 of the 1931 Convention had to be products “obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf”. The range of substances which could be controlled as “convertible” was therefore narrowly circumscribed in the 1931 Convention.

10. Neither the 1948 Protocol nor the Single Convention requires that “convertible” substances which may be brought under their control belong to certain chemical groups. The chemical formula of the substances is irrelevant, and the range of chemical classes to which they may belong is thus theoretically unlimited. Moreover, such substances as by-products of petrol or coal tar can be “converted” into narcotic drugs, and actually are. It cannot have been the intention of the authors of the 1948 Protocol and of the Single Convention to place under international narcotics control anything which may theoretically be “convertible” into narcotic drugs. The purpose of the provisions regarding “convertible” substances is to make it as difficult as practicable for illicit traffickers to obtain material which they could in practice, i.e. *with relative ease*, transform into controlled dangerous drugs.

11. It can be seen from the discussions of the Plenipotentiary Conference that what the delegates had in mind when they used the term “convertible”

⁸ Control of the hallucinogenics as well as of amphetamines, barbiturates and tranquillizers is provided for in the Convention of 21 February 1971 on Psychotropic Substances which also provides for a procedure, similar to that of the Single Convention, for placing additional substances under its régime; document E/CONF.58/6 and E/CONF.58/6/Corr.1 (the latter document only in English).

⁹ Which—strictly speaking—would hardly be possible; see however article 1, para. 1 of the 1948 Protocol.

¹⁰ Article 11, paras. 3, 4 and 6 of the 1931 Convention; article 1, para. 2 of the 1948 Protocol.

was “easily” or “readily” convertible.¹¹ This has in fact been the traditional meaning of the words “convertible” and “conversion” in the field of international narcotics treaties.¹² Moreover, the representatives at the Conference were very often technical experts in the field of international narcotics control or had such experts as advisers. Most of them must therefore have been aware of the resolution adopted by the World Health Assembly in 1954 and dealing with the matter.¹³ In this resolution the Assembly declared that under the 1931 Convention “a substance will be considered by the World Health Organization as ‘convertible’ where the ease of conversion and the yield obtained constitute a risk to public health and that in cases where there is uncertainty whether a substance will fall under this definition, the substance will be considered as ‘convertible’ rather than as ‘not convertible’ ”.

12. When including “convertible” substances in Schedules I and II of the Single Convention, the Technical Committee of the Plenipotentiary Conference, in fact accepted this definition of the World Health Organization, as can be seen from the criteria quoted above which it used in preparing the Schedules.¹⁴

13. It may be concluded that the “convertibility” required by article 3, paragraph 3, subparagraph (iii) must be of such a kind as to make it, by the ease of the process and by the yield, practicable and profitable for a clandestine manufacturer to transform the substance in question into controlled drugs.

14. A substance which is not by itself “liable to similar abuse and productive of similar ill effects as the drugs in Schedules I or II” must be convertible into a “drug”, i.e. into a controlled substance listed in either of those Schedules, if it is to be brought under control by operation of subparagraph (iii). This is quite clear under the English and French texts, which respectively use the phrases “convertible into a drug”¹⁵ and “*transformable en un stupéfiant*”.¹⁵ The Spanish text describes however the convertible substance as “*sustancia ... que puede ser transformada en un producto que se preste a un uso indebido similar o que puede producir efectos nocivos semejantes*”. This means that under the Spanish text the dangerous product into which the substance concerned must be “convertible” under subparagraph (iii) need not be in Schedule I or II, i.e. need not itself be controlled. It is suggested that preference must in this case be given to the English and French texts. It cannot be assumed that the authors of the Single Convention intended to control a substance which by itself is not harmful because it is convertible into another substance which, however dangerous, is not itself under the international narcotics régime. There can, however, be no objection under subparagraph (iii) to placing simultaneously under international control both the harmless substance as well as the dangerous substance into which the harmless one is convertible.

¹¹ *Records*, vol. I, p. 66, vol. II, pp. 90-91.

¹² I.e. the sense in which these terms are used in the 1931 Convention and 1948 Protocol.

¹³ Resolution WHA 7.7. (May 1954).

¹⁴ *Records*, vol. II, pp. 263-264.

¹⁵ Article 1, para. 1, subpara. (j).

15. The World Health Organization may recommend for inclusion in Schedule II not only substances which are by themselves not dangerous in the meaning of subparagraph (iii), but only convertible into "drugs", ¹⁵ i.e. into products already under the narcotics régime, but also those substances which have the dangerous properties themselves. ¹⁶

16. The WHO has very wide discretion in selecting the Schedule. It may choose either Schedule, both for substances which are themselves dangerous and for those which are not dangerous in themselves, but are convertible into drugs. ¹⁶ It will be guided in this choice by the interest of public health in each case, as it appears not only from the degree of danger which the substance in question presents but also from the need to make useful medicines as easily available as may be compatible with the requirements of their control. Substances which are comparatively less dangerous and widely used in medical practice may therefore often be proposed for inclusion in Schedule II. The criteria which the technical Committee of the Plenipotentiary Conference used in establishing the Schedules and which are quoted above may offer a useful guide in the selection of the Schedule for a substance to be recommended for international control under subparagraph (iii).

17. The Commission on Narcotic Drugs decides whether a substance is to be placed under international control. It can take a positive decision only in accordance with the recommendation of the World Health Organization. It can include the substance only in that Schedule which is recommended by the Organization. If the World Health Organization recommends Schedule I, the Commission cannot decide to add the substance to Schedule II, or *vice versa*. The Commission must either accept the Schedule recommended by the World Health Organization or abstain from extending control at all. It may, however, decide to place a drug only in Schedule I and not in Schedule IV if the World Health Organization has recommended simultaneously inclusion in both these Schedules. In no case can the Commission decide to extend control to a substance if the World Health Organization has not recommended to do it.

18. It is suggested that the Commission should in principle accept the pharmacological and chemical ¹⁷ findings of the World Health Organization. When it does not accept the recommendation of the World Health Organization, it should be guided by other considerations such as those of an administrative or social nature. ¹⁸

¹⁶ Under article 11 of the 1931 Convention substances which were "addiction-producing" could not be included in Group II, but only those which were not "addiction-producing" themselves but merely convertible into addiction-producing drugs.

¹⁷ I.e. as regards "convertibility".

¹⁸ *Records*, vol. I; pp. 66 and 68; vol. II, pp. 92 and 93.

Paragraph 4

4. If the World Health Organization finds that a preparation because of the substances which it contains is not liable to abuse and cannot produce ill effects (paragraph 3) and that the drug therein is not readily recoverable, the Commission may, in accordance with the recommendation of the World Health Organization, add that preparation to Schedule III.

*Commentary**Exemption of preparations from certain measures of control*

1. Preparations in Schedule III are subject to considerably more extensive controls than those “for the export of which export authorizations are not required”, i.e. which were “exempted” under the earlier narcotics treaties. For the controls under the Single Convention and under the earlier treaties, see above, comments on article 2, paragraph 4.

2. As in the case of all changes in the Schedules of the Single Convention, action of both the World Health Organization and of the Commission on Narcotic Drugs is required to add a preparation to Schedule III. The Commission cannot do this unless it is recommended by the World Health Organization, and cannot change the definition of the preparation given by the World Health Organization. If deciding to add a preparation to Schedule III, it must act fully in accordance with the recommendation of the World Health Organization. It may, however, refuse to make an addition to Schedule III recommended by that Organization.

3. The Director-General of the World Health Organization is at the time of this writing the organ authorized to act on behalf of the Organization under paragraph 4, as in respect to all other findings and recommendations under article 3. See above, comments on article 3, paragraph 3, subparagraph (iii).

4. If the World Health Organization receives through the Secretary-General a notification from a Party stating that Party’s opinion that the addition of a given preparation to Schedule III may be required, it must examine whether the preparation has the pharmacological and chemical properties which under paragraph 4 justify exemption. It is, however, suggested that even if its examination results in an affirmative finding, the World Health Organization need not in all cases recommend the preparation’s addition to Schedule III. It may hold that a wide consumption of the preparation involved, without medical supervision, is not advisable, that exemption is not justified in the light of sound principles of public health, and that consequently an amendment to Schedule III is not “required”.¹ The World Health Organization may in particular arrive at this opinion in the case of a preparation which, although fulfilling the conditions of paragraph 4, is only of very little or questionable therapeutic value. It must not be overlooked that a preparation whose harmful drug content is not “readily” recoverable may nevertheless represent some limited risk to public health. Acceptance of this risk should be justified by some therapeutic advantages which would be offered by an

¹ See article 3, para. 1.

exemption, making a useful preparation very easily available for wide consumption without requiring a medical prescription. Inclusion of a preparation in Schedule III is not favoured by the spirit of the Single Convention.²

5. The Single Convention, however, does not contain any provision excluding from Schedule III preparations of drugs in Schedule IV. Since drugs in Schedule IV have no substantial therapeutic value not possessed by other less dangerous drugs³ and are therefore not really needed in the treatment of the sick, it is not very probable that a preparation of such a drug might be so widely needed for legitimate purposes as to justify, under the conditions of paragraph 4, exemption in order to facilitate wide-spread consumption without medical supervision. It cannot, however, be excluded from a theoretical view point that a combination containing a drug in Schedule IV may in the future be found to have such important and widely needed therapeutic properties as to justify exemption if the conditions of paragraph 4 are met.

6. The Technical Committee of the Plenipotentiary Conference which adopted the Single Convention, listed in Schedule III preparations which :

“(a) Are intended for legitimate medical use; and

“(b) Have a specified drug content and are compounded with one or more ingredients in such a way that the preparation has no, or a negligible risk of abuse, and in such a way that the drug cannot be recovered by readily applicable means or in yield which would constitute a risk to public health”.⁴

7. The criteria mentioned under (b), although described in more detail, are those incorporated in paragraph 4 of article 3. The 1925 Convention provided for substantially the same conditions for exemption of preparations from its controls.⁵ It has been suggested above that the criterion indicated under (a) might also be taken into account by the World Health Organization when considering the recommendation which it should make under article 3, paragraph 4. The factors which may be relevant in the procedure for including a preparation in Schedule III may be summed up as follows:

(a) Drug content of the preparation;

(b) Potency of the drug;

(c) Nature of the admixtures, their degree of effectiveness in counter-acting⁶ the dangerous properties of the drug;

(d) Practicability of recovery of the drug by illicit traffickers or persons desiring to abuse it;

(e) Therapeutic value and extent of the legitimate use of the preparation.

8. In arriving at its decision as to the control status of the preparation involved the Commission will, of course, be guided by the pharmacological and chemical findings of the World Health Organization; but the question of the practicability of the recovery of a drug is not only a matter of chemical

² See article 39.

³ Article 3, para. 5.

⁴ *Records*, vol. II, p. 264.

⁵ Article 8; see above, comments on article 2, para. 4 and the general comments on article 3.

⁶ E.g. by emetic action.

evaluation. The conditions under which illicit traffickers may be able to engage in the extraction of the drug in different countries, e.g. what type of machinery or solvents may in practice be available to them, and the price which the drug may fetch in the contraband trade may be very important factors among the questions on which the members of the Commission will have special expert knowledge.

9. It has been noted above that the number of preparations which are included in Schedule III of the Single Convention is much smaller than that of the preparations "exempted" under earlier narcotics treaties.⁷

10. The procedure of article 3, paragraph 4 can also be initiated by the World Health Organization.

⁷ See above comments on article 2, para. 4.

Paragraph 5

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 may, in accordance with the recommendation of the World Health Organization, place that drug in Schedule IV.

Commentary

Insertion in Schedule IV

1. As in the case of all other changes in the Schedules, action of both the World Health Organization and of the Commission on Narcotic Drugs is required to bring about a new listing in Schedule IV. See above, comments on article 3, paragraph 3, subparagraph (iii) and paragraph 4.

2. For the authority of the Director-General of the World Health Organization to act on behalf of that Organization, see above, comments on article 3, paragraph 3, subparagraph (iii).

3. The question arises whether the World Health Organization can make a finding that a substance has dangerous properties as defined in paragraph 5 only if it is a drug already placed in Schedule I by the Plenipotentiary Conference or by the Commission on Narcotic Drugs, or whether the Organization has the power to make simultaneous findings that a substance should be placed both in Schedules I and IV. The latter appears preferable from a practical view point, and also seems to agree with the opinion of the World Health Organization on this matter.¹ To require the World Health Organization

¹ The World Health Organization recommended to place simultaneously in Schedules I and IV acetorphine and etorphine, both substances notified by the Government of the United Kingdom of Great Britain and Northern Ireland under article 3, para. 1; WHO Expert Committee on Dependence-Producing Drugs, 15th Report, Sections 1.1 and 1.3, *WHO Technical Report Series 343*. The Commission on Narcotic Drugs did not object to this simultaneous recommendation when acting on these two drugs; Commission on Narcotic Drugs, reports on the twenty-first session

to delay its recommendation to place a substance in Schedule IV until the Commission has decided to accept the Organization's recommendation to include the same substance in Schedule I does not seem to be a desirable procedure; it might delay the expeditious adoption of necessary international control measures. As can be seen from the text of article 3, paragraph 3, subparagraphs (i) and (ii) regarding provisional control, provision for the quick extension of controls was considered by the authors of the Convention to be necessary in order to prevent the spread of the abuse of uncontrolled substances. No Party has objected to the World Health Organization's recommendation to place substances simultaneously in Schedules I and IV,¹ and it can be assumed that it is generally acceptable to interpret the phrase "a drug in Schedule I" in the conditional clause of paragraph 5 to mean "a drug listed in Schedule I or recommended for inclusion in Schedule I".²

4. It will be recalled that drugs in Schedule IV *must* also be included in Schedule I.³ As the WHO can recommend for inclusion in Schedule IV only drugs already in Schedule I or substances which it recommends simultaneously to place in Schedule I, so can the Commission on Narcotic Drugs place in Schedule IV only drugs in Schedule I or substances which it decides simultaneously to place in Schedule I.

5. As in the drawing up of all Schedules of the Single Convention, the Technical Committee of the Plenipotentiary Conference which adopted that treaty was guided by the "degree of liability to abuse" and the "risk to public health and social welfare"⁴ of the substances which it considered for inclusion in Schedule IV. It described the substances which it listed in this Schedule as those:

"(a) Having strong addiction-producing properties or a liability to abuse not offset by therapeutic advantages which cannot be afforded by some other drug; and/or

"(b) For which deletion from general medical practice is desirable because of the risk to public health".⁵

6. The standards set out by the Technical Committee under (a) are substantially the same as the criteria of article 3, paragraph 5, justifying the inclusion of a drug in Schedule IV; the criterion mentioned under (b) was not incorporated in the text of the Single Convention. The standards of (a) and (b) were formulated by the Technical Committee as cumulative *or* alternative conditions. Since the desirability of deleting a drug from general medical practice must under (b) be due to its "risk to public health", cases covered by the definition of (b) will generally if not always also fall under (a). There is, therefore, hardly any difference between the standards used by the Technical Committee when composing Schedule IV and those which were incorporated in paragraph 5 of article 3.

and on the twenty-second session, *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 2*, paras. 61-64 and *Ibid.*, *Forty-fourth Session, Supplement No. 2*, para. 43.

² See also above comments on article 3, para. 3, subpara. (iii).

³ Article 2, para. 5, introductory subparagraph.

⁴ *Records*, vol. II, p. 263.

⁵ *Records*, vol. II, p. 264.

7. If it is found that a drug has particularly dangerous properties and lacks therapeutic value, as paragraph 5 requires for inclusion in Schedule IV, its deletion from general medical practice will usually be desirable from the view point of public health. The recommendation of the World Health Organization and the decision of the Commission on Narcotic Drugs to place a drug in Schedule IV will in fact largely be motivated by such a desire.⁶

8. It may, however, also be desirable to remove from general medical practice a drug which does not have the particularly harmful effects defined in paragraph 5, but is nevertheless of no therapeutic value. However appropriate such an action might be from a more general view point of public health, a drug of this kind could not be placed in Schedule IV.

9. As the reference to paragraph 3 makes quite clear, the dangerous properties required by paragraph 5 are of the same types as those defined in paragraph 3, subparagraph (iii), i.e. in view of the present composition of Schedules I or II they must be morphine-like, cocaine-like or cannabis-like.⁷ The difference between the harmful effects required by paragraph 5 and those defined in paragraph 3, subparagraph (iii) is one of degree and not of kind.

10. Those who question the particularly harmful character of cannabis and cannabis resin may hold that the Technical Committee of the Plenipotentiary Conference was under its own criteria not justified in placing these drugs in Schedule IV; but the approval of the Committee's action by the Plenipotentiary Conference places this inclusion beyond any legal doubt. Should the results of the intensive research which is at the time of this writing being undertaken on the effects of these two drugs so warrant, they could be deleted from Schedule IV, and these two drugs, as well as extracts and tinctures of cannabis, could be transferred from Schedule I to Schedule II.⁸

11. While the Commission on Narcotic Drugs will accept the findings of the World Health Organization made under paragraph 5 on the harmful

⁶ Prohibition of the production or manufacture of, trade in or use of the drugs involved may be one of the measures which a Party to the Single Convention may have to adopt in respect of drugs in Schedule IV; article 2, para. 5; see above, comments on that paragraph.

⁷ See above, comments on article 3, para. 3, subpara. (iii), particularly as regards the possible gradual change in the character of drugs included in the Schedules. The comments on para. 5 refer to Schedules I and II because it cannot be excluded that a drug having properties similar in kind to those of a drug in Schedule II may be so much more potent as to require its inclusion not only in Schedule I but also in Schedule IV. As regards the relevance of potency to inclusion in a Schedule, see also above, comments on article 3, para. 3, subpara. (iii).

⁸ It is submitted that after the Vienna Convention of 21 February 1971 has come into force, cannabis, cannabis resin and extracts and tinctures of cannabis could be placed under its régime if they are removed from the Schedules of the Single Convention. Article 28, para. 1 of the Single Convention would, however, continue to apply unless this treaty is revised to prevent this. (The same must also be stated in respect to article 22.) The effect of reservations under article 49 concerning these cannabis drugs would be restricted to the application of article 28, para. 1. It is however admitted that this legal possibility of transferring cannabis and cannabis resin from the scope of the Single Convention to the régime of the new treaty may be disputed. Some may hold that in view of the continued application of article 28, para. 1, cannabis and cannabis resin are not substances "not yet under international control" within the meaning of article 2, para. 1 of the Vienna Convention; the Vienna Convention is reproduced in document E/CONF.58/6.

properties and lack of therapeutic value of a drug, it need not implement the Organization's recommendation to place the drug in Schedule IV. The Commission may in particular accept a recommendation of the World Health Organization to include a substance in Schedule I, while refusing a simultaneous recommendation to add the substance also to Schedule IV. When failing to make a recommended insertion in Schedule IV, it may act on the basis of a great variety of considerations other than those of a pharmacological character, as accords with the competence of its members in administrative and social matters. The Commission may, however, in no case place a drug in Schedule IV without a recommendation of the World Health Organization to do so. It must in this case act "in accordance with the recommendation of the World Health Organization".

12. As regards the possibility of placing in Schedule III preparations of drugs in Schedule IV, see above, comments on article 3, paragraph 4; for the régime governing drugs in Schedule IV and for the historical background of this régime, see comments on article 2, paragraph 5.

Paragraph 6

6. Where a notification relates to a drug already in Schedule I or Schedule II or to a preparation in Schedule III, the Commission, apart from the measure provided for in paragraph 5, may, in accordance with the recommendation of the World Health Organization, amend any of the Schedules by:

- (a) Transferring a drug from Schedule I to Schedule II or from Schedule II to Schedule I; or**
- (b) Deleting a drug or a preparation as the case may be, from a Schedule.**

Commentary

Other changes in the Schedules

1. Paragraph 6 deals with all changes in the Schedules of the Single Convention other than those with which paragraph 3, subparagraph (iii) and paragraphs 4 and 5 are concerned. It does not deal with the insertion of an uncontrolled substance either in Schedule I or II, and with any additions to Schedule III or IV.

2. Some of the changes with which paragraph 6 deals must be accompanied by other consequential changes: A drug which is listed in Schedules I and IV, if transferred from Schedule I to Schedule II, must be deleted from Schedule IV. This must also be done if the drug is deleted from Schedule I without being transferred to Schedule II.¹ Preparations listed in Schedule III of drugs which are deleted from Schedule I or II without being transferred to the other Schedule, i.e. are freed from international control, must be deleted from Schedule III.² The Commission must make these consequential obli-

¹ Article 2, para. 5, introductory subparagraph.

² Article 1, para. 1, subpara. (s) in connexion with subpara. (j).

gatory changes even if the World Health Organization has failed to recommend them, while it may effect all the other changes in the Schedules only “in accordance with the recommendation of the World Health Organization”, i.e. if they are recommended by that Organization.

3. The procedure to be applied in changing the Schedules under paragraph 6 is the same as that to be followed in the changes under the preceding paragraphs. The criteria to be employed under these paragraphs in the inclusions in Schedules I, II, III and IV are also those which must be taken into account in the transfers and deletions of paragraph 6. Regarding these criteria and this procedure, and in particular the initiation of the procedure by notifications, the role of the World Health Organization and the Commission on Narcotic Drugs, the relation between recommendations of the World Health Organization and the decisions of the Commission on changes in the Schedules, and the authority of the Director-General of the World Health Organization to act under article 3, see the comments on the preceding paragraphs of this article.

Paragraph 7

7. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, to the World Health Organization and to the Board. Such decision shall become effective with respect to each Party on the date of its receipt of such communication, and the Parties shall thereupon take such action as may be required under this Convention.

Commentary

Communication of decisions of the Commission on Narcotic Drugs effecting changes in the Schedules of the Single Convention

1. The Secretary-General of the United Nations is required to communicate the decisions of the Commission taken pursuant to article 3¹ to all States which have treaty obligations to co-operate in international narcotics control, i.e. to the Parties to the Single Convention, which are bound to carry out those of the Commission's decisions under article 3 which are onerous, and to the Members of the United Nations, which under the terms of the Charter of the United Nations have undertaken to co-operate in the fight against drug abuse as well as in other social matters.² It will, on the other hand, be noted that the notifications initiating the procedure for changes in the Schedules of the Single Convention are communicated only to Parties to that

¹ I.e. pursuant to para. 3, subparas. (ii) and (iii) and paras. 4 to 6 of this article.

² Articles 55 and 56 of the Charter being understood by the founding San Francisco Conference to cover international narcotics control. Fifth report of the Drafting Committee of Committee II/3 of the San Francisco Conference, document WD 40 II/3/A/5 26 May 1945; statements of the representatives of Canada, China, India and the United States in Committee II/3; verbatim minutes of the 19th meeting, 4 June 1945; see comments below on article 5.

treaty, and not to those Members of the United Nations which are not Parties.³ It is thus only the former that are enabled to participate in the procedure by submitting comments addressed to the World Health Organization, or to the Commission, or both.

2. It may also be noted that provision is made for communication to the Board of the Commission's decisions, but not of the notifications. The Board must take steps to implement the decisions, but plays no role in the procedure by which they are adopted.⁴ It has, however, been suggested above that, although not required by any provision of the Single Convention, it would be useful to communicate the notifications also to the Board in order to enable that organ to take such preparatory measures as may be necessary to ensure the quick execution of the Commission's decisions when taken.

3. Governments should carry out the onerous decisions of the Commission as expeditiously as practicable. National narcotics laws normally provide for changes, by decree, in the lists of drugs subject to control; but the procedure for issuing such a decree requires some time. A Party is certainly allowed a reasonable interval between the receipt of the communication of the Commission's decision and the issue of its decree implementing the decision.

4. Paragraph 7 provides that the decision of the Commission becomes effective in respect to each Party on the date of its receipt of the communication of that decision. Fixing these dates exactly may be of minor importance for determining whether the lapse of time between the receipt of the decision by a Party and its enactment of the decree implementing it has not been too long, since it must be assumed that Governments will act in good faith and will not deny the receipt of the communication, so that a few days' difference will not be relevant; but under article 3, paragraph 8, subparagraph (a), the period of ninety days within which a Party may lodge an appeal against a decision of the Commission begins to run on the date of its receipt of the notification of the decision. It is therefore suggested that the Secretary-General of the United Nations could determine these dates and record them if he communicated the decisions of the Commission by registered mail with requests for postal return receipts.

5. It might also be helpful if Governments would notify the Secretary-General of the office to which the Commission's decisions should be addressed in order to ensure speedy follow-up action on the national level. Use of crowded normal diplomatic channels or other channels used for numerous United Nations communications may sometimes cause an undue delay.

³ Article 3, para. 2.

⁴ By its regular representation at sessions of the WHO Expert Committee on Drug Dependence and of the Commission on Narcotic Drugs, the Board may, however, exercise some influence in the procedure under article 3; but this representation is not based on provisions of the Single Convention.

Paragraph 8, subparagraph (a)

8. (a) The decisions of the Commission amending any of the Schedules shall be subject to review by the Council upon the request of any Party filed within ninety days from receipt of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based;

*Commentary**Filing an appeal¹ or “request” for “review”*

1. Only Parties, and not other States whether Members of the United Nations or not, are authorized to make a request for review under paragraph 8. Parties can choose two different ways to bring about a revision of decisions which the Commission has taken under article 3 and with which they are not satisfied. They may make a notification under article 3, paragraph 1, to obtain a reconsideration of the matter by the Commission itself under paragraphs 3 to 6, or they may file an appeal to the Economic and Social Council. By the first method a Party may obtain remedial action even in cases in which the Commission has failed to make a change in a Schedule desired by that Party, whether in so doing the Commission rejected or followed a recommendation of the World Health Organization. The Party may put forward any relevant argument, including those relating to the pharmacological and chemical properties of the drug involved, because the World Health Organization would again be called upon to make its findings and recommendations.

2. By the appeals procedure of paragraph 8, only those decisions of the Commission which alter the Schedules can be contested by a dissatisfied Party. Failures of the Commission to effect revisions are not subject to the Council's review. As just stated, a remedy for such refusals of the Commission can be secured only by a new procedure before the Commission. A Party may, on the other hand, obtain by the appeals procedure a listing in a Schedule other than that recommended by the World Health Organization. It cannot achieve this result by a new procedure before the Commission unless the World Health Organization changes the view which it held earlier. The Single Convention does not require that the Council's decision be “in accordance with the recommendation of the World Health Organization”.²

3. A Party can thus accomplish by an appeal the following changes in the Commission's decisions:

(a) Cancellation of a decision to place an uncontrolled substance under the narcotics régime by entering it either in Schedule I or II;

(b) Revision of such a decision by transferring it from Schedule I chosen by the Commission to Schedule II or vice versa;

¹ As regards the lack of an appeal procedure in earlier narcotics treaties. See above the general comments on article 3.

² Article 3, para. 8, subpara. (c); see on the other hand, para. 3, subpara. (iii), paras. 4, 5 and 6, introductory subparagraph.

(c) Cancellation of a decision to free from control a drug by deleting it from Schedule I or II in which it is entered;

(d) Altering a decision to free from control a drug listed in Schedule I, with the effect that the drug in question is merely transferred to Schedule II;

(e) Addition to Schedule IV of a drug which either the Commission or the Council itself, in the course of the review procedure, has placed in Schedule I;

(f) Cancellation of a transfer from Schedule I to Schedule II or *vice versa*;

(g) Cancellation of a decision to make or delete an entry in Schedule III or IV.

4. It is, however, suggested that the Council could hardly list in Schedule I a drug which, having been in Schedule II, was completely freed by the Commission from control. There is no express provision in the Single Convention which would impose a restriction on the Council's authority to alter or reverse decisions of the Commission.³ It is, however, hardly possible to imagine a situation in which the Council could justify the strict control of Schedule I for a drug in Schedule II, whose complete freedom from control is considered appropriate by the Commission, by the World Health Organization⁴ and by the Party which, by its notification,⁵ has initiated the procedure before the Commission.

5. It will be recalled⁶ that the Commission must delete from Schedule IV drugs which it removes from Schedule I, and from Schedule III preparations of drugs which it completely frees from control. Such obligatory decisions can be rescinded by the Council only if it simultaneously changes the Commission's decisions whose consequences they are.

6. Parties can be dissatisfied with a decision of the Commission on administrative or social grounds, or also because they disagree with the pharmacological and chemical findings of the World Health Organization on which the decision in question was based. During the consideration by the Plenipotentiary Conference of a procedure for reviewing the Commission's decisions, a number of speakers held that medical or scientific grounds should not form the basis of an appeal to, or request for review by, another organ. They mentioned that such grounds were within the competence of the World Health Organization, on whose recommendation the Commission would act, and that the reviewing body should be guided only by the administrative aspects of the question.⁷ The Economic and Social Council is, however, not excluded by the Single Convention from taking into account medical and scientific arguments when deciding on an appeal. Such comments as the World Health Organization may wish to make on the appeal are in fact

³ Article 3, para. 8, subpara. (c).

⁴ Without whose concurrence the Commission could not have acted; see article 3, para. 6, introductory subparagraph and subparagraph (b).

⁵ Article 3, para. 1.

⁶ See above, comments on article 3, para. 6.

⁷ *Records*, vol. I, pp. 65-68; vol. II, pp. 92-93.

made available to the Council;⁸ but unless they differ from the views which the Organization held in the procedure before the Commission, it is difficult to conceive a situation in which the Council would reject the pharmacological and chemical findings which the Organization had presented to the Commission. It is therefore assumed that Parties will base their appeals on administrative and social arguments rather than on those of a medical or scientific nature. It is suggested that they would find it to be more advantageous to use the latter in a new procedure before the Commission, which they could at any time initiate by a new notification under paragraph 1.

7. The appeal must be filed in one of the official languages of the United Nations. It would be helpful if the appellant Government would furnish the appeal and the supporting documentation in as many working languages of the Council as feasible. The member of the delegation who hands the appeal to the Secretary-General of the United Nations or to an authorized member of the United Nations Secretariat could ask for a receipt in order to have evidence that the document has been filed in time, i.e. within ninety days from receipt by his Government of the decision involved. If the appeal is mailed, it should be registered for the same reason. For a suggestion that the Secretary-General should communicate the Commission's decisions to Governments by registered mail with requests for return receipts and keep a record of the dates on which each Government received the communication, see comments on paragraph 7 above.

⁸ Para. 8, subpara. (b).

Paragraph 8, subparagraph (b)

(b) The Secretary-General shall transmit copies of the request for review and relevant information to the Commission, the World Health Organization and to all the Parties inviting them to submit comments within ninety days. All comments received shall be submitted to the Council for consideration.

Commentary

Communication of copies of the request for review (appeal) to the Parties and organs participating in the procedure.

1. It will be noted that copies of the request for review (appeal) and supporting documentation must be sent by the Secretary-General of the United Nations to the same organs and Governments as those to which he communicates the notification with supporting information by which the procedure before the Commission is initiated.¹ Communications which are intended to enable the addressees to participate in the procedure, in that of first instance as well as in that of appeal, must be sent to all Parties, but need not be furnished to Members of the United Nations which are not Parties to the Single Convention. Communications under paragraph 2 and paragraph 8 (b) are of this nature. Notifications of decisions which may have to be implemented by

¹ See article 3, para. 2 and comments thereon.

Governments are, on the other hand, also communicated to all non-Parties which are Members of the United Nations² and to the International Narcotics Control Board. Decisions of this kind are those to be notified under paragraph 7 and paragraph 8, subparagraph (c). No provision is made for furnishing to the Board a copy of the request for review or an invitation to submit comments, since the Board is not given a formal role under the procedure of article 3. It is, however, suggested that it would be useful if copies of the request for review and of the invitation³ to make comments were also sent to the Board, which is regularly represented at those sessions of the Economic and Social Council and of its Social Committee which deal with narcotic drugs.⁴

2. It may be noted that the Secretary-General need not forward to the addressees mentioned in subparagraph (b) all the supporting information which he receives from the Party requesting the review, but only that part of it which he considers "relevant". What is "relevant" is left to his judgement. He is granted this discretionary power for reasons of economy, since the supporting documentation may be very bulky.⁵

3. It is suggested that the World Health Organization should submit its comments in all languages which are at that moment working languages of the Economic and Social Council. This would not only be of help in expediting the procedure, but would also ensure that the Organization's views, which might be of a highly technical nature, were accurately presented in all those languages.

4. Parties are required to make their comments in one of the official languages of the United Nations. It is, however, suggested that it would be very useful if they could furnish translations into as many working languages of the Council as possible. Despite the fact that, pending the review, the decision of the Commission remains in effect,⁶ anything which could be done to expedite the Council's action would be important in order to shorten the period of uncertainty about the international control status of the drug in question, and to alleviate the eventual legislative or administrative difficulties which might result therefrom in a number of countries.

5. The Commission, the World Health Organization and the Parties are "invited" to furnish their comments "within ninety days", i.e. within ninety days from receipt of their respective invitations.⁷ The text using the word

² See comments on article 3, para. 7 and foot-note 2 relating to these comments.

³ A copy of the invitation, but not an invitation. The Board is however not precluded from making comments, since it can do so under article 15.

⁴ See comments on article 3, para. 7 and foot-note 4, relating to these comments as regards the participation of the Board in the deliberations of the Commission on Narcotic Drugs.

⁵ See for the similar discretion granted to the Secretary-General under article 2, para. 2, comments on this paragraph.

⁶ Article 2, para. 8, subparagraph (d).

⁷ This interpretation, based on the ordinary meaning of the text, is also supported by the fact that the author of both subparas. (a) and (b) was the same and obviously meant to count the "ninety days" of subpara. (b) in the same way as those of subpara. (a); see Conference document E/CN.7/C2/L.7 containing a United States proposal. Para. 7, subparas. (a) and (b) of this proposal are identical with article 3, para. 8, subparas. (a) and (b) of the Single Convention; *Records*, vol. II, pp. 36-37.

“inviting” permits also the conclusion that comments received after this period need not be excluded from consideration. Those of them would in any event be taken into account, according to the present practices of the Economic and Social Council, which are received in time to be circulated to members of the Council within six weeks⁸ before the beginning of the session which is called upon to deal with the review.

6. The provision requiring the Secretary-General to transmit to the Commission on Narcotic Drugs a copy of the request for review and an invitation to submit comments within ninety days may give rise to some questions. If, at the time at which the Secretary-General issues the invitations under paragraph 8, subparagraph (b), the Commission happens to be in session or is scheduled to meet so as to be able to make the comments pursuant to this subparagraph in time, i.e. “within ninety days”, the Secretary-General may carry out his task by making the necessary arrangements to enable the Commission to deal with the matter. Such arrangements would include placing the item on the provisional agenda⁹ of the Commission, or if the invitation is made during a session, transmitting it to the assembled Commission, and in both cases submitting to the members of the Commission, in form of United Nations documentation, a copy of the request for review, the supporting relevant information and the invitation to make comments. It is perhaps difficult to say when the period of ninety days would commence to run in these cases. It is submitted that it would be within the spirit of subparagraph (b) to assume that the “ninety days” may be counted from the day on which the invitation is addressed to the assembled Commission, or if this organ is not in session at the time of the communication, from the date at which the last of its members has received the invitation.

7. It is, however, suggested that if the Secretary-General issues the invitations to make comments at a time at which the Commission is not scheduled to meet early enough to be able to make its comments in time, it would be in accordance with the spirit of subparagraph (b) not to solicit the comments of the Commission as a whole, but those of its individual members. To adopt this suggested procedure would be more in accordance with the objectives of article 3, paragraph 8 than to delay unduly the decision of the Council, and thus to cause to a number of national administrations the above-mentioned legislative or administrative inconveniences which would result from a prolonged uncertainty about the international control status of the drug involved. The Secretary-General could in such a case address to the members of the Commission the invitation to make comments at the same time as to the Parties and to the World Health Organization. The members should be asked to furnish their comments within ninety days from the dates on which they receive their respective invitations.

8. The invitations to make comments, as well as comments other than those handed to the United Nations Secretariat by members of delegations,

⁸ Rule 14, para. 4 of the Rules of Procedure of the Economic and Social Council; document E/3063/Rev. 1, United Nations Publication, Sales No. 67.I.32.

⁹ Rules 5 and 6 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council; document E/4767, United Nations publication, Sales No. 70.I.9.

should be sent by registered mail.¹⁰ The Secretary-General should request postal return receipts for his communications, and should keep a record of the dates on which the invitations were received by each addressee.¹¹ The Director-General of the World Health Organization is at the time of this writing authorized to make comments on behalf of his Organization pursuant to subparagraph (b).¹²

9. The question arises whether the Secretary-General should reject *a limine* a request for review by a non-Party, i.e. whether he should inform the requesting Government that only Parties to the Single Convention are authorized to ask for a review by the Council, and that he consequently could not forward the request pursuant to article 8, subparagraph (b). The wording of this subparagraph does not appear to exclude such a course of action. It might, however, be preferable if the Secretary-General brought the legal problem to the attention of the Government concerned with the informal suggestion of withdrawal of the request for review; but if the Government maintained its appeal, it might be advisable to deal with the request under subparagraph (b) as if it had emanated from a Party, and thus to leave it to the Council to refuse the review, as it would be required to do under paragraph 8, subparagraph (a). Since the character of the requesting State as a Party may sometimes be disputed, the Secretary-General could by this procedure also avoid taking a position on a controversial question with possibly difficult political implications.

10. The same kind of procedure is also suggested if a request is made for review of a decision of the Commission refusing to amend any of the Schedules, such a refusal not being subject to review under paragraph 8.

¹⁰ Comments of the Commission in session need of course not be sent by mail; the comments can also be handed over to the Secretary-General or his representative by a messenger.

¹¹ See above comments on article 3, para. 7.

¹² Resolution WHA 18.46 of the World Health Assembly; see also above, comments on article 3, para. 3, subpara. (iii).

Paragraph 8, subparagraph (c)

(c) The Council may confirm, alter or reverse the decision of the Commission, and the decision of the Council shall be final. Notification of the Council's decision shall be transmitted to all States Members of the United Nations, to non-member States Parties to this Convention, to the Commission, to the World Health Organization and to the Board.

Commentary

The decision of the Economic and Social Council

1. Requests for review of decisions of the Commission refusing to amend any of the Schedules must be rejected by the Council, and so must requests for review by non-Parties.¹ As regards the question of the Secretary-General

¹ See above, comments on article 3, para. 8, subparas. (a) and (b).

rejecting such requests *a limine*, see above comments on the preceding subparagraph.

2. The Council “may confirm,² alter or reverse” a decision of the Commission which has amended any of the Schedules and whose review has been requested by a Party. It may be noted that the Council is in no case required to act in accordance with a recommendation of the World Health Organization,³ which may, however, comment on the matter under review.⁴ No restriction is imposed on the Council’s discretion to base its decision on such reasons as it may consider relevant. For the role of pharmacological and chemical properties of the drug involved in the Council deliberation, see above, comments on subparagraph (a).

3. As regards the various alterations and reversals which may be effected by the Council’s decision, see above, comments on paragraph 8, subparagraph (a). The Council’s decision is said to be “final”. This means that no appeal against the decision to a higher instance was intended to be admitted.

4. Chapter IX of the United Nations Charter, on international economic and social co-operation, provides in Article 55 that “the United Nations shall promote . . . b. solutions of international economic, social, health and related problems . . .”, and in Article 60 that

“Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.”

If decisions of the Council reviewing decisions of the Commission under paragraph 8 of article 3 of the Convention were to be regarded as in performance of functions under the Charter, they would be, by the terms of the Charter, under the authority of the General Assembly, and hence subject to reversal or modification by it. If, however, these decisions of the Council are regarded as separate from the functions conferred by the Charter and as being based solely on the Single Convention, then only the provisions of the Convention apply, and the General Assembly is not competent to modify Council decisions which are stated to be “final”. The latter view seems the more persuasive, in view of the nature of the decisions here involved. Under the Charter, neither the Commission nor the Council has the authority to make decisions which impose obligations on States, or alter such obligations; the binding character of decisions by those organs under the Single Convention proceeds exclusively from the terms of the Convention. Therefore, even though decisions under the Convention are related to the Charter function of promoting “solutions of international economic, social, health and related problems”, it seems preferable to regard them as a separate matter, and hence not subject to reversal or modification by the General Assembly. To the extent that the decisions in question, notwithstanding their special character, could be regarded as falling

² The obligatory refusal to review a decision of the Commission denying any change in any of the Schedules amounts of course in fact to a confirmation of the Commission’s action.

³ See comments on article 3, para. 8, subpara. (a) .

⁴ Article 3, para. 8, subpara. (b) and comments on subpara. (a).

within the Charter functions of the Council, they would of course theoretically be subject to discussion and review by the General Assembly, but the outcome of such review could only have a recommendatory character, and would not alter the binding legal force of the Council's decision.

5. The Council acts as last instance in the process which was initiated by a particular notification in question under article 3, paragraph 1. The French text makes quite clear what is meant by the English words: "the decision of the Council shall be final". The French version reads: "*il (le Conseil) statuera en dernier ressort*". The Council's decision is not "final" in the sense that the international control status of a drug which it has determined cannot later be changed by a new procedure under article 3, paragraphs 3 to 6 if a Party or the World Health Organization makes the required notification under paragraph 1. It may, however, be assumed that the Commission, being a functional Commission of the Council, would not decide to make such a change on grounds which had been rejected by the Council. It may, on the other hand, take such a decision if new scientific findings, later experience, other new factors or other arguments not put forth in the earlier procedure warrant it; for example, the Commission may in the new procedure transfer to Schedule II a relatively less dangerous drug which was placed by the Council in Schedule I, and which only after the Council's decision has come in widespread use in medical practice.⁵

6. As in the case of the other decisions which may have to be implemented by Governments under article 3,⁶ notifications of the Council's decisions are transmitted by the Secretary-General not only to Parties to the Single Convention, but also to non-Parties which are Members of the United Nations.⁷ The notification must also be sent to the Commission and the World Health Organization, which take part in the procedure of first instance and in that of review, and to the Board, which must give effect to the Council's decisions in the performance of its treaty functions.⁸ The Commission can thus take note of the limits which it should observe in future proceedings on the control status of a drug which the Council has determined in a review proceeding.

⁵ For the inclusion in Schedule II of drugs which are relatively harmless and widely used in medical practice, see above, comments on article 3, para. 3, subpara. (iii).

⁶ See para. 7.

⁷ As regards the obligation of Members of the United Nations to co-operate in the international fight against drug abuse see above comments on article 3, para. 7 and foot-note 2 relating to these comments.

⁸ For differences in the addressees of different communications under article 3, see paras. 2, 7 and 8, subpara. (b) and the comments on these provisions.

Paragraph 8, subparagraph (d)

(d) During pendency of the review the original decision of the Commission shall remain in effect.

Commentary

Non-suspensive effect of a request for review

The provision of this paragraph is based on the consideration that delay in the application of controls might lead to widespread dependence on the

drug involved,¹ and that—as experience has shown—it is very difficult indeed to repair such a situation once it exists. It may cause some Governments considerable legislative or administrative inconveniences if the review decision differs from that of the Commission; but it can be expected that this would only be very rarely the case. As of the time of this writing no request for review has yet been filed under paragraph 8.

¹ The provisions of article 3, para. 3, subparas. (i) and (ii) regarding provisional controls are based on similar considerations; see comments on these provisions.

Paragraph 9

9. Decisions of the Commission taken in accordance with this article shall not be subject to the review procedure provided for in article 7.

Commentary

In article 7 the single Convention confers upon the Economic and Social Council and the General Assembly the same authority to change decisions or recommendations adopted by the Commission under the terms of the Convention as these two principal organs of the United Nations have in respect of decisions and recommendations of the Commission adopted under the United Nations Charter. Paragraph 9 exempts decisions of the Commission taken under paragraphs 3 to 6 of article 3 from the ordinary authority of the Council and General Assembly to review actions of the Commission. Such decisions seem not to be subject to change by the General Assembly,¹ and can be modified by the Council only in accordance with the procedure of article 3, paragraph 8. They may, however, be revised by the Commission itself pursuant to paragraphs 1 to 6 of that article. See below, comments on article 7.

¹ See above, comments on article 3, para. 8, regarding the authority of the General Assembly to change decisions by the Council on review.

Article 4

GENERAL OBLIGATIONS

Paragraph 1

1. The Parties shall take such legislative and administrative measures as may be necessary:

(a) To give effect to and carry out the provisions of this Convention within their own territories;

(b) To co-operate with other States in the execution of the provisions 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.

Commentary

1. In providing for a general obligation of Parties to “take such legislative and administrative measures as may be necessary to give effect to and carry out the provisions of the Convention”, article 4 only states expressly what would in any event be the consequence of undertaking treaty obligations. The phrase “to give effect to and carry out” has the same meaning as the shorter phrases “*pour exécuter*” and “*para dar cumplimiento*” of the French and Spanish texts.

2. For the meaning of the word “territories”, see above, comments on article 1, paragraph 1, subparagraph (v) and foot-note 22 relating to those comments.

3. Legislation authorizing a central organ of the executive branch of Government to give effect by decree to decisions of the Commission on Narcotic Drugs or of the Economic and Social Council under article 3 appears to be one of the legislative measures which Parties are required to take under article 4 if they have not yet done so. A delay in placing a drug under the national narcotics régime caused by the need for parliamentary legislation or for action by the component states, provinces or cantons of a federal country would hardly be compatible with the object and purpose of the provisions of article 3.

4. All measures which Parties must carry out under the various terms of the Single Convention require, of course, some domestic administrative action. By several specific provisions Governments are moreover required to maintain particular administrative institutions: a “special administration” for the purpose of applying the provisions of the Single Convention,¹ possibly national opium, coca leaf or cannabis agencies,² as appropriate, and, with “due

¹ Article 17.

² Article 23, article 26, para. 1 and article 28, para. 1.

regard to their constitutional, legal and administrative systems”, “arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic”.³

5. A few specific administrative actions which are not expressly indicated in the text of the Single Convention, but which, it is suggested, Parties are required to take under the general rule of article 4, may be mentioned: maintenance of a staff sufficient in numbers and technical qualifications to carry out their treaty obligations, provision of training facilities for members of this staff where needed, and maintenance of a system of inspection⁴ of businesses engaged in the various phases of the narcotics trade (agriculture, manufacture and wholesale and retail trade).⁵ Governments which do not already have the required facilities would also fulfil their obligation regarding training by enabling members of their staff to participate in training arrangements offered by other countries or by international organizations such as the United Nations, the World Health Organization or the International Criminal Police Organization (INTERPOL).⁶

6. Co-operation of States is an indispensable requirement for effective narcotics control. This is recognized in the Preamble of the Single Convention, which states that “effective measures against abuse of narcotic drugs require co-ordinated and universal action”, and that “such universal action calls for international co-operation”. The general rule of article 4 requiring Parties “to take such legislative and administrative measures as may be necessary” “to co-operate with other States in the execution of the provisions of this Convention” is supplemented by some specific provisions. Article 35, paragraphs (b)-(e), contains rules regarding co-operation in the fight against the international illicit traffic. Article 36, paragraph 2, subparagraph (b), dealing with the extradition of illicit traffickers, is another provision aiming at international co-operation in this campaign.⁷

³ Article 35, para. (a).

⁴ The obligation to make inspections appears also to arise from the provisions of article 29, para. 2, subpara. (b), article 30, para. 1, subpara. (b), clause (i) and article 31, para. 3, subpara. (b).

⁵ The word “inspection” appears in the heading of article 34, but no express provision for inspection is made in the body of this article; the same applies to the corresponding and substantially similar article 43 of the Third Draft which served as working document of the Plenipotentiary Conference (E/CN.7/AC.3/9, *Records*, vol. II, p. 17). The corresponding article 46 of the Second Draft (E/CN.7/AC.3/7), in its second paragraph, requires Parties to maintain a system of inspection. This paragraph, but not the word “inspection” in the heading of article 46, was deleted by the Commission on Narcotic Drugs at its thirteenth session because it was superfluous, since all Governments provide in any case for inspection (E/CN.7/SR.398, pp. 6-7, and Annex V of the Report of the Commission on Narcotic Drugs on the thirteenth session, *Official Records of the Economic and Social Council, Twenty-sixth Session. Supplement No. 9*).

⁶ An intergovernmental organization in special relationship with the Economic and Social Council.

⁷ See also article 31, para. 1 requiring Parties not to permit exports of narcotic drugs except in accordance with the laws and regulations and within the import limits of the importing country or territory, and paras. 4-7 containing rules governing the co-operation of importing and exporting countries in the implementation of the import certificate and export authorization system.

7. It undoubtedly follows from the rule of article 4 on co-operation that a Party is bound not to permit its territory to be used as a base of operation of the illicit traffic in other countries or to become a refuge of international illicit traffickers, and that it must take appropriate legislative or administrative measures to this end.⁸ Where that aim cannot be accomplished by the prosecution of crimes committed abroad⁹ or by extradition,¹⁰ such other appropriate measures must be taken as are feasible under the constitutional limitations and in accordance with the basic principles of the legal system of the Party concerned. Penalizing local participation of all kinds in the illicit traffic in other countries¹¹ and measures of expulsion may serve the purpose.

8. The question may be raised whether rendering technical aid to countries which need it in order to be able to implement the provisions of the Single Convention is a legal obligation of the Parties under article 4, paragraph (b). Experience has shown that foreign aid is indispensable to various Governments if they are to be enabled to make a full contribution to the fight against the abuse of narcotic drugs. There may not be general agreement on the existence of such a formal legal obligation; but giving technical assistance to countries which need and request it undoubtedly corresponds to the object and purpose of the Single Convention, and is within the spirit of the provision of article 4 requiring co-operation with other States.

9. The object of the international narcotics system is to limit exclusively to medical and scientific purposes the trade in and use of controlled drugs. From the beginning this has been a basic principle of the multilateral narcotics system, although all the treaties providing for it authorize some exceptions. The 1912¹² and 1925¹³ Conventions and the 1953 Protocol¹⁴ contained provisions incorporating this principle. The gradual extension of the scope of its application is a characteristic feature of progress in this branch of treaty law. It is one of the most important achievements¹⁵ of the Single Convention that it ended the exceptions permitted in earlier treaties, subject only to transitional provisions of limited local application and duration pursuant to article 49, and apart from two cases presenting no problem of public health because they exclude the consumption of the dangerous substances involved.

10. The provisions to which paragraph (c) is "subject", i.e. which are excepted from its application, are article 49, article 2, paragraph 9 (whose practical importance seems highly hypothetical)¹⁶ and article 27 (permitting

⁸ Such an obligation may also be implied in the provisions of article 35, paras. (b) and (c).

⁹ See below comments on article 36, para. 2, subpara. (a), clause (iv).

¹⁰ See below, comments on article 36, para. 2, subpara. (b).

¹¹ See also article 36, para. 2, subpara. (a), clauses (i) and (ii).

¹² Article 9, which, however, uses the phrase "medical and legitimate purposes".

¹³ Article 5, which already employs the phrase "medical and scientific purposes"; see also article 13, para. 1 of the 1931 Convention.

¹⁴ Article 2, article 5, introductory paragraph, and article 6, para. 1.

¹⁵ The others being the extension of a comprehensive system of control to the cultivation of the coca bush (article 26) and to that of the cannabis plant grown for the production of cannabis and cannabis resin (article 28, para. 1).

¹⁶ See above comments on this provision.

the use of coca leaves for the preparation of a flavouring agent which must not contain any alkaloids, and the production¹⁷ of, trade in and possession of leaves intended for this purpose.¹⁸

11. The term “medical purposes” has not been uniformly interpreted by Governments when applying the provisions of the narcotics treaties containing it.¹⁹ Some have prohibited the consumption of narcotic drugs by all addicts excepting only when necessary to alleviate suffering during withdrawal treatment; a number of other countries have permitted consumption by persons whose addiction proves to be incurable of the minimum quantities required to prevent painful withdrawal symptoms and to enable them to lead a normal life. There have also been a few cases in which all consumption of narcotic drugs by addicts was prohibited, even in the course of withdrawal treatment.

12. The term “medical purposes” does not necessarily have exactly the same meaning at all times and under all circumstances. Its interpretation must depend on the stage of medical science at the particular time in question; and not only modern medicine, sometimes also referred to as “western medicine”, but also legitimate systems of indigenous medicine such as those which exist in China, India and Pakistan, may be taken into account in this connexion.²⁰

13. The term “medical purposes” includes veterinary and dental purposes.²¹

14. Drugs in Schedule II and their preparations, as well as preparations in Schedule III, are not excluded from the scope of article 4 including its paragraph (c).²²

15. The “use” of drugs is not specifically listed in article 36, paragraph 1, among the actions which, subject to its constitutional limitations, a Party must treat as punishable offences. It appears that it is left to the discretion of each Party to decide whether it wishes to penalize the non-medical consumption of narcotic drugs by addicts, or whether it prefers to prevent such abuse solely by administrative and penal measures by which the production, manufacture and distribution of drugs must be controlled under the terms of the Single Convention.²³

16. In addition to article 4, paragraph (c), the provisions of article 33 and of article 36, paragraph 1, deal with the possession of drugs. Under these provisions, Parties must take the required legislative and administrative measures to limit exclusively to medical and scientific purposes the possession of

¹⁷ Article 1, para. 1, subpara. (r).

¹⁸ Leaves from which “all ecgonine, cocaine or any other ecgonine alkaloids have been removed” are not “coca leaves” as defined in the Single Convention; article 1, para. 1, subpara. (f); see also below, comments on article 27, para. 1.

¹⁹ See above foot-notes 12-14.

²⁰ *Records*, vol. I, pp. 25-26.

²¹ *Records*, vol. I, p. 207; vol. II, pp. 123, 267, 280 (foot-note 8) and 285 (foot-note 27).

²² Article 2, paras. 2 to 4; see also below, comments on article 33.

²³ See comments on article 36, para. 1.

drugs,²⁴ must not permit the possession of drugs except under legal authority,²⁵ and subject to their constitutional limitations must make possession of drugs contrary to the provisions of the Single Convention a punishable offence.²⁶

17. The question arises how far and in what way these provisions govern the possession of controlled drugs; do they apply without regard to whether the drugs are held for illegal distribution or only for personal consumption, or do they apply solely to the possession of drugs intended for distribution?

18. Article 4, paragraph (c), undoubtedly refers to both kinds of possession; but whether that provision must be implemented by imposing penal sanctions on possession for personal consumption is a question which may be answered differently in different countries.²⁷ Some Governments seem to hold that they are not bound to punish addicts who illegally possess drugs for their personal use. This view appears to be based on the consideration that the provisions of article 36, which in its paragraph 1 requires Parties, subject to their constitutional limitations, to penalize the possession of drugs held contrary to the provisions of the Single Convention, are intended to fight the illicit traffic, and not to require the punishment of addicts not participating in that traffic. Article 45 of the Third Draft, which served as working document of the Plenipotentiary Conference, enumerated in its paragraph 1, subparagraph (a) "possession" among the actions for which punishment would be required. This paragraph is identical with the first part of paragraph 1 of article 36 of the Single Convention, dealing with "possession" as one of the punishable offences. Article 45 of the Third Draft is included in chapter IX, headed "Measures against illicit traffickers". This would appear to support the opinion of those who believe that only possession for distribution, and not that for personal consumption, is a punishable offence under article 36 of the Single Convention. The Draft's division into chapters was not taken over by the Single Convention, and this was the only reason why the chapter heading just mentioned was deleted, as were all the other chapter headings. Article 36 is still in that part of the Single Convention which deals with the illicit traffic. It is preceded by article 35, entitled "Action against the illicit traffic", and followed by article 37, entitled "Seizure and confiscation".

19. Parties which do not share this view, and which hold that possession of drugs for personal consumption must be punished under article 36, paragraph 1, may undoubtedly choose not to provide for imprisonment of persons found in such possession, but to impose only minor penalties such as fines or even censure. Possession of a small quantity of drugs for personal consumption may be held not to be a "serious" offence under article 36, paragraph 1, and only a "serious" offence is liable to "adequate punishment particularly by imprisonment or other penalties of deprivation of liberty".

²⁴ Article 4, para. (c).

²⁵ Article 33.

²⁶ Article 36, para. 1.

²⁷ No doubt appears to exist as regards the obligation of Parties to apply penal sanctions in implementing the rule of article 4, para. (c), concerning manufacture, production, export, import, distribution, trade and possession for distribution; see below, comments on article 36, para. 1. As to use, see above.

20. Penalization of the possession of drugs for personal consumption amounts in fact also to a penalization of personal consumption.²⁸

21. It has, on the other hand, been pointed out, particularly by enforcement officers, that the penalization of all unauthorized possession of drugs, including that for personal use, facilitates the prosecution and conviction of traffickers, since it is very difficult to prove the intention for which the drugs are held. If Governments choose not to punish possession for personal consumption or to impose only minor penalties on it, their legislation could very usefully provide for a legal presumption that any quantity exceeding a specified small amount is intended for distribution. It could also be stipulated that this presumption becomes irrebuttable if the amount in the possession of the offender is in excess of certain limits. It may also be remarked that constitutional limitations, which can free a Party from all obligation to punish an action mentioned in article 36, paragraph 1, will generally not prevent the penalization of the unauthorized possession of drugs.

22. It may finally be mentioned that Parties must prevent the possession of drugs for other than medical and scientific purposes by all the administrative measures which they are bound to adopt under the terms of the Single Convention, whatever may be their view on their obligation to resort to penal sanctions or on the kind of punishment which they should impose.

23. What has been said in regard to the need for penal sanctions for limiting the possession of controlled drugs exclusively to medical and scientific purposes pursuant to article 4, paragraph (c), also applies to the obligation of Parties under article 33 not to permit the possession of drugs except under legal authority. While there may be a difference of opinion as to the obligation of Parties to impose penal sanctions on persons found in the unauthorized possession of drugs held for personal consumption, it should be kept in mind that Governments must in any event take all the administrative measures which they are required to adopt under the Single Convention in order to prevent any unauthorized possession for any purpose whatever. There can be no doubt that Governments may refrain from imposing imprisonment in cases of possession of drugs held for personal consumption without legal authority. Possession of drugs for distribution without such authority must, on the other hand, be made punishable "by imprisonment or other penalties of deprivation of liberty".²⁹

24. It is also apparent that the obligation of Parties not to permit the possession of drugs except under legal authority requires them to confiscate drugs if found in unauthorized possession, even if held solely for personal consumption. See also below, comments on articles 33 and 37.³⁰

25. Parties cannot legally authorize the possession of drugs for other than medical and scientific purposes, except in the cases in which non-medical

²⁸ See above for the omission of the "use" of drugs in the enumeration of punishable offences in article 36, para. 1.

²⁹ Article 36, para. 1.

³⁰ The obligation to confiscate drugs possessed without legal authority for non-medical consumption is held to derive from article 33 if article 37 is not applied, because such possession is not considered to be an offence under article 37.

consumption or industrial use is exceptionally permitted by the Single Convention.³¹ See also below, comments on article 33.

26. As regards the meaning of “production” and the application of the term “manufacture” to the separation of substances which may in the future be placed under international narcotics control from plants, see above, comments on article 1, paragraph 1, subparagraphs (*n*) and (*t*).

27. It will be noted that the English text of article 4 is preceded by the figure 1, without any following numbered paragraph. This is an oversight due to the fact that article 4 of the Third Draft had two numbered paragraphs, of which the first was retained in its entirety by the Convention as finally adopted by the Plenipotentiary Conference, while the second paragraph was deleted.³² The number 1 does not, however, appear in French and Spanish texts, in which the required change was made.

³¹ Article 4, para. (c) together with article 2, para. 9, article 27 and article 49.

³² United Nations document E/CN.7/AC.3/9, *Records*, vol. II, p. 4.

Article 5

THE INTERNATIONAL CONTROL ORGANS

The Parties, recognizing the competence of the United Nations with respect to the international control of drugs, agree to entrust to the Commission on Narcotic Drugs of the Economic and Social Council, and to the International Narcotics Control Board, the functions respectively assigned to them under this Convention.

Commentary

1. The Covenant of the League of Nations entrusted the League “with the general supervision over the execution of agreements with regard to . . . the traffic in opium and other dangerous drugs”.¹ The Charter of the United Nations, on the other hand, does not contain a provision dealing specifically with drugs. It was, however, made quite clear at the San Francisco Conference that the phrase “international economic, social, health and related problems”,² for which the United Nations was made competent, also covered international co-operation in the suppression of the traffic in, and of the abuse of, opium and other narcotics and dangerous drugs.³

2. It appears that the recognition by the Parties to the Single Convention of the competence of the United Nations in the field of narcotic drugs has two aspects: those Parties which are not Members of the United Nations undertake under article 5 of the Convention to co-operate with United Nations organs and Members of the World Organization in matters of narcotics control as if they were Members, while the Parties which are also Members of the United Nations confirm that they accept the interpretation given to the Charter at the San Francisco Conference. All Parties to the Convention, whether Members of the United Nations or not, are thus bound not only to carry out the provisions of the Single Convention, but also those of the Charter, relating to drugs, in particular to co-operate in the promotion of solutions of the various problems of drug abuse.⁴

3. The Single Convention assigns functions not only to the Commission on Narcotics Drugs and the International Narcotics Control Board, the two organs mentioned in article 5, but also to the General Assembly, the Economic and Social Council and the Secretary-General.⁵

¹ Article 23, para. (c) of the Covenant.

² Article 55, para. (b) of the Charter.

³ Fifth report of the Drafting Committee II/3 of the San Francisco Conference, document WD 40 II/3/A/5, 25 May 1945; statements of the representatives of Canada, China, India and the United States in Committee II/3, verbatim minutes of 19th meeting, 4 June 1945.

⁴ Article 55, para. (b) of the Charter.

⁵ For the provisions entrusting functions to these three organs, see above, comments on article 1, para. 1, subparas. (h), (k) and (v). During a transitional period

4. It may also be noted that the International Narcotics Control Board is also entrusted with those functions which the Permanent Central Board and Drug Supervisory Body had under the narcotics treaties preceding the Single Convention. It will continue this task as long as the earlier treaties remain in force.⁶

from the date of the coming into force of the Single Convention, 13 December 1964, to 1 March 1968, the Permanent Central Board constituted under chapter VI of the 1925 Convention and the Drug Supervisory Body constituted under Chapter II of the 1931 Convention were entrusted with the performance of functions under the Single Convention; see article 45 and resolution 1106 (XL) of the Economic and Social Council.

⁶ Article 44 and article 45, para. 2; see also comments on article 1, para. 1, sub-para. (a) and on article 45.

Article 6

EXPENSES OF THE INTERNATIONAL CONTROL ORGANS

The expenses of the Commission and the Board will be borne by the United Nations in such manner as shall be decided by the General Assembly. The Parties which are not members of the United Nations shall contribute to these expenses such amounts as the General Assembly finds equitable and assess from time to time after consultation with the Governments of these Parties.

Commentary

1. Article 6 establishes as rules of treaty law what has in any case been the practice of the United Nations General Assembly. The Second Geneva Opium Conference of 1924/1925 concluded the 1925 Convention, under whose chapter VI the Permanent Central Board,¹ one of the two predecessor bodies² of the present International Narcotics Control Board, was established. It adopted a resolution requesting the Council of the League of Nations to include in the expenses of the League Secretariat the costs of the Central Board and its administrative services. This resolution also stated that it was understood that those Parties to the 1925 Convention which were not Members of the League would bear their share of the expenses in accordance with a scale to be drawn up by agreement with the Council.³ In fact, the League bore the costs of the Central Board, in addition to the other expenses of international narcotics control, and some States, non-members of the League, which participated in the narcotics treaties, paid their share of costs not only of the Board, but also of the other activities of the League in the field of narcotics control.⁴

2. The United Nations has followed the example of the League. It provides in its budget for the costs of international narcotics control, no matter whether the work is done under the narcotics treaties or under the United Nations Charter, with the exception only of those expenses which are borne by the World Health Organization in discharging its functions in the field. Since 1950 the General Assembly has been assessing Parties to narcotics treaties which are not Members of the United Nations for their shares of the costs of the United Nations in connexion with the international narcotics régime.⁵ The procedure which is followed in this assessment was first employed

¹ See above comments on article 1, para. 1, subpara. (a).

² The other being the Drug Supervisory Body established under Chapter II of the 1931 Convention; see article 45 of the Single Convention.

³ Resolution VII incorporated in the Final Act of the Conference; *Records of the Second Opium Conference, November 17, 1924—February 19, 1925*, vol. I, p. 539, League of Nations, document C.760.M.260.1924.XI.

⁴ Document A/C.5/340.

⁵ General Assembly resolution 455 (V) and document A/1418; see also General Assembly resolution 353 (IV) and document A/C.5/340, and Economic and Social Council resolution 201 (VIII).

in assessing Switzerland for the share of its costs of the International Court of Justice under the resolution 91 (I) of the General Assembly, which determined the conditions of Swiss adherence to the Statute of the International Court as required under the terms of article 93, paragraph 2 of the United Nations Charter. It is in fact this procedure which has been incorporated in the second sentence of article 6 of the Single Convention. The text of this sentence follows closely the wording of the corresponding paragraph of the General Assembly resolution concerning Swiss adherence to the Statute of the Court.⁶ The General Assembly has since 1950 extended the scope of its assessment of non-Member States. It assesses them not only for the costs of the Court and narcotics control, but also for several other United Nations activities in which they respectively participate.⁷

3. There are other costs than those of the Commission and Board and their secretariat services⁸ which the United Nations incurs in the field of drugs. The General Assembly itself has dealt with the drug problem from time to time, the Economic and Social Council at least once a year, and even the Trusteeship Council several times, but these other costs are comparatively very small, and form only a minute fraction of the total United Nations costs in connexion with problems of narcotics drugs.

4. In view of the authority granted to the Commission by the Single Convention⁹ "to consider all matters pertaining to the aims of this Convention", practically all of its work must be considered to be carried out under the terms of this treaty;¹⁰ but even expenses incurred in work not carried out under the Single Convention, but rather under the terms of the Charter, would be covered by article 6, which does not exclude from its scope any costs of the Commission. Moreover Parties which as non-members of the United Nations are assessed for such costs under article 6 have under article 5 expressly recognized "the competence of the United Nations with respect to the international control of drugs".¹¹ See above, comments on article 5.

5. It may be noted that the procedure of assessing non-members under article 6 requires that they be consulted, but not that they consent. The obligation of a non-member to make a payment under this article flows therefore

⁶ Para. (c) of General Assembly resolution 91 (I).

⁷ See e.g. General Assembly resolution 2118 (XX), para. 1, subpara. (h), clause (ii) and General Assembly resolution 1691 (XVI), para. 4, subpara. (b).

⁸ Article 16 of the Single Convention.

⁹ Article 8, introductory paragraph.

¹⁰ Even the Commission's work to extend control to drugs not covered by the Single Convention by preparing a new treaty, may be considered as a matter "pertaining to the aims of this Convention", i.e. to its principal aim of fighting drug abuse. Work of this kind was undertaken at the Commission's twenty-third session in 1969 and first special session in 1970, when it prepared the Draft Protocol on Psychotropic Substances and the Revised Draft Protocol on Psychotropic Substances (*Official Records of the Economic and Social Council, Forty-sixth Session (E/4606/Rev.1), Annex IV, and Forty-eighth Session, Supplement No. 8 (E/4785), Chapter III.*

¹¹ The technical assistance programme under General Assembly resolution 1395 (XIV) is generally carried out by the Secretary-General in accordance with recommendations of the Commission, to which, as well as to the Economic and Social Council, he must report regularly under para. 6 of the resolution.

from the decision of the General Assembly, and not from its agreement with the particular percentage of the costs with which it is assessed.¹²

¹² The English text uses the phrase “these expenses”, and the Spanish text “*dichos gastos*”, the phrasing in both cases making it clear that the costs are those of the Commission and the Board. The French text does not use this method of reference, but employs instead the phrase “*frais des organes internationaux de contrôle*”. Although article 5 refers only to the Commission and the Board as “international control organs”, the above comments on this article point out that there are in fact other international organs of control under the terms of the Single Convention. It is, however, suggested that despite the differing phrasing the French text has the same meaning as the other language versions. The terms “*des organes internationaux de contrôle*” in article 6 refer only to the Commission and the Board.

Article 7

REVIEW OF DECISIONS AND RECOMMENDATIONS OF THE COMMISSION

Except for decisions under article 3, each decision or recommendation adopted by the Commission pursuant to the provisions of this Convention shall be subject to approval or modification by the Council or the General Assembly in the same way as other decisions or recommendations of the Commission.

Commentary

1. Articles 7 and 8 contain constitutional provisions concerning the Commission on Narcotic Drugs.¹ The Single Convention does not provide for the composition of the Commission as it does for that of the International Narcotics Control Board.² The Parties to the Convention accept the composition of the organ named "Commission on Narcotic Drugs of the Economic and Social Council",³ to which they entrust a number of treaty functions,⁴ as determined by the Council from time to time in accordance with the Charter of the United Nations. The Charter provision in question⁵ stipulates that "The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions". The Council may, under this provision, define the composition of the Commission on Narcotic Drugs and the powers which it confers on that organ, in addition to those provided for in the multilateral treaties, including in particular the Single Convention.⁶

2. Under the present rules of the Council, the Commission is composed of twenty-four Governments chosen by the Council normally for terms of four years, with due regard to adequate representation of countries which are important manufacturers of narcotic drugs, of those which are important producers of opium or coca leaves and of those in which drug addiction or the illicit traffic in narcotic drugs constitutes a serious problem. The principle of equitable geographic distribution must as well be taken into account in this

¹ As regards the power of the Commission to change the Schedules, see articles 3 and 8, para. (a); as regards other specific functions of the Commission, see article 8, article 15, para. 1, article 18, article 31, para. 5 and article 32, para. 2. For the expenses of the Commission, see article 6; see also article 5.

² Article 9.

³ Articles 5 and 1, para. 1, subpara. (g).

⁴ See above, foot-note 1.

⁵ Article 68.

⁶ Rule 71 of the Rules of Procedure of the Council, in force at the time of this writing, reads: "The Council shall set up such Commissions as may be required for the performance of its functions, and shall define the powers and composition of each of them."; document E/3063/Rev.1, United Nations publication, Sales No. 67.1.32.

election.⁷ Not only Members of the United Nations, but also States which are not Members of the United Nations, may be elected if they are members of a specialized agency or Parties to the Single Convention.⁸ The delegates to the Commission are at present representatives of Governments, and their appointment does not require consultation with the Secretary-General or confirmation by the Council as in the case of other functional commissions.⁹ The Council has full discretion to change the composition of the Commission on Narcotic Drugs; it may even convert it into a body partially or fully composed of independent experts chosen in their individual capacity. It must, however, maintain a collegial body,¹⁰ however composed, for the performance of the functions entrusted by the Single Convention¹¹ to the Commission on Narcotic Drugs.

3. The Commission has two different kinds of powers: those assigned to it by its terms of reference or other decisions of the Council¹² ("Charter functions"), and those granted to it by provisions of the Single Convention or of earlier narcotics treaties ("treaty functions"). As regards these earlier treaties, the view has been held that the authority which the Council has over the Commission's Charter functions does not extend to that organ's treaty functions.¹³ Article 7 of the Convention settles this question in favour of the Council's authority in respect of the treaty functions of the Commission under the Single Convention. All decisions and recommendations of the Commission taken under provisions of that Convention are subject to the authority of the Council. Decisions taken under article 3 amending any of the Schedules can be reviewed by the special procedure of paragraph 8. All other decisions i.e. all except those taken in accordance with article 3 and all recommendations of the Commission under the Single Convention are "subject to approval or modification

⁷ Economic and Social Council resolution 1147 (XLI), para. 4, together with resolution 845 (XXXII) II, paras. 2 and 3 and III, para. 1.

⁸ Economic and Social Council resolution 845 (XXXII) II, para. 1; earlier resolutions on the matter are 9 (I) and 199 (VIII).

⁹ See foot-note 4 to rule 13 of the Rules of Procedure of Functional Commissions of the Economic and Social Council, document E/4767, United Nations publication, Sales No. E.70.I.9; the other functional commissions are, at the time of this writing, the Statistical Commission, the Population Commission, the Commission for Social Development, the Commission on Human Rights and the Commission on the Status of Women. See foot-note 1 to the title of these Rules of Procedure. After the completion of this commentary the membership of the Commission was increased to 30 by Economic and Social Council resolution 1663 (LII) of 1 June 1972.

¹⁰ A "commission", a body composed of more than one member.

¹¹ Or by other multilateral drug treaties.

¹² Economic and Social Council resolution 9 (I), para. 2.

¹³ In one particular case of exercising a treaty function, in appointing a member of the Drug Supervisory Body under article 5, para. 6 of the 1931 Convention as amended by the 1946 Protocol, the Commission, at its thirteenth session (1958), acted in fact contrary to a wish expressed by the Council; see Economic and Social Council resolution 667 (XXIV) H, para. 2 and *Official Records of the Economic and Social Council, Twenty-sixth Session, Supplement No. 9*, paras. 114-116. The Convention on Psychotropic Drugs, when in force will also confer functions on the Commission; document E/CONF./58/6.

by the Council or the General Assembly in the same way as other decisions or recommendations of the Commission”, i.e. as the Commission’s actions taken in respect to functions derived from the United Nations Charter. The phrase “other decisions and recommendations” refers to these “Charter functions” and not to decisions which the Commission may take under powers which it has under earlier treaties.¹⁴ By abstaining from describing the procedure of approval or modification by the Council or General Assembly, article 7 avoids possibly controversial questions and leaves the way for evolutions in the United Nations practice in this connexion.

4. The Council has complete authority over the decisions and recommendations of the Commission in regard to “Charter functions”, and thus also in respect to such actions under the Single Convention, with the exception of the Commission’s decisions under article 3 which are subject to the different review procedure mentioned above. The Council may expressly rescind these decisions or recommendations, may modify them in any way it may see fit, or may simply deny them implementation by failing to act on them. The Commission’s decisions and recommendations, whether in form of recommendations to the Council, of draft resolutions suggested for the Council’s adoption or of actions in the name of the Commission itself, are included in the reports of the Commission to the Council. They are normally not transmitted by the Secretary-General for implementation to Governments or to international organs to which they may be addressed until they have been approved by the Council, either directly, or indirectly by “taking note” of the Commission’s report containing them. Only Commission resolutions of minor importance, which are not controversial, which have no financial implications and which if they concern a specialized agency have been accepted by that agency, are dispatched for implementation before they are so approved by the Council.¹⁵

5. The authority of the General Assembly over the Economic and Social Council and thus also over the Council’s Commissions is laid down in the Charter of the United Nations. Article 60 of the Charter provides that “responsibility for the discharge of the functions of the Organization set forth in this Chapter [i.e. in Chapter IX on international economic and social co-operation] shall be vested in the General Assembly and, *under the authority of the General Assembly*, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X”. Article 66, paragraph 3, stipulates that the Council “shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly”.¹⁶

6. The General Assembly at its first session adopted a resolution that the Economic and Social Council, as one of the principal organs of the United

¹⁴ E.g. a decision under article 2 of the 1948 Protocol to place a drug under provisional control.

¹⁵ *Records*, vol. II, p. 211.

¹⁶ The budget authority of the General Assembly (article 17 of the Charter) strongly reinforces its controlling position.

Nations, should be allowed the widest possible freedom to carry out its work.¹⁷ The General Assembly's authority over the Council has been said to mean, in practice, a continuing authority of a general nature.¹⁸ The relation between the two organs has, however, later been summed up by an author who states that "generally speaking, the General Assembly has viewed its relations to ECOSOC as permitting detailed review of the acts of that organ and free revision of its recommendations".¹⁹ While the Council has continuously initiated action without specific authorization of the General Assembly,²⁰ it has on a number of occasions acted on the recommendation or request of the Assembly.²¹ It has also revised its decisions in compliance with the wishes of the General Assembly whether expressed in the form of a "recommendation", "request" or "invitation".²²

7. The General Assembly has on some occasions addressed subsidiary organs of the Council, either directly or through the Council. It has also given directions to such organs.²³ It can therefore be concluded that it can also give instructions to the Commission on Narcotic Drugs.²⁴

8. The Spanish text of article 7 of the Single Convention uses the words "*las decisiones y recomendaciones aprobadas por la Comisión en cumplimiento de sus disposiciones*" for the English version which reads "each decision or recommendation adopted by the Commission pursuant to the provisions of this Convention". The French wording "*toute décision ou recommandation adoptée par la Commission en exécution des dispositions de la présente Convention*" fully agrees with the English text. The possessive adjective "*sus*" of the Spanish text refers to "*Comisión*". The recommendations and decisions of

¹⁷ General Assembly resolution 5 (I); *Repertory of Practice of United Nations Organs*, vol. III. Articles 55-72 of the Charter, New York, 1955; foot-note 12 relating to the text of the *Repertory* concerning Article 60; see also Leland M. Goodrich, Edward Hambro, and Anne Patricia Simons, *Charter of the United Nations, Commentary and Documents*, third edition revised, New York, Columbia University Press, 1969, p. 406. It has been observed that since General Assembly resolution 5 (I) "there has been a pronounced development in the direction of subordination in respect to detailed decisions as well as general authority"; *ibid.*

¹⁸ The volume of the *Repertory* referred to in the preceding foot-note, para. 8 of the text concerning Article 60 of the Charter.

¹⁹ Goodrich and others, *op. cit.*, p. 407.

²⁰ The volume of the *Repertory* referred to in foot-note 16, para. 8 of the text relating to Article 60 of the Charter.

²¹ Goodrich and others, *op. cit.*, p. 406.

²² The volume of the *Repertory* referred to in foot-note 17, para. 9 of the text relating to Article 60; see also volume III of *Supplement No. 2* of this *Repertory*, paras. 10 and 21 of the text relating to Article 60; and Goodrich and others, *op. cit.*, p. 406.

²³ *Repertory of Practice of United Nations Organs*, vol. III, paras. 17-22 of the text relating to Article 60 of the Charter; *Supplement No. 2* of the *Repertory*, vol. III, para. 16 of the text relating to the same article; Goodrich and others, *op. cit.*, p. 407.

²⁴ In resolution 2584 (XXIV) of 15 December 1969, the General Assembly requested the Council to call upon the Commission on Narcotic Drugs to proceed at its "special session" without delay to complete the draft protocol for the control of psychotropic substances. The Commission at the time of the adoption of the resolution was scheduled to meet in special session in January 1970. It actually met at that time and completed the draft Protocol as called upon by the General Assembly to do so; see foot-note 10 to comments on article 6, above.

the Commission referred to in the Spanish version would therefore not be those taken pursuant to the provisions of the Single Convention—as in the English and French text—but resolutions adopted pursuant to provisions of the Commission itself. Since the meaning of the Spanish text, as a result of some error of drafting or translation, is obviously obscure, it must be assumed that the English and French text convey the intention of the Parties, as can be seen from the discussion of this provision at the Plenipotentiary Conference which adopted the Single Convention.²⁵

²⁵ *Records*, vol. II, pp. 211-212.

Article 8

FUNCTIONS OF THE COMMISSION

The Commission is authorized to consider all matters pertaining to the aims of this Convention, and in particular:

- (a) To amend the Schedules in accordance with article 3;**
- (b) To call the attention of the Board to any matters which may be relevant to the functions of the Board;**
- (c) To make recommendations for the implementation of the aims and provisions of this Convention, including programmes of scientific research and the exchange of information of a scientific or technical nature; and**
- (d) To draw the attention of non-parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith.**

Commentary

1. In addition to the functions which the Commission has under article 8 and other provisions of the Single Convention ¹ ("treaty functions"), ² it has also those given to it by the Council in general terms (terms of reference) ³ or by special decisions ⁴ ("Charter functions"). ²

2. Under its present terms of reference ³, the Commission has the following "Charter functions":

- (i) Assisting the Council in exercising such powers of supervision over the application of international conventions and agreements on narcotic drugs as may be assumed by or conferred on the Council;
- (ii) Advising the Council on all matters pertaining to the control of narcotics and preparing such draft international conventions as may be necessary;
- (iii) Considering what changes may be required in the existing machinery for the international control of narcotic drugs and submitting proposals thereon to the Council;
- (iv) Performing such other functions relating to narcotic drugs as the Council may direct. ⁵

¹ Article 3, article 15, para. 1, article 18, article 31, para. 5 and article 32, para. 2.

² For the terms "treaty functions" and "Charter functions" see also comments on article 7 above.

³ The terms of reference of the Commission are laid down in para. 2 of the resolution 9 (I) of the Economic and Social Council. The provisions of the resolution concerning the composition of the Commission were amended by resolutions 199 (VIII), 845 (XXXII) II and III, para. 1 and 1147 (XLI), para. 4.

⁴ Economic and Social Council resolution 9 (I), para. 2, subpara. (e).

⁵ The terms of reference of the Commission provide also for its carrying out such functions entrusted to the League of Nations Advisory Committee on Traffic in Opium

3. These terms of reference use the phrase “narcotic drugs” in defining the powers of the Commission; this phrase has often been used to designate all drugs under international narcotics control, rather than only those of them which are really “narcotic”, i.e. “sleep-inducing” as are the morphine-like substances; the phrase is thus also used to include others such as cocaine and cannabis drugs, which are by no means “narcotic” in this sense. There has never been any doubt that the Commission’s Charter functions are not restricted to narcotic drugs in the narrow sense of morphine-like drugs, but also cover the other substances under international control. The Commission has, however, in its practice given a very broad meaning to the term “narcotic drugs” with which it is authorized to deal. It has proceeded on the understanding that it may consider the problem of all drugs which fall under the international narcotics régime or may represent international questions to be dealt with by international treaties,⁶ by recommendations of international organs or even only by international exchange of information.

4. It has considered problems relating to such substances outside the international narcotics régime as that,⁷ hallucinogenics, barbiturates, amphetamines and tranquillizers.⁸ In adopting this broad conception of its “Charter functions” it has never met any objection by the Council, which has taken note of the Commission’s reports dealing with such substances and even approved resolutions concerning them.

5. Prior to the coming into force of the Single Convention, by far the major part of the Commission’s work was carried out on the basis of the powers which it received under its terms of reference from the Council under the United Nations Charter,⁹ although that work concerned the implementation of the narcotics treaties and their improvement.

6. The Commission had then only very limited “treaty functions”.¹⁰ This situation has completely changed under the terms of the Single Conven-

and other Dangerous Drugs by the international conventions on narcotic drugs as the Council may find necessary to assume and continue; Economic and Social Council resolution 9 (I), para. 2, subpara. (b). This provision became obsolete by the effect of the 1946 Protocol, which transferred these functions to the Commission.

⁶ Commission on Narcotic Drugs, report on the eleventh session (1956); *Official Records of the Economic and Social Council, Twenty-second Session, Supplement No. 8*, para. 327.

⁷ Document E/CN.7/471, paras. 180-183. The Commission has even occasionally discussed such other abuses of chemicals as sniffing of ether and the fumes of glue and gasoline; see *ibid.*, para. 184.

⁸ When adopting the Draft Protocol on Psychotropic Substances at its twenty-third Session and the Revised Draft Protocol on Psychotropic Substances at its first special session (*Official Records of the Economic and Social Council, Forty-sixth Session*, document E/4606/Rev.1, annex. IV and *ibid.*, *Forty-eighth Session, Supplement No. 8* (E/4785), chapter III) the Commission appears to have been authorized to act not only under its terms of reference, but also under the very broad terms of article 8 of the Single Convention.

⁹ See above, foot-note 3.

¹⁰ Article 5, para. 6 of the 1931 Convention (appointment of a member of the Drug Supervisory Body); article 11, para. 4 of the 1931 Convention (appointment of a member of the *ad hoc* body of three experts charged with determining the control régime of a drug found by the World Health Organization not to be addiction-producing by itself, but convertible into an addiction-producing drug); article 21 of the 1931

tion. Under the broad provisions of article 8, the Commission is now authorized to carry out all those functions which it could formerly perform only on the basis of decisions of the Economic and Social Council, such as the Council's resolution 9 (I) containing the Commission's terms of reference. The authority granted by the introductory paragraph of article 8 "to consider all matters pertaining to the aims of this Convention" is very broad indeed; it appears to cover all functions which the Commission has in the past exercised under its terms of reference, and more. Since the power granted by article 8 is not limited to questions concerning the *implementation* of provisions of the Single Convention but includes all matters pertaining to the *aims* of that treaty, the Commission has under this article authority to deal with all aspects of the fight against drug abuse, whether political, legal, administrative, economic, social, medical or scientific, with due regard, of course, to the jurisdiction of other international organs and organizations such as the World Health Organization. It may in particular also consider questions of technical co-operation, especially the foreign aid needed by some Governments to enable them to make a full contribution to the international campaign against drug abuse. Its authority under this provision appears by no means to be limited to the drugs within the scope of the Single Convention, but extends to all drugs whose abuse may constitute an international problem. Article 8 has given a treaty basis to the wide range of functions which the Commission has from its beginning performed, originally on the basis of decisions of the Economic and Social Council including in particular the Commission's terms of reference.¹¹

7. Paragraphs (a)-(d) enumerate some specific cases of the general rule laid down in the introductory paragraph. Other provisions of the Single Convention assigning specific functions to the Commission are:

- (i) Article 15, paragraph 1, stipulating that the reports of the International Narcotics Control Board shall be submitted to the Economic and Social Council through the Commission which may make such comments as it sees fit;
- (ii) Article 18, authorizing the Commission to require Parties to furnish to the Secretary-General such information as it may request as being necessary for the performance of its functions, to determine the manner

Convention (drawing up a form for the annual reports which Governments must communicate to one another through the Secretary-General on the working of the 1931 Convention); article 2 of the 1948 Protocol (placing a drug under provisional international control pending the procedure on its control status before the World Health Organization); and article 10, para. 1, subpara. (c) of the 1953 Protocol (prescribing the form for the annual reports on the working of the Protocol which Parties must furnish to the Secretary-General).

¹¹ The Commission's predecessor, the League of Nations Advisory Committee on the Traffic in Opium and Other Dangerous Drugs, having only very limited treaty functions under the 1931 Convention (article 5, para. 6, article 11, para. 4 and article 21 of the 1931 Convention), acted similarly on the basis of authority given to it by decisions of the League Council or Assembly under article 23, para. (c) of the League Covenant. See in particular the resolution adopted by the League's First Assembly on 15 December 1920 establishing the Advisory Committee; League of Nations, *Records of the First Assembly, Plenary Meetings* (Geneva 1920), pp. 538-539. The Advisory Committee's treaty functions under the 1931 Convention were transferred to the Commission by the 1946 Protocol; see the preceding foot-note 10, and also foot-note 5.

in which and the dates by which this information must be supplied, and to draft forms which it may ask Parties to use for this purpose;

- (iii) Article 31, paragraph 5, requiring Parties to follow as closely as may be practicable the form of import certificate approved by the Commission; and
- (iv) Article 32, paragraph 2, requiring the Commission to recommend safeguards to be taken by the countries of registry of ships or aircraft engaged in international traffic to prevent the diversion for illicit purposes or the improper use of drugs carried by such vessels or aircraft for first-aid purposes or emergency cases pursuant to paragraph 1 of that article.

8. As regards paragraph (b) of article 8, see below, comments on article 14, paragraph 1, subparagraph (a).

9. Paragraph (c) expressly states that the recommendations which the Commission may make need not be limited to the implementation of provisions of the Single Convention, but may also relate to the realization of its aims. The Commission may thus not only "consider"¹² all aspects (political, legal, administrative, economic, social, medical or scientific) of drugs whose abuse constitutes an international problem, but may also make recommendations concerning them. These recommendations may be addressed to Governments of Parties and non-parties (paragraph (d)) alike, as well as to inter-governmental organizations and organs.

10. Article 7 applies to such recommendations.¹³ Paragraph (c) also offers formal treaty authority for scientific research and international exchange of scientific and technical information, functions which, on the initiative and under the direction of the Commission, had already been undertaken by the Secretariat of the United Nations in the field of drugs prior to the adoption of the Single Convention in 1961, for example, the establishment and maintenance of a United Nations chemical laboratory in Geneva,¹⁴ and research programmes to develop methods for determining the geographic origin of opium¹⁵ seized from the illicit traffic and for the identification of cannabis.¹⁶ These programmes have involved laboratory work in the Geneva institution, the maintenance of a centre for the international exchange of information, the distribution of drug samples to national scientists for their research, international arrangements for collaborative studies of national research workers, and international seminars.¹⁷

¹² Article 8, introductory paragraph.

¹³ See above, comments on that article.

¹⁴ General Assembly resolution 834 (IX) (1954); see also Council resolution 667C (XXIV) (1957).

¹⁵ See Council resolutions 159 II C (VII) (1948); 246 F (IX) (1949), 436 F (XIV) (1952) and 626 H (XXII) (1956) and Commission resolutions V (XIII) (1956) and 6 (XIV) (1959); see also document E/CN.7/471, paras. 118-130.

¹⁶ Commission on Narcotic Drugs, report on the fourteenth session, para. 308, resolution 8 (XIV) (1959), *Official Records of the Economic and Social Council, Twenty-eighth Session, Supplement No. 9* (E/3254).

¹⁷ Council resolution 626 H (XXII) (1956).

11. The authors of the Single Convention recognized that effective measures against drug abuse required universal action. They stated this in the preamble to the treaty.¹⁸ Paragraph (d) is one of the provisions of the Convention intended to obtain universal implementation, or as wide implementation of that treaty as possible.¹⁹ It aims at inducing non-parties to carry out not only the Commission's decisions or recommendations for the implementation of the Convention, but, beyond that, also those designed to promote the aims of the treaty but not referring to the execution of express treaty provisions.

12. It will be recalled that decisions of the Commission or the Council regarding changes under article 3 in the schedules of the Single Convention must be communicated to non-parties which are Members of the United Nations.²⁰ The Commission's decisions and recommendations may under article 8, paragraph (d) be brought to the attention of all non-parties, no matter whether they are Members of the United Nations²¹ or not.

13. Under the English text, paragraph (d) applies to the Commission's decisions and recommendations "which it adopts under this Convention", while the French text refers to those "*qu'elle adopte conformément aux fonctions que lui confère la présente Convention*", and the Spanish version to those "*que adopte en cumplimiento de la presente Convención*". It is submitted that despite these different phrasings, the meaning of the three language versions is in this case the same. The adoption of recommendations for the implementation of both the aims and the provisions of the Single Convention is, in view of paragraph (c), among the "*fonctions*" of the Commission as well as an action "*en cumplimiento de la presente Convención*".

14. There is, however, in paragraph (d) another discrepancy between the English and Spanish text on the one hand and the French text on the other which cannot so easily be reconciled. Under the English text, the attention of non-parties may be drawn to the Commission's decisions and recommendations "with a view to their considering taking action in accordance therewith" (i.e. with the decisions and recommendations). Under the equivalent Spanish text, non-parties are addressed "*a fin de que dichos Estados examinen la posibilidad de tomar medidas de acuerdo con tales decisiones y recomendaciones*". The French text, however, describes the purpose for which the non-parties may be approached under paragraph (d) with the words "*de façon qu'ils examinent les mesures qu'elle peut être amenée à prendre en vertu de la présente Convention*". The personal pronoun "*elle*" undoubtedly refers to "*la Commission*" in the introductory paragraph. To call the attention of non-parties to decisions and recommendations of the Commission in order to induce them to examine the measures which the *Commission* may have to take by virtue of the Single Convention—as the French text suggests—makes hardly any sense. Since the

¹⁸ Fifth considerandum of the Preamble.

¹⁹ See also article 3, para. 7 and para. 8, subpara. (c), article 12, paras. 2 and 3, para. 13, para. 2, article 14, article 21, article 24, para. 4, article 31, para. 1 and article 49, para. 2, subpara. (b).

²⁰ Article 3, para. 7 and para. 8, subpara. (c).

²¹ As regards the obligation of non-parties which are Members of the United Nations to participate in the international fight against drug abuse, see above, comments on article 3, para. 7.

meaning of the French text, as the result of some error of translation or drafting, does not seem to be very reasonable, it must be concluded that the Spanish and English text correspond to the intention of the authors of the treaty. This inference is also in accord with the decision taken by the Committee of the Plenipotentiary Conference dealing with the subject.²²

²² Article 11, para. (i) of the Third Draft (document E/CN.7/AC.3/9), which served as working document of the Plenipotentiary Conference; *Records* (English), vol. II, pp. 5, 212, 214 and 276; see also vol. I, pp. 142 and 189; see also *Records* (French), vol. II, pp. 6, 242, 244 and 314.

Article 9

COMPOSITION OF THE BOARD

General comments

1. Articles 9-15 contain provisions on the constitution of the International Narcotics Control Board, on its composition, the election of its members, its procedure (articles 9-11) and its functions (articles 12-15). Provisions located in other parts of the Convention also confer functions on the Board:

(i) *Article 21, paragraph 3*, requiring that quantities of drugs found by the Board to have been manufactured and imported by a country or territory in excess of its supply limits¹ shall be deducted from these limits and from “the total of the estimates”² of that country or territory in the following year;

(ii) *Article 21, paragraph 4, subparagraph (a)*, authorizing the Board to order the discontinuation of the export of drugs to a country or territory which has exceeded its import limits as defined in this provision;

(iii) *Article 24, paragraph 2, subparagraph (a)*, authorizing the Board to review the notification of a Party, which under paragraph 3 of that article is not automatically entitled to export opium of its own production nor has under paragraph 2, subparagraph (b) obtained the approval of the Council to do so, that it desires to engage in the export of opium of its own harvest, in an amount not exceeding five tons annually. The Board may either approve the notification or recommend to that Party that it not engage in the production of opium for export;

(iv) *Article 45, paragraph 2*, authorizing the International Narcotics Control Board to perform the functions which the Permanent Central Board and Drug Supervisory Body had under earlier narcotics treaties;³

(v) *Article 49, paragraph 3, subparagraph (b)*, requiring Parties which have made a reservation under that article to furnish to the Board “estimates”⁴ and statistical returns⁵ in respect of the reserved activities in the manner and form prescribed by the Board;

(vi) *Article 49, paragraph 4, subparagraph (a)*, requiring the Board to send to a Party which has made a reservation under article 49 and has failed to furnish the prescribed estimates and statistics⁶ within three months after

¹ To be established in accordance with article 21, paras. 1 and 2.

² Defined in article 19, para. 2 and serving as basis for the computation of import limits of a country or territory which an exporting Party must respect; see article 21, para. 4, subparas. (a) and (b) and article 31, para. 1, subpara. (b).

³ See above, comments on article 1, para. 1, subpara. (a) and article 5, and below, comments on article 45.

⁴ See article 19.

⁵ See article 20.

⁶ Article 49, para. 3, subpara. (b).

the date on which they were due, a notification of the delay, with the request to provide the missing information within three months after the receipt of that notification.⁷

2. The International Narcotics Control Board has replaced two organs which were established under earlier narcotics treaties: the Permanent Central Board and the Drug Supervisory Body.⁸

⁷ Failure of the Party to comply with such a request renders ineffective the reservation which it made under article 49. For other references to functions of the Board, see article 19, paragraph 1, introductory paragraph and para. 4, article 20, para. 1, introductory paragraph, para. 2 and para. 3, article 24, para. 4, subpara. (a), clause (ii) and article 49, para. 4, subpara. (b).

Paragraph 1

1. The Board shall consist of eleven members to be elected by the Council as follows:

(a) Three members with medical, pharmacological or pharmaceutical experience from a list of at least five persons nominated by the World Health Organization; and

(b) Eight members from a list of persons nominated by the Members of the United Nations and by Parties which are not Members of the United Nations.

Commentary

1. The Economic and Social Council, which was the body which appointed the Permanent Central Board¹, one of the two predecessor organs of the International Narcotics Control Board,² is also the electoral organ of

¹ See above, comments on article 1, para. 1, subpara. (a) and below comments on article 45. Prior to the 1946 Protocol the members of the Permanent Central Board were appointed by an electoral college consisting of the members of the Council of the League of Nations, a representative of the United States of America and, when Germany was not a member of the League, also a representative of that country. When Germany became a Member of the League, it became also a permanent member of its Council.

² The other predecessor organ was the Drug Supervisory Body, whose four members were, under article 5, para. 6 of the 1931 Convention as amended by the 1946 Protocol, appointed as follows; two members by the World Health Organization, one member by the Commission on Narcotic Drugs and one member by the Permanent Central Board. Prior to the 1946 Protocol, one member was appointed by the Health Committee of the League of Nations, a second member by the *Office International d'Hygiène Publique*, an intergovernmental organization located in Paris and established in 1907 (see *British and Foreign State Papers*, vol. 100, p. 466), a third member by the League's Advisory Committee on Traffic in Opium and other Dangerous Drugs (the predecessor body of the Commission on Narcotic Drugs), and a fourth member by the Permanent Central Board. In the last five years of their existence (1963-1968), there was a complete union of membership between the Permanent Central Board and Drug Supervisory Body, the appointive bodies of the Supervisory Body having elected to membership to that body four of the eight members of the Permanent Central Board; see Economic and Social Council resolution 914 F (XXXIV) (1962) para. 2; see also Economic and Social Council resolution 667 (XXIV) (1957) and foot-note 13

the latter Board. The requirement that three of the eleven members of the International Narcotics Control Board be elected from a list of persons nominated by the World Health Organization is explained by the facts that the new Board not only took over in substance the functions assigned by the earlier treaties to the Permanent Central Board, but also those entrusted by these treaties to the Drug Supervisory Body, two of whose four members were appointed by the World Health Organization. Since that Organization need not nominate more than five persons, it has considerable influence on the composition of the Board, reflecting the importance of medical, pharmacological and pharmaceutical knowledge in the work of that organ. The World Health Organization's nominations are made by its Director General.³

2. The right of non-Parties to the Single Convention which are Members of the United Nations to nominate candidates for membership on the Board appears to be justified on the ground that they contribute to the budget of the United Nations, and thus to the costs of maintaining the Board.⁴

3. The Commission on Narcotic Drugs, at its twentieth session, drew up a procedure⁵ which the Economic and Social Council approved⁶ and which the latter follows in electing the members of the Board. Under this procedure the Secretary-General of the United Nations invites the Members of the United Nations, the Parties to the Single Convention which are non-member States, and the World Health Organization to nominate candidates within an indicated period. The invitation, which is to be issued one year before the session of the Council at which the election takes place, contains information on the relevant treaty provisions, the election procedure, in particular on the dates on which the Council will act, the requirements of membership of the Board, and the rights and duties of members.⁷ The treaty provisions regarding the required qualifications of members are explained, and the views of the Council on their interpretation are given.⁸ The Governments are also informed of the qualifications which the Council finds desirable, but on which the Convention is silent. The attention of the World Health Organization is in particular drawn to the desirability that its nominees should not only enjoy a reputation in the medical, pharmacological or pharmaceutical world as required by article 9, paragraph 1, subparagraph (a), but should also have a sound knowledge of international and national narcotics administration.⁹ Governments

referring to the comments on article 7; as regards the dissolution of the "Office International d'Hygiène Publique" and the transfer of its functions to the World Health Organization, see Protocol concerning the International Office of Public Health, dated 22 July, 1946, United Nations, *Treaty Series*, vol. 9, p. 3.

³ Resolution WHA 1846 (May 1965) of the World Health Assembly.

⁴ Article 6 of the Single Convention, which also provides for contribution of Parties which are not Members of the United Nations.

⁵ Commission on Narcotic Drugs, report on the twentieth session, *Official Records of the Economic and Social Council, Fortieth Session, Supplement No. 2* (E/4140). See also documents E/4158/Rev. 1 (1966) and E/4761 (1969).

⁶ Council resolution 1106 (XL), para. 5.

⁷ Document E/4158/Rev.1, para. 17. As regards a similar procedure for the election of the members of the past Permanent Central Board, see Council resolutions 49 (IV) and 123 D (VI).

⁸ See also below, comments on article 9, para. 2.

⁹ Document E/4158/Rev.1, para. 14, see also document E/4761, annex II, para. 14; see also *Records*, vol. II, p. 6, foot-note 16.

are informed that it is not essential that their candidates be technically qualified as doctors, chemists or pharmacists, as the Board will have at its command the benefit of such qualifications from the inclusion of those of its members who are nominated by the World Health Organization, and who under the terms of the Convention must have the necessary scientific knowledge.¹⁰ It is, on the other hand, pointed out that it is highly desirable that Government nominees should have a good knowledge of national and international narcotics administration. Governments are also reminded that they may nominate candidates who are not their nationals.¹¹ The Secretary-General transmits to the members of the Council two lists, one composed of persons nominated by Governments, and a second of candidates nominated by the World Health Organization, annexing copies of the *curricula vitae* which he has received. He is required to do this before the session of the Council at which the election procedure is commenced. He supplements the lists by forwarding to the members of the Council late nominations, i.e. nominations which he receives after the expiration of the period which he had indicated for this purpose in his invitations to name candidates.

4. The election process takes place in two stages. The Council sets up a Committee on Candidatures charged with the task of selecting from the nominees those persons whom it considers particularly qualified. This Committee establishes two panels of recommended persons, one containing Governmental nominees and the second containing candidates named by the World Health Organization, and reports to the Council. It is suggested that the panel of Government nominees should contain 16 persons, i.e. twice the number of members to be chosen among them. It is also proposed that the panel of World Health Organization nominees which the Committee establishes should contain at least five names.¹² The Committee may meet outside the time in which the Council is in session.

5. At the next session, whether or not it is formally a new session or a continuation of the earlier session ("resumed" session), the Council proceeds to the actual election. It is suggested that the election should take place in two different parts, and that the election of the members of the World Health Organization nominees be carried out first. It is also proposed in the procedure drafted by the Commission and approved by the Council at its fortieth session⁶ that an interval sufficient to facilitate consultation should take place between the election of the World Health Organization nominees and that of the Government candidates. It is also suggested that not more than one national of any particular country should be chosen.¹³ The Council is not bound to choose from the panels established by the Committee on Candidatures.¹⁴ It can, however, elect only persons nominated by the World Health

¹⁰ Document E/4158/Rev.1, para. 8; see also document E/4761, annex II, para. 8, see also *Records*, vol. II, p. 6, foot-note 16.

¹¹ Document E/4158/Rev.1, para. 13; see also document E/4761, annex II, para. 13.

¹² Documents E/4158/Rev.1, para. 21 and E/4761, para. 3; see also document E/4772.

¹³ There is no express treaty provision prohibiting the election of two persons of the same nationality. See below, comments on article 9, para. 3.

¹⁴ Document E/4158/Rev.1, paras. 22-24.

Organization, by Members of the United Nations or by non-Member States which are Parties to the Single Convention. It may elect a person who is neither a national of a Member of the United Nations nor of a Party not a Member, and even a stateless person, provided only he has been so nominated. The elections are decided by secret ballot under the Council's Rules of Procedure.¹⁵

6. If a vacancy occurs, the outlined procedure is applied *mutatis mutandis*. If a place held by a Government nominee becomes vacant, only Governments are invited to make nominations. If on the other hand the vacant place had been occupied by a World Health Organization nominee, only this Organization is asked to propose candidates.

7. The Convention does not state how many candidates the World Health Organization should propose in the event of such a vacancy. It appears however that it would hardly be compatible with the spirit of article 9, paragraph 1, if the World Health Organization nominated less than two persons, because doing so would deprive the Council of its right of choice of the member of the Board, as therein provided.

8. The vacancy should be filled if possible at the Council session immediately following its occurrence.¹⁶

¹⁵ Rules 67-69 of the Rules of Procedure of the Economic and Social Council, United Nations, New York, 1967, document E/3063/Rev.1; United Nations publication, Sales No. 67.I.32.

¹⁶ Document E/4158/Rev.1, para. 25; article 10, para. 5 of the Single Convention.

Paragraph 2

2. Members of the Board shall be persons who, by their competence, impartiality and disinterestedness, will command general confidence. During their term of office they shall not hold any position or engage in any activity which would be liable to impair their impartiality in the exercise of their functions. The Council shall, in consultation with the Board, make all arrangements necessary to ensure the full technical independence of the Board in carrying out its functions.

Commentary

1. The International Narcotic Control Board is held to have some judicial functions, as was its predecessor, the Permanent Central Board.¹ The function of establishing whether a country or territory has failed to carry out provisions of the Single Convention and has thereby seriously endangered its aims, and that of recommending that Parties discontinue the import or export of drugs or both, from or to the offending country or territory,²

¹ Commission on Narcotic Drugs, report on the twenty-first session, *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 2* (E/4294), para. 108; *Records*, vol. II, pp. 218 and 222.

² Article 14 of the Single Convention; see also articles 24 and 26 of the 1925 Convention, article 14, para. 3 of the 1931 Convention and article 11-13 of the 1953 Protocol.

undoubtedly has judicial characteristics.³ Article 9, paragraph 2 therefore contains rules to ensure the independent functioning of the International Narcotics Control Board. Its independence is called “technical” to indicate that it refers only to the performance of its functions, which are mainly of a technical nature. It depends for its election and budget on organs of the United Nations.⁴ The Board must also submit to the Council, through the Commission, an annual report on its work.^{4a}

2. This report, as well as such additional reports as the Board may choose to make, serve the purpose of calling the attention of Governments to points of strength or weakness of the international control system, and to particular conditions which may require remedial action by political intergovernmental organs such as the General Assembly, the Council or Commission and by the national Governments. Both the Council and the Commission may make such comments on the Board’s reports and work as they see fit; but neither of them nor any other United Nations organ may, directly or indirectly, give the Board instructions as regards the actions which it should take.

3. Paragraph 2 contains three different rules to ensure the full technical independence of the Board. One refers to the personal qualifications of its members, another excludes from membership persons engaged in activities which might affect their impartiality, and the third provides for the Board administrative working conditions appropriate to enable it to function independently. The first two rules impose obligations in regard to nominations by the World Health Organization and by Governments, as well as upon the Council acting as an electoral body, to see to it that the nominees and persons who are elected fulfil the requisite conditions.

4. The first sentence of paragraph 2, requiring that the members of the International Control Board should by their “competence”, “impartiality” and “disinterestedness” command general confidence, is in substance the same as, and textually very similar to, the second paragraph of article 19 of the 1925 Convention which applied to the members of the former Permanent Central Board. High standards of a technical, intellectual and moral nature are required.

5. As regards the technical qualifications which form a part of the “competence” required, see above, comments on article 9, paragraph 1.

6. The condition of “impartiality” presupposes that on the basis of his background the candidate can be expected to adopt a judicial attitude in performing his functions if elected to membership on the Board.

³ The corresponding functions of the Permanent Central Board, one of the two predecessor bodies of the present International Narcotics Control Board, were termed “judicial” as early as 1927 in a report dated 1 October 1927 of a sub-committee of the Advisory Committee on Traffic in Opium and other Dangerous Drugs on the Relations of the Advisory Committee and the Central Board; League of Nations, document O.C. 669, p. 3. That Board was sometimes called a “judicial” organ, or, because it has also administrative functions, referred to as “semi-judicial” or “quasi-judicial”.

⁴ Articles 7 and 9, para. 1.

^{4a} Article 15.

7. Both “impartiality” and “disinterestedness” must be ensured not only by the absence of any material interest in favouring particular elements of the controlled drug trade, but also by the assurance that the candidate will be free from any bias which might prevent him from acting impartially.

8. The general rule of the first sentence of paragraph 2, stipulating the conditions of “impartiality” and “disinterestedness” of the members of the Board, is strengthened by the specific rule of the second sentence, prescribing that they should “during their term of office” “not hold any position or engage in any activity which would be liable to impair their impartiality in the exercise of their functions”. The second sentence corresponds to the sixth paragraph⁵ of article 19 of the 1925 Convention, which applied to members of the old Permanent Central Board, and which read as follows: “The members of the Central Board shall not hold any office which puts them in a position of direct dependence on their Government.” This paragraph was, prior to World War II, understood to exclude Government employees from membership on the Board. It was also held that such employees were excluded from election if at the date of their appointment they had not retired from Government service. This narrow interpretation became difficult to maintain after World War II, when the economic and social conditions had become very different from those prevailing at the time of the conclusion of the 1925 Convention, and in particular when a number of socialist countries had emerged. It was found that in many countries it would be difficult to find persons who would not be government employees and would at the same time be qualified for membership on the Permanent Central Board. It was, moreover, considered that the narrow interpretation of paragraph 6 of article 19 of the 1925 Convention did not do justice to its text, which did not exclude all Government employees but only those who held an office “which puts them in a position of *direct* dependence on their Government”, and that the wording of that paragraph did not eliminate from election even those Government officials who were in such direct dependence, provided only that they ceased to maintain such a relationship with their Governments while serving on the Board. The Economic and Social Council accepted this new view, and adopted a resolution⁶ which endorsed the opinion that candidates who were Government employees in such capacities as judges, university professors, and medical practitioners, but who were not in a position of direct dependence on their Governments, were eligible for membership on the Permanent Central Board, and were not required to give up their position while serving on the Board. Even some lawyers or specialists in other professions who were in Government employment could, in the Council’s view, fall in the same category. The Council also held that officials in active civil service who were in a position of direct dependence on their Government could be appointed, provided that following their election they ceased temporarily, i.e. for the duration of their membership on the Board, to exercise their functions as officials (e.g. by taking a leave of absence), and while serving on the Board did not act under instruc-

⁵ Fifth para. of article 19 as amended by the 1946 Protocol.

⁶ Resolution 123 D (VI), of 2 March, 1948.

tions of their Governments.⁷ The second sentence of paragraph 2 of article 9 was drawn up with this resolution of the Council in mind.⁸

9. It may therefore be assumed that government positions which did not prevent the eligibility of candidates for the old Permanent Central Board under Economic and Social Council resolution 123 D (VI) may also be held not to be liable to impair the “impartiality” required under the first two sentences of paragraph 2 of article 9. Moreover, persons who are in government positions which may be considered to be liable to affect their “impartiality” may nevertheless be appointed to the International Narcotics Control Board if they cease to hold their positions for the duration of their term of membership, whether temporarily by taking a leave of absence or permanently by resigning from their Government position, *and* if they do not accept instructions from their national Governments while serving on the Board.

10. The 1925 Convention expressly excluded from membership on the Permanent Central Board only Government employees, but not persons engaged in non-governmental activities affecting their impartiality. While this latter class of persons was not made ineligible for membership on the old Board by a specific rule, it appears that they were nevertheless excluded by the general provision of the second paragraph of article 19 of that Convention requiring “impartiality” and “disinterestedness”. The Single Convention contains the same general rule,⁹ which likewise must be considered to have the effect of excluding from membership on the International Narcotics Control Board persons engaged in such non-governmental activities; but the Single Convention goes beyond that. Its definition of activities which might be incompatible with the “impartiality” required for membership on the International Narcotics Control Board covers not only government employment, but “any position” and “any activity”, no matter whether governmental or private, which would be liable to impair that impartiality. Positions in the private drug industry or trade may therefore present grounds for exclusion.

11. The third sentence of paragraph 2 of article 9 contains a provision which is very similar to that of the first paragraph of article 20 of the 1925 Convention. Article 20 stipulated that the Council of the League of Nations should, in consultation¹⁰ with the Permanent Central Board, make the necessary arrangements for the organization and working of that Board with the object of assuring its full technical independence.

12. The independence of the work of an organ can undoubtedly be impaired if it is impeded in carrying out its functions by unfavourable ad-

⁷ *Official Records of the Economic and Social Council, Fourth Session, Supplement No. 1*, report of the Commission on Narcotic Drugs (E/251), p. 7; *Ibid.*, *Sixth Session, Supplement No. 2*, report of the Commission on Narcotic Drugs (E/575), pp. 21-23 and annex IV, pp. 74-87; see also resolution of the Economic and Social Council 49 (IV) of 28 March 1949 (part dealing with “Appointments to the Permanent Central Opium Board”).

⁸ *Records*, vol. II, p. 218. Article 13, para. 3 of the Third Draft serving as working document for the Plenipotentiary Conference contains in substance the same provision as the two first sentences of article 9, para. 2 of the Single Convention.

⁹ Article 9, para. 2, first sentence.

¹⁰ The French text provided that the arrangements should be made “*d'accord avec le Comité*”.

ministrative conditions under which it must perform its tasks, and especially by unsatisfactory secretariat services.¹¹ The International Narcotics Control Board must in particular be able to meet as often as in its opinion may be necessary for the proper discharge of its functions, as it is indeed authorized to do by article 11, paragraph 2 of the Single Convention. It must not be prevented, for example, from holding urgent meetings by lack of administrative facilities. Whether such a session is urgent must be left to the free judgement of the Board. Dependence in this matter on the decision of another organ undoubtedly would affect the "technical independence of the Board in carrying out its functions". The Board must also be able, through a secretariat, to carry out certain technical functions on definite dates. Its inability to do this might have serious consequences for the operation of the Convention; for example, some countries might not obtain urgently needed medical supplies without delays very damaging to their health services.¹²

13. There can, on the other hand, be no question that the General Assembly of the United Nations must have full budgetary control over the administration of the International Narcotics Control Board, whose expenses are borne by the United Nations. The Single Convention moreover provides expressly that the expenses shall be borne in such manner as shall be decided by the General Assembly;¹³ but in order to be able to carry out its functions in full technical independence, the Board must have some degree of budgetary and administrative discretion, within limits set each year by the General Assembly taking into account the nature of the Board's work, which, as has been pointed out, includes some judicial functions.

14. The Council, in carrying out its tasks of guardian of the Board's independence under the third sentence of paragraph 2 of article 9, by its resolution 1196 (XLII) of 16 May 1967 adopted administrative arrangements to ensure the full technical independence of the Board.¹⁴ These arrangements had been drafted by the Secretary-General in consultation with the old Permanent Central Board¹⁵ for the Council's approval. They are similar to those which the Council had adopted for the Permanent Central Board under article 20 of the 1925 Convention.¹⁶ Under the Council resolution of 1967, the International Narcotics Control Board has some degree of budgetary discretion within the limits set each year by the General Assembly, and has a separate

¹¹ For a discussion of these problems as they may affect the International Narcotics Control Board, see the report of the Permanent Central Narcotics Board to the Economic and Social Council on the work of the Board in 1965, paras. 61-76 (document E/OB/21); see also Commission on Narcotics Drugs, report on the twenty-first session (1966), *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 2* (E/4294), paras. 98-113.

¹² E.g., article 12 (particularly para. 5 thereof), article 21, paras. 1 and 4 and article 31, para. 1, subpara. (b).

¹³ Article 6.

¹⁴ Annex to resolution 1196 (XLII).

¹⁵ Article 45, para. 1 of the Single Convention. Until 1 March 1968 the Permanent Central Board performed the functions of the International Narcotics Control Board under the Single Convention; see Economic and Social Council resolution 1106 (XL).

¹⁶ Economic and Social Council resolution 201 (VIII) of 2 March 1948.

secretariat¹⁷ which is an integral part of the Secretariat of the United Nations and under the full administrative control of the Secretary-General. This secretariat is bound to carry out the Board's decisions. Its head is appointed or assigned by the Secretary-General in consultation with the Board. Provision is made for administrative measures to protect the confidential character of the Board's correspondence and other papers. The Board has also the right to be represented at meetings of the Commission on Narcotic Drugs, as well as at meetings of the Economic and Social Council, of other organs of the United Nations, of conferences held under the auspices of the United Nations, of specialized agencies and of other organizations at which problems relating to narcotic drugs are considered.

15. The arrangements adopted by the Council resolution of 1967 expire on 1 March 1974. The council may, in consultation with the Board, prolong, revise or replace them by different measures.¹⁸

¹⁷ As regards the possibility of establishing a "single secretariat" serving the Board as well as the Commission on Narcotic Drugs, see below, comments on article 16.

¹⁸ Para. 20 of the Arrangements of 1967 provides that the Secretary-General has at any time the right, to propose, in agreement with the Board, to the Commission on Narcotic Drugs and to the Economic and Social Council, revisions to enter into force before 1 March 1974. For proposal of changes to come into force after that date, only consultation with the Board, and not its agreement, is required.

Paragraph 3

3. The Council, with due regard to the principle of equitable geographic representation, shall give consideration to the importance of including on the Board, in equitable proportion, persons possessing a knowledge of the drug situation in the producing, manufacturing, and consuming countries, and connected with such countries.

Commentary

1. Paragraphs 1 and 2 of article 9 contain provisions to ensure the technical competence and impartiality of the individual members of the International Narcotics Control Board. Paragraph 3 supplements these provisions by setting up two principles for the guidance of the Council in electing the members of the Board. The application of these principles has the effect of promoting the impartiality and technical competence of the Board as a whole.

2. Two different rules are established: the principle of geographic distribution, and that of "including on the Board, in equitable proportion, persons possessing a knowledge of the drug situation in the producing, manufacturing and consuming countries, and connected with such countries". The second of these principles, but not the first, was also provided for in the 1925 Convention in regard to the election of the members of the former Permanent Central Board.¹ The fact that the members of the International

¹ Article 19, para. 5 of the unamended text, or para. 4 of the text as amended by the 1946 Protocol.

Narcotics Control Board are collectively familiar with the drug situation in different geographic regions, as well as in countries with basically different interests in the drug trade, is likely to reduce the possibility of any bias, however unconscious, of that organ in favour of a particular country or of particular economic interests.²

3. The Council is required to give consideration to the principles laid down in paragraph 3 not only in the election of government nominees, but also in that of WHO candidates. Paragraph 3 applies to the election of the Board as a whole. The Council's tasks under this paragraph are facilitated by the practice of the World Health Organization, which is guided by the principle of equitable geographic representation when nominating its candidates pursuant to paragraph 1, subparagraph (a) of article 9.

4. The wording of paragraph 3 allows a flexible application of its rules. While the Council must, of course, give due consideration to all of the aspects of paragraph 3 at each election, the emphasis which it may place on each of them may differ from election to election, depending on the availability of highly qualified candidates.

5. The election of more than one national of the same country is not expressly prohibited by the Single Convention, but it would be very difficult to reconcile with the provisions of paragraph 3 of article 9, particularly with the principle of equitable geographic representation.

6. The terms "producing" and "manufacturing" are to be understood in the sense of the definition of "production" and "manufacture" in article 1. A "producing" country is thus a country which is engaged in the separation of opium, coca leaves, cannabis or cannabis resin from the plants from which these drugs are obtained, and a "manufacturing" country is a country which is engaged in the making of other drugs. The word "consuming" is, on the other hand, to be understood in its ordinary meaning, and not in the sense of the definition of article 1, paragraph 2, which states that "a drug shall be regarded as 'consumed' when it has been supplied to any person or enterprise for retail distribution, medical use or scientific research".³

7. All countries are of course "consuming" countries, some of them are in addition also "manufacturing" countries or "producing" countries, and a few belong to all three groups of countries mentioned in paragraph 3. For the purposes of this provision, a country should be assigned to that category which appears to be dominant⁴ in the light of a worldwide view of the drug trade. A "consuming" country will thus be a country which relies for its drug supplies mainly on imports, although it may also be engaged in the "manufacture" or "production" of drugs, or both. In view of the purpose of

² As regards similar rules guiding the composition of the Commission on Narcotic Drugs, which is however a body consisting of Government representatives, see Economic and Social Council resolutions 9 (I) and 1147 (XLI), para. 4 together with resolution 845 (XXXII) II, paras. 2 and 3, and III, para. 1; see also above, comments on article 7. In the composition of the Commission the consideration of "consuming countries" is however replaced by that of those countries in which drug addiction or the illicit traffic constitutes a serious social problem.

³ In practice there would be no difference whichever of these two meanings is given to the word "consuming" in para. 3.

⁴ *Records*, vol. II, pp. 214-215.

paragraph 3, it may also be assumed that only those countries should be considered as “manufacturing” or “producing” which—as the case may be—“manufacture” or “produce” relatively important quantities of drugs.⁵

8. A country “producing” only cannabis or cannabis resin could hardly, under the conditions prevailing at the time of this writing, be selected as a “producing” country for the purposes of paragraph 3 since the medical use of cannabis drugs is at present considered to be obsolete, has in many countries been abolished, and in any case can be only very limited. Since drugs obtained from opium are incomparably more used in medical practice than cocaine, which has only very limited medical uses and has largely been replaced by synthetic substances, countries producing opium in important amounts may for the purposes of paragraph 3 have generally to be preferred to countries producing coca leaves.

9. The application of the rule concerning manufacturing, producing and consuming countries should have the effect of ensuring that the Board has collectively a knowledge of the economic and administrative drug problems peculiar to each of the three categories of countries mentioned in paragraph 3.

10. The requirement that a Board member should be “connected” with a country belonging to one of the three groups does not necessarily mean that he must have the nationality of the country concerned, although this will generally be the case. His connexion, by residence and experience in drug control or economy, should, however, be so close as to justify the expectation that he would be thoroughly familiar with the drug situation in the country concerned.

⁵ *Records*, vol. II, p. 214.

Article 10
TERMS OF OFFICE AND REMUNERATION OF MEMBERS
OF THE BOARD

Paragraphs 1 and 2

- 1. The members of the Board shall serve for a period of three years, and shall be eligible for re-election.**
- 2. The term of office of each member of the Board shall end on the eve of the first meeting of the Board which his successor shall be entitled to attend.**

Commentary

1. The members of the former Permanent Central Board were appointed for a term of five years.¹ The same period was foreseen for membership on the International Narcotics Control Board,² in the Third Draft, which the Plenipotentiary Conference used as working document. A long term of office is often considered to be an important factor in strengthening the independence of office holders, particularly of those who perform judicial functions; but in 1961 when the Plenipotentiary Conference adopted the Single Convention, an accelerating process of emancipation of dependent peoples had already commenced. The Conference found it advisable to reduce the term of office of the members of the new Board from five to three years in order to facilitate the election of nationals of newly independent States to membership.³ The Single Convention does not impose any restrictions on the re-election of members of the International Narcotics Control Board, and in this respect follows the rule of the 1925 Convention regarding the old Permanent Central Board.¹ Experience in the often highly technical work of the International Narcotics Control Board generally adds to the competence of a candidate.

2. It is essential for the effective operation of the international narcotics régime that the Board should always be capable of speedy action; for example, if a country submits to the Board a supplementary estimate of its narcotics requirements in order to increase the quantities of drugs which it is authorized to import under the terms of the Single Convention, failure of the Board to consider such an estimate expeditiously may unduly delay the importation of medicines which may be urgently needed.⁴ If the need for such urgent action

¹ Article 19, seventh para. of the unamended text and sixth para. of the text as amended by the 1946 Protocol; the terms of office of each member of the (Drug) Supervisory Body, the other predecessor organ of the International Narcotics Control Board was in each case determined by the Organization appointing him.

² E/CN.7/AC.3/9, article 14, para. 1, *Records*, vol. II, p. 6.

³ *Records*, vol. I, p. 94 and vol. II, p. 233.

⁴ Article 12, para. 5, article 19, para. 3, article 21, para. 1 and article 31, para. 1, subpara. (b); see also article 21, para. 4, subpara. (b), clause (i); see also above comments on article 9, para. 2.

arises at a moment at which the members of the Board have been newly elected but have not yet met, it might be very difficult to convoke a session of members living in different parts of the world with sufficient speed. Therefore in such circumstances it would be desirable to obtain a decision by airmail correspondence or by cable; but it might be very difficult or even impossible to obtain in such a situation a well-considered decision by air correspondence or cable from members who might not even know each other. Paragraph 2 of article 10 is designed to deal with this difficulty. To explain its practical application, an example may be given. At its 1677th meeting, on 14 May 1970, the Council elected eleven members of the International Narcotics Control Board for a term of office of three years beginning on 2 March 1971.⁵ If on 15 March 1971 urgent action was needed, and the Board consisting of the members elected in May 1970 and beginning their three-year term on 2 March 1971 had not yet met for its first meeting, the members of the preceding Board, elected for a term of office of three years beginning on 2 March 1968,⁶ rather than the new members, would have to take the required decision by cable or airmail. This Board in its old membership, though it would not be entitled to meet after 1 March 1971, would be able to take decisions by mail or telecommunications after that date, that is, until the eve of the first meeting of the new Board.

3. Difficulties will arise in applying paragraph 2 if a person leaves the Board before the expiration of his term of office, and is replaced by a new member elected for the remainder of the term of the former in accordance with article 10, paragraph 5. It is submitted that paragraph 2 should not be applied to situations governed by paragraphs 3 or 4; nor could it be applied to a vacancy due to death. Paragraph 2 could be applied to a voluntarily resigning member only if he agrees to make his resignation effective on the eve of the first meeting which his successor would be entitled to attend.

4. The question arises what should be done in all these cases to which paragraph 2 is not applicable. Should the newly elected member, who under the terms of his election by the Council would already be entitled to participate in the meetings of the Board, be consulted by mail or cable even before the first meeting which he has a right to attend, or should the decision be taken only by the other members? Paragraph 5 of article 10 stipulates that the vacancy be filled for the "remainder of the term" of the member who is to be replaced. Such remainder must be assumed to commence, in all cases to which paragraph 2 does not apply, with the termination of the term of office of the preceding member who on account of his death, his resignation not timed to take effect on the eve of the first meeting which his successor is entitled to attend, or by the operation of paragraphs 2 and 3, ceases to belong to the Board. It is suggested that it would be useful if the Council in its decision filling a vacancy in such a case, would indicate that the newly elected member is entitled to function immediately, and not only from the first meeting of the Board in which he has the right to take part.

⁵ *Official Records of the Economic and Social Council. Resumed Forty-eighth Session, Supplement No. 1A*, p. 24.

⁶ This election took place on 31 May 1967, at the Council's 1472nd meeting; *Ibid.*, *Forty-second Session. Supplement No. 1 (E/4393)*, p. 29.

Paragraphs 3 and 4

3. A member of the Board who has failed to attend three consecutive sessions shall be deemed to have resigned.

4. The Council, on the recommendation of the Board, may dismiss a member of the Board who has ceased to fulfil the conditions required for membership by paragraph 2 of article 9. Such recommendation shall be made by an affirmative vote of eight members of the Board.

Commentary

1. The provision of paragraph 3 is not in the nature of a penal sanction imposed on office holders who neglect their duties as members of the Board. It is rather intended to facilitate the proper functioning of the Board. It appears to be highly desirable that all members, and in any event as many members of the Board as possible, participate in its meetings in order to ensure that its actual composition reflects the balance of technical competence, of equitable geographic representation and of familiarity with the varying drug situations in different types of countries required for the Board under the terms of article 9. It is also necessary to avoid a situation in which the Board is incapable of taking any action because of lack of a quorum,¹ or in which, due to insufficient attendance, it cannot adopt those decisions which require a two-thirds majority.²

2. Paragraph 3 must be applied no matter how justified may be the reasons for a member's failure to attend three consecutive sessions. Failure to attend *three* consecutive sessions is required under paragraph 3. Presence, however short, at every third session would prevent the loss of membership.

3. The Secretary-General must, without any undue delay inform the Council of any vacancy caused by the operation of paragraph 3 in order to enable the Council to fill the vacancy "as soon as possible" as required by article 10, paragraph 5. He should, at the same time, request Governments or the WHO, as the case may be,³ to nominate candidates for the vacancy. He should also include the election of the new member in the provisional agenda of the earliest session or resumed session of the Council which he can in due time inform of the nominations received.

4. A member of the Board may be dismissed under paragraph 4 whatever the reasons for his ceasing to fulfil the conditions for membership under article 9, and whether or not he is personally responsible for those reasons. If he does not promptly resign, he may be dismissed not only if he accepts a position or commences to engage in any activity which is liable to impair his impartiality, but also if he commits any offence, or performs any other act not subject to penal law, which would undermine the general confidence which he must command. If a member's mental or physical capacity deteriorates so that his ability to perform efficiently the functions of his office is affected, he

¹ Article 11, para. 3.

² Article 14, para. 6; see also article 10, para. 4.

³ See above comments on article 9, para. 1 and below comments on article 10, para. 5.

obviously ceases to possess the competence required for membership on the Board under article 9, and if he does not resign he may be dismissed pursuant to article 10, paragraph 4.

5. The question arises whether a member may be dismissed if he changes his nationality or becomes stateless. It is suggested that paragraph 4 generally does not apply to such a situation unless the equitable geographic representation required by article 9, paragraph 3 for the composition of the Board is thereby seriously affected. This may in particular be the case if the member changing his nationality acquires the nationality of another member of the Board. The majority of eight affirmative votes required for a recommendation of the Board to dismiss a member amounts to “a two-thirds majority of the whole number of the Board”, that is, to the same majority as that which is required for the Board’s decisions in regard to the measures which it may take under article 14 “to ensure the execution of provisions of the [Single] Convention”.⁴

6. The Secretary-General must without any delay notify the Council of the Board’s recommendation in order to enable the Council to take quick action and, if it concurs with the Board, to proceed with filling the vacancy “as soon as possible”.⁵ The Council decides on the Board’s recommendation by a (simple) majority of its members present and voting.⁶

⁴ As regards the majority required for a decision of the Board to delegate its powers to one or several of its members (Committee) or to a member of the Secretariat, see below, comments on article 11, para 3.

⁵ Article 10, para. 5.

⁶ Article 67, para. 2 of the Charter of the United Nations.

Paragraph 5

5. Where a vacancy occurs on the Board during the term of office of a member, the Council shall fill such vacancy as soon as possible and in accordance with the applicable provisions of article 9, by electing another member for the remainder of the term.

Commentary

1. The subordinate clause at the beginning of the English text is perhaps not very fortunately formulated. There can however be no doubt that the words “where a vacancy occurs on the Board during the term of office of a member” are intended to mean “where a seat on the Board becomes vacant during the term of office of the member holding it”. The French and Spanish versions of this subordinate clause corroborate this understanding. The French text reads: “*Lorsque le siège d’un membre de l’Organe devient vacant au cours du mandat de son titulaire*”. The Spanish version reads: “*Cuando durante el mandato de un miembro de la Junta quede vacante su cargo*”.

2. The Secretary-General should take all measures to enable the Council to fill the vacancy “as soon as possible”. He should therefore without any undue delay invite the countries mentioned in article 9, paragraph 1, subparagraph (b) to nominate candidates if the seat of a government nominee has become vacant, or the WHO to make nominations if the seat belonged to a

nominee of that Organization. The World Health Organization should name at least two candidates. The Secretary-General should also immediately inform the Council of the occurrence of a vacancy, and should place the election of the new member on the provisional agenda of the earliest session or resumed session of the Council which he can in due time inform of the nominations which he has received.¹

3. As to the beginning of the exercise of membership functions by the person filling the vacancy, see above, comments on article 10, paragraphs 1 and 2.

¹ As regards the procedure for filling vacancies, see also above, comments on article 9, para. 1.

Paragraph 6

6. The members of the Board shall receive an adequate remuneration as determined by the General Assembly.

Commentary

1. The English phrase “adequate remuneration as determined by the General Assembly” is rendered in the French version by the words: “*une rémunération appropriée dont le montant est fixé par l’Assemblée générale*”, and in the Spanish version by the words: “*una remuneración adecuada que fijará la Asamblea General*”. It must be assumed that the meaning of the French and Spanish texts is the same as that of the English text. There cannot be any doubt that the General Assembly may determine not only the amount of the remuneration, but also the other conditions of its payment. General Assembly resolution 2368 (XXII) paragraph 2 implemented paragraph 6¹ of article 10. It refers to the “remuneration” as “honorarium”.

2. The members of the former Permanent Central Board had no *express treaty right* to any remuneration.²

3. The Third Draft, which was used as working document by the Plenipotentiary Conference, contains a provision,³ formulated in general terms,⁴ which would have conferred upon the members of the Board “such

¹ See also para. 21 of the annex to Economic and Social Council resolution 1196 (XLII).

² During the period of the League of Nations, the members of the Permanent Central Board never received any remuneration, but only expense allowances; see *United Nations Bulletin on Narcotic Drugs*, vol. II, No. 1 (January 1950), p. 69. The authors of the 1925 Convention, which established that Board, seem, however, to have envisaged that the members of the Permanent Central Board would be remunerated at a high rate to attract persons of high qualifications; see report of Sub-Committee A of the Second Geneva Opium Conference, *Records of the Second Opium Conference*, Geneva, Nov. 17, 1924–February 19, 1925, League of Nations, document C.760.M.260. 1924.XI, vol. 1, p. 471 and vol. 2, p. 139. The General Assembly of the United Nations, by its resolution 875 (IX) of 4 December 1954 (para. (c)), decided to pay honoraria to the members of the Permanent Central Board and Supervisory Body; see also Economic and Social Council resolution 123 D (VI).

³ Document E/CN.7/AC.9, article 15, para. 1; *Records*, vol. II, p. 6.

⁴ Patterned after article 105, para. 2 of the Charter of the United Nations.

privileges and immunities as are necessary for the independent exercise of their functions” under the Single Convention. The Conference was informed⁵ that the Office of Legal Affairs of the United Nations Secretariat held that such a provision was unnecessary since the members of the International Narcotics Control Board would be regarded as experts performing missions for the United Nations, and would consequently enjoy the advantages of article VI of the General Convention of 13 February 1946 on the Privileges and Immunities of the United Nations.⁶

4. Article VI of the Convention reads as follows:

“Article VI—Experts on Missions for the United Nations

“Section 22. Experts (other than officials coming within the scope of article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

“(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

“(b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

“(c) Inviolability for all papers and documents;

“(d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

“(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

“(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

“Section 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.”

5. If it should be held that the right of the Secretary-General under section 23 to waive the immunities of a member of the Board might not be fully compatible with that organ’s technical independence, the Council could, if it so desires, after having consulted the Board, invite the Secretary-General under article 9, paragraph 2, last sentence of the Single Convention, to grant such a waiver only with the consent of a majority of the Board members. This agreement could be obtained by mail or telecommunication if necessary.

⁵ Document E/Conf.34/1, p. 61; the Legal Adviser of the Conference also presented this view to the *Ad Hoc* Committee on articles 7, 10, 11, 13-16, 19 and 23 of the Third Draft; *Records*, vol. II, p. 225 and to the Plenary, *Records*, vol. I, p. 96.

⁶ *United Nations Treaty Series*, vol. I, p. 15; article VI is headed: “Experts on missions for the United Nations”.

6. Resolution 1196 (XLII) (operative paragraph 5) of the Council invites Governments “to extend to the members of the International Narcotics Control Board privileges and immunities along the lines laid down in the Convention on the Privileges and Immunities of the United Nations as approved by the General Assembly on 13 February 1946”.

7. The Council had similarly in its resolution 123 E (VI), recommended that Governments should extend to the members of the Permanent Central Board “privileges and immunities on the lines laid down in the Convention on Privileges and Immunities as approved by the General Assembly on 13 February 1946”.

Article 11

RULES OF PROCEDURE OF THE BOARD

Paragraph 1

- 1. The Board shall elect its own President and such other officers as it may consider necessary and shall adopt its rules of procedure.**

Commentary

1. It may be mentioned here that the Rules of Procedure of the Functional Commissions of the Economic and Social Council are adopted by that Council.¹ These rules are also applied by the Commission on Narcotic Drugs, which is one of the functional Commissions.²

2. It was the understanding of the Plenipotentiary Conference that the phrase "other officers" included only vice-presidents and rapporteurs, and did not cover such persons as a secretary or treasurer.³

3. Several procedural practices of the International Narcotics Control Board, which follow the practices of its predecessor, the Permanent Central Board, may be indicated. Its meetings are held in private, but a representative of the Secretary-General of the United Nations and a representative of the World Health Organization can normally participate fully in its discussions. States are sometimes invited to send representatives to meetings of the Board at which questions of particular concern to them are considered. Any State must be so invited to a meeting at which a question directly interesting it is discussed in the course of the Board's consideration of measures to be taken under article 14 to ensure the execution of provisions of the Single Convention.⁴

4. At occasional meetings of the Board, called "confidential", only its members may be present. This practice has been taken over by the International Narcotics Control Board from the former Permanent Central Board. It has never met any objections from the excluded representatives. Article 11, paragraph 1 corresponds to a similar provision of article 19⁵ of the 1925 Convention concerning the Permanent Central Board.

5. For a few other procedural questions, see below, article 11, paragraph 3.

¹ See resolutions 100 (V), 289 (X), 481 (XV), 1231 (XLII) and 1393 (XLVI) of the Economic and Social Council; decisions taken by the Council on 2 August 1968 (1561st meeting), on 3 June 1969 (1596th meeting) and on 17 November 1969 (1647th meeting); and Article 68 of the Charter of the United Nations.

² See above, comments on article 7.

³ *Records*, vol. II, pp. 276, 226, 227 and 228, vol. I, p. 144.

⁴ Article 14, para. 5 of the Single Convention; see also the corresponding provision of article 24, para. 7 of the 1925 Convention relating to the procedure of the former Permanent Central Board.

⁵ Para. 8 of the unamended text and para. 7 of article 19 as amended by the 1946 Protocol.

Paragraph 2

2. The Board shall meet as often as, in its opinion, may be necessary for the proper discharge of its functions, but shall hold at least two sessions in each calendar year.

Commentary

1. The authors of the Single Convention assumed that the administration of the Single Convention's estimate system,¹ which is intended to limit the world narcotics supplies and those of each individual country and territory to the quantities needed for medical and scientific purposes, required a minimum of two annual sessions of the International Narcotics Control Board. They drew that conclusion from the long experience of the Permanent Central Board and Drug Supervisory Body, the two predecessors of the International Narcotics Control Board, which were responsible for the administration of the basically similar estimate system of the narcotics régime preceding the Single Convention. The inclusion in the Single Convention of the mandatory requirement of two annual sessions should relieve the International Narcotics Control Board from the annual burden of justifying, and the budget organs of the United Nations (the Secretary-General, the Advisory Committee on Administrative and Budgetary Questions and the General Assembly and its Fifth Committee) from the need for examining, the necessity of these two sessions.

2. It appears that the Board's technical independence requires it to have the right to convene as often as it considers necessary. To assure this right, it seems to be necessary that the Board be given some measure of budgetary discretion,² of course within limits set by the General Assembly each year.³ Adequate budgetary principles to be applied to the Board's annual budget are a proper subject for the administrative arrangements which the Council must make, in consultation with the Board under article 9, paragraph 2, to ensure the Board's full technical independence.⁴

3. If the Board decides to convene a session for which the General Assembly has not made the necessary budgetary provisions, the cost should be considered an urgent matter, and it should be financed from contingency funds.

¹ Articles 12, 13, 19, 20, 21 and 31, para. 1, subpara. (b) of the Single Convention; see also article 49, paras. 3 and 4.

² See above comments on article 9, para. 2.

³ Article 6.

⁴ The administrative arrangements, at present in force under this provision, contain such budgetary principles; see Economic and Social Council resolution 1196 (XLII), annex; see also comments on article 9, para. 2.

Paragraph 3

3. The quorum necessary at meetings of the Board shall consist of seven members.

Commentary

1. The question arises whether a quorum of seven members is sufficient for the consideration of matters whose decision requires an affirmative vote of eight members, that is, for the discussion of a recommendation to dismiss a member under article 10, paragraph 4, or of measures to ensure the execution of provisions of the Convention pursuant to article 14.¹ The text of these provisions permits the conclusion that the discussion can be held with the presence of at least seven members, provided of course that at the time at which the vote is taken at least eight members attend the meeting, and that the recommendation under article 10, paragraph 4 or the decision under article 14 is adopted by the required majority of eight affirmative votes.

2. The two provisions just mentioned are the only rules of the Single Convention establishing the majority by which the Board can decide the questions concerned. The wording of these two rules is very different, but the meaning is exactly the same. Article 10, paragraph 4 stipulates that a recommendation to dismiss a member of the Board requires “an affirmative vote of eight members of the Board”. Article 14, paragraph 6 provides that decisions under this article shall be taken “by a two-thirds majority of the whole number of the Board”; but the number of members being eleven,² “a two-thirds majority of the whole number of the Board” equals “an affirmative vote of eight members of the Board”.

3. The Single Convention contains no other provision concerning the majority required for decisions of the Board. The rules of procedure which the Board is required to adopt under article 11, paragraph 1 can therefore regulate the majority needed for all questions other than those referred to in articles 10, paragraph 4, and 14. These rules can provide—if the Board so desires—that all or certain classes of such questions can be decided by a simple majority of the members present and voting. Abstaining members may be considered as not voting. Decisions could thus in such cases be adopted even by such a vote as two in favour, one against and 4 abstentions, provided always that a minimum of seven members are present at the moment at which the vote is taken.

4. For provisions of earlier treaties regarding the quorum and voting of the former Permanent Central Board, see the last two paragraphs of article 19 of the 1925 Convention and article 12, paragraph 4, subparagraph (a) of the 1953 Protocol.³

¹ For the voting requirement, see para. 6.

² Article 9, para. 1, introductory sub-paragraph.

³ Article 19 provided that at meetings of the Permanent Central Board (consisting of 8 members), four should form a quorum, and that decisions of the Board on matters regulated in articles 24 and 26 of the 1925 Convention should be taken by an absolute majority of the whole number of the Board. Article 12, para. 4 of the 1953 Protocol provided for the same majority for decisions under that article. Articles 24 and 26 of the 1925 Convention and article 12 of the 1953 Protocol provide for measures to ensure

5. The Third Draft,⁴ which was used as working document by the Plenipotentiary Conference, contains a provision⁵ which would have expressly authorized the Board to delegate its powers, other than those provided in the present article 14 of the Single Convention, to one or more of its members, and, in appropriate cases, to its Secretary. This provision was deleted.⁶ The members of the Conference taking this action did it for different, and sometimes very contradictory, reasons. Some found the provision unnecessary, and did not wish to restrict unduly the freedom of action of the Board in the matter, while others wanted to limit its authority to delegate its functions.⁷ The Single Convention consequently does not contain any provision regarding delegation of powers of the Board, following in this respect the provisions of the earlier treaties regarding the former Permanent Central Board and Drug Supervisory Body.

6. It is, however, submitted that the Board, for the effective and economic performance of its tasks, needs authority to delegate some of its functions to one or several of its members, and even to its secretariat. Both of its predecessors, the former Permanent Central Board and the Drug Supervisory Body, which together carried out nearly the same tasks as the present International Narcotics Control Board, used to delegate some of their functions, in particular to their Secretary,⁸ although they had no express treaty authority to do so. The International Narcotics Control Board, like its predecessors, is not permanently in session. It meets ordinarily only for two annual sessions, but may have to act at any time, often very urgently, throughout the year. Governments may, by furnishing to the International Narcotics Control Board supplementary estimates of their drug requirements, acquire the right to import some drugs or increased quantities of drugs for which no provision was made in their original annual estimates.⁹ They may do this at any time of year.¹⁰ The Board is required to act on such supplementary estimates “as expeditiously as possible”¹¹ in order to avoid a delay in the importation of needed medicines. When it is not in session, it must often vote by mail or telegraph to

the execution of treaty provisions, generally very similar to the measures provided in article 14 of the Single Convention. There are no other treaty provisions on majority requirements for decisions of the former Permanent Central Board. There are no treaty provisions concerning the majority needed for decisions of the Drug Supervisory Body, the other predecessor organ of the present International Narcotics Control Board.

⁴ Document E/CN.7/AC.3/9, *Records*, vol. II, p. 2.

⁵ Article 17, *Records*, vol. II, p. 6.

⁶ *Records*, vol. I, p. 97.

⁷ *Ibid.*, pp. 91-97.

⁸ Their joint Secretary was on a permanent basis authorized to impose the “automatic embargo” provided in article 14, para. 2 of the 1931 Convention and article 8, para. 11 of the 1953 Protocol, and could act on behalf of the Supervisory Body in respect to supplementary estimates under article 5, paras. 6 and 8 of the 1931 Convention and under article 8, para. 6 of the 1953 Protocol concerning very small quantities of drugs.

⁹ Article 19, para. 3, article 21, para. 1 and article 31, para. 1, subpara. (b); see also article 21, para. 4, subpara. (b), clause (i).

¹⁰ Article 19, para. 3.

¹¹ Article 12, para. 5.

prevent such a situation, but consultation by such means of eleven members residing in different parts of the globe would often be too time-consuming. The Board has therefore delegated to a Committee, comprising only a part of its members, the task of examining supplementary estimates of drug requirements. If the supplementary estimates involve only very minor and obviously justified quantities, e.g. a few grammes of codeine, it would clearly be highly uneconomical to carry out a complicated procedure of consultation by mail or telegraph. The Board has therefore authorized its Secretary to approve (but not to amend) such minor supplementary estimates.

7. Action by the Board to order the discontinuation of the export of drugs to a country or territory which has exceeded its import limits under the terms of the Single Convention¹² is based on the quarterly statistical reports which the Board receives.¹³ It is considered to be urgent to prevent an accumulation of excessive quantities of drugs above the maximum limits prescribed by the Single Convention. The Board, however, meets normally only twice a year. If a vote of the members were to be taken on such an order by correspondence or telegraph, the excessive imports could continue during the time of the voting procedure. The Board has therefore authorized its Secretary to issue such orders in its name.¹⁴ It can do so since the determination of the conditions of such an order involves only a purely mathematical computation.

8. It is not necessary to deal in this context with the general legal problem of delegation of powers by an international organ to a committee consisting of less than the full number of its members; but it is submitted that in any event there cannot be any objection to the Board delegating such of its powers as it finds necessary to one of its members, to a committee or even to its Secretary, so long as such delegation has the continued unanimous consent of the Board. Such a committee may be composed of less than seven members of the Board.¹⁵ It is, however, evident that the Board cannot delegate its authority under article 10, paragraph 4, and under article 14.

¹² Article 21, para. 4.

¹³ Article 20, para. 1, subpara. (d) and para. 2, subpara. (b).

¹⁴ As regards the same authority of the Secretary of the former Permanent Central Board, see above, foot-note 8.

¹⁵ The quorum stated in article 11, para. 3.

Article 12

ADMINISTRATION OF THE ESTIMATE SYSTEM

General comments

1. The estimate system is used for determining the maximum quantities of narcotic drugs which each country or territory may under the Single Convention obtain by manufacture or import or both. It is provided for in articles 12, 19 and 21 and in article 31, paragraph 1, subparagraph (b).¹ It is supplemented by a system of statistical returns by which the Board and each Government can establish whether these supply limits have been exceeded by a particular country or territory. Provision for statistics is made in articles 13 and 20.²

2. The estimate system of the Single Convention is basically the same as that of the narcotics régime preceding that treaty.³ It differs from the earlier provisions mainly by the inclusion of coca leaves and cannabis drugs (cannabis, cannabis resin, extracts and tinctures of cannabis).⁴ It also did not take over the provision of the 1953 Protocol concerning the estimates of the area to be cultivated of the opium poppy for the production of opium, and of the expected opium harvest.⁵

¹ See also article 27, para. 2 and the supplementary transitional provisions of article 49, paras. 3 and 4.

² See also article 2, para. 9, subpara. (b), article 27, para. 2 and article 49, paras. 3 and 4.

³ Articles 2 to 9, article 12, para. 2 and article 14 of the 1931 Convention, article 22 of the 1925 Convention, article 13 of the 1931 Convention, articles 1 and 2 of the 1948 Protocol and articles 8 and 9 of the 1953 Protocol; see also article 21 of the 1925 Convention.

⁴ The estimate system was extended to opium requirements by the 1953 Protocol.

⁵ Article 8, para. 3 of the 1953 Protocol.

Paragraph 1

1. **The Board shall fix the date or dates by which, and the manner in which, the estimates as provided in article 19 shall be furnished and shall prescribe the forms therefor.**

Commentary

1. The Board may fix different dates for different drugs. However at the time of this writing, it has fixed a single date for all estimates of drug requirements to be furnished under the Single Convention, namely 1 August of the year preceding that to which they refer.¹ The date that the

¹ Form B/S (6th edition, March 1970), p. 3 of the International Narcotics Control Board. The Board has fixed as date for the annual estimates of opium production to be furnished under article 8, para. 3 of the 1953 Protocol, 30 June of the year preceding

Board may determine need not be the date of dispatch, but may be the date by which the estimates must reach the Board. The Board has in fact prescribed that 1 August should be the date of receipt of the estimates. The Board may change the dates which it has fixed pursuant to this paragraph. If it takes such action, it should do so in time to enable Governments to make the required adjustments in their procedures for the establishment of the estimates without undue administrative difficulties.

2. The Board may determine the "manner" in which the estimates must be furnished. It requires that the estimates should be prepared on the forms which it furnishes to Governments.² It may give detailed instructions regarding the completion of these forms.³ It may also prescribe the way by which the estimates should be sent, e.g. that estimates which are not handed over to the secretariat of the Board by members of delegations or by messengers should be sent by registered air mail.

3. The Board should furnish Governments in time with a sufficient number of copies of the form or forms whose use it requires in order to enable them to comply with the time-limit which it has fixed. Governments should inform the secretariat of the Board of the number of copies which they need.

4. Not only the annual estimates, but also the supplementary estimates,⁴ must be furnished on forms which have been prepared by the Board and whose use it prescribes. Governments should therefore keep a reserve stock of such forms.

5. The commentary to the 1931 Convention states in its observations on the provision of that treaty corresponding to article 12, paragraph 1, of the Single Convention that "an estimate which is not furnished on the prescribed form and which does not contain the particulars required by that form is not, strictly speaking, an estimate in the sense of the Convention".⁵ For provisions of earlier treaties corresponding to article 12, paragraph 1, of the

that to which they refer; see form B/4 of the International Narcotics Control Board. Under article 8, para. 4, subpara. (b) of the 1953 Protocol in connexion with article 45, para. 2 of the Single Convention the Board has authority to fix the date by which the estimates of opium requirements and those of opium production must reach the Board. The Board continues to request under this Protocol estimates of opium production but not those of opium requirements. The Single Convention does not provide for estimates of opium production; it requires Parties to furnish estimates of opium requirements as of other drugs. The former Permanent Central Board had no authority to determine the date by which the estimates of drug requirements under the 1931 Convention had to be furnished. This Convention itself fixed 1 August of the year preceding that to which the estimates referred as date by which the estimates had to reach that organ; see article 5, para. 4 of the 1931 Convention. The International Narcotics Control Board, performing the functions of the former Permanent Central Board under the 1931 Convention, is bound by this provision in respect to estimates furnished under this Convention; see also form E/S of the International Narcotics Control Board for the "Annual estimates of requirements of narcotics drugs for other than medical or scientific purposes" to be furnished under article 49, para. 3, subpara. (b) of the Single Convention.

² Article 19, para. 1, introductory paragraph.

³ See the "instructions" on form B/S referred to in foot-note 1.

⁴ Article 19, para. 3; see also article 12, paras. 4 and 5.

⁵ *Commentary*, para. 41, p. 74.

Single Convention, see article 5, paragraph 1, of the 1931 Convention and article 8, paragraph 4 of the 1953 Protocol.

6. For more details of implementation of article 12, paragraph 1 by the Board, see its form B/S (6th edition, March 1970).

Paragraph 2

2. The Board shall, in respect of countries and territories to which this Convention does not apply, request the Governments concerned to furnish estimates in accordance with the provisions of this Convention.

Commentary

1. It is the purpose of the estimate system to limit the narcotics supplies of each country and territory to the quantities which it needs for its medical and scientific use, for the maintenance of adequate¹ stocks, and for legitimate exports, and thus to eliminate to the greatest extent possible the danger that persons engaged in the legal drug trade may divert surplus quantities into illicit channels. In order to be fully effective, this system of national and territorial limitation must be supplemented by a world-wide limitation of narcotics supplies to legitimate requirements.² The estimates of the drug requirements of each country and territory must be viewed by the Board in the light of the requirements of other countries and territories, and indeed of the world as a whole. The Commentary on the 1931 Convention calls the estimate system of that treaty, which is basically the same as that of the Single Convention, "a planned economy on a world scale".³ It may be added that this "planned economy" is based essentially on voluntary co-operation of Governments, fortified by such powers of persuasion as may be applied by suggestions, observations and critical remarks of the Board concerning the estimates of Governments which it is called upon to examine.⁴ There is at present in fact no significant diversion of drugs under the international narcotics régime from legal manufacture and wholesale trade into illicit channels.

2. The need for universal application of the estimate system explains why the Single Convention requires the Board to request the Governments of countries and territories to which it does not apply to furnish estimates in accordance with its provisions. Such a country and territory has also an interest in complying with this request, because the Board may otherwise establish the estimates of its drug requirements,⁵ and thus the upper limits of its drug imports.⁶ Parties to the Single Convention will not export to the country or territory concerned quantities of drugs exceeding these limits.⁷ While the country or territory in question may, by furnishing supplementary

¹ Article 29, para. 3 and article 30, para. 2, subpara. (a) of the Single Convention.

² *Commentary* on the 1931 Convention, para. 24, p. 53 and para. 30, p. 61.

³ *Ibid.*, para. 24, p. 54.

⁴ Article 12, paras. 4-6 and article 15.

⁵ Article 12, para. 3.

⁶ Article 21, para. 1.

⁷ Article 31, para. 1, subpara. (b) and article 21, para. 4.

estimates,⁸ modify the estimates originally established by the Board and thus increase the quantities which it may import, the need for taking such action may delay its acquisition of medicines which it may urgently need.

3. The Board must request that the estimates be furnished “in accordance with the provisions of this Convention”, i.e. that they be sent by the date which it has fixed, be furnished in the manner and on the form or forms which it has prescribed therefor,⁹ and contain the data which article 19 requires.¹⁰

4. The term “country” as used in paragraph 2 means a State as a whole, and the term “territory” means any part of a State “treated as separate entity for the application of the system of import certificates and export authorizations provided for in article 31”.¹¹ A State which has not become a Party pursuant to articles 40 and 41 (or in accordance with generally recognized rules of state succession) is thus a “country” “to which this Convention does not apply”. A “territory”¹² to which the paragraph under consideration applies is one which is either identical with a “territory” in the sense of article 42, or a part of such a “territory” to which a State is not required to apply the Single Convention either because it is not a Party or because it is not bound to do so under the terms of article 42.¹³

5. The Board should each year address to the Governments concerned the request to furnish estimates. It should send a reminder to each Government which fails to comply with this request in time.

6. For provisions of earlier treaties corresponding to paragraph 2 of article 12, see article 2, paragraph 3 of the 1931 Convention and article 8, paragraph 8 of the 1953 Protocol.

⁸ Article 19, para. 3, and article 12, paras. 4 and 5.

⁹ Article 12, para. 1.

¹⁰ See also *Commentary* on the 1931 Convention, para. 33, p. 63.

¹¹ Article 1, para. 1, subpara. (y); see above, comments on this subpara. The effect of article 12, para. 2 would, however, not be changed if the word “country” were understood in the sense of “metropolitan country”, i.e. of a “territory” in which the seat of the central national Government is located.

¹² I.e. within the meaning of article 1, para. 1, subpara. (y).

¹³ See below, comments on that article, see also above, comments on article 1, para. 1, subpara. (y).

Paragraph 3

3. If any State fails to furnish estimates in respect of any of its territories by the date specified, the Board shall, as far as possible, establish the estimates. The Board in establishing such estimates shall to the extent practicable, do so in co-operation with the Government concerned.

Commentary

1. The Board is required under paragraph 3 to establish estimates for:

(i) Any State, whether a Party to the Single Convention or not, which has failed to furnish its estimates in time and which is not divided into separate

entities for the application of the system of import certificates and export authorizations, i.e. into territories in the sense of article 1, paragraph 1, subparagraph (y);¹

(ii) Any “territory” in the sense of that subparagraph for which the Government concerned has failed to furnish estimates in time, whether or not that territory belongs to a Party to the Single Convention, and whether or not it is identical with, or a part of, a “non-metropolitan territory” within the meaning of article 42 to which the Party concerned is not required to apply the Convention, in accordance with article 42.²

2. The Board is required to establish estimates under paragraph 3 only “as far as possible”. The same qualifying phrase was used by the 1931 Convention in reference to the obligation of the Drug Supervisory Body—which preceded the International Narcotics Control Board in this matter—to establish estimates for countries or territories for which the Governments concerned had failed to furnish them in accordance with that Convention.³ It was intended to relieve the Drug Supervisory Body from the obligation to establish estimates under the 1931 Convention in cases in which it was unable to do so on account of technical considerations. The Supervisory Body, however, found it possible to establish estimates in practically all cases in which they had not been furnished by the Governments in question, with the exception of that part of the estimates which related to stocks.⁴

3. The Single Convention uses the same phrase as the 1931 Convention, likewise for the purpose of relieving the International Narcotics Control Board from the obligation to establish estimates if it is unable to do so for technical reasons. The present Board has, however, at its disposal an extensive amount of data concerning the drug requirements of practically all countries and territories in the world, and in any event much more relevant data than the Drug Supervisory Body had when it commenced its work after the 1931 Convention came into force in 1933. The Board will therefore only very rarely find it impossible to establish adequate estimates of the narcotics requirements of any particular country or territory, and especially estimates of the quantities of drugs needed for medical consumption.⁵ However—as the Supervisory Body also found—the Board may still find it sometimes difficult to establish satisfactory estimates of the narcotics stocks which a particular territory should hold on December 31 of the year to which the estimates refer. It will therefore not infrequently refrain from establishing stock estimates.

4. When computing the estimates, the Board will of course be guided by the interests of public health in the country or territory concerned. It will ensure that the estimates which it establishes enable the country or territory

¹ For the meaning of the term “territory” as including, in article 12, para. 3, such undivided States, see above, comments on article 1, para. 1, subpara. (y).

² See below comments on article 42.

³ Article 2, paras. 2 and 3 of the 1931 Convention; article 8, para. 9 of the 1953 Protocol uses the phrase “as far as practicable” when limiting similarly the obligation of the Drug Supervisory Body to establish opium estimates.

⁴ *Commentary* on the 1931 Convention, paras. 30 and 31, pp. 62 and 63; see article 5, para. 2, first subpara., clauses (c) and (d) and second subpara. of the 1931 Convention; see also article 19, para. 1, subparas. (c) and (d) of the Single Convention.

⁵ Article 19, para. 1, subpara. (a).

involved to import sufficient quantities of drugs for its medical needs.⁶ The Board will be guided by the same considerations as the Government in question would be if it had prepared its own estimates.

5. The Board bases its computation on such data as past consumption figures and the quantities of stocks held in preceding years. It also takes into account any exports which the country or territory involved may have effected in recent times. The growth rate of drug consumption indicated by the statistical figures is also a relevant factor. In computing the estimates of the stocks, the Board pays attention to the geographic location of the territory concerned and to the means of transportation which connect it with its normal sources of supply. The Board also includes in its calculation of the estimates a safety margin to allow for possible fluctuations in demand.

6. The Board will, however, never establish estimates of the quantities of drugs necessary for addition to "special stocks",⁷ i.e. to stocks held for special Government purposes, in particular for the needs of the armed forces, and to meet exceptional circumstances such as large-scale epidemics and major earthquakes.⁸ It not only appears to be precluded from taking such action by the purposes of the provisions of the Single Convention concerning "special stocks",⁹ but would also be unable to compute appropriate figures.

7. The Board is required to establish the estimates under paragraph 3 "to the extent practicable" "in co-operation with the Government concerned". It is the practice of the Board to send through its secretariat reminders to those Governments which have failed to furnish their estimates in time. It customarily establishes the estimates under paragraph 3 at the same session at which it examines the annual estimates¹⁰ of those Governments which have furnished them in compliance with their treaty obligation or with the Board's request.¹¹ It would generally hardly be practicable for the Board to seek at this session the co-operation of a Government which, despite a reminder, has failed to supply its estimates by that time. There is not enough time for such action during the session at which the Board must review the drug requirements of all countries and territories in the world. Moreover, the reply of a Government whose co-operation was sought at this moment would generally arrive only after the end of the session.

8. A Government can modify by supplementary estimates¹² any estimates either those which it has furnished itself or those which the Board has established in respect of any of its territories under paragraph 3. The Government's supplementary estimates achieve this effect whether or not they are expressly called "supplementary" in the document containing them or in the letter or note

⁶ Article 21, para. 1.

⁷ Article 19, para. 1, subpara. (d).

⁸ Form B/S of the International Narcotics Control Board (6th edition, March 1970), instruction 13; article 1, para. 1, subpara. (w) of the Single Convention; and above comments on this subpara. and subpara. (x) of article 1, para. 1.

⁹ Article 12, para. 4, article 13, para. 4, article 19, para. 1, subpara. (d), article 20, para. 4 and article 21, para. 1, subpara. (e); see also article 1, para. 1, subpara. (w).

¹⁰ Article 19.

¹¹ Article 12, para. 2.

¹² Article 19, para. 3.

accompanying the document. The Board may change, by supplementary estimates, those estimates which it has established itself, but never those which a Government has sent. Alteration of Government estimates would amount to an amendment, which the Board may make only with the consent of the Government which has furnished the estimates.¹³

9. The Board is required to establish estimates for any territory in respect of which the Government concerned has failed to furnish them "by the date specified". This date is the date fixed by the Board for this purpose pursuant to article 12, paragraph 1. The Board is, however, relieved from its obligation to establish estimates and even has no right to do so if it has received estimates from the Government concerned after the date specified but before it has itself established them. The Government's estimates, which whenever received have the effect of modifying estimates already established by the Board, must *a fortiori* preclude their establishment.

10. Paragraph 3 of article 12 does not apply if a Government has furnished incomplete estimates omitting, for example, figures for drugs which it obviously needs, but only if it has failed to furnish them altogether. Calling the attention of the Government to the missing data would be the remedy in such a case and not the establishment of estimates by the Board.

11. A document called "estimates" which the Board receives from a Government and which cannot be considered to be estimates in the sense of the Single Convention may, however, be disregarded by the Board; this would be the case, for example if the estimates for a territory which does not manufacture, but imports its requirements are nil for all drugs because the author of the document erroneously assumed that the estimates required were estimates of the drugs to be manufactured.¹⁴ If the Board establishes in such a case estimates under paragraph 3, it acts in the interest of such a territory, which would otherwise not be entitled to import drugs which it might urgently need, and might in fact be unable to do so. The Government of that territory can moreover at any time substitute its own estimates for those framed by the Board. All estimates containing nil entries for all drugs on the forms¹⁵ on which they are furnished should call for action by the Board under paragraph 3.

¹³ Article 12, para. 5; see comments on article 19, para. 3; see also *Commentary* on the 1931 Convention (para. 35, p. 65), in which the same view is expressed in respect of supplementary estimates established by the Permanent Central Board under that treaty. To grant the International Narcotics Control Board the right to revise, by supplementary estimates, estimates which it has established itself, is in the interest of the country or territory which has failed to furnish estimates. Its failure to do this may be due to lack of experienced officials, and the Board's right to revise the estimates which it established might prevent difficulties which such a country or territory might have in obtaining needed drug supplies. It is, however, admitted that the view expressed in this commentary to the Single Convention cannot easily be reconciled with article 19, para. 3, which provides for supplementary estimates by *States*; but the *Commentary* on the 1931 Convention holds the same view although this latter treaty (article 3) provides only for supplementary estimates by *Parties*.

¹⁴ See also *Commentary* on the 1931 Convention, para. 30, p. 62.

¹⁵ Article 12, para. 1 and article 19, para. 1; small territories which do not manufacture, nor engage in the wholesale trade in drugs, but cover all their requirements by imports of retail pharmacists may be an exception; see below, comments on article 19, para. 1, subpara. (a) and subpara. (c).

12. For provisions of earlier treaties corresponding to that paragraph, see article 2, paragraphs 2 and 3 of the 1931 Convention and article 8, paragraph 9 of the 1953 Protocol.

Paragraph 4

4. The Board shall examine the estimates, including supplementary estimates, and, except as regards requirements for special purposes may require such information as it considers necessary in respect of any country or territory on behalf of which an estimate has been furnished, in order to complete the estimate or to explain any statement contained therein.

Commentary

1. The purpose of the examination of the estimates by the Board is to ensure as far as possible that they are neither overestimates nor underestimates, and thus to achieve the aim of the estimate system of the Single Convention, i.e. to limit the narcotics supplies of each country and territory and of the world as a whole to the quantities required for medical and scientific needs. The Board has at its disposal for this task a great amount of official information supplied by Governments to it, to its predecessors, the Permanent Central Board and Drug Supervisory Body, to the Commission on Narcotic Drugs or to the Secretary-General, such as statistical figures on all phases of the narcotics trade (including consumption), estimates for the preceding years and other relevant data which may have been included in the annual reports which Governments must furnish to the Secretary-General under article 18, paragraph 1, subparagraph (a). The Single Convention does not lay down any criteria which the Board must or may apply in its examination of the estimates. It is, however, submitted that the Board could not effectively play its role in the limitation of narcotics supplies to the quantities needed for medical and scientific purposes if it were guided solely by statistical considerations. The Board is granted considerable discretion in determining the scope of its inquiry, as is indicated by the provision authorizing it to require such information "as it considers necessary" "in order to complete the estimate or to explain any statement contained therein".

2. In carrying out its functions, the Board must ensure that its administration of the estimate system does not cause Governments undue difficulties in providing themselves with drugs which they need for medical purposes.¹ It is for this reason also that the Board must try to prevent underestimates, which may create such problems for countries or territories which furnish them. In determining the figures the Board should, in the case of countries and territories which import their narcotic drugs, allow a wider margin for those of them which are distant from sources of supply than for those which are near to these sources.²

¹ It is for this reason that article 12, para. 5 requires the Board to act expeditiously on estimates, including supplementary estimates, furnished by Governments.

² *Commentary* on the 1931 Convention, para. 73, p. 120.

3. The Board may obtain the information which it needs not only from Governments, but also from intergovernmental organizations such as the World Health Organization and from the Secretary-General of the United Nations. It may take into account not only information received from the Government whose estimates it examines, but also data obtained from other Governments. The restriction of article 14, paragraph 1, subparagraph (a) on the kind of information on the basis of which the Board may act does not apply to article 12, paragraphs 4-6 or article 13, paragraphs 2 and 3. The Board may, however, in no case base its action on non-official information such as newspaper reports.

4. It is of particular importance to the Board to know exactly the method which a Government uses for calculating its estimates. The Convention provides therefore that the method employed and any changes therein shall be communicated to the Board.³ Governments often omit from the documents containing their estimates an indication of this method, or at least a sufficiently accurate description of it, although the form which the Board prescribes for the estimates⁴ expressly requests this information.⁵ Many inquiries of the Board under paragraph 4 relate to this method.

5. A number of factors determine the extent of the consumption of narcotic drugs, and are therefore subjects on which the Board may require information under paragraph 4, e.g. the size and character, in particular age structure, of the population, the extent and kind of health facilities available to the population, climatic conditions, and epidemiological and other health data.

6. It may moreover be pointed out that the estimate system is only one of important elements of the international narcotics régime, all of which are interdependent for their effectiveness in achieving the aims of the Convention. The estimate system cannot adequately function without an appropriate application of the provisions of the Single Convention regarding licensing⁶ and import certificates and export authorizations.⁷ It is submitted that it was not the intention of the authors of the Single Convention to limit the remedies available to the Board for violations of treaty provisions of this kind to application of sanctions under article 14, or to critical comments in its reports pursuant to article 15. A persistent discrepancy between, on the one hand, the manufacturing and import statistics of a particular country or territory and, on the other hand, its limits authorized in accordance with its estimates, may often result in whole or in part from other circumstances than its use of an unsatisfactory method for calculating its estimates. Its failure to apply correctly other provisions of the Single Convention than those referring directly to the estimate system may explain such a discrepancy; thus, a failure to apply the rules on licensing and on import and export authori-

³ Article 19, para. 4. As regards non-Parties, see this para. in connexion with article 12, para. 2.

⁴ Article 12, para. 1 and article 19, para. 1, introductory subparagraph.

⁵ Form B/S (6th edition, March 1970), p. 3.

⁶ Article 29, paras. 1 and 2 and article 30, para. 1; the institution of State enterprises may substitute for the licensing of manufacture and trade.

⁷ Article 31, paras. 4-14.

zations so as to enforce a régime of monopoly or oligopoly, or in order to enforce quotas for manufacture or import of drugs, may result in a malfunctioning of the estimate system of the country or territory concerned. A dispersion of the national functions required for the implementation of the estimate system among several government departments, without co-ordination by a "special administration" as required under article 17 of the Single Convention, may have the same effect. If the Board is to carry out properly its examination of estimates pursuant to article 12, paragraph 4, it must pay attention to such cases of defective treaty execution, which are consequently proper subjects of its inquiries under this provision, and which—it may be added—will quite often be corrected by suggestions which the Board may make in its correspondence with the Government in question. In any event, the fact that the International Narcotics Control Board has taken over the functions of both the Permanent Central Board and the Drug Supervisory Body under the earlier treaties offers the new Board an opportunity to give to the examination of the estimates a greater scope than when this task was performed by the Supervisory Body pursuant to the 1931 Convention⁸ and 1953 Protocol.⁹

7. The range of subjects on which the Board may require Governments to furnish information under article 12, paragraph 4 is, however, by no means unlimited. It covers only such matters as may be relevant in respect to the functioning of the estimate system; but this may in principle include the implementation of most¹⁰ provisions of the Single Convention.

8. It may be mentioned here that the Board employs its authority under paragraph 4 with prudence, and that Governments of Parties and non-Parties to the Single Convention alike usually respond to the Board's inquiries in good faith. The authority of the Board to make a particular inquiry has hardly ever been questioned on legal grounds. These friendly relations are guided by the requirements of co-operation in the field of drug control, and not by a strict application of the letter of the law.

9. The term "special purposes" means "special Government purposes and to meet exceptional circumstances" for which the so-called "special stocks" are held.¹¹ The "special Government purposes" include in particular the needs of the armed forces. The drugs involved are only those held by the Government for such purposes. Governments are required to furnish estimates of the quantities of drugs necessary for addition to "special stocks".¹² These estimates, the actual additions and the "special stocks" themselves are excluded from the scope of inquiry under paragraph 4.¹³ The Board may only request a Government which holds "special stocks" and which has failed to furnish estimates of the additions to such stocks to supply these estimates,

⁸ Article 5, para. 6.

⁹ Article 8, para. 7.

¹⁰ The provisions of article 38 (treatment of drug addicts) are among the few which may never be relevant in this connexion.

¹¹ For the meaning of these phrases under quotation marks see above comments on article 1, para. 1, subparas. (w) and (x).

¹² Article 19, para. 1, subpara. (d).

¹³ See also article 20, para. 4.

but may not question the figures given by the Government on this matter whatever they may be, even if the figure is “zero”. The exclusion of the “requirements for special purposes” is explained by the fact that the authors of the Single Convention did not intend to apply the narcotics régime to special stocks and the drugs included in them, as long as they are used for “special Government purposes and to meet exceptional circumstances”.¹⁴ The Convention requires Governments to furnish to the Board only such data¹⁵ on this subject as are necessary to prevent a gap in the estimates and statistics which the Board receives, and to enable that organ to strike a balance in its statistical calculations.

10. As regards provisions of earlier treaties corresponding to article 12, paragraph 4 of the Single Convention, see article 5, paragraph 6 of the 1931 Convention and article 8, paragraph 7 of the 1953 Protocol.

¹⁴ Article 1, para. 1, subpara. (w).

¹⁵ Article 19, para. 1, subpara. (d) and article 20, para. 4.

Paragraphs 5 and 6

5. The Board shall as expeditiously as possible confirm the estimates, including supplementary estimates, or, with the consent of the Government concerned, may amend such estimates.

6. In addition to the reports mentioned in article 15, the Board shall, at such times as it shall determine but at least annually, issue such information on the estimates as in its opinion will facilitate the carrying out of this Convention.

Commentary

1. Paragraph 5 provides for two different actions which the Board may take on estimates, including supplementary estimates, after having examined them. The Board may confirm them, or may amend them with the consent of the Government concerned.

2. The annual estimates are examined and confirmed or amended by the Board at its ordinary session in the autumn preceding the calendar year to which they relate. Estimates which arrive too late to be dealt with at this session, and which concern a country or territory for which the Board has not established the estimates pursuant to article 12, paragraph 3, may be placed on the agenda of the following session, or submitted to a vote by mail or telegraph, the choice of the course of action depending on the date of their arrival and their degree of urgency. Late annual estimates which refer to a country or territory for which the Board has already established the estimates have the effect of supplementary estimates.¹

3. The Board may, at its ordinary session in autumn, also deal with supplementary estimates for the current year, as well as for the calendar year

¹ See above, comments on article 12, para. 3.

following the session.² The Board cannot, however, take action on estimates received after the end of the year to which they refer. Such supplementary estimates are without effect.³

4. Paragraph 5 prescribes that the Board's action should be taken "as expeditiously as possible". The need for speed is explained by the considerations that the estimates determine the quantities of drugs which a country or territory may obtain by manufacture or import or both,⁴ and that a Government must know as early as possible what these quantities are in order to be able to take the required administrative measures. The need for speed in handling supplementary estimates may be particularly evident if those estimates would enable the country or territory concerned to increase its supply limits, and thus to obtain additional drugs for which no provision has been made in the original estimates but which may be urgently required for medical purposes. If such supplementary estimates arrive at a time at which the Board is not in session nor scheduled to meet very shortly, it may be necessary to submit them to a vote by mail or even by telegraph, or if they concern only very minor quantities, to leave the examination and decision to the Board's secretariat, which may obtain authority from the Board to do so.⁵

5. Estimates, including supplementary estimates furnished by Governments, come into force when they have been confirmed by the Board, or if amended by that organ, when the amendment has been accepted or rejected by the Government concerned. Estimates established by the Board enter into force at the moment at which they are adopted. This means, first, that estimates other than those established by the Board, once they have come into force, cannot again be taken up by the Board for examination and confirmation or amendment, i.e. cannot be revised, unless the Government concerned furnishes supplementary estimates; second, that such estimates, whether furnished by a Government or established by the Board itself,⁶ create for Parties to the Single Convention whose estimates are involved the legal obligation to arrange for the consequential limitation of their manufacture or import of the drugs in question, or both;⁷ and third that other Parties are bound to respect import limits⁸ based on these estimates.

6. The Parties must comply with this legal obligation from the date at which they obtain the knowledge of the relevant figures, i.e. in the case of estimates which have been amended by the Board, from the moment at which they dispatch to that organ their acceptance or rejection, and in any event in the case of all estimates from the time at which they receive from the Board the required data. Pending the procedure before the Board pursuant to article 12, paragraph 4 and 5, a Government should also not take measures

² As regards the admissibility of supplementary or amending estimates prior to 1 January of the calendar year to which the original estimates refer, see below, comments on article 19, para. 3.

³ Article 19, para. 3 and comments thereon.

⁴ Article 21, paras. 1 and 2.

⁵ See above comments on article 11, para. 3.

⁶ See above, comments on article 12, para. 3.

⁷ Article 21, para. 1.

⁸ Article 31, para. 1, subpara. (b); see also article 21, para. 4.

contrary to its own estimates, even though they are not yet in force, unless it dispatches to the Board amending or supplementary estimates prior to that organ's decision under paragraph 5.

7. While the Board may not formally re-examine in accordance with article 12, paragraphs 4 and 5, estimates in force other than those which it has itself established ⁹ unless the Government concerned has furnished supplementary estimates, the Board does not appear to be precluded by any provision of the Single Convention from making at any time ⁹ informal suggestions to any Government in regard to the desirability of a reconsideration of that Government's estimates.

8. Since Governments may reject amendments made by the Board to their estimates, and may by subsequent (supplementary) estimates replace both estimates which they themselves have furnished as well as those which the Board has established, they are legally the final masters of their estimates, and thus of the quantities of drugs which they may manufacture and import. They are, however, in this connexion subject to various measures of persuasion applied in the interest of the family of nations as a whole, such as amendments proposed by the Board for their acceptance, or less formal suggestions and critical comments of that organ which may be contained in communications addressed to them or published pursuant to article 12, paragraph 6 or article 15. This has in practice proved to be an effective system of moral control, ¹⁰ as the experience of the International Narcotics Control Board and of its predecessor, the Drug Supervisory Body, has shown. Amendments which the Board makes are generally accepted and revisions which it proposes informally are mostly accepted by the Governments concerned.

9. Paragraph 6 requires that the Board shall issue, at such times as it shall determine but at least annually such information as in its opinion will facilitate the implementation of the Single Convention. As has been indicated earlier, the Board must in particular inform Governments of the estimates and their total ¹¹ in force in respect of each country and territory in order to enable them to observe their own limits of manufacture and import, as well as to respect the import limits of other countries or territories. Since the estimates must be furnished annually, paragraph 6 prescribes that the Board should issue this information at least once a year. ¹² The Board therefore issues an annual statement of the estimated world requirements of narcotics drugs, which contains the estimates and their totals for each individual country and territory and for the world as a whole. ¹³ It prepares this statement at its ordinary

⁹ But not after the end of the year to which the estimates involved refer; see article 19, para. 3 and comments thereto.

¹⁰ See *Commentary* on the 1931 Convention, para. 78, p. 122.

¹¹ Article 19, para. 2 in connexion with article 21, paras. 3 and 4.

¹² See also article 5, para. 7 of the 1931 Convention as amended by the 1946 Protocol.

¹³ See, e.g., E/INCB/6, United Nations publication, Sales No. E.70.XI.1, entitled "Estimated world requirements of narcotic drugs and estimates of world production of opium in 1970". The document contains also information on opium production in implementation of the 1953 Protocol; see article 8, para. 3 of the 1953 Protocol. See on the other hand article 19 of the Single Convention, which does not provide for production estimates.

session held in the autumn preceding the calendar year to which the annual estimates concerned refer. This statement should be—and is—published as expeditiously as possible, and in any event before the beginning of the calendar year in respect of which the estimates involved have been made.

10. Governments should plan their annual estimates so as to avoid the need for subsequent changes effected by supplementary estimates; but drug requirements are not always fully predictable, and may be affected by events, such as epidemics, which cannot be foreseen at the time at which the annual estimates are prepared. Governments may have to manufacture or import more drugs than have been provided for in their original annual estimates, and may therefore be compelled to furnish to the Board supplementary estimates. This happens quite frequently, although sometimes it would not happen if the annual estimates had been more carefully planned. The Board must therefore from time to time bring up to date some of the information contained in its annual statement in order to enable Governments to carry out their obligations regarding the limitation of the manufacture and import of narcotic drugs.¹⁴ The Board therefore publishes each year four supplements to its annual statement of estimated world requirements of narcotic drugs. But there are sometimes urgent cases in which a country or territory, on behalf of which supplementary estimates have been furnished to the Board, cannot delay the import of the drugs which it needs until the Government of the exporting country learns from the next quarterly supplement that the import limit of that country or territory has been raised. At the request of the Government of the country or territory which needs the drugs urgently, the Board in such a case informs, by letter and if necessary by telegram, the Government of the exporting country of the change in the import limit.

11. The information which the Board issues under paragraph 6 may, in addition to the estimates and their totals, also contain an account of any explanations given or requested in the course of the examination of the estimates pursuant to paragraph 4 and of any amendments proposed by the Board which were not accepted by the Governments concerned, and may further include any other observations which the Board considers would facilitate the carrying out of the Single Convention.¹⁵ The annual statement may, but need not, form a part of or an addendum to the annual report or other reports which the Board issues pursuant to article 15. The supplements to the annual statement may similarly be a part of or addenda to, additional reports which the Board is authorized to make under this article, though it has not yet made such additional reports.

12. For provisions of earlier treaties corresponding to article 12, paragraphs 5 and 6 of the Single Convention, see article 5, paragraphs 6-8 of the 1931 Convention and article 8, paragraph 7 of the 1953 Protocol.

¹⁴ Article 21, para. 1, and article 31, para. 1, subpara. (b).

¹⁵ This additional information may also be included in the reports which the Board prepares under article 15.

Article 13

ADMINISTRATION OF THE STATISTICAL RETURNS SYSTEM

Paragraph 1

1. The Board shall determine the manner and form in which statistical returns shall be furnished as provided in article 20 and shall prescribe the forms therefor.

Commentary

1. It will be noted that, while the Board determines the date or dates by which Governments should furnish the annual estimates of their narcotics requirements,¹ the dates by which the statistical returns are due are fixed in the Convention itself.²

2. The forms which the Board is required to prescribe for use by Governments for their statistical returns must be supplied in time by its secretariat to all Governments, both of Parties and non-Parties, in order to enable them to furnish the returns by the dates provided in the Convention.³ While the Convention does not contain an express provision requiring the Board to request Governments of non-Parties to furnish statistical returns in accordance with its provisions, as it does in respect to the estimates,⁴ the Board's authority to address such a request to non-Parties was considered to be "implied" by the Drafting Committee of the Plenipotentiary Conference which adopted the Single Convention.⁵ Governments of non-Parties are also interested in furnishing statistical returns because by so doing they are able to correct inaccurate information supplied by other Governments which could be used to their disadvantage under the terms of the Single Convention. An inaccurate export report of another country may, for example, indicate that a non-Party which has not furnished its own import statistics has imported drugs in excess of its limits as determined by the Convention. Such a non-Party may, on the basis of such wrong information, be subjected by the Board to an embargo of narcotics imports.⁶ It will also be recalled in this connexion that the Board may take even against non-Parties the measures foreseen in article 14 to ensure the execution of provisions of the Single Convention. It follows that the Board is required to supply non-Parties with its statistical forms, not only in the interest of the family of nations as a whole, which benefits from universal implementation of the provisions of the Single Convention, but also in that of

¹ Article 12, para. 1.

² Article 20, para. 2.

³ Article 20, para. 1, introductory subparagraph.

⁴ Article 12, para. 2.

⁵ *Records*, vol. II, p. 287, foot-note 33; the implication is said to follow from para. 2 of article 13.

⁶ Article 21, para. 4.

the non-Parties themselves. All Governments should from time to time inform the secretariat of the Board of the number of copies which they need.

3. The Board may determine the "manner and form" in which the statistic returns should be furnished. It may prescribe the mode of transmission, e.g. that returns which are not delivered to the Board's secretariat by a member of a delegation or by a messenger should be forwarded by registered air mail, and that the forms should be completed by typewriter. The Board may and does require that the import and export figures which Governments must furnish⁷ should be subdivided by country of origin and destination.⁸ It may also require that the statistical data on the seizure of drugs from the illicit traffic indicate separately the amounts seized on account of illicit import and export, and those seized within the country.⁹

4. The forms prescribed by the Board for statistical returns contain detailed instructions concerning their completion.¹⁰

5. For provisions of earlier treaties corresponding to article 13, paragraph 1, see article 22, paragraph 1, introductory paragraph and article 23, introductory paragraph of the 1925 Convention and article 9, paragraph 2 of the 1953 Protocol.

⁷ Article 20, para. 1, subpara. (d).

⁸ See form A/S of the International Narcotics Control Board (5th edition, November 1969).

⁹ The Board does not at present require such separate data; see form C/S of the Board (4th edition, November 1969, table II, column E). The 1925 Convention required only information on international seizures; see article 22, para. 1, subpara. (e); the 1953 Protocol provided for statistics on all opium seizures, see article 9, para. 1, subpara. (a), clause (iv).

¹⁰ Form C/S referred to in foot-note 9 for the Annual Statistics of Production, Manufacture, Consumption, Stocks and Seizures of Narcotics Drugs and form A/S referred to in foot-note 8 for the Quarterly Statistics of Imports and Exports of Narcotic Drugs; see also form R/S for the Annual Statistics on Narcotic Drugs Used for Non-Medical Purposes, under article 49, para. 3, and subpara. (b) of the Single Convention.

Paragraphs 2 and 3

2. The Board shall examine the returns with a view to determining whether a Party or any other State has complied with the provisions of this Convention.

3. The Board may require such further information as it considers necessary to complete or explain the information contained in such statistical returns.

Commentary

1. Paragraph 2 states that the purpose of the Board's examination of the statistical returns is the determination of compliance of any Party or any other State with the provisions of the Single Convention; but beyond that, the Convention does not define the scope of the examination which the Board is required to undertake pursuant to paragraphs 2 and 3, nor the kind of information which it may use for its examination or whose supply it may require

to this end. The Convention indicates in several places¹ the use which should be made by the Board of the statistical information, but states nowhere that the figures may not be employed for any other purpose which it desires to achieve in accordance with the Convention. It does not establish criteria by which the figures themselves should be evaluated.

2. The Board has, of course, first to establish whether the data are complete, that is, whether all the figures required by the Convention have in fact been furnished; secondly, it must consider whether the statistical information is correct, that is, whether in the light of other information at its disposal it has reasons to assume that a particular figure may be inexact; for example, information furnished under the Single Convention on the production² of opium may differ from that which the Food and Agriculture Organization of the United Nations has received pursuant to article 11 of its Constitution. The Board's right on sound grounds to question the accuracy of statistical figures which it receives under the Single Convention³ may *a contrario* be inferred from *inter alia*, the fact that article 13, paragraph 4 excludes from such questioning only "statistical information respecting drugs required for special purposes". Each country's and territory's figures are reviewed by the Board with a view to determining whether its manufacturing and import limits under the provisions of the Single Convention have been observed.⁴ The Board is also expressly required to include in its annual report on its work, and if appropriate in additional reports, "an analysis of the estimates and statistical information at its disposal".⁵ Such an analysis involves of course a comparison of the estimates and statistics.

3. Though the examination of the statistics in the light of the estimates is largely a mathematical operation, it would be wrong to assume that the Board's authority is restricted to arithmetical computations. An organ of high standing like the Board, elected by the Economic and Social Council and composed of independent members possessing the high professional and moral qualities required by the Single Convention⁶ would not be needed for such a limited purpose. Moreover, even the type of information which the Board receives indicates that its authority cannot be so restricted. In order to establish whether the manufacturing and import limits of countries and territories have been observed, it would be sufficient for the Board to have in addition to the other data involved, figures on that part of the drugs seized from the illicit traffic which has been utilized for licit purposes. The Board, however, receives the total figures on such seizures as well as information on the disposal of the seized drugs.⁷ This appears to indicate that the extent of

¹ Article 14, para. 1, subpara. (a) and article 21.

² I.e. harvesting; see article 1, para. 1, subpara. (r).

³ Article 20, article 27, para. 2 and article 49, para. 3, subpara. (b); see also article 2, para. 9, subpara. (b).

⁴ Article 21, paras. 1 to 3; see also article 31, para. 1, subpara. (b) and article 21, para. 4.

⁵ Article 15, para. 1.

⁶ Article 9, paras. 1 and 2.

⁷ Article 20, para. 1, subpara. (e); see also form C/S of the Board (4th edition, November 1969) table II, column F; see also article 22, para. 1, subpara. (e) of the 1925 Convention and article 9, para. 1, subpara. (a), clause (iv) of the 1953 Protocol.

the illicit traffic may be a relevant factor in the Board's evaluation of the performance of Governments under the Single Convention.

4. A purely mathematical approach to the statistical data would also present a temptation for the sometimes not very high-ranking official who prepares the estimates and statistical returns to adjust the statistical data so as to make it appear that his country or territory has not exceeded its manufacturing and import limit under the Single Convention.

5. In fact, as has been pointed out elsewhere,⁸ the various elements of the international narcotics régime are interdependent. If a country or territory furnishes incomplete or inaccurate statistical returns or sends them late or not at all, this is not necessarily exclusively due to lack of experience, incompetence or negligence on the part of the national officers responsible for this task. Such a situation may be caused by unsatisfactory organization of the national narcotics administration, such as dispersion of the control functions among too many government units without co-ordination by a special administration pursuant to article 17. There may be a failure to implement article 17; perhaps the collection of data may have been entrusted by a Government to an inappropriate agency such as a university, with the result that statistical reporting by the Government is unsatisfactory. In such a case there would be a violation of the requirement of article 4 that the necessary administrative measures be taken to carry out the provisions of the Single Convention. Inadequate reporting may also result from a failure to enforce the provision of article 34, paragraph (b) requiring that government agencies, manufacturers and distributors of drugs keep satisfactory records of their transactions, which may make it impossible to compile complete and accurate data or to furnish statistical returns in time. A defective application of the licensing system may also affect the capacity of a national narcotics administration to comply with the provisions of the Convention regarding statistics. If a Government issues too many licences to manufacturers⁹ or to persons engaged in the import or export trade in drugs,¹⁰ it may not be in a position to collect and compile the data with sufficient speed to be able to transmit them to the Board by the dates prescribed by the Convention.¹¹ If a Government grants licences to engage in narcotics trade to persons who do not have "adequate qualifications for the effective and faithful execution"¹² of their duties under the narcotics régime, it may be unable to obtain from them complete or accurate data for transmission to the Board, or to obtain the figures in time for transmission by the dates required by the Convention.

6. The Board may use facts from different sources in evaluating the accuracy and completeness of statistical returns. It may compare the import statistics of a particular country or territory with the export statistics of the countries of origin, or the export statistics in one return with the import

⁸ See above, comments on article 12, para. 4.

⁹ Article 29, para. 1.

¹⁰ Article 31, para. 3, subpara. (a).

¹¹ Article 20, para. 2. Such a situation may also be responsible for the failure of a country or territory to observe its manufacturing and import limits; see above comments on article 12, para. 4.

¹² Article 34, para. (a).

statistics of the countries and territories of destination. It may study the returns in the light of information which it may learn from the annual reports on the working of the Single Convention and from the reports on seizures of drugs furnished under article 18, paragraph 1, subparagraphs (a) and (c), from other communications furnished by Governments in writing or orally to other intergovernmental organizations or organs, or from official data released by Governments to the public. Information from private sources, however, may not be used.

7. It may be noted that the Board may require additional information not only to complete statistical returns which it has received, but also to *explain* the information contained in them. It has considerable discretion in determining the scope of information which it wishes to employ for this purpose, not only to explain the meaning of imprecise information contained in the returns in question, but also to explain why the statistical documents are incomplete or inaccurate. The Board may seek information in order to establish whether there are weaknesses in the control régime of the country which has sent the defective return or returns. In so doing, it may solicit data to clarify whether the country or territory concerned has complied with particular provisions of the Single Convention. The phrase “the Board may require such further information as it considers necessary” indicates the wide range of subject-matter about which it may make inquiries in the course of its examination of statistical returns; but facts which have no bearing on the incompleteness, inaccuracy or late arrival of statistical returns, or which would not elucidate the circumstances of any other failure of a Government to comply with provisions of the Single Convention as indicated in a statistical return, are excluded from the scope of the Board’s inquiries under paragraph 3 of article 13.

8. The Board may address its inquiries to the Government which has furnished the statistical return involved or has failed to furnish it, to other Governments and to intergovernmental organizations, but never to private organizations or individuals.

9. It is also submitted that the provision of article 14, paragraph 1, subparagraph (a) in regard to the type of information on which the Board may base its action under that provision does not apply to paragraphs 2 and 3 of article 13.

10. The Board can never make any inquiry in respect to statistical information on drugs required for “special purposes”. As regards the meaning of the phrase “special purposes”, see above, comments on article 1, paragraph 1, subparagraphs (w) and (x) and on article 12, paragraph 4.

11. It will be noted that the Board is required to carry out its examination and inquiries under article 13, paragraphs 2 and 3 in respect of statistical returns of Parties and non-Parties alike. Non-compliance of any State with provisions of the Single Convention may weaken its effectiveness. Accurate statistical figures supplied by non-Parties at the dates provided in the Single Convention¹³ are needed by the Board not only in order to be able to administer the treaty in the interest of the international society as a whole,

¹³ Article 20, para. 2.

but also in justice to the non-Parties themselves, which might otherwise be subjected to measures based on inaccurate information supplied by other Governments. Here again, it will be recalled that the Board is authorized to impose even on non-Parties a mandatory embargo on the export of drugs if, according to statistical information at the Board's disposal, a country or territory has exceeded its import limits under the Single Convention.¹⁴ Moreover, the measures which the Board may take to ensure the execution of provisions of the Single Convention may also be applied to non-Parties,¹⁵ and in extreme cases this may lead to a recommendation of the Board to stop the import of drugs, the export of drugs, or both, from or to a non-Party.¹⁶ It may finally be pointed out that a Party may also of its own accord, on the basis of inaccurate data furnished by other Governments, discontinue its export of drugs to a non-Party which has failed to supply its own statistical information. Parties are under an obligation to discontinue exports if according to the information at their disposal they would otherwise violate the import limits of an importing country or territory.¹⁷

12. The Board—like its predecessor, the former Permanent Central Board—has always in exercising its authority to examine the statistical returns and to make inquiries to explain information contained therein, paid due respect to the fact that the Governments which furnish the returns are sovereign States.¹⁸ It appears that friendly relations have developed as a result of the continuous and close contacts between the secretariat of the international organ and the technical national officers concerned during more than four decades, and the Board's inquiries about statistical returns have hardly ever been questioned on legal grounds. The relations between both Boards and the national authorities with whom they have corresponded have been guided by a common desire to co-operate in the interest of effective international narcotics control, and hardly ever by legal technicalities. The exact legal limits of the scope of the Board's examination of statistical returns and of its inquiry regarding them may therefore in practice be only of minor importance.¹⁸

13. The Single Convention does not expressly require the Board to publish the statistical data which it receives. It prescribes only that the Board's reports pursuant to article 15 should contain "also an analysis of the estimates and statistical information at its disposal". It is however submitted that the statistical data furnished by a particular Government are not only of interest to the Board but also to all Parties to the Convention. The Board should therefore periodically, and at least annually, publish the figures at its disposal.¹⁹ It may of course do this in an economical way, and present some of the information in a summarized form. It is also desirable that in publishing such

¹⁴ Article 21, para. 4; this provision has, however, no punitive character.

¹⁵ Article 14.

¹⁶ Article 14, para. 2; see also comments on article 12, para. 2 and article 13, para. 1.

¹⁷ Article 31, para. 1, subpara. (b).

¹⁸ See also above comments on article 12, para. 4.

¹⁹ See also article 22, para. 1, last subpara. and article 27, second para. of the 1925 Convention, article 9, para. 4 of the 1953 Protocol and article 21, para. (b) of the 1912 Convention.

figures the Board should take care not to facilitate the operations of speculators and not to injure the legitimate commerce of any Party.²⁰

14. The Board may, in its publication of the statistical data, give an account of its inquiries made concerning them and of the explanations given by Governments in respect of them, and may add such observations and recommendations as it considers desirable.²¹

²⁰ See article 27, second paragraph of the 1925 Convention; but this appears under present conditions hardly to be a significant problem.

²¹ Article 15, para. 1 of the Single Convention.

Paragraph 4

4. It shall not be within the competence of the Board to question or express an opinion on statistical information respecting drugs required for special purposes.

Commentary

1. The term “special purposes” means “special Government purposes and to meet exceptional circumstances”. The “special Government purposes” include in particular the needs of the armed forces.¹ The drugs involved are only those held by the Government for such purposes. The Parties are not bound to furnish statistical data concerning drugs held by the Government for these purposes, i.e. “special stocks”,² but only figures on the drugs imported or procured domestically for such stocks and on drugs withdrawn from them to meet the requirements of the civilian population.³ The Board is not entitled to make inquiries about these figures, nor to express any opinion on them. While it may not ask questions about the size of “special stocks” nor about the use of drugs contained in them as long as they are employed “for special Government purposes and to meet exceptional circumstances”; it may ask for the supply of data on additions to, and withdrawals from, special stocks if a Government which holds such stocks has failed to furnish these figures.

2. The authors of the Single Convention did not intend to submit “special stocks” to the international narcotics régime.⁴ They therefore incorporated only such provisions in the Convention regarding “special stocks” and drugs included in them⁵ as are required to enable the Board to strike the balance which may be necessary in order to determine the manufacturing and import limits of a particular country or territory⁶ and whether these limits are observed.

¹ See above comments on article 1, para. 1, subparas (w) and (x) and on article 12, para. 4.

² Article 1, para. 1, subpara. (w).

³ Article 20, para. 4.

⁴ See above, comments on article 1, para. 1, subparas. (w) and (x) and on article 12, para. 4.

⁵ Article 19, para. 1, subpara. (d) and article 20, para. 4; see also article 12, para. 4, article 13, para. 4 and article 1, para. 1, subparas. (w) and (x).

⁶ See also article 5, para. 6, second para. of the 1931 Convention and article 22, para. 3 or the 1925 Convention.

Article 14

MEASURES TO ENSURE EXECUTION OF CONVENTION PROVISIONS

General comments

1. Article 14 deals with a subject-matter which is also dealt with in earlier multilateral narcotics treaties. The 1925 and 1931 Conventions and the 1953 Protocol¹ authorized the former Permanent Central Board² to adopt certain measures against Parties and non-Parties which failed to comply with treaty provisions. These measures have often been referred to as “sanctions” or “enforcement measures”. Some of the principal differences between the earlier provisions and those of article 14 of the Single Convention may be pointed out.

2. The Single Convention does not take over the provision of the 1953 Protocol³ authorizing the Permanent Central Board to impose, with binding effect on Parties, an embargo of the import of opium or the export of opium, or both, upon any country or territory which has failed in a serious manner to comply with provisions of that Protocol (“Mandatory (opium) embargo”).

3. The 1953 Protocol stipulated that the Permanent Central Board could, with the consent of the Government concerned, undertake a “local inquiry” in order to elucidate the opium “situation” in any country or territory.⁴ The Single Convention does not provide for “local inquiries”; it does not however, contain any provision which would prevent the International Narcotics Board from engaging in a local inquiry at the request of the Government concerned.

4. Under the earlier treaty provisions, the Permanent Central Board could recommend the discontinuation of opium imports from a country or territory which had failed to comply with treaty provisions.⁵ In respect of other drugs under international control, that Board could recommend only the cessation of exports to such a country or territory, as it was able to do also as regards

¹ Articles 24 and 26 of the 1925 Convention; article 13, para. 1 of the 1931 Convention in connexion with articles 24 and 26 of the 1925 Convention; article 14, para. 3 of the 1931 Convention; and articles 11-13 of the 1953 Protocol. Article 14, para. 3 of the 1931 Convention can, however, be applied only to Parties; the information to which this paragraph refers could, however, also be used in the adoption of measures against non-Parties under article 26 of the 1925 Convention; see *Commentary* on the 1931 Convention, para. 157, p. 190. As long as these treaties continue to be in force (article 44 of the Single Convention) these “enforcement measures” can be adopted by the International Narcotics Control Board pursuant to article 45, para. 2 of the Single Convention and resolution 1106 (XL) of the Economic and Social Council.

² See above, comments on article 1, para. 1, subpara. (a).

³ Article 12, para. 3 and article 13.

⁴ Article 11, para. 1, subpara. (d) of the 1953 Protocol.

⁵ Article 12, para. 2 of the 1953 Protocol.

opium.⁶ The Single Convention authorizes the International Narcotics Control Board to recommend an embargo on the import or export, or both, of all drugs which it controls.⁷

5. There are also differences between the type of information which may be used by the International Narcotics Control Board in the procedure under article 14 and the sources of information which could be drawn upon under the corresponding provisions⁸ of the earlier treaties. See below, comments on article 14, paragraph 1, subparagraph (a).

6. The Permanent Central Board was authorized by the 1953 Protocol to call upon Governments to study the possibility of adopting remedial measures in case of substantial failures to carry out important provisions of that treaty, or, more generally, in the case of a "gravely unsatisfactory opium situation".⁹ It did not have such express authority in relation to other drugs under the international narcotics régime as it existed prior to the coming into force of the Single Convention. The International Narcotics Control Board may under article 14¹⁰ call upon Governments to adopt such remedial measures in respect to all controlled drugs as it considers "under the circumstances to be necessary for the execution of the provisions of this (Single) Convention". This provision, however, only incorporates in law what, prior to the Single Convention, was already the practice of the Permanent Central Board in its informal relations with co-operating Governments.

⁶ Articles 24 and 26 of the 1925 Convention; article 13, para. 1 of the 1931 Convention in connexion with those articles of the 1925 Convention; article 14, para. 3 of the 1931 Convention; and article 12, para. 2 of the 1953 Protocol.

⁷ Article 14, para. 2; see below, comments on that paragraph.

⁸ Article 24, para. 1 of the 1925 Convention; see also article 25 of that Convention; article 14, para. 3, first and second subpara. of the 1931 Convention; article 12, para. 2, subparas. (a) and (b) of the 1953 Protocol; see also article 11, para. 1, subpara. (b) of that Protocol.

⁹ Article 11, para. 1, subpara. (c).

¹⁰ Para. 1, subpara. (b).

Paragraph 1, subparagraph (a)

1. (a) If, on the basis of its examination of information submitted by Governments to the Board under the provisions of this Convention, or information communicated by United Nations organs and bearing on questions arising under those provisions, the Board has reason to believe that the aims of this Convention are being seriously endangered by reason of the failure of any country or territory to carry out the provisions of this Convention, the Board shall have the right to ask for explanations from the Government of the country or territory in question. Subject to the right of the Board to call the attention of the Parties, the Council and the Commission to the matter referred to in subparagraph (c) below, it shall treat as confidential a request for information or an explanation by a Government under this subparagraph.

Commentary

1. The initiation of a procedure to examine whether a Government of a Party or non-Party has failed to carry out the provisions of the Single Convention is a serious and very delicate matter under the present conditions of international relations, particularly since it may lead to a recommendation of an international embargo on the import or export of drugs, or both, against the country or territory involved.¹ Article 14 therefore not only provides for procedural guarantees, but also imposes several restrictions on the authority of the Board to resort to the measures provided in that article. First of all, the Board may initiate the procedure only if it “has reason to believe that the aims of this Convention are being *seriously* endangered by reasons of the failure of any country or territory to carry out the provisions of this Convention”. The conclusion that a serious situation of this kind exists will be justified if lack of control or defective control in one country or territory appears to endanger the effectiveness of control in another country or territory. If the failure to comply with the treaty provisions has only a domestic impact, the Board will in general hardly be in a position to initiate the procedure of article 14.

2. Failure to furnish the required information by the due date, or to answer fully all questions contained in the forms prescribed respectively by the Board or Commission for the annual reports, seizure reports, estimates and statistical returns which Governments must furnish,² will generally not be sufficient cause for commencing the procedure of that article. In cases of this kind, the Board will usually limit itself to requesting additional information and explanations under article 12, paragraph 4 and article 13, paragraph 3,³ and to including appropriate comments in the reports which it is authorized to make to the Council and to Parties and which are published by the Secretary-General under article 15. A persistent failure of a country or territory to furnish the required information may, however, constitute a sufficient reason for starting the procedure of article 14. Such a failure, as well as failure to observe other important provisions of the Convention, may seriously endanger the effectiveness of control in another country or territory.

3. In any event, the nature of the procedure of article 14, as well as its text, requires the Board to apply the provisions of that article with particular prudence, and the present Board and its predecessor, the Permanent Central Board, have indeed done so in respect to this article and the corresponding provisions of the earlier narcotics treaties. Only in a very few cases has the “enforcement” procedure of the international narcotics régime been initiated since it was first introduced in the 1925 Convention,⁴ which entered into force on 25 September 1928, and at the time of this writing no embargo has yet been recommended. Information of a non-official character can in no case justify the initiation of the procedure pursuant to article 14; not even all type of

¹ Article 14, para. 2.

² Article 18, para. 1, subparas. (a) and (c) and para. 2, article 12, para. 1, article 13, para. 1, article 19, para. 1, introductory subparagraph and article 20, para. 1, introductory subparagraph and para. 2.

³ See also article 18, para. 1 introductory subparagraph.

⁴ Articles 24 and 26.

information furnished by Governments or intergovernmental organs is admitted for this purpose, but only that defined in the first sentence of paragraph 1, subparagraph (a).

4. The facts on which the Board may base its action are divided into two groups:

(i) Facts appearing in the course of the Board's examination of information submitted to it by Governments under the provisions of the Single Convention; and

(ii) Facts communicated by United Nations organs and "bearing on questions arising under those provisions".

5. The facts belonging to the group just described under (i) are:

(a) Those contained in the estimates furnished by Governments pursuant to article 19;⁵

(b) Those included in the statistical returns furnished by Governments pursuant to article 20;

(c) The supplementary information or the explanations which Governments may be required by the Board to submit in respect to their estimates or statistics under article 12, paragraph 4 and article 13, paragraph 3;

(d) A failure to furnish information referred to in (a), (b) or (c).

6. As has been pointed out elsewhere,⁶ non-compliance with almost any of the provisions of the Single Convention can be revealed in the data furnished by Governments, or in the additional information or explanations which Governments may be required to supply in the course of the Board's examination of their communications. While the question of non-compliance with such provisions as those of article 38 concerning the treatment of drug addicts will hardly ever arise in this context, it is not impossible that the data will reveal even a failure to carry out the provisions of article 36 regarding the penal measures which Governments must adopt in their campaign against the illicit traffic, for example, in the information furnished by Governments on their seizures of drugs and on their disposal of such drugs,⁷ and particularly in their explanations regarding an extensive illicit traffic which may be reflected in such data. Non-compliance with the provisions requiring Governments to limit the amounts of drugs which they manufacture and import to the maximum quantities allowed under the terms of the Convention,⁸ and failure to control production,⁹ manufacture, domestic and international trade,¹⁰ will of course more often be disclosed in the Board's examination of the information

⁵ Estimates established by the Board itself pursuant to article 12, para. 3 may as such not be basis of its action under article 14; *Records*, vol. I, p. 137. Excessive manufacture or imports computed on the basis of such estimates and revealed in information furnished by Governments or United Nations organs may, however, be such a failure to carry out provisions of the Single Convention as to justify action under article 14, para. 1, subpara. (a); see article 21.

⁶ See above, comments on article 12, para. 4 and article 13, paras. 2 and 3.

⁷ Article 20, para. 1, subpara. (e).

⁸ Article 21, paras. 1 and 2.

⁹ Article 1, para. 1, subpara. (r) and articles 22-28.

¹⁰ Articles 29 to 34.

which it receives under the provisions of the Single Convention than a failure to implement the articles dealing with the illicit traffic.

7. It is suggested that the Board's action can be based not only on information which it receives, but also on the failure by a Government to supply the information which it should furnish to the Board pursuant to provisions of the Single Convention.¹¹ Such a failure is a fact which may be established by the Board "on the basis of its examination of information submitted by Governments to the Board under the provisions of this Convention". Any other interpretation of article 14, paragraph 1, subparagraph (a) would favour those Governments which refuse to furnish the required information over those which do, and this cannot have been the intention of the authors of the Single Convention.

8. The information which may justify the initiation of the procedure of article 14 need not be that supplied by the Government of the country or territory which has failed to carry out provisions of the Single Convention, but can also be that furnished by other Governments; for example, the failure of a country or territory to observe its import limits may be revealed by the export statistics of the Government of another country or territory,¹² or the fact that a country or territory exercises such defective control as to become a centre of the international illicit traffic may be reflected in the data furnished by Governments of other countries or territories on their seizures of drugs.

9. It can be seen that the Board is by no means limited to basing its action on the figures contained in the estimates and statistical returns which it receives.¹³ There is a wide range of facts which may evidence a failure to comply with provisions of the Single Convention, and which may be revealed in the explanations received by the Board in the course of its examination of the estimates and statistics. It must, however, be emphasized that under article 14, paragraph 1, subparagraph (a), the Board may not use any information, however authentic, which does not emerge in the course of this examination, or which is not contained in communications which it receives from United Nations organs in accordance with this subparagraph. As regards the Board's use of information which is excluded from the procedure of article 14 as a basis for observations under article 15, see below, comments on that article.

10. As regards the information described under (ii) in paragraph 4 above as facts communicated by United Nations organs, it is submitted that the term "United Nations organs" as used in subparagraph (a) not only covers organs of the United Nations itself, such as the Secretary-General, the Commission on Narcotic Drugs, the Economic and Social Council, the General Assembly or the Trusteeship Council, but also organs of other inter-governmental organizations which are members of the United Nations family. The representative of the United Kingdom of Great Britain and Northern Ireland at the Plenipotentiary Conference, who proposed the text defining the information which the Board may use, stated that organs of the World Health Organization would also be among those referred to as "United Nations

¹¹ This applies also to non-parties; see article 12, paras. 2 and 4 and paras. 2 and 3 of article 13 and comments on those paras.

¹² See also article 21, para. 4.

¹³ *Records*, vol. II, p. 200.

organs".¹⁴ The Food and Agriculture Organization of the United Nations may also have relevant information under article 14, paragraph 1, subparagraph (a), i.e. data on opium production.

11. The Board cannot use all data contained in communications which it receives from "United Nations organs", but only those data which have a "bearing on questions arising" under the provisions of the Single Convention under which it obtains information from Governments. As has been pointed out above, such "questions" may be failures to comply with almost any of the provisions of the Convention; for example if information furnished by Governments to explain defective estimates or statistics reveals that a country or territory has no "special administration" for the purpose of applying the Single Convention as required by article 17, the Secretary-General or the Commission on Narcotic Drugs may communicate to the Board any information obtained from annual reports of Governments¹⁵ or from their laws and regulations¹⁶ which evidences a failure to carry out this article. Persistent excesses of manufacture of drugs may give the Board reason to believe that the country or territory concerned does not require licensed drug manufacturers to obtain periodical permits specifying the kinds and amounts of drugs which they are entitled to manufacture, as required by article 29, paragraph 2, subparagraph (c). The Commission on Narcotic Drugs or the Secretary-General may communicate to the Board legal texts¹⁶ which evidence such a failure to carry out the Single Convention. Statistical data on the seizure of drugs¹⁷ from the illicit traffic in connexion with the information furnished by Governments to explain them¹⁸ may justify the Board's belief that a particular country or territory does not comply with some of those provisions of the Single Convention which are intended to prevent the diversion of drugs from legal trade into illicit channels or of those which aim at the suppression of the illicit traffic, and these two groups of provisions cover most of the substantive rules of that treaty. The Commission on Narcotic Drugs or the Secretary-General may in such cases communicate to the Board the often extensive information which they have on the illicit traffic, and on the conditions under which this traffic is carried on.¹⁹ The information communicated by "United Nations organs" need not be limited to that supplementing the particular data in the possession of the Board, but may include all facts relevant to questions of failures to carry out provisions of the Single Convention which arise from such data; for example, statistical data in the hands of the Board indicating excessive drug manufacture may be elucidated by a communication of the Commission or of the Secretary-General pointing to the lack of legal authority of the Government concerned to allocate manufacturing quotas under article 29, paragraph 2, subparagraph (c).²⁰

¹⁴ *Records*, vol. II, p. 200.

¹⁵ Article 18, para. 1, subpara. (a).

¹⁶ Article 18, para. 1, subpara. (b).

¹⁷ Article 20, para. 1, subpara. (e).

¹⁸ Article 13, para. 3.

¹⁹ Article 18, para. 1, subpara. (c).

²⁰ As regards information on the basis of which procedures corresponding to that of article 14 of the Single Convention could be initiated under earlier treaties, see article 24, para. 1 of the 1925 Convention ("information at its (the Permanent Central Board's) disposal"); article 25 of the 1925 Convention ("any matter which

12. It may be recalled in this context that under article 8, paragraph (b) the Commission is expressly authorized to call the attention of the Board to any matters which may be relevant to the functions of the Board. The attention of the Board may therefore be drawn not only to facts which have a bearing on a procedure pursuant to article 14, but also to those which may be relevant to the tasks which are conferred upon the Board under article 9, paragraph 2, article 10, paragraph 4, articles 12, 13, 15, 19 and 20, article 21, paragraphs 3 and 4, article 24, article 45, paragraph 2 and article 49, paragraphs 3 and 4.

13. The procedure of article 14 may be initiated not only in respect of a "country", i.e. a State as a whole, but also in respect of a "territory", i.e. of a "part of a State which is treated as a separate entity for the application of the system of import certificates and export authorizations".²¹ The Government of a Party may thus be requested, by a recommendation of the Board made pursuant to paragraph 2 of article 14, to discontinue the narcotics trade (import or export, or both, as the case may be) carried on by its other territory or territories with that of its territories which fails in a serious manner to implement provisions of the Single Convention.

14. The procedure of article 14 may be initiated not only in respect of a Party and those of its territories to which the Single Convention applies according to article 42, but also in respect of a non-Party and its territories, and of a "territory" of a Party within the meaning of article 1, paragraph 1, subparagraph (y), to which the Convention does not apply because it is either identical with, or part of, a non-metropolitan territory in the sense of article 42 which has been excluded from the application of the Single Convention in accordance with the terms of this article.

15. It may be recalled that this treatment of non-Parties does not constitute an innovation introduced by the Single Convention. Provisions of earlier narcotics treaties corresponding to those of article 14 also permitted their application to non-Parties.²²

16. Reference may be made in this context to the comments on article 5 above, in which the view is expressed that Members of the United Nations are bound by the Charter to co-operate in the promotion of solutions of the various problems of drug abuse even if they are not Parties to the Single Convention or other narcotics treaties. Mention may also be made of the view held by some that the basic provisions of the international narcotics régime have become rules of customary general international law.²³ The 1936 Convention and the 1953 Protocol have, however, not been very widely accepted; but it is

appears . . . to require investigation" to which a party to that Convention draws the attention of the Permanent Central Board); article 14, para. 3 of the 1931 Convention (the figures contained in the estimates compared with those contained in the statistical returns); article 12, para. 2, subpara. (a) of the 1953 Protocol ("result of its (the Permanent Central Board's) study of the estimates and statistics"); and article 12, para. 2, subpara. (b) of the 1953 Protocol ("information at its (the Permanent Central Board's) disposal").

²¹ Article 1, para. 1, subpara. (y) and comments thereon.

²² Article 26 of the 1925 Convention and article 13 of the 1953 Protocol.

²³ Commentary on the Draft Single Convention (E/CN.7/AC.3/4/Rev.1), para. C.153; United Nations publication, Sales No. 1952.XI.7; *Records*, vol. I, p. 139 (statement of Mr. Bevans).

interesting to note that hardly any Government has relied on the fact that it is not a Party to the treaty in question if its attention is called to its failure to carry out a provision of chapters II-VI of the 1925 Convention, of the 1931 Convention, or of the 1948 Protocol.²⁴ Most of these treaty provisions have been resumed by the Single Convention.

17. The Board must treat as confidential communications made under the terms of the subparagraph under consideration, including both its own requests for information or explanations and the replies of Governments, as long as it does not decide to call the attention of the Parties, the Council and the Commission to the matter pursuant to article 14, paragraph 1, subparagraph (c), or to publish a report on the situation according to paragraph 3 of this article. The Board is also not precluded from publishing²⁵ that part of the information contained in replies of Governments under article 14, paragraph 1, subparagraph (a) which has also come to its notice from communications which it has received under articles 12 or 13; but the Board must in such a case avoid any reference to the procedure under article 14.

18. As regards the representation of the Government concerned at the Board's meeting at which the initiation of the procedure pursuant to subparagraph (a) is considered, see below, comments on paragraph 5.

²⁴ Or of the Single Convention.

²⁵ Article 15, para. 1.

Paragraph 1, subparagraph (b)

(b) After taking action under subparagraph (a) above, the Board, if satisfied that it is necessary to do so, may call upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.

Commentary

1. The Board may take action pursuant to this subparagraph only after it has asked for explanations in accordance with subparagraph (a). It is submitted that this means that the Board may call upon the Government concerned to adopt the remedial measures only if it does not, within a reasonable period of time, receive a reply to its request for explanations, or if the reply does not satisfy the Board that no serious failure to comply with provisions of the Single Convention as described in Subparagraph (a) in fact exists.

2. It may be noted that the Board may in any event propose the remedial measures referred to in this subparagraph only if it is "satisfied that it is *necessary* to do so", and may propose only such measures "as shall seem under the circumstances to be *necessary* for the execution of the provisions of this Convention". This appears to limit considerably the discretion of the Board to propose the remedial measures. It seems that the Board would not be entitled to take action under subparagraph (b) if it finds this not to be necessary, but only advisable, or to propose remedial measures which it considers to be helpful but not really necessary for the implementation of the Convention. The

English and French texts agree on this point. The Spanish text also provides that the Board may take the action under subparagraph (b) only if it finds it necessary to do so, but it does not prescribe that the remedial measures which the Board may suggest must under the circumstances seem to be “necessary” for the execution of provisions of the Convention. It is sufficient under the Spanish text that the measures are “advisable” for this purpose.¹ It is submitted that, in the light of the drafting conditions of the Plenipotentiary Conference, the English and French texts may be given preference over the Spanish text on this point. The provision in question was originally drafted in English.² In practice, however, there might often be no difference between what is “necessary” and what is only “advisable”.

3. The Government of the country or territory in question should be invited to be represented at the meeting at which the Board considers what remedial measures it should suggest.³ The Government should have this opportunity even if it was represented at the meeting at which the Board decided under subparagraph (a) to ask for the explanations. The Government’s participation might be very helpful in the Board’s efforts to formulate the remedial measures which would be most adequate under the particular conditions of the country or territory involved.

4. The Board’s request may consist of a general appeal to adopt “remedial measures”, without specifying them, or may indicate in more or less detail what measures the Board considers necessary.

5. The Board may find, for example, that diversions of drugs into illicit channels are due to the fact that the number of licensed drug manufacturers or importers is too large. It may in such a case propose that the number of manufacturing or import licences should be limited. It may, however, suggest only such measures as may be necessary for the execution or for an improved execution of the *provisions* of the Single Convention. The Board does not appear to be authorized under subparagraph (b) to request the adoption of measures which are not needed for the implementation of *specific provisions* of the Convention, however desirable it may find them in the interest of a successful campaign against drug abuse and the illicit traffic. For example, the Convention permits Parties to organize their drug economy either on a private enterprise basis or according to socialist principles, without giving any preference to one or the other of these two systems.⁴ The Board, therefore,

¹ The relevant part of the Spanish text of subparagraph (b) reads as follows: “. . . la Junta, si ha comprobado que es necesario proceder así, podrá pedir al gobierno interesado que adopte las medidas correctivas que las circunstancias aconsejen, para la ejecución de las disposiciones de la presente Convención”.

² See article 22, paragraph 1, subparagraph (d) of the third draft of the Single Convention on Narcotic Drugs, *Records*, vol. II, p. 8 and the British redraft of article 22, paragraph 1, subparagraph (b), *Records*, vol. II, p. 40; see also A.D. McNair, *The Law of Treaties*, Oxford, Clarendon Press, 1961, pp. 462-463 (“*in dubio mitius*”) and pp. 434-435 (preference given to text of language in which originally drafted); H. Lauterpacht, *The Development of International Law by the International Court*, Stevens & Son, 1958, pp. 29-30; and Edvard Hambro, *The Case Law of the International Court*, A. W. Sythoff, Leyden, 1961, paragraphs 71, 74, 78 and 79; see also the cases referred to by these authors in the indicated places.

³ Article 14, para. 5.

⁴ Article 29, para. 1; article 30, para. 1, subpara. (a); and article 31, para. 3, subpara. (a).

may not propose the replacement of a socialist system by a private enterprise régime, or vice versa, however advantageous it might find this from the general view point of drug control. Where, however, the Convention prescribes the application of a State enterprise system (as for the cultivation of the opium poppy for the production of opium, of the coca bush, and of the cannabis plant for the production of cannabis or cannabis resin, and for the wholesale and international trade in the drugs so obtained in countries producing⁵ them⁶), the Board may request, to the extent required by the Convention, the introduction of State enterprise institutions to replace a private enterprise organization.

6. The proposed measures need not be in conformity with the national law of the country or territory concerned.⁷ The Board may propose any changes in domestic laws and regulations which are required to bring them into accord with provisions of the Single Convention. It may, however, be expected that the Board would in such cases endeavour to limit to a minimum the burden which would be imposed on the legislative or regulatory authorities concerned.

7. The Board is not in all cases required to suggest remedial measures before proceeding to the application of subparagraph (c). It may omit a request for the adoption of such measures if, in the light of the explanations which it has received from the Government in question or of other circumstances, it considers that its request would not be met by a positive response. In fact, the exercise of its power under subparagraph (b) to propose remedial measures appears to be discretionary.

8. The restrictions imposed by subparagraph (b) on the Board's authority to propose remedial measures, however, do not apply to such suggestions as the Board may make outside the procedure of article 14, with the agreement of the Government concerned. The former Permanent Central Board as well as the present International Narcotics Control Board have in fact suggested such remedial measures, without any reference to article 14 or to corresponding provisions of earlier treaties, but with the express or implied consent of the Government concerned. The restrictions of subparagraph (b) also do not apply to those reforms of drug control in general or of specific aspects thereof which the Board may make without reference to specific countries in its reports pursuant to article 15. The International Narcotics Control Board, like its predecessor the Permanent Central Board, has not hesitated to propose such reforms.

9. Subparagraph (b) also does not limit the Board's right to render to a Government requesting it technical assistance in the improvement of its narcotics régime. Such assistance should, however, be within the terms of the Board's treaty functions, and should not overlap with assistance which might be given by other intergovernmental bodies. The Board would, for instance, undoubtedly be entitled to assist a Government in improving its method of preparing its estimates⁸ and its statistical returns,⁹ as well as its

⁵ Article 1, para. 1, subpara. (t).

⁶ Articles 23, 26 and 28.

⁷ See, however, *Records*, vol. I, p. 85.

⁸ Article 19.

⁹ Article 20.

administrative services charged with drafting these documents. The past as well as the present Board have in fact given such aid to Governments requesting it.

10. For remedial measures which the former Permanent Central Board could propose under the 1953 Protocol, and which the International Narcotics Control Board can still propose, see article 11, paragraph 1, subparagraph (c) of the 1953 Protocol, together with article 45, paragraph 2 of the Single Convention; see also article 44 of the Single Convention.

11. It may finally be noted that subparagraph (b) does not expressly require the Board to treat as confidential its calling upon a Government to adopt remedial measures, or the remedial measures themselves which it has suggested. It appears doubtful, however, that the Board could reveal its request, or the requested corrective measures, in any form which would allow the conclusion to be drawn that it has asked for explanations under subparagraph (a), or which would indicate the contents of such explanations, as long as and to the extent to which it is bound to treat as confidential its action under that subparagraph. See above, comments on article 14, paragraph 1, subparagraph (a). Since its action under subparagraph (b) may be taken only *after* that taken under subparagraph (a), the Board, when referring in one of the reports prepared in pursuance of article 15, to remedial measures which it has proposed, must avoid any reference, either direct or implied, to the procedure under article 14 as long as it has not called the attention of the Parties, the Council and the Commission to the failure of a Government to carry out provisions of the Single Convention, under the conditions of subparagraph (c). The Board may, however, before taking action under that subparagraph, in any event reveal any suggestions of remedial measures which it has made to a particular Government at its request or with its express or implied consent.

Paragraph 1, subparagraph (c)

(c) If the Board finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under subparagraph (a) above, or has failed to adopt any remedial measures which it has been called upon to take under subparagraph (b) above, it may call the attention of the Parties, the Council and the Commission to the matter.

Commentary

1. While the Board may take action under subparagraph (b) only *after* it has completed the procedure of subparagraph (a),¹ it need not call upon the Government concerned to adopt remedial measures pursuant to subparagraph (b) before proceeding under subparagraph (c). The Board's action under subparagraph (c) may immediately follow its action pursuant to subparagraph (a). It has been pointed out above¹ that the Board is not required to propose remedial measures. It may call the attention of the Parties, the Council and the

¹ See above, comments on subparagraph (b).

Commission to the matter if it finds that the Government concerned has failed to give satisfactory explanations under subparagraph (a) or to adopt the required remedial measures under subparagraph (b). The measure provided for in subparagraph (c) may thus follow either the action provided for in subparagraph (a) or that described in subparagraph (b).

2. When acting under subparagraph (c), the Board is no longer obliged to treat as confidential its request for information and the explanations which it has received in the course of the procedure under subparagraph (a).² On the contrary, in its communication calling attention to the matter, the Board may, and if the Government concerned so requests should, include the explanations that it has received, and indicate the remedial measures which it has suggested and which have not been adopted. The Board should accept such a request even though it is not expressly required by subparagraph (c) to do so. Otherwise, the purpose of paragraph 3 of article 14 which incorporates the principle "*et altera pars audiat*",³ could be frustrated, and would certainly be frustrated if the Board failed to publish a report in accordance with paragraph 3. A communication under subparagraph (c) calling attention to the failure of a Government to carry out provisions of the Convention and addressed to the Parties, the Council and the Commission would in fact amount to a publication of the matter.

3. The Board, remains, however, bound not to reveal, without the consent of the Government in question, its request for information and the explanations which it has received if it decides to discontinue the procedure of article 14 after having taken action under subparagraphs (a) or (b), no matter whether this decision is taken because the Board has found that the explanations which it has received are satisfactory or that the remedial measures which it has suggested have in fact been adopted, or for any other reasons.⁴

4. The Board is entitled to include in a report made pursuant to article 14, paragraph 3, the fact that it has called the attention of the Parties, the Council and the Commission, under paragraph 1, subparagraph (c), to the failure of a country or territory to carry out provisions of the Single Convention. It is submitted that the Board may also publish its action in one of its reports under article 15; but the mere inclusion in any of these reports of a communication made pursuant to article 14, paragraph 1, subparagraph (c) would not be sufficient for the purpose of that subparagraph. The communication must be made separately. This appears to follow from the provisions requiring different modes of communication of these three kinds of documents.

5. As regards the invitation of the Government concerned to be represented at the meeting of the Board at which action under paragraph 1, subparagraph (c) is considered, see below, comments on paragraph 5.

6. For provisions of earlier treaties corresponding to article 14, paragraph 1, subparagraph (c), see article 24, paragraph 2 of the 1925 Convention,

² Last sentence of subparagraph (a).

³ "The other party should also be heard."

⁴ As regards the use, in the Board's reports under article 15, of facts included in the confidential material, see above, comments on article 14, para. 1, subpara. (a).

article 14, paragraph 3, second subparagraph of the 1931 Convention, and article 12, paragraph 1, subparagraph (a) of the 1953 Protocol.⁵

⁵ There is a minor discrepancy between the English and French texts of subparagraph (c) on the one hand and the Spanish text of that subparagraph on the other. In the English and French version reference is made to the “remedial measures” as steps which the Government concerned has been called upon (“*a été invité*”) to take while the Spanish text refers to them as steps which that Government should (“*debía*”) have taken, but this difference appears to be of no practical importance in view of the reference in that subparagraph to subparagraph (b).

Paragraph 2

2. The Board, when calling the attention of the Parties, the Council and the Commission to a matter in accordance with paragraph 1 (c) above, may, if it is satisfied that such a course is necessary, recommend to Parties that they stop the import of drugs, the export of drugs, or both, from or to the country or territory concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or territory. The State concerned may bring the matter before the Council.

Commentary

1. The Board may recommend “embargo” measures, described in paragraph 2, only if, pursuant to paragraph 1, subparagraph (c), it calls the attention of the Parties, the Council and the Commission to the failure of the country or territory concerned to carry out provisions of the Single Convention. It may limit itself to taking action under article 14, paragraph 1, subparagraph (c) without making a recommendation under paragraph 2, but it may never recommend an embargo without having called the attention to the matter in accordance with subparagraph (c). It follows also that a request for explanations under article 1, paragraph 1, subparagraph (a) must in any event precede the recommendation of an embargo, but not necessarily a call upon the Government concerned to adopt remedial measures pursuant to article 1, paragraph 1, subparagraph (b).¹

2. The question arises whether the recommendation of an embargo can be made only simultaneously with the action taken pursuant to article 1, paragraph 1, subparagraph (c), or may also be made subsequently. Does the word “when” in the first line of paragraph 2 have the meaning of the words “at the time that” or of the phrase “in the event that” (“in the event of”)?² While

¹ See above, comments on that subparagraph.

² *Webster's New International Dictionary of the English Language*, Second Edition, Unabridged, G. & C. Merriam Company, Springfield, Massachusetts, 1954, p. 2910, meanings under 1 and 2 of the entry “when” (conj.); *The Oxford English Dictionary*, Oxford, at the Clarendon Press, vol. XII (1933), p. 24 of the section dealing with “WH”, the meanings listed under 4 (a) and 8 of the entry “when”; the corresponding words of the French and Spanish texts “*lorsque*” and “*cuando*” also appear to have a temporal as well as a conditional meaning; Sachs-Villatte, *Enzyklopädisches Französisch-Deutsches und Deutsch-Französisches Wörterbuch*, Berlin, Langenscheidt, 1964, first part, p. 548; and Fernandez Cuesta, *Dictionnaire des Langues Espagnole et Française*, Buenos Aires, Anaconda, vol. III, p. 429.

the temporal sense of the word “when” may in this context appear to be more probable, both interpretations seem to be possible. It may sometimes appear to the Board to be advantageous not to recommend an embargo simultaneously with its action pursuant to article 1, paragraph 1, subparagraph (c), but rather to do so only after it has called the attention of the Parties, the Council and the Commission to the matter without effect.

3. Under the 1925 and 1931 Conventions,³ the Permanent Central Board could recommend only the cessation of the export of controlled drugs to the country or territory concerned.³ The situations which the authors of these treaties had in mind were those in which the offending country or territory accumulated excessive quantities of controlled drugs or became a centre of the illicit traffic on account of diversion of narcotics from the legal trade into illicit channels. Under surplus conditions of this kind, a cessation of imports would not have endangered the supply of the sick and might have contributed to a reduction of the amounts available to illicit traffickers.⁴

4. But as a result of the international narcotics treaties, the diversion of manufactured narcotic drugs from legal trade into illicit channels has become insignificant, and smugglers have come to rely for their supplies on clandestine manufacture. Under these conditions, the cessation of drug exports to an offending country or territory could no longer make the direct impact on the illicit traffic which the authors of the 1925 and 1931 Conventions had envisaged. The value of such an embargo measure was questioned because it could endanger the treatment of the sick,⁵ and moreover because it favoured those countries which manufactured their own narcotic drugs and therefore did not import them. This kind of embargo appeared to its critics to have become a purely punitive measure without direct effect on the illicit traffic, and moreover to be discriminatory against the non-industrial countries; but some others continued to assert its value, since the threat of such an embargo could have some beneficial effect on Governments whose control régime was defective.⁶

5. The 1953 Protocol authorized⁷ the Permanent Central Board to recommend in respect of opium, not only the discontinuation of exports to, but also of imports from, a country or territory failing to carry out its provisions. It also empowered that Board to impose in regard to that drug “mandatory” import or export embargoes or both on an offending country or territory, that is, embargoes which Parties to that treaty are legally bound to carry out.⁸ As

³ See above, general comments on article 14; article 24 and 26 of the 1925 Convention and article 14, para. 3 of the 1931 Convention; see also article 1, para. 4 of the 1948 Protocol and article 13, para. 1 of the 1931 Convention.

⁴ *Records*, vol. I, p. 84.

⁵ See also article 14, para. 2 of the 1931 Convention and article 21, para. 4, subpara. (b), clause (ii) of the Single Convention.

⁶ *Records*, vol. II, p. 196.

⁷ Article 12, para. 2; see also article 45, para. 2 of the Single Convention.

⁸ Article 12, para. 3.

was pointed out above,⁹ the Single Convention did not take over this provision, nor does it provide in respect of any other drugs for a mandatory embargo.¹⁰

6. Prior to the Single Convention, opium was the only drug in respect to which the former Permanent Central Board could recommend the cessation not only of the export to, but also of the import from a country or territory. The Single Convention authorizes the International Narcotics Control Board¹¹ to recommend both measures not only in respect of opium, but in respect of all controlled drugs, and thus abolishes a situation of inequality which was widely felt to favour the countries manufacturing narcotic drugs, which are mostly industrial or “developed” countries. If an element of inequality seems still to persist, it appears to be now one in favour of the drug-importing States, which are often “developing” countries. It may be assumed that in some situations of serious failures to comply with provisions of the Single Convention, the Board may more readily be inclined to recommend the cessation of imports from, than of exports to, an offending country or territory, since it would in any event not wish to endanger the supply of useful medicines to the sick.

7. The Board’s recommendation to discontinue the import or export or both may cover one, several or all drugs under international narcotics control, including drugs in Schedule I as well as those in Schedule II.¹²

8. The embargo may be recommended for a definite period to be designated by the Board, or for an indefinite period until the Board is “satisfied as to the situation in that country or territory”. The Board may terminate an embargo either if it finds that the country or territory involved is no longer failing to carry out the provisions of the Single Convention in the serious manner which led to the initiation of the procedure pursuant to article 14, or if it is satisfied that such country or territory has taken steps which are likely to remedy the situation, or has in any event made all efforts which can reasonably be expected, even though because of the retarded stage of its economic and social development, and consequently also of its administrative machinery, it may not be fully capable of full and perfect compliance with all the requirements of the Single Convention. The Board may in these cases, and in particular in the case of an administrative insufficiency, take into account any request from the Government concerned for the needed foreign aid under available multilateral or bilateral programmes. It is submitted that the Board may in fact discontinue the recommended embargo if for any reason it finds such course of action to be advisable. The Board need not recommend an embargo even if it finds that all conditions justifying such action under paragraph 2 exist. Similarly, the Board may at its discretion end any embargo, although

⁹ See above, general comments on article 14.

¹⁰ See, however, article 21, para. 4, which takes over article 14, para. 2 of the 1931 Convention, and which empowers the Board to order the cessation of exports to a country or territory which exceeds its import limits; but such an order is not meant to be a punitive measure.

¹¹ See article 45 for the transitional period; see also above, comments on article 1, para. 1, subpara. (a).

¹² Articles 24 and 26 of the 1925 Convention can be applied only to drugs in group I of the 1931 Convention (or of the 1948 Protocol), but not to those of Group II. This follows from article 13 of the 1931 Convention; article 14, para. 3 of the 1931 Convention can however be applied to drugs in both groups; articles 24 and 26 of the 1925 Convention can of course be applied to any substance covered by that treaty.

the unsatisfactory situation which originally motivated its recommendation does not improve.

9. The question may be raised whether an embargo which has been recommended for a designated period of time can be prolonged by the Board. Since the recommendation of an embargo as a sanction for treaty violations is a very serious matter at the present stage of international relations, and the Single Convention does not provide for such prolongation, it may be assumed that the Board may make the prolongation only after having again followed the procedure and made the findings which are prescribed by article 14 before a recommendation pursuant to paragraph 2 of that article can be made.¹³ The prolongation could be effected only by a recommendation which would procedurally be “new”, that is, only after the Board has again asked for explanations (as required by paragraph 1, subparagraph (a)) and has, if necessary, again asked the Government concerned to adopt remedial measures (as provided in paragraph 1, subparagraph (b)) and only when the Board is again calling the attention of Parties, the Council and the Commission to the matter pursuant to paragraph 1, subparagraph (c). It is submitted that the Board may initiate and also complete the new procedure under article 14 before the period designated for the original embargo has expired. The Board may again recommend the embargo for a designated period, for example, for a certain time immediately following the end of the original embargo and thus actually effect a prolongation of that embargo, or it may recommend the new action for an indefinite time until it “shall be satisfied as to the situation” in the country or territory involved.

10. The Board may at any time terminate an embargo, whether it has been recommended for a designated period or for an indefinite time. As to reasons which may move the Board to take such action, see above comments.

11. The Board may recommend an embargo only “if it is satisfied that such a course is necessary”. It may be assumed that the Board may consider the recommendation of an embargo to be “necessary” if it holds that such an action would be the best step which it could under the circumstances take to bring about an improvement in the drug situation of the country or territory concerned. Like other steps under article 14, action under paragraph 2 may be taken not only against Parties and those of their territories to which the Single Convention applies under the terms of its article 42, but also against non-Parties and their territories, and against those territories of Parties to which the Single Convention does not apply by the operation of that article.¹⁴ The embargo may be recommended not only against a State as a whole, but also against one particular “territory” only, i.e. a part of a State. This is expressly said in the English text in regard to imports as well as to exports. The French text, however, refers separately to “*territoire*” only in connexion with exports and not in relation to imports, while the Spanish text omits a separate mention of “*territorio*” in both cases; but these omissions in the French and Spanish texts are clearly due to oversight. Both of these language versions

¹³ Reference may be made in this connexion to the literature cited in foot-note 2 of the above comments on article 14, para. 1, subpara. (b).

¹⁴ See above, comments on article 14, para. 1, subpara. (a) and on article 1, para. 1, subpara. (y).

distinguish between “country” and “territory” when rendering¹⁵ the words “until the Board shall be satisfied as to the situation in that country or territory”. Moreover, the English text of paragraph 2 is in harmony with paragraph 1, subparagraph (a), while the French and Spanish texts are not.

12. As regards the theoretical possibility of a recommended cessation of trade in narcotic drugs between territories of the same State, see above, comments on article 14, paragraph 1, subparagraph (a).

13. The State against which an embargo has been recommended—no matter whether against the State as a whole or against one of its territories only—is the “State concerned” which may bring the matter before the Council.¹⁶ This “State concerned” would under paragraph 2 be entitled to take this step even if it was not a Member of the United Nations.

14. Parties invited by the Board’s recommendation to apply the embargo would not be “States concerned” within the meaning of this term in paragraph 2. Depending on the nature of the recommended embargo, namely whether it covers imports or exports or both, a Party that has an important economic interest in the export of the drugs involved to the country or territory against which the embargo has been recommended, or which to a significant extent relies on that country or territory for its supply of the drugs in question, may, however, be a State “directly” interested in the matter under the terms of article 14, paragraph 5.¹⁷ While such a Party may not bring the matter before the Council under paragraph 2, it may be able to do this under the Council’s Rules of Procedure.

15. The “matter” which may be brought before the Council under that paragraph is the recommended embargo. The serious failure to comply with provisions of the Single Convention which has caused the Board to make the recommendation is the “matter” called to the Council’s attention, and to that of the Parties and of the Commission, under article 14, paragraph 1, subparagraph (c), and therefore that failure must be brought or have been brought to their attention if the Board recommends an embargo pursuant to paragraph 2.¹⁸

16. Since the Board, when applying article 14 and in particular when recommending an embargo under paragraph 2 of that article, is performing “judicial” functions,¹⁹ it cannot be assumed that the Council, when dealing with the matter under that paragraph, may formally confirm, alter or reverse the Board’s recommendation of an embargo. There can, however, be no doubt that the Council may consider the merits of the Board’s recommendation,

¹⁵ “Jusqu’à ce que la situation dans ce pays ou territoire lui donne satisfaction” in the French text and “hasta que la Junta quede satisfecha con la situación existente en ese territorio o país”.

¹⁶ *Records*, vol. II, pp. 202-203 and 40; see also article 24, paras. 3 and 4 of the 1925 Convention, and article 12, para. 2, subpara. (b) of the 1953 Protocol.

¹⁷ See below, comments on that paragraph.

¹⁸ See above, comments on article 14, para. 1, subpara. (c).

¹⁹ League of Nations, document O.C.669 of 1 October 1927 concerning the Permanent Central Board; as regards “judicial” functions of the International Narcotics Control Board, see Commission on Narcotic Drugs, report on the twenty-first session, *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 2*, para. 108.

may make suggestions to the Board regarding the way in which the matter should be handled in the future, and adopt its own recommendations on the subject. The Council may act in this manner despite the “judicial” character of the Board’s recommendation of an embargo. A denial of such a right of the Council could not be reconciled with the treaty provision expressly authorizing the “State concerned” to bring the matter before the Council.

17. There is no provision requiring Parties which are not willing to carry out the Board’s recommendation to notify the Board of such unwillingness²⁰ Such a refusal to accept the Board’s recommendation would, however, be brought to the Board’s knowledge by the quarterly statistical returns which Parties to the Single Convention must under article 20 of that treaty furnish to the Board on their imports and exports of narcotic drugs.

18. Article 14, paragraph 2, providing for the Board’s right to *recommend* an import or export embargo of narcotic drugs or both, must be distinguished from article 21, paragraph 4, authorizing the Board to *order* the discontinuation of the exports of narcotic drugs to a country or territory in excess of its import limits. The Board’s decision under article 21, paragraph 4 does not have any punitive character, and need not be based on a failure of the country or territory concerned to comply with the provisions of the Single Convention which seriously endangers the aims of the Single Convention, as a recommendation of an embargo pursuant to article 14, paragraph 2 must be. Moreover, the Board’s action under article 14 constitutes only a recommendation, while its decision pursuant to article 21, paragraph 4 obligates the Parties to carry it out, that is, to discontinue the exports involved to the country or territory in question.

19. The Board’s recommendation under article 14, paragraph 2 may also cover drugs in respect of which the control situation in the country or territory in question is satisfactory. Article 21, paragraph 4, on the other hand, can be applied only to those drugs whose imports exceed the limits computed under the terms of that paragraph for the country or territory concerned.

20. Although article 14, paragraph 2 refers expressly only to recommendations to Parties, there is no provision which prevents the Board from addressing simultaneously to non-Parties a recommendation made pursuant to that paragraph.

21. Non-compliance with a recommended embargo of course does not constitute a violation of a treaty provision and it may even be considered justified on non-legal grounds if it is motivated by the desire to provide for the treatment of the sick.²¹

22. See below, comments on article 21, paragraph 4.

²⁰ See, however, article 24, para. 4 of the 1925 Convention. Such a Party is also not a “State concerned” which may bring the matter before the Council under article 14, para. 2 of the Single Convention.

²¹ See also article 21, para. 4, subpara. (b), clause (ii) and article 14, para. 2, subpara. (ii) of the 1931 Convention, *Records*, vol. II, pp. 203-204.

Paragraph 3

3. The Board shall have the right to publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. If the Board publishes in this report a decision taken under this article or any information relating thereto, it shall also publish therein the views of the Government concerned if the latter so requests.

Commentary

1. The Board's "right to publish a report on any matter dealt with under the provisions" of article 14 is limited by its obligation to treat as confidential a request for information or an explanation by a Government under paragraph 1, subparagraph (a). As long as the Board does not decide to take action under subparagraph (c), it may therefore not reveal without the consent of the Government concerned its request and the explanations and consequently not publish a report under paragraph 3 on any procedure in which that request has been made. The Board must thus not report on any action under article 14 in the course of which a request for explanations pursuant to paragraph 1, subparagraph (a) has been made and which has been discontinued without calling the attention of the Council, the Commission and the Parties to the matter in accordance with paragraph 1, subparagraph (c).¹

2. Article 14, paragraph 1, subparagraph (a), on the other hand, does not require the Board to treat as confidential its refusal to ask for explanations, or the circumstances motivating such a negative action. The Board therefore does not appear to be prevented from reporting under paragraph 3 the fact that it has decided in a given case not to ask for explanations under paragraph 1, subparagraph (a), and the particulars of the situation on which its decision is based.

3. The Board may include in its report an account of the fact that, in accordance with paragraph 1, subparagraph (c), it has called "the attention of the Parties, the Council and the Commission" to a "matter", and it may cover any other "matter dealt with under the provisions" of article 14. Inclusion of mention of such an action under subparagraph (c) in the Board's report would not, however, be sufficient for the purposes of that subparagraph. If the Board decides to act in accordance with this provision, it must send to this end a separate communication to the Parties, the Council and the Commission.²

4. The Board may also include in one of its reports under article 15 the matter with which it may deal or has dealt in a report pursuant to article 14, paragraph 3; but the inclusion in a report under article 15 of an account of a matter dealt with under the provisions of article 14 would, strictly speaking, not constitute a report under paragraph 3. This may be concluded from the fact that reports under article 15 are to be communicated to the Parties by the Secretary-General, while those under paragraph 3 are transmitted by the

¹ See above, comments on article 14, para. 1, subparas. (a), (b) and (c); see in particular comments on subpara. (b) as regards publication by the Board of its suggestions of remedial measures.

² See above, comments on article 14, para. 1, subpara. (c).

Council. It is also expressly required for the former, but not for the latter, that they be submitted to the Council through the Commission.

5. But this distinction between the inclusion of an account in a report under article 15 or in a separate document under paragraph 3 is of little practical importance. The Board has the right, but not the obligation, to publish a report under paragraph 3 under the conditions of that provision. It may therefore forego such a report, and choose instead to give an account, in a report pursuant to article 15, of a matter dealt with under the provisions of article 14; but when following such a procedure, the Board must comply with the conditions to which it is subject in reporting under the terms of that article. However, facts which have been communicated to the Board in the course of a procedure under article 14 and may not be reported under paragraph 3 of that article may nevertheless be included in a report prepared pursuant to article 15 if they have also come to the Board's notice outside of that procedure, for example, under articles 12 and 13. The Board must however avoid any reference to article 14 in connexion with its presentation of such information.³

6. The Board may choose not to limit itself to giving, in a document prepared pursuant to article 15, an account of a matter dealt with under the provisions of article 14, but may also publish a special report in accordance with paragraph 3 of article 14 in order to emphasize the particularly serious character of an unsatisfactory drug situation.

7. The Government of the country or territory whose failure to comply with provisions of the Single Convention has been the object of the procedure under article 14 must be invited to the meeting of the Board at which the adoption of a report under paragraph 3 of that article is to be considered. If the Board chooses not to publish such a report but to give instead an account of the matter in a report to be issued under article 15, that Government must also be invited to be represented at the meeting at which the relevant section of that document is to be discussed. See below, comments on article 14, paragraph 5.

8. The Board must include in a report published under article 14, paragraph 3, the views of the "Government concerned" if the latter so requests; but it may do this even without such a request. It appears that the Board has the same obligation and right if it decides not to publish a report under paragraph 3, but chooses instead to limit itself to giving an account of the matter in a report issued pursuant to article 15. The "Government concerned" is the Government against which action under article 14 has been taken.⁴ For provisions of earlier treaties corresponding to article 14, paragraph 3, see article 24, paragraph 5 of the 1925 Convention.

³ See above, comments on article 14, para. 1, subpara. (a).

⁴ See also article 11, para. 4 and article 12, para. 4, subpara. (c) of the 1953 Protocol.

Paragraph 4

4. If in any case a decision of the Board which is published under this article is not unanimous, the views of the minority shall be stated.

Commentary

1. The “minority” may consist of a single member of the Board who participates in the vote on the decision in question.

2. For corresponding provisions of earlier narcotics treaties, see article 24, paragraph 6 of the 1925 Convention and article 12, paragraph 4, subparagraph (c), second sentence, of the 1953 Protocol.

Paragraph 5

5. Any State shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.

Commentary

1. The text clearly requires that a State should be given an opportunity to participate in the discussion under article 14 of any question directly interesting it. Such a question may be action by the Board pursuant to paragraph 1, subparagraphs (a), (b) or (c), paragraph 2 or paragraph 3, but cannot be a procedural problem arising under paragraphs 4, 5 or 6. The fact that a State has participated in an earlier stage of the procedure under article 14 does not deprive it of its right to participate in the discussion of subsequent steps to be taken by the Board in accordance with the sequence prescribed by article 14. This means that the State in question may be entitled to participate in the whole or parts of several meetings, that is, each time the Board deals with requests for information under paragraph 1, subparagraph (a), with suggestions of remedial measures under paragraph 1, subparagraph (b), with the consideration of the satisfactory character of explanations or with that of a failure to adopt proposed remedial measures under paragraph 1, subparagraph (c), with a proposal to call the attention of the Parties, the Council or the Commission to the matter in accordance with the same subparagraph, with a motion to recommend an embargo under paragraph 2 or with a proposal to publish a report pursuant to paragraph 3. If the Board chooses not to make a report under paragraph 3, but instead decides to deal with the matter in a report issued under article 15, paragraph 1, the State involved must be invited to be represented at the discussion of the relevant part of that document.¹

2. It is, however, submitted that the Board may not find itself required to refrain from discussing any proposal to take any of the actions mentioned in paragraphs 1 to 3 until the interested State has an opportunity to take part in the debate. A motion to take such a step may be discussed, at least in a preliminary way, without inviting that State to be represented.² Any other

¹ See above, comments on article 14, para. 3, in particular in regard to reporting the facts without reference to the procedure of article 14.

² *Records*, vol. II, p. 204.

interpretation may involve the State concerned in unnecessary costs of representation in situations which quite obviously cannot form the basis of any action by the Board. Only if the Board finds that the circumstances are such as to require an examination whether the conditions prescribed for any of its actions under paragraphs 1 to 3 exist, must it give the State concerned an opportunity to participate in the debate; but the text of the treaty does not appear to require that that State be entitled to take part in the whole debate of a question directly interesting it. In any event, none of the steps mentioned in these provisions may be adopted by the Board without previously offering the Government in question a hearing in the matter.

3. Any State—whether the whole State or only one or several of its territories³—against which any of the actions mentioned in paragraphs 1 to 3 is being considered by the Board is a directly interested State in the sense of paragraph 5. A State whose imports or exports would in a considerable measure be affected by the recommendation of an embargo under paragraph 2 would also be a State “directly” interested in such a recommendation and would have to be invited to be represented at the meeting of the Board at which the embargo would be considered.⁴

4. For provisions in earlier narcotic treaties corresponding to that of article 14, paragraph 5, see article 24, paragraph 7 of the 1925 Convention and article 11, paragraph 2 and article 12, paragraph 4, subparagraph (b) of the 1953 Protocol.

³ Article 1, para. 1, subpara. (j).

⁴ *Records*, vol. II, p. 204.

Paragraph 6

6. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

Commentary

It will be noted that a two-thirds majority of the members present and voting is not sufficient under this paragraph but that a two-thirds majority of “the whole number of the Board”, i.e. an affirmative vote of at least 8 of the 11 members of the Board, is required for decisions under article 14. The majority required under paragraph 6 is thus identical with that of article 10, paragraph 4, although expressed in different terms.¹ Decisions of the Board under article 10, paragraph 4 and article 14 are the only ones for which the Single Convention requires a two-thirds majority. In respect of all other decisions the rules of procedure which the Board may adopt in accordance with article 11, paragraph 1 may provide for adoption by a simple majority of the members present and voting, provided that at least seven of them (the quorum requirement of article 11, paragraph 3²) are present at the time of the voting.

¹ See above, comments on article 10, para. 4.

² For the two-thirds majority required for decisions of the Permanent Central Board under earlier narcotics treaties, see article 19, last para. of the 1925 Convention and article 11, para. 3 and article 12, para. 4, subpara. (a) of the 1953 Protocol.

Article 15

REPORTS OF THE BOARD

Paragraph 1

1. The Board shall prepare an annual report on its work and such additional reports as it considers necessary containing also an analysis of the estimates and statistical information at its disposal, and, in appropriate cases, an account of the explanations, if any, given by or required of Governments, together with any observations and recommendations which the Board desires to make. These reports shall be submitted to the Council through the Commission, which may make such comments as it sees fit.

Commentary

1. The Board's reports publishing its observations and recommendations may be that organ's most potent instrument for the promotion of effective international and national drug control, the power of public opinion being a very important element in the strength of the international drug régime.¹

2. The paragraph under consideration provides that the Board's reports should be submitted to the Council through the Commission, which may make such comments as it sees fit. In adopting this procedure, the authors of the Single Convention incorporated in that treaty what had already been the practice in regard to the reports of the Permanent Central Board prior to the entry into force of the Convention. This procedure can be very useful to the Council, whose consideration of the report of the International Narcotics Control Board may be greatly aided by the comments of a technical body; but it may also have some disadvantages whenever it leads to a delay so great that important parts of the information contained in the Board's report are out of date when the Council reviews them. The Council's discussion is more likely to attract the attention of the public, and in particular of the news media, if it deals with recent events than with matters which are no longer "newsworthy"; the value of the Board's report depends to a large extent on the impact which it has on public opinion.

3. Routing the report through the Commission may cause such an undesirable delay if the Commission meets only a long time after the adoption of a report by the Board. This may happen even if the Commission convenes annually, but particularly if it meets less than once a year.² It has been suggested that in order to avoid too long a delay in the submission to the Council of a report by the Board, the Commission may delegate its authority to make comments to a small committee of its members which can meet

¹ *Records*, vol. I, pp. 73 and 81.

² Resolution of the Economic and Social Council 1156 (XLI) II of 5 August 1966 provides *inter alia* that its functional commissions (including the Commission on Narcotic Drugs) should meet only biennially.

between its sessions, or that the Commission may adopt its observations by correspondence.³

4. There is, however, no provision which would prevent the Council from considering the Board's report prior to the examination of that document by the Commission. This view was in fact followed by the Council at its forty-eighth and fiftieth sessions, when it decided to follow such a procedure in order to avoid too long a delay in its review of the Board's report.⁴

5. Article 15, paragraph 1, refers to two different kinds of reports; to annual reports which the Board must prepare on its work, and to such additional reports as it may consider necessary. The annual reports are mandatory. The Board must prepare such a report even in the very improbable event that it considers this action unnecessary. It must, on the other hand, prepare only such additional reports as it considers necessary. The Board is fully independent in deciding whether such a necessity exists. It cannot be prevented by any Party to the Single Convention or by any budgetary or other organ of the United Nations from issuing such an additional report. The expenses of such an action by the Board must be borne by the United Nations,⁵ since it is clear from a series of resolutions of the Council and of the General Assembly that the United Nations has agreed to perform the functions conferred by the Single Convention on it or its particular organs;⁶ but this obligation to respect the technical independence of the Board does not exclude the right of United Nations organs, and particularly of the General Assembly, as well as that of any Government, to question the necessity and to criticize the contents of an additional report by the Board.

6. Article 15 does not impose any restrictions on the Board in regard to the kind of information, observations and recommendations which its reports may obtain. Both the International Narcotics Control Board and its predecessor the Permanent Central Board have taken a very broad view of what they may include in these documents. They have on several occasions not only reported on the implementation or non-implementation of provisions of the narcotics treaties, but have also given a comprehensive review of the international control régime, and have more generally presented a conspectus of the problem of drug abuse in its manifold aspects, including the political, economic, social and administrative problems which are the root-causes of extensive drug abuse and of weakness of drug control in a number of countries. They have pointed to lacunae in the international narcotics system, have referred to the need for additional control measures and for extension of control to uncontrolled substances, and, in the case of psychotropic substances not within the scope of the Single Convention, have even offered a critical review of various procedures by which international control could be extended to them. Reference has been made in the annual reports to the sociologically conditioned incapacity, or even unwillingness, of some administrations to

³ Letter dated 29 July, 1968 of the Director of the General Legal Division of the United Nations Office of Legal Affairs to the Director of the United Nations Division of Narcotic Drugs (United Nations file LE.221/1 (6-13) GEN.).

⁴ *Official Records of the Economic and Social Council, Fiftieth Session*, 1735th meeting (12 January 1971), paras. 40, 45, 76-77.

⁵ Article 6.

⁶ The letter referred to above in foot-note 3.

implement an effective control régime, including such factors as corruption in high places, and defective Government reports containing data which do not correspond to reality. Emphasis has been laid on the need for modernization of archaic economic and social structures in some regions which have a “drug economy”, that is, whose population depends for its livelihood to a considerable degree on the production of opium or the cultivation of the coca bush. The view has been expressed that in some places legal opium production is profitable only because a part of the crop is sold at the higher prices offered by illicit traffickers. A world plan has been suggested to carry out, with foreign aid where required, all reforms necessary to eliminate uncontrolled or illicit opium production and diversion from legal opium production into illicit channels in all countries where they occur, and thus to bring about the virtual suppression of the illicit traffic in opiates, that is, drugs derived from opium, such as morphine, and heroin. The need for increased foreign aid, multi-lateral and bilateral, has been stressed, and the lack of sufficient international solidarity has been mentioned in this context.

7. Reference has also been made to the importance of research into the aetiology of drug abuse and of the treatment and rehabilitation of drug addicts. It has been pointed out that effective control of the actual agents of abuse is not sufficient, because this may only bring about a transfer to other agents which are not, or not so effectively, controlled.

8. The two Boards have, however, avoided taking a position on problems on which countries of different social systems hold different views on ideological grounds, and they have also avoided making proposals which would be prejudicial to the action to be taken by other intergovernmental organs within their special sphere of competence. They have in such cases limited themselves to pointing to the problems involved, without making definite proposals regarding the kind of solution which should be adopted.⁷

9. The two Boards have by no means limited their work to a mechanical evaluation of the estimates and statistics which they receive from Governments, but have chosen a “dynamic” approach towards the performance of the functions conferred upon them by the narcotics treaties.⁸

10. Article 15, paragraph 1 stipulates that the Board’s reports should also contain an analysis of the estimates and statistical information at its disposal and, in appropriate cases, an account of the explanations given or required of Governments. The Board may ask for such explanations pursuant to article 12, paragraph 4 and article 13, paragraph 3. The Board is not bound to publish all explanations furnished by Governments. It may in particular omit those on minor points,⁹ but if it reports a request for explanations, it should also report the reply which it receives.

11. The analysis to which article 15, paragraph 1 refers must be undertaken in order to establish whether the countries and territories¹⁰ have complied with the provisions of the Single Convention governing their supply

⁷ See documents E/OB/19, E/OB/20, E/OB/21, E/OB/22, E/OB/23-E/DSB/25, E/INCB/1, E/INCB/5 and E/INCB/9.

⁸ *Records*, vol. II, p. 200, statement of the representative of France.

⁹ *Records*, vol. II, p. 231.

¹⁰ See also *Commentary* on the 1931 Convention, para. 153.

limits, i.e. the quantities of narcotic drugs each of them may acquire by manufacture or import, or both. This examination can be made only by comparing the statistical data received from Governments with the estimates of their drug requirements which they have furnished to the Board or which have been established for them by the Board pursuant to article 12, paragraph 3. Such an analysis and comparison is also prescribed by article 14, paragraph 3 of the 1931 Convention.¹¹ It is not necessary that every report issued by the Board contain such an analysis, but only the reports as a group published in a given calendar year. The Single Convention does not prescribe which report should contain the analysis. It appears advisable, however, that this examination be included in the Board's annual report, either in the main body of this document or in an annex thereto. This report refers to the Board's work in the preceding year, and the examination of compliance by Governments with the treaty provisions regarding supply limits of narcotic drugs is an important part of this work. The analysis should refer to the preceding year, and should give the data (estimates and statistical figures) concerning that year which have been compared.

12. The text of article 15, paragraph 1, however does not exclude the publication of the analysis in a separate report, which would be one of the additional reports which the Board may consider necessary to prepare pursuant to that paragraph.

13. The Single Convention does not contain any provision separate from that of article 15, paragraph 1, requiring the Board to publish the statistical data which it receives. Knowledge of such figures is, however, necessary for Parties in order to enable them to establish whether other States are carrying out the treaty provisions. It may also aid Governments in regulating their drug economy, for example in the establishment of manufacturing or import quotas¹² or both, and in the administration of the import certificate and export authorization system¹³ as required under the terms of the Convention.

14. The statistical data may be published in the document which contains the above-mentioned analysis, and may be included in that analysis as part thereof. They may also be published separately, either in the Board's annual report, in an annex thereto, or in a separate report.

15. The Board should give as complete an account as practicable of the statistical figures which it receives. It may, however, omit insignificant minor figures relating to drugs which do not appear in trade, or are traded only in small quantities for scientific purposes, or are otherwise of no importance from the viewpoint of international drug control.

16. Article 12, paragraph 6 requires the Board to issue at such times as it shall determine, but at least annually, such information on the estimates as in its opinion will facilitate the carrying out of the Single Convention. It is within the discretion of the Board to prepare these publications separately, or as a part of its annual or other reports under article 15, or in annexes to them;¹⁴ but the publication required by article 12 must contain the estimates

¹¹ See also *Commentary* on the 1931 Convention, para. 153.

¹² Article 29, para. 2, subpara. (c) and article 21, paras. 1 and 2.

¹³ Article 31, paras. 4-15.

¹⁴ See above comments on article 12, para. 6.

relating to the following calendar year, or to the remaining part of the current calendar year. The comparison of the statistical data and the estimates, which constitutes the “analysis” required pursuant to article 15, paragraph 1, refers to past figures. The publication of the estimates in such a comparison or in connexion therewith would therefore not be sufficient for the purposes of article 12, paragraph 6.

17. Explanations which the Board has received from Governments in respect of estimates under article 12, paragraph 4, and which have been included in a separate document issued in accordance with article 12, paragraph 6, need *not be included* in a report published in accordance with article 15, paragraph 1, and containing the analysis referred to therein.

18. The discretion of the Board to include information and to make observations and recommendations in its reports is, however, not unlimited. It may not, in applying article 15, paragraph 1, circumvent the restrictions of article 14. While its recommendations may be addressed to all States, to particular groups of States or to individual States, its report may in particular not recommend an import or export embargo of drugs or both except under the conditions of article 14, paragraph 2, and may also not recommend to a particular Government the adoption of remedial measures except in accordance with article 14, paragraph 1, subparagraph (b), unless this is done at the request of, or with the express or implied consent of, the Government concerned.

19. As regards the relationship between provisions of article 14 and those of article 15, paragraph 1, see above, comments on article 14, paragraph 1, subparagraphs (a), (b) and (c) and paragraph 3.

20. The Board may issue press releases which, however, should not contain any information which it cannot make known to the public at the time at which the release in question is issued. A press release containing information included in a report of the Board may also be issued only after the report of the Board has been communicated to the Parties. Governments should not learn from the press the contents of a report of the Board which they have not yet received.¹⁵

21. There is no provision restricting the discretion of the Commission to include, in its comments on the Board's reports, such observations and such recommendations to the Council as it may consider appropriate.

22. For provisions of earlier narcotics treaties corresponding to that of article 15, paragraph 1, see article 27 of the 1925 Convention, article 14, paragraph 3 of the 1931 Convention, and article 9, paragraph 4 of the 1953 Protocol; see also article 5, paragraph 7 of the 1931 Convention.

¹⁵ *Records*, vol. I, pp. 97-98.

Paragraph 2

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

Commentary

1. The Board's reports should be sent to the Parties as soon as they are reproduced, and in any case not later than the time at which they are sent to the Commission for submission to the Council. The Governments represented on the Council and the Commission should be in a position to know the contents of the reports a reasonable time before they participate in the review of these documents in the organs of which they are members.

2. The reports should be published, that is, released to the public by the Secretary-General, only a reasonable time after they have been communicated to the Parties. Governments should not learn from the press the comments which the Board may make in these documents on their stewardship in the field of drug control.¹ They should be able to acquaint themselves in time with the observations of the Board in order to be able to present to the public their own views on the situation simultaneously with the publication of the Board's report. This appears to be the purpose of the word "subsequently", which was inserted by the Commission when preparing the Third Draft² which was used as working document by the Plenipotentiary Conference.

3. The Parties are required to permit the "unrestricted" distribution of the Board's report. This provision is motivated by the desire of the authors of the Single Convention to ensure that the Board's reports should fulfil one of their principal aims, namely to inform public opinion of the successes and failures of international and national drug control, and thus to obtain the support of world opinion for the Board's views.³ The provision requires Parties to refrain from all action whether legal, regulatory or administrative, or the exercise of any pressure within the power of public authorities, which would make it impossible or difficult for a reporter of the news media or for a member of the general public to obtain and read copies of the Board's reports. Governments are, however, not bound to play an active role in this connexion, that is, to promote a wide distribution of the Board's reports, or to distribute them themselves.⁴ Although not expressly provided for in the Single Convention, it appears also to be in accord with the spirit of paragraph 2 of article 15 that Governments must not prevent or make difficult the reporting by the different news media of the contents of these documents of the Board.

4. Since the Board's reports should be able to make an impact on the general public they should be reproduced by such processes as printing or lithography which would permit the issue of large numbers of clearly legible copies. Mineographing would not be sufficient.

5. Copies of the Board's reports should also be made available to the public at such prices as would encourage their wide distribution.

¹ See above, comments on article 15, para. 1; *Records*, vol. II, pp. 97-98.

² Article 23, para. 2 of the Third Draft, document E/CN.7/AC.3/9, *Records*, vol. II, p. 9; compare with the corresponding article 24, para. 2 of the Second Draft, document E/CN.7/AC.3/7, para. 236; the word "subsequently" or any other expression requiring a sequence also does not appear in the first para. of article 27 of the 1925 Convention which corresponds to article 15, para. 2 of the Single Convention.

³ See also above, comments on article 15, para. 1.

⁴ *Records*, vol. II, pp. 231-232.

Article 16

SECRETARIAT

The secretariat services of the Commission and the Board shall be furnished by the Secretary-General.

Commentary

1. The 1925 and 1931 Conventions contained provisions regarding the secretariats of the two predecessor bodies of the International Narcotics Control Board, the Permanent Central Board and the Drug Supervisory Body. The 1925 Convention provided¹ that the Secretary-General of the League of Nations should appoint the secretary and staff of the Permanent Central Board on the nomination of the Board and subject to the approval of the Council of the League, while the 1931 Convention² required the Secretary-General of the League to provide the secretariat of the Supervisory Body. No treaty provision was made for the secretariat services of the League's Advisory Committee on the Traffic in Opium and Other Dangerous Drugs, the predecessor of the United Nations Commission on Narcotic Drugs; those services were supplied by a unit of the League's secretariat.

2. These treaty functions of the Secretary-General and of the Council of the League were transferred by the 1946 Protocol to the Secretary-General and the Economic and Social Council of the United Nations, respectively. In 1946, the Secretary-General of the United Nations and the Permanent Central Board agreed³ to establish a Joint Secretariat of the Board and Drug Supervisory Body, which served these two organs until they were replaced by the present International Narcotics Control Board in 1968.⁴ The Commission on Narcotic Drugs was and is being served by the Division of Narcotic Drugs of the United Nations Secretariat.

3. The existence of two separate, mutually independent secretariat units in the field of international narcotics control within the United Nations⁵ has been the subject of controversy. On the one hand, the opinion has been expressed that such a secretariat arrangement is unsound from an administrative viewpoint, hampers co-ordination of work and facilitates duplication of effort, and that the Permanent Central Board did not and the International Narcotics Control Board does not need a separate secretariat of its own to

¹ Article 20, second para.

² Article 5, para. 6.

³ *Official Records of the General Assembly, Fifteenth Session, Annexes*, agenda item 50, document A/4603, para. 7.

⁴ Article 45, para. 2 of the Single Convention and resolution 1106 (XL) of the Council; see above comments on article 1, para. 1, subpara. (a) and article 9, para. 2.

⁵ Secretariat functions relating to implementation of provisions of the narcotics treaties are also performed by a unit of the Secretariat of the World Health Organization.

secure its independent functioning, which could be guarded by other means and has been sufficiently protected by the relevant treaty provisions.⁶ It has, on the other hand, been asserted that the Board needs a separate secretariat for the independent performance of its tasks, which include judicial functions,⁷ and that there has been no significant duplication of work between the two secretariat units.⁸ These different opinions were also expressed at the Plenipotentiary Conference in 1961. Although the majority of the delegates was in favour of establishing a single secretariat for the two bodies,⁹ the Conference adopted article 16, which, while it makes the Secretary-General responsible for furnishing the secretariat services of the Commission and the Board, permits him to make such arrangements as he considers appropriate, whether by the establishment of a single or of two separate secretariats. The secretariat services furnished by the Secretary-General must, however, be in accord with the arrangements made by the Council in consultation with the Board pursuant to article 9, paragraph 2 to ensure the full technical independence of that organ in carrying out its functions. Under the arrangements in force at the time of this writing,¹⁰ provision is made for a separate secretariat serving the Board.¹¹

⁶ First para. of article 20 of the 1925 Convention and article 9, para. 2 of the Single Convention; see document referred to in foot-note 3, paras. 11 and 15.

⁷ See also above, comments on article 9, para. 2 and article 14, para. 2.

⁸ An internal management survey of the two secretariats which took place in 1965 and which recommended the establishment of a single secretariat serving both the Commission and the Board found that there was no duplication of work. It recommended the amalgamation of the two secretariats on other grounds than those of duplication of work.

⁹ For the debate on the question at the Plenipotentiary Conference see *Records*, vol. I, pp. 73-75, 98-100 and 114-120; see also documents E/CONF.34/L.10. *Records*, vol. II, p. 37 and E/CONF.34/L.16, *Records*, vol. II, p. 40.

¹⁰ Resolution 1196 (XLII) of the Economic and Social Council, dated 16 May 1967.

¹¹ See above comments on article 9, para. 2; also see however *Official Records of the Economic and Social Council, Thirty-second Session, Annexes*, agenda item 18, document E/3527, para. 70.

Article 17

SPECIAL ADMINISTRATION

The Parties shall maintain a special administration for the purpose of applying the provisions of this Convention.

Commentary

1. There is a need for co-ordinating the work of the various departments of a central national Government and its political subdivisions which perform the various tasks involved in carrying out the provisions of the international narcotics treaties, and more generally in dealing with the problem of drug abuse. Arrangements must also be made on the national level to ensure that each communication of an international organ relating to drug control is routed to the national Government agency which is competent in the special sphere of drug control in question. Such routing facilitates an appropriate response, either by taking the required national action or by furnishing to the international organ the requested information, as the case may be.

2. The constitutional, legal and administrative systems of many countries do not allow the establishment of a single authority for the implementation of all the provisions of the international narcotics régime, which require action in very different substantive fields. The Plenipotentiary Conference which adopted the 1931 Convention therefore limited itself to recommending to Governments to consider the desirability of establishing a single authority,¹ while the treaty itself imposed on the Parties only a legal obligation to maintain a “special administration” for the purposes of applying the provisions of the Convention, of regulating, supervising and controlling the trade in drugs subject to the Convention, and of organizing the campaign against drug addiction by taking all useful measures to prevent its development and to suppress the illicit traffic.² It was understood by the participants in the Conference of 1931 that the term “special administration” did not mean a “single authority”, as can be seen from the debates³ and also from the recommendation just referred to, by which the Conference only recommended that Governments should “consider the desirability of establishing” a single authority. This understanding has also been confirmed by the subsequent practice of the Parties, and by the League of Nations documents interpreting the terms of the 1931 Convention.⁴ Parties to the 1931 Convention have in most cases implemented their obligation to establish a “special administration”

¹ Recommendation I, Records of the Conference for the Limitation of the Manufacture of Narcotic Drugs; League of Nations, document C.509.M.214.1931.XI, vol. I, p. 415.

² Article 15, second para. of the 1931 Convention.

³ League of Nations document referred to in foot-note 1, vol. I, pp. 186, 201 and 251.

⁴ *Commentary* on the 1931 Convention, para. 162; see also Model Code, p. 7.

by taking some special administrative arrangements to provide for liaison among their various national agencies charged with functions of drug control, and to co-ordinate the work of such agencies in its domestic and international aspects. Many countries have made a special unit in one of their central government departments responsible for this task of liaison and co-ordination.⁵

3. The term “special administration” has nevertheless sometimes given rise to misunderstandings. At the Plenipotentiary Conference there was some opposition to using this term, since it could be understood to mean a “single authority”. When adopting the text of article 17, the delegates to the Conference made it clear that they used the term “special administration” in the same sense as this phrase was used in the 1931 Convention, and that they did not mean to impose an obligation to establish a “single authority”, but only to require the maintenance of some national administrative arrangements for liaison and co-ordination. The Conference found it superfluous to state this expressly in the treaty itself, since the Conference Records were very clear on this point.⁶

4. See also article 35, paragraph (a) of the Single Convention regarding arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic; and articles 11 and 12 of the 1936 Convention requiring the Parties to establish a national “central office” for the supervision and co-ordination of all operations in the fight against the illicit traffic and for international co-operation in this area.

⁵ Others have established to this end interdepartmental committees; *Records*, vol. II, p. 250.

⁶ *Records*, vol. II, p. 278, foot-note 87 and page 289, foot-note 56; see also Conference document E/CONF. 34/L.18, *Records*, vol. II, p. 63-65; for the discussions, see *Records*, vol. I, pp. 36 and 120-122 and vol. II, pp. 249-254.

Article 18

INFORMATION TO BE FURNISHED BY PARTIES

Paragraph 1, introductory part

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:

Commentary

1. The introductory part describes in general terms the information which Parties to the Single Convention are bound to furnish to the Secretary-General at the request of the Commission. No such general formula exists in the earlier narcotics treaties in respect of the information which Parties are obliged to supply to the Secretary-General, or to each other through the Secretary-General.¹ The paragraph under consideration lays down, however, only what was the practice of the Commission prior to the coming into force of the Single Convention.² The Commission then did not hesitate to ask Governments for information relating to drugs which were abused or liable to abuse, whether or not they were already under international control, whenever it considered such information necessary for its work either under its terms of reference as a functional commission of the Economic and Social Council under the United Nations Charter, or under the narcotics treaties; but the earlier narcotics treaties themselves did not impose upon Parties a legal obligation to furnish information at the *request* of the Commission. As far as these treaties are concerned, the Parties were only bound to furnish the specific information expressly required by those conventions which they had respectively accepted. The view may, however, be held that the obligation of Members of the United Nations to co-operate in the international campaign against drug abuse also includes their legal duty to furnish at the request of the Council, the Commission or the Secretary-General, such data regarding drugs as these organs respectively require for the performance of their functions under the United Nations Charter in regard to international co-operation concerning the social problem of abuse of drugs.³

¹ For provisions of earlier narcotics treaties requiring parties to furnish substantive information to the Secretary-General, see article 21 of the 1912 Convention together with the resolution dated 15 December 1920 of the Assembly of the League of Nations (see foot-note 11 to above comments on article 8) and article 3 of the 1946 Protocol; article 10 of the 1925 Agreement; articles 11, 21 and 23 of the 1931 Convention; article 16 of the 1936 Convention, article 1 of the 1948 Protocol; and article 4, para. (b) and article 10 of the 1953 Protocol.

² See in this connexion resolution 246 B (IX) of the Economic and Social Council authorizing the Secretary-General to ask Governments to furnish explanations or additional information regarding statements contained in annual reports, seizure reports, texts of laws and regulations or in other reports forwarded by them to the Secretary-General as may be necessary to enable the Commission on Narcotic Drugs to discharge its functions.

³ See above, comments on article 3, para. 7, articles 5 and 8 and article 14, para. 1, subpara. (a).

2. Two questions of interpretation of the paragraph under consideration may be raised: first, is the information referred to by the words “and in particular”, i.e. that described in subparagraphs (a) to (d), to be furnished to the Secretary-General in any case, or only if requested by the Commission? It is submitted that such a request is not required, and furthermore that the Commission has an obligation to determine the particulars of the illicit traffic which Parties must include in their reports under subparagraph (c). The data mentioned in the four subparagraphs are in any event necessary for the performance of the Commission’s work, while other facts are considered necessary, and therefore must be furnished to the Secretary-General, only if expressly requested by the Commission “as being necessary for the performance of its functions”.

3. One of the principle aims of the Single Convention was that of codifying the treaty law in the field.⁴ By making it expressly obligatory to furnish annual reports, the text of laws and regulations and seizure reports, the authors of the Single Convention sought to achieve this aim. Subparagraphs (a) to (c) only reproduce the substance of provisions of earlier narcotics treaties which require Parties to supply the information defined in these subparagraphs, without being specifically requested by an international organ to do it.⁵

4. The second question which arises is whether the Commission’s view that the information which it requests is “necessary” for the performance of its functions is binding on Parties. It appears that the text justifies an affirmative reply to this question.⁶ If this view is accepted, the Commission has indeed very far-reaching powers to require Parties to furnish information, since the Commission may consider not only the implementation of specific provisions of the Single Convention, but “all matters pertaining to the aims of this Convention”.⁷ The Commission has requested Parties to supply data not only in respect of controlled drugs, but also in regard to such substances liable to abuse as are outside the scope of the Single Convention, without any Party questioning on legal grounds the right of the Commission to require this kind of information. It seems that only in the highly improbable case of

⁴ Operative part of resolution 159 II D (VII) and resolution 246 D (IX) of the Council; the Records of the Conference only indicate that the text of article 26, para. 1, introductory part of the Third Draft which was drafted by the Commission and served as working document of the Plenipotentiary Conference was “approved”. Article 26, para. 1, introductory part of the Third Draft is identical with article 18, para. 1, introductory part of the Single Convention as finally adopted; *Records*, vol. II, pp. 10 and 179. The Commission was guided in its work by the two Council resolutions.

⁵ Article 21, para. (a) of the 1912 Convention, article 30 of the 1925 Convention, articles 21 and 23 of the 1931 Convention and article 16 of the 1936 Convention; see also article 4, para. (b) and article 10 of the 1953 Protocol.

⁶ It may be recalled in this connexion that the Commission could invite the Council to request the International Court of Justice for an advisory opinion on this point, or on any other question of interpreting the single Convention, in accordance with article 96, para. 2 of the United Nations Charter and General Assembly resolution 89 (I); see also on disputes article 48 of the Single Convention.

⁷ Article 8, introductory part.

abuse by the Commission of its right⁸ to request information would a Party be entitled to refuse to furnish requested data on the ground that the information is unnecessary for the performance of the Commission's functions.

5. On the other hand, it appears to follow from the practice of Governments in this area, before as well as after the coming into force of the Single Convention, that Parties are bound to furnish only such data as are in their possession, or which they are required to obtain to carry out specific provisions of the Convention, or which they may acquire by an effort which can reasonably be expected of them. For example, if the Commission asks for detailed statistical figures on the incidence of abuse of drugs,⁹ a Party would not be obligated, in order to obtain this information, to enact laws or regulations to require physicians to report addicts whom they treat if this would be incompatible with its traditional principle of professional secrecy.

6. The Commission may under the general formula of the introductory part require that the requested information be supplied separately, or be included in the annual reports mentioned in subparagraph (a) or in other documents, since pursuant to paragraph 2 it is authorized to determine the manner in which the data should be furnished and to prescribe the forms to be used for this purpose. The Commission may address also to non-Parties its requests for information which it needs for the performance of its functions. A non-Party would, however, be bound to comply with such a request, in the case of a Member of the United Nations, if furnishing the information involved is required by its obligation under the United Nations Charter to co-operate in the promotion of the solution of the international social problem of drug abuse.¹⁰ If it is a non-Member of the United Nations, it would have the legal duty to carry out the request of the Commission to the extent that it may be bound to do so under a rule of customary international law. The latter presupposes, of course, that the basic rules of the international narcotics régime have in fact become provisions of customary general international law.¹¹

⁸ See article 38, para. 1, subpara. (c) of the Statute of the International Court of Justice; the prohibition of the abuse of rights appears to be a general principle of law "recognized by civilized nations".

⁹ See chapter X of the Form of Annual Reports, document E/NR.FORM/Rev.2, dated 21 March 1966.

¹⁰ Article 55, subpara. (b) of the Charter; see above, comments on the subparagraph under consideration and on article 3, para. 7, article 5, article 8 and article 14, para. 1, subpara. (a).

¹¹ See above, comments on article 14, para. 1, subpara. (a).

Paragraph 1, subparagraph (a)

(a) An annual report on the working of the Convention within each of their territories.

Commentary

1. The 1931¹ and 1936² Conventions, as well as the 1953 Protocol,³ also required Parties to furnish annual reports on the working of these treaties in their territories. The 1953 Protocol expressly stipulated that the annual report which it required should be included in or annexed to the annual report on the working of the 1931 Convention. It has, however, been the practice not only to combine the annual report provided for in the 1953 Protocol with that of the 1931 Convention, but to include in a single document all the annual reports required by the different treaties. This practice continued after the Single Convention came into force. Since the three earlier treaties which provide for annual reports are still in force⁴ at the time of this writing, the Commission has prepared a single form⁵ which it requires Governments to use for their annual reporting on the working of the Single Convention and of these three earlier treaties. Many Parties to the Single Convention are, however, not Parties to one or more of these earlier treaties; on the other hand, some Parties to these treaties have not yet accepted the Single Convention. Governments may thus be called upon to reply to questions included in this single form which are required by a treaty to which they are not Parties; but this has caused no difficulties in practice. The subject-matter with which the earlier treaties deal is normally also covered by the terms of the Single Convention. Moreover, questions which relate to the working of the earlier treaties but not to that of provisions of the Single Convention would generally be “necessary” for the Commission’s performance of its functions under that Convention, and thus be justified by the terms of the introductory part of article 18. The Commission’s practice of including in the form for annual reports by Governments on the working of the Single Convention questions relating to the implementation of other narcotics treaties to which some of these Governments may not be Parties only continues the practice which existed prior to the coming into force of the Single Convention. In fact, both the Commission and the Board expect to receive from all Governments, and request them to furnish, all the various reports required by the different narcotics treaties, whether or not the Government in question is a Party to one, several or all of these treaties,⁶ and they make the request to non-Parties not only in

¹ Article 21.

² Article 16.

³ Article 10, para. 1, subpara. (c).

⁴ Article 44 of the Single Convention.

⁵ Form E/NR.FORM/Rev.2, dated 21 March 1966. The form states expressly in its heading that it refers to all four treaties.

⁶ Only very few countries are Parties to all general substantive narcotics treaties, that is, to the 1912, 1925, 1931 and 1936 Conventions, to the 1948 and 1953 Protocols and to the Single Convention; the 1925 and 1931 Agreements relating to opium smoking which are in any event obsolete (see article 19 of the 1953 Protocol and particularly article 49 of the Single Convention) have of course only a small number of Parties; document E/CN.7/514/Add.2.

the cases where they are specifically authorized to do so by treaty provisions.⁷ Both organs, however, consider some provisions of the treaties preceding the Single Convention to be obsolete, and for practical reasons do not request such obsolete information.⁸ The Commission also follows this practice in regard to the annual reports to be furnished under subparagraph (a).

2. As regards the obligation of a Member State of the United Nations or of a non-Member State to furnish information required by a narcotics treaty to which it is not a Party, see above, comments on article 18, paragraph 1, introductory part, and the references in foot-note 3 to these comments.

3. The form⁵ which the Commission requests to be used for the annual reports contains some questions which do not concern the working of any of the four treaties under whose terms the reports are furnished. For example, it contains requests for information on publications of international interest, official or unofficial, relating to narcotics control,⁹ and on drugs not yet under international control and their medical value.¹⁰ The Commission is of course authorized to ask these questions under the general terms of article 18, paragraph 1, introductory part, and to require, pursuant to paragraph 2 of this article, the inclusion of the replies in the annual reports.¹¹

4. The information which Governments are asked to furnish in their annual reports includes, *inter alia*, steps, including preliminary steps, taken to become a Party to any of the ten multilateral narcotics treaties in force; other international agreements or arrangements relating to narcotic drugs, whether bilateral or concluded by more than two countries; laws and regulations enacted to implement any of the four treaties under whose terms the annual reports are made; administrative arrangements for narcotics control; control of the international trade, including names and addresses of authorities responsible for the issue of import and export authorizations;¹² control of manufacture, including the names and addresses of narcotics factories and the drugs each of them is authorized to manufacture and their designations;¹³

⁷ Article 26 of the 1925 Convention; article 2, para. 3 of the 1931 Convention; article 8, para. 8 and article 13 of the 1953 Protocol; and article 12, paras. 2 and 4, article 13, paras. 2 and 3 and article 14 of the Single Convention.

⁸ E.g. the second paragraph of article 13 of the 1912 Convention (rescinded by article 31 of the 1925 Convention as between Parties to that Convention); and article 14, para. 1 of the 1931 Convention.

⁹ Question 51.

¹⁰ Question 16 (a).

¹¹ See above, comments on article 18, para. 1, introductory part.

¹² The lists of these authorities are published in the document series E/NA.19 . . .

¹³ Lists of narcotics factories, indicating the drugs each of them is authorized to make, are published in the document series E/NF. 19 . . . a Multilingual List of Narcotic Drugs under International Control containing all known synonyms is published by the United Nations Secretariat and brought up to date from time to time; see document E/CN.7/513, United Nations publication, Sales No. E/F/S/R/69.XI.1; see also the List of Narcotic Drugs under International Control, published by the International Narcotics Control Board, 14th edition (March 1970) published as annex to the statistical forms ("Yellow List"); see para. 1 of articles 12 and 13 and introductory parts of paras. 1 of articles 19 and 20; article 20 of the 1931 Convention as amended requires Parties to notify to the Secretary-General narcotics factories and the drugs which each of the factories is authorized to manufacture. The Single Convention did not take over this provision; but its article 18, para. 1, introductory part,

control of domestic trade; prohibition of manufacture of, international and domestic trade in, and use of some narcotic drugs; data on cultivators of plants from which narcotic drugs are obtained (e.g. whether they are state farms, co-operatives, other corporate bodies or individual farmers); statistical figures on drug abuse (classified by agent of abuse, source of agent of abuse, origin of addiction, occupation, age and sex); and illicit traffic with many details, such as sources of supply of the traffic, quantities of each drug seized, prosecutions, convictions, penalties, prices in the illicit traffic, methods used by traffickers and disposal of seized drugs.¹⁴

5. Contrary to the earlier practice, copies of the texts of the annual reports are now no longer distributed by the Secretary-General to Governments.¹⁵ Summaries of the annual reports are prepared by the Secretariat of the United Nations and are reviewed by the Commission.¹⁶

6. In accordance with paragraph 2 of article 18, the Commission at present requires that the annual reports should reach the Secretary-General not later than 30 June of the year following the year to which they relate.¹⁷

7. The term “territories” as used in subparagraph (a) not only refers to territories as defined in article 1, paragraph 1, subparagraph (y), i.e. to *parts* of a State treated as separate entities for the application of the system of import certificates and export authorizations provided for in article 31, but also to the whole area of a State not divided into such separate entities.¹⁸

empowers the Commission to require Parties to furnish this information to the Secretary-General as it actually does in para. 13 of the form (see above foot-note 5) for annual reports.

¹⁴ For the full contents of the annual reports, see the form referred to in foot-note 5 above.

¹⁵ Distribution is expressly required by article 16 of the 1936 Convention but not by article 21 of the 1931 Convention, article 10, para. 1, subpara. (c) of the 1953 Protocol and article 18, para. 1, subpara. (a) of the single Convention.

¹⁶ These summaries are published in the series E/NR. 19 . . . /SUMMARY.

¹⁷ See “Note by the Secretary-General” on the first page of document E/NR. FORM/Rev.2; see also article 49, para. 4, subpara. (a), clause (i) of the Single Convention.

¹⁸ See above comments on article 1, para. 1, subpara. (y).

Paragraph 1, subparagraph (b)

(b) The text of all laws and regulations from time to time promulgated in order to give effect to this Convention.

Commentary

1. Parties must furnish to the Secretary-General all their laws and regulations which implement provisions of the Single Convention, including those which were enacted before they became Parties; this obligation does not apply, however, to those texts that have already been furnished under

corresponding provisions of earlier narcotics treaties.¹ Not only texts of legislation of central governments must be supplied, but also those of political sub-divisions such as states or provinces of a federal union whenever legislation implementing provisions of the Single Convention falls within the competence of such subdivisions.

2. The words “from time to time” indicate that the obligation of Parties is a continuing one. Their duty is not completed once they have supplied all the laws and regulations which they have promulgated to implement all the provisions of the Single Convention. They must also furnish later amendments.²

3. The phrase “from time to time” in the English text and the corresponding word “*periódicamente*” of the Spanish text refer respectively to the words “promulgated” or “*promulgados*”. The corresponding phrase “*de temps à autre*” of the French version appears, however, to refer to the word “*fourniront*”³ in the introductory part. It is suggested that preference be given to the English and Spanish texts because this would be in accordance with the explanation given to the plenary meeting of the Plenipotentiary Conference by the chairman of the Drafting Committee, which inserted the words in question.⁴

4. The Secretary-General distributes to Governments copies of the legal texts that he receives.⁵

¹ Article 21, para. (a) of the 1912 Convention, article 30 of the 1925 Convention; article 21 of the 1931 Convention, article 16 of the 1936 Convention; article 10, para. 1, subpara. (b) and para. 2 of the 1953 Protocol which, however, requires Parties only to furnish “a report on the legislative and administrative measures adopted in accordance with this Protocol” and “additional information regarding any important changes” concerning these measures.

² *Records*, vol. I, p. 208.

³ “Shall furnish” in the English text and “*facilitarán*” in the Spanish text.

⁴ *Records*, vol. I, p. 208; see also article 26, para. 1, subpara. (b) of the Third Draft, i.e. of the working document of the Plenipotentiary Conference, *Records*, vol. II, pp. 10 and 179.

⁵ Governments are also asked by the Commission to furnish in their annual reports legal information on the implementation of narcotics treaties, including the Single Convention; see chapter II of the form E/NR.FORM/Rev.2. The texts are published in the series E/NL.19 . . ./. . .; the Secretary-General also prepares cumulative indexes of these texts, see e.g. document E/NL.1965/Index, United Nations publication, Sales No. 66.XI.4. Distribution of the texts is required by the 1912, 1925, 1931 and 1936 Conventions, but not by the 1953 Protocol or by the Single Convention; see foot-note 1 above.

Paragraph 1, subparagraph (c)

(c) Such particulars as the Commission shall determine concerning cases of illicit traffic, including particulars of each case of illicit traffic discovered which may be of importance, because of the light thrown on the source from which drugs are obtained for the illicit traffic, or because of quantities involved or the method employed by illicit traffickers; and

Commentary

1. Under this subparagraph the Parties have a general obligation to furnish to the Secretary-General such data on cases of the illicit traffic as the Commission may determine, and a more specific obligation to furnish data to be determined by the Commission on important cases as defined by the subparagraph. If no provision were made for the specific obligation, that is, if the part of the subparagraph beginning with the word “including” in the second line were omitted, the general formula at the beginning would still authorize the Commission to require Parties to furnish the information covered by the specific obligation.¹ Under the general formula the Commission is authorized to determine what particulars and on what kind of cases of illicit traffic the Parties are bound to report.

2. Under the more specific part of the subparagraph under consideration, which begins with the word “including” in the second line, the Parties must report on each possibly important case of illicit traffic discovered by them. The obligation of Parties to report is not limited to those cases which they consider to be actually important, but includes also those which “may” be important. What cases may be important is not established by the Commission, but defined by the Convention itself. A case “may be of importance” for one or more of the following reasons: “because of the light thrown on the source from which drugs are obtained for the illicit traffic, or because of quantities involved or the method employed by illicit traffickers”. The Commission must, however, determine the “particulars” which the Parties must supply on the cases which “may be of importance”.

3. The information which Parties are required by the Commission to supply under the general formula of subparagraph (c) is at present included in the annual report² which they furnish pursuant to subparagraph (a).³

4. The separate reports on “each case of illicit traffic discovered which may be of importance” are made by Governments on a form⁴ prepared by the Commission in accordance with paragraph 2 of article 18. Contrary to the earlier practice under the corresponding provision of the 1931 Convention,⁴ the individual reports are no longer distributed to Governments by the Secretary-General. The data contained in them are summarized in documents prepared from time to time by the United Nations Secretariat, which are distributed to Governments and submitted to the Commission.⁵

¹ *Records*, vol. II, p. 179, Statement of the representation of the United Kingdom of Great Britain and Northern Ireland; the Commission could also require Parties to furnish this information under its general authority provided for in the introductory part of para. 1.

² Chapter XI of document E/NR.FORM/Rev.2; see also last sentence of paragraph 2 of the “Notes” at the end of annex I of that document.

³ This form as prescribed by the Commission at present is reproduced as annex I of document E/NR/FORM/Rev.2.

⁴ Article 23; the practice of distributing the individual reports to Governments was already discontinued prior to the Single Convention.

⁵ In 1968 the former monthly summaries of these seizure reports were replaced by communications on relevant cases issued at the discretion of the Director of the Division of Narcotic Drugs of the United Nations Secretariat; Commission on Narcotic Drugs, report on the twenty-second session (1968), *Official Records of the Economic*

5. When the reports on seizures were first introduced by the 1931 Convention, their communication to Governments was thought to facilitate police co-operation in individual cases of illicit traffic.⁶ They are no longer used for this purpose by the United Nations. The information that they contain, however, assists Governments and the Commission in developing policies in the fight against the international illicit traffic, and in reviewing the effectiveness of law enforcement in that area. Actual international police co-operation takes place on a bilateral basis between the national police services concerned, and on a multilateral basis through the International Criminal Police Organization (INTERPOL) which is an international organization. In the above-mentioned form which the Commission has prepared for the reports on individual cases of illicit traffic, Governments are invited to use the form not only for reports furnished to the Secretary-General of the United Nations, but also for reports to be made to INTERPOL.⁷ It is requested in the form⁸ that when the report is forwarded to that organization, photographs, fingerprints and records of previous convictions of the illicit traffickers in question should be attached.

6. It was provided in the 1931 Convention⁹ that reports on individual cases of the illicit traffic should be furnished by the Parties "as soon as possible". Similarly, the Commission states in the form which it requests to be used for the reports under the Single Convention or under the 1931 Convention that they should be made "as soon as possible".¹⁰ As regards the reports transmitted pursuant to subparagraph (c), the Commission may request submission as soon as possible under paragraph 2 of article 18, by which it is authorized to determine the dates by which information required under provisions of paragraph 1 of that article should be supplied.

7. In the form³ for reports on individual cases of illicit traffic, the Commission at present requires Governments to report *inter alia* on the kind and weight of the seized drug, the place and date of the illicit transaction or seizure, packing, labelling and trade mark of the seized substance, type of transportation used by the illicit trafficker (including name, owner, nationality and registration of the ship, aircraft or other vehicle involved), route followed by the drug, destination, place of acquisition of the drug by the culprit, place where the drug was manufactured or where the plant was cultivated from which the drug was obtained, means by which the drug was obtained (purchase, theft, etc.), in case of clandestine laboratories the apparatus seized, personal data on the trafficker (name, date and place of birth, nationality, occupation,

and Social Council, Forty-fourth Session. Supplement No. 8 (E/4455), para. 372 I. The documents containing summaries of the reports are at present published in the United Nations document series E/NS.19 . . . SUMMARY . . .

⁶ The League of Nations Secretariat even prepared confidential "black lists" of illicit traffickers, see, e.g., League of Nations, document C.256. M.105. 1934.XI, p. 24.

⁷ Para. 1 of the Notes at the end of annex I of document E/NR.FORM/Rev.2; see also Council resolution 1579 (L) (Special Arrangement for co-operation between the United Nations and the International Criminal Police Organization).

⁸ Para. 18.

⁹ Article 23.

¹⁰ Para. 2 of the notes mentioned above in foot-note 7.

residence, whether arrested or at large, etc.) and judicial or administrative measures taken against him.

8. The treaties preceding the Single Convention did not give to the Commission a general authority to require Parties to furnish information on the illicit traffic, as provided in the general formula at the beginning of subparagraph (c); but the formula represents the actual practice of the Commission as it existed before the Single Convention.

9. There is a considerable divergence between the English text of subparagraph (c), on the one hand, and the French and Spanish versions on the other hand. The part of the English subparagraph beginning with the words "particulars of each case" is rendered in the French version by the words "*les détails de chaque affaire de trafic illicite découverte qui pourront présenter de l'importance soit en raison de la lumière qu'ils jettent sur les sources d'approvisionnement en stupéfiants du trafic illicite, soit en raison des quantités en cause ou de la méthode utilisée par les trafiquants illicites*", and in the Spanish version by the words "*los datos de cada caso descubierto de tráfico ilícito que pueden tener importancia, ya sea por arrojar luz sobre las fuentes de que provienen los estupefacientes para dicho tráfico, o bien por las cantidades de que se trata o el método empleado por los traficantes ilícitos*".

10. As can readily be seen, the English text provides that each case of the illicit traffic on which a report should be made should be one which "may be of importance" for the reasons specified, while the French and Spanish versions provide for reporting in respect of each case of the illicit traffic the *particulars* which may be important for the same reasons. It appears from the legislative history of this provision that the English text accords with the intention of the Plenipotentiary Conference which adopted the Single Convention. The provision was not included in the Third Draft, which contained only the general formula with which subparagraph (c) of article 18, paragraph 1 of the Single Convention begins. The Third Draft uses exactly the same words as the Single Convention in formulating this general power of the Commission, namely the words "such particulars as the Commission shall determine concerning cases of illicit traffic".¹¹ When the provision was discussed in the Committee charged by the Plenary Meeting to consider it,¹² the representative of India moved to replace it by a text which was nearly the same as the substantive part of the first paragraph of article 23 of the 1931 Convention, except that the order of the three reasons for which "each case of illicit traffic . . . may be of importance" was different. He stated expressly that his proposal would replace the wording of the Third Draft by the text of article 23 of the 1931 Convention. The original of the Indian amendment was of course drafted in English.¹³ The Committee decided, with the consent of the Indian representative, that his proposal should not replace the text of the Third Draft,

¹¹ Article 26, para. 1, subpara. (c), *Records*, vol. II, p. 10.

¹² *Records*, vol. I, p. 80.

¹³ Document E/CONF.34/C.9/L.1, *Records*, vol. II, p. 39. The French and Spanish translations prepared by the Conference secretariat of this document, obviously by mistake, contain already that difference from the English original which appears in the French and Spanish versions of article 18, para. 1, subpara. (c) of the Single Convention; *Records* (Spanish) vol. II, p. 40; *Records* (French), vol. II, p. 46.

but should be added to it.¹⁴ The Committee's amendment was approved by the Plenary without any change.¹⁵

11. The English text of article 18, paragraph 1, subparagraph (c), beginning with the word "particulars" in the second line and ending with the word "traffickers" in the last line, is thus nearly the same as the substantive part of the first paragraph of article 23 of the 1931 Convention, with the exception mentioned above. The French version of this paragraph is identical with the English text. It relates the qualification of "importance" to "each case of illicit traffic discovered", and not to the "particulars" of such a case.¹⁶

12. This legislative history appears to permit the above-mentioned conclusion that the English text of article 18, paragraph 1, subparagraph (c) fully accords with the intention of the Plenipotentiary Conference, and is to be preferred to the French and Spanish versions where it differs from them.

13. For the provision requiring Parties to furnish to the Board statistical information on the illicit traffic, see article 20, paragraph 1, subparagraph (e), of the Single Convention; see also article 21, paragraph 2 of that Convention. As regards the preceding treaties, see article 22, paragraph 1, subparagraph (e) of the 1925 Convention, article 7, first paragraph, subparagraph (ii) of the 1931 Convention and article 8, paragraph 1, subparagraph (a), clause (iv) of the 1953 Protocol.

¹⁴ *Records*, vol. II, p. 179.

¹⁵ *Records*, vol. II, p. 273 and vol. I, p. 179; see also vol. I, p. 208 and vol. II, p. 287.

¹⁶ The relevant French words are; "*tout cas de trafic illicite découvert par elles* (i.e. les Hautes Parties contractantes) *et qui pourra présenter de l'importance*". The English and French texts of the 1931 Convention are "authoritative" (article 27 of the 1931 Convention); there is no internationally "authoritative" Spanish version of that treaty, which was concluded under the auspices of the League of Nations.

Paragraph 1, subparagraph (d)

(d) The names and addresses of the governmental authorities empowered to issue export and import authorizations or certificates.

Commentary

1. The information mentioned in this subparagraph is needed by Governments in order to prevent international shipments of narcotic drugs on the basis of forged documents. Authorities of "territories" within the meaning of article 1, paragraph 1, subparagraph (y), that is, of political subdivisions or parts of a State treated as separate entities for the application of the system of import certificates and export authorizations,¹ may also be empowered to issue the authorizations or certificates. Subparagraph (d) therefore requires Parties to furnish to the Secretary-General also the names and addresses of such territorial authorities.

¹ Article 31, paras. 4-14.

2. Governments are at the time of this writing bound to supply the information referred to in subparagraph (d) in their annual reports pursuant to article 18, paragraph 1, subparagraph (a).²

3. The English, French and Spanish versions of the present subparagraph refer not only to import and export authorizations and to import certificates, but also to “export certificates”. The Convention does not provide for “export certificates”. Subparagraph (d) is mistaken on this point; but the terms “export authorization” and “export certificate”, as well as the terms “import authorization” and “import certificate”, are sometimes used as synonyms, although not in the Single Convention or in the earlier narcotics treaties; see below, comments on article 31, paragraph 4, subparagraphs (a) and (d) and paragraph 5 on the distinction between “import authorization” and “import certificate”.

4. Lists of Names and Addresses of National Authorities authorized to issue the documents mentioned in subparagraph (d) are published by the Secretary-General in the document series E/NA.19 . . .

² E/NR.FORM/Rev.2, para. 5; under article 18, para. 2, the Commission is authorized to require Parties to furnish in their annual reports the information foreseen in subpara. (d); see also above, comments on article 18, para. 1, introductory part.

Paragraph 2

2. Parties shall furnish the information referred to in the preceding paragraph in such manner and by such dates and use such forms as the Commission may request.

Commentary

1. The Commission is authorized by this paragraph to determine:

(i) The manner in which Parties must supply information required by paragraph 1;

(ii) The dates by which this information must be furnished; and

(iii) The forms to be used.

2. As regards the manner of submission, the Commission may determine whether the information should be furnished separately, or included in the annual reports of Governments or in other documents;¹ it may request that the paper containing the data should be supplied in an indicated number of copies; and it may prescribe the mode of dispatch of the information, e.g. by mail, air mail, registered mail or in urgent cases by telegram.

3. As regards the dates of submission, it is suggested that the power of the Commission to determine the date by which a given information should be furnished must be interpreted in connexion with the fact that it is also authorized to decide on the “manner” in which the information should be supplied. It may therefore not only determine by which date information should be dispatched, but also that it be sent early enough so as to reach the

¹ See also above, comments on article 18, para. 1, introductory part.

Secretary-General by a given date. The Commission has thus requested Governments to send to the Secretary-General their annual reports so as to reach the Secretary-General not later than 30 June of the year following the year to which the reports relate.²

4. It is also suggested that the authority of the Commission to set the date by which information must be supplied also includes its power to determine the approximate time by which this should be done. It seems that in exercise of this power the Commission requires that the reports of each case of illicit traffic which “may be of importance” pursuant to article 18, paragraph 1, subparagraph (c)³ should be made “as soon as possible”.⁴

5. As regards forms to be used, under the earlier narcotics treaties the Commission was expressly authorized to prepare the form in accordance with which Governments must furnish their annual reports on the working of the 1931 Convention⁵ and of the 1953 Protocol;⁶ but even prior to the coming into force of the Single Convention, the Commission, like its predecessor the League of Nations Advisory Committee on the Traffic of Opium and Other Dangerous Drugs, repeatedly prepared forms or questionnaires for use by Governments in furnishing other kinds of information. Paragraph 2 of article 18 expressly empowers the Commission to require Governments to use such forms as it may request, not only for their annual reports, but for any kind of information which it is entitled to obtain from them under this article.⁷

² See “Note by the Secretary-General” on the first page of document E/NR.FORM/Rev.2.

³ See above, comments on that subparagraph; see also the first paragraph of article 23 of the 1931 Convention.

⁴ Para. 2 of the notes at the end of annex I of United Nations document E/NR.FORM/Rev.2.

⁵ Article 21.

⁶ Article 10, para. 1, subpara. (c); the 1936 Convention does not expressly provide for the use of forms for the annual reports that it requires under its article 16.

⁷ The forms whose use the Commission requires at the time of this writing are the form for annual reports on the working of the 1931 and 1936 Conventions, of the 1953 Protocol and of the Single Convention, contained in document E/NR.FORM/Rev.2 the form for reports on individual illicit narcotics transactions or seizures, *Ibid.*, annex I, and the “questionnaire” on the manufacture of narcotic drugs, *Ibid.*, annex II.

Article 19

ESTIMATES OF DRUG REQUIREMENTS

General comments

1. Article 19 defines the estimates of narcotic drug requirements for medical and scientific purposes ¹ which Parties to the Single Convention must furnish to the Board. For provisions regarding estimates of drug requirements for non-medical purposes, see article 27, paragraph 2 and article 49, paragraph 3, subparagraph (b) and comments on these provisions; see also article 49, paragraph 4.

2. Article 19 does not take over the provisions of article 8, paragraph 3 of the 1953 Protocol requiring Parties to furnish annual estimates of the area on which they intend to grow the opium poppy for the production of opium and of the expected opium harvest. The Single Convention also omitted the obsolete provision of article 21 of the 1925 Convention obligating Parties to send to the Board annual estimates of each of the substances covered by that treaty to be imported into their territory during the following year for medical, scientific or other purposes.

3. Article 19, which provides for estimates of requirements of all drugs under the international narcotics régime, extends the obligation of Parties to furnish this kind of information to those drugs which were subject to some of the rules of the international control system preceding the Single Convention, but on which Parties to the earlier treaties concerned ² did not have to furnish estimates of their requirements. These drugs are cannabis, cannabis resin, extract and tinctures of cannabis and coca leaves. As regards opium, this extension was already made by the 1953 Protocol. ³ See also general comments on article 12.

4. As regards the publication of the estimates, see above, comments on article 12, paragraphs 5 and 6; see also comments on article 15, paragraph 1.

¹ Article 4, para. (c).

² I.e. the 1931 Convention and the 1953 Protocol.

³ Article 8.

Paragraph 1, introductory part

1. The Parties shall furnish to the Board each year for each of their territories, in the manner and form prescribed by the Board, estimates on forms supplied by it in respect of the following matters:

Commentary

1. The data to be furnished under paragraph 1 should cover the pure drug content of drugs, crude drugs, salts and preparations other than prepara-

tions in Schedule III.¹ As regards preparations in that schedule, the only information which must be given is the estimate of the quantities of drugs to be utilized for compounding them, as required by subparagraph (b). This follows from the provisions of paragraphs 3 and 4 of article 2, which stipulate that in regard to preparations other than those in Schedule III, estimates distinct from those which deal with the drugs which they contain shall not be required, and that for the purpose of estimates the information required in regard to preparations in Schedule III shall be restricted to the quantities of drugs used in making them.²

2. The salts, for the purposes of estimates, are not considered by the Board to be drugs separate from those which form them.³ The isomers, esters and ethers of drugs must, however, be treated as drugs separate from those whose chemical variations they are.

3. As regards the manner and form in which estimates (including "supplementary estimates")⁴ must be furnished, see above, comments on article 12, paragraph 1. At the time of this writing, the Board requires that the estimates of drug requirements provided for in article 5 of the 1931 Convention, article 8 of the 1953 Convention and article 19 of the Single Convention should be furnished on a single form.⁵

4. The Board must supply the Governments of Parties, and in view of article 12, paragraph 2, also of non-Parties, with the forms on which the estimates should be furnished. The Governments should from time to time inform the Secretariat of the Board of the number of copies which they need.⁶

5. Article 19 does not provide for the date by which the annual estimates must be sent by Governments. This matter is regulated by article 12, paragraph 1, which states that the Board should fix the date or dates by which this information must be supplied.⁶

6. The 1931 Convention permitted the amounts of estimated requirements to be calculated so as to include a "margin" allowing for possible fluc-

¹ See tables showing the pure drug content, annex to the statistical forms ("Yellow List") of the Board, 14th edition, March 1970, part four.

² See above, comments on article 2, paras. 3 and 4; see also form B/S of the Board (6th edition, March 1970), general instructions 3, 5 and 6; reference is also made to article 5, para. 2, introductory part of the 1931 Convention, which reads in part: "every estimate shall show . . . in respect of each of the drugs whether in the form of the alkaloid or salts or of preparations of the alkaloids or salts".

³ See above, comments on article 1, para. 1, subpara. (n).

⁴ Article 19, para. 3, see also article 12, paras. 4 and 5.

⁵ The form B/S referred to above in foot-note 2; separate forms are, however, at present prescribed for the estimates of opium production (article 8, para. 3 of the 1953 Protocol) (form B/4) and for those of requirements of narcotic drugs for other than medical or scientific purposes (article 19 of the 1953 Protocol and article 49 of the Single Convention) (form E/S). The functions of the former Permanent Central Board have been taken over by the International Narcotics Control Board; see article 45, para. 2 of the Single Convention and comments on this paragraph and on article 1, para. 1, introductory subparagraph and subpara. (a). The separate estimates provided for in article 27, para. 2, of requirements of coca leaves for the preparation of a flavouring agent are at present to be furnished on form B/S of the Board, see foot-note d on page 5 of this form (6th edition).

⁶ See above, comments on article 12, para. 1.

tuations in demand, and recognized the possible need for a wider margin in the case of drugs in Group II ⁷ of that Convention than in the case of other drugs. ⁸ The Drug Supervisory Body, one of the two predecessor organs of the International Narcotics Control Board, ⁹ expressed the view that in the case of countries which themselves manufacture the drugs concerned or which have easy access to countries which manufacture or supply these drugs, a small margin, for example 10 per cent or less, would be sufficient, while in the case of other countries a margin of not more than 25 per cent would generally seem amply sufficient. ¹⁰

7. The Single Convention did not take over the provision of the 1931 Convention regarding “margins”. ¹¹ Calculation of estimates so as to include a margin does not seem to be necessary in view of the fact that the stocks of drugs which countries maintain may allow for possible fluctuations in demand. Moreover, many Governments have acquired long experience in establishing estimates of drug requirements and have collected ample data for this purpose. They are therefore able to prepare more exact estimates than Governments were when the 1931 Convention entered into force. ¹² It may, however, be useful to call the attention of those Governments which still consider it useful to include a margin in the estimates of their drug requirements that “the idea of a margin is not applicable to the stock items”. ¹³

8. The term “territories” as used in this subparagraph not only refers to “territories” within the meaning of article 1, paragraph 1, subparagraph (y), i.e. to parts of a State which are treated as separate entities for the application of the system of import certificates and export authorizations provided for in article 31, but also to whole States which are not divided into such separate entities. ¹⁴

⁷ See above, comments on article 2, para. 2.

⁸ Article 5, para. 3, of the 1931 Convention.

⁹ Article 45 of the Single Convention.

¹⁰ Supervisory Body, *Notes on the Preparation of Estimates*, pp. 4 and 13, League of Nations, document C.521.M.362.1937.XI.

¹¹ Nor did the 1953 Protocol.

¹² This Convention came into force on 9 July 1933.

¹³ *Commentary* on the 1931 Convention, para. 60.

¹⁴ See above, comments on article 1, para. 1, subpara. (y).

Paragraph 1, subparagraph (a)

(a) Quantities of drugs to be consumed for medical and scientific purposes;

Commentary

1. The Single Convention does not employ the words “consumption” or “consumed” in their ordinary meaning. As defined in article 1, paragraph 2, they denote the transfer of drugs from the manufacturing or wholesale level of the drug economy to its retail level. ¹

¹ See comments on that paragraph.

2. The Board consequently calls to the attention of Governments that “the phrase: ‘quantity to be consumed’ means the quantity to be supplied for retail distribution, use in medical treatment or scientific research, to any person, enterprise or institute (retail pharmacists, other authorized retail distributors, institutions or qualified persons duly authorized to exercise therapeutic or scientific functions: doctors, dentists, veterinarians, hospitals, dispensaries and similar health institutions, both public and private; scientific institutes)”.²

3. The Board advises that the estimates of “consumption” should be established on the basis of statistical figures for past “consumption”. The average annual consumption in the three years preceding that in which the estimates are computed would be a useful guide in the calculation of the probable requirements of narcotic drugs for consumption. This average figure might have to be increased by approximately 10 per cent to take account of such factors as might cause increased use of the drugs, for example, population growth, evolution of health services and trends in the incidence of diseases. The margin of increase might have to be higher than 10 per cent in the case of such drugs as codeine, which are very widely used, or in the case of a country or territory which is in the process of rapid economic and social development. Moreover, in the case of drugs which have been newly introduced into the medical practice of the country or territory involved, statistical figures on consumption in all the preceding three years might not be available. In a case of this kind, such statistical data on consumption as may be available might still be of some use, but where a rapid expansion of the medical use of the new drugs could be expected, an increase of more than 10 per cent in the figures offered by available past statistics might be justified in computing the estimates.³ Where data on past consumption are not available at all, the Government might have to rely on the judgement of its own health authorities, on that of medical professional associations or of authoritative experts.

4. Surveys by public health authorities of medical requirements might also in other cases usefully supplement the statistical figures in guiding Governments in calculating their estimates of consumption.

5. It will be noted that the statistical data for the year, and generally even for a part of the year, preceding that for which the estimates are drawn up will not be available at the time at which the calculation must be made. The computation must be made at an early moment of the year preceding the year to which the estimates relate, since they have to reach the Board by 1 August of the preceding year, which is the date at present prescribed by the Board in accordance with article 12, paragraph 1.⁴ But where consumption figures for early months of the current year are available, they should be taken

² Form B/S (6th edition, March 1970) of the Board, General Instruction 9, p. 2; see also International Narcotics Control Board. *Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium in 1970* (subsequently referred to as *Estimated World Requirements*, 1970), narrative part, para. 6.

³ *Estimated World Requirements*, 1970, paragraph 27. See also Model Code, annex I.

⁴ The Board must in any event prescribe an early date in order to be able to complete the processes of examination and publication (article 12) prior to the beginning of the calendar year for which the estimates are furnished.

into account in evaluating the possible rate of growth of medical use of the drugs in question.

6. The Board stresses that Governments should not base their consumption estimates on the size of the imports which they expect to effect, the only exception being small territories which do not manufacture their drugs, do not have a wholesale trade in drugs, and meet their requirements only by imports of retail pharmacists. Since these imports represent deliveries for retail distribution, the quantities received by the importing pharmacists are considered to have been “consumed” within the meaning of this term in the Single Convention.⁵ This would also be the case if the imported drugs are not needed for medical use in the current year, but rather for replenishing the “stocks”⁶ of the retail pharmacists concerned.

7. The Board also calls the attention of Governments to the fact that their consumption estimates should not include the amounts intended for the stocks of manufacturers, wholesalers and importers other than the retail pharmacists just mentioned; but in all cases in which a need exists for increasing the “stocks”⁶ of retail distributors, the quantity required for that purpose may be taken into account in computing the consumption estimates, whether it is to be obtained by manufacture or by import. Where a country wishes to import more than the amount required for consumption (including the quantity needed for the “stocks”⁶ of retail distributors), the amount exceeding the anticipated needs for consumption, which will probably not be re-exported during the year to which the figures relate but is likely to go into stocks,⁷ should in accordance with article 19, paragraph 1, subparagraph (c) be included in the estimates of the stocks to be held at the end of the year in question.⁸

8. Only the quantities needed for domestic consumption should be included in the estimates pursuant to subparagraph (a). The corresponding provisions of the 1931 Convention⁹ and of the 1953 Protocol¹⁰ required that the consumption estimates include the amounts needed for the compounding of “preparations for the export of which export authorizations are not required”,¹¹ i.e., of preparations whose legal position under the earlier treaties corresponded to that of preparations in Schedule III of the Single Convention.¹² Such amounts had to be included no matter whether the preparations were intended for domestic consumption or for export. The consumption

⁵ See article 1, para. 2 and above, the beginning of the comments on the subparagraph under consideration.

⁶ These “stocks” of retail pharmacists are not “stocks” as this term is used in the Single Convention; article 1, para. 1, subpara. (x).

⁷ Article 1, para. 1, subpara. (x).

⁸ *Estimated World Requirements*, 1970, paras. 7-9 of the narrative part; see also the League of Nations document C.521.M.362.1937.XI (referred to in foot-note 10 to the comments on article 19, para. 1, introductory part), p. 3.

⁹ Article 5, para. 2, sub-para. (a).

¹⁰ Article 8, para. 1, subpara. (a).

¹¹ The 1953 Protocol refers to them in article 8, para. 1, subpara. (a) as “preparations exempted under article 8 of the 1925 Convention”. In article 9, para. 1, subpara. (a), clause (iii) the Protocol uses the same phrase as the 1931 Convention.

¹² See above, comments on article 2, para. 4.

estimates under the Single Convention, on the other hand, must not include the quantities of drugs which are expected to be needed for the wholesale manufacture¹³ of preparations in Schedule III. These quantities must be furnished as separate figures under article 19, paragraph 1, subparagraph (b). The quantities of drugs which are expected to be used by retailers, for example, retail pharmacists or hospital laboratories for the manufacture of preparations in Schedule III for their retail distribution, medical use or scientific research, must, however, be included in the consumption estimates of subparagraph (a), since the drugs delivered to such retailers are considered to have been “consumed” under the terms of the Single Convention.¹⁴

9. The expected consumption of opium, coca leaves and cannabis drugs (cannabis, cannabis resin, extracts and tinctures of cannabis) for non-medical purposes pursuant to article 49 should not be taken into account in computing the estimates under article 19, paragraph 1, subparagraph (a). They are the subject of separate estimates which must be furnished to the Board under article 49, paragraph 3, subparagraph (b).

¹³ See above, comments on article 1, para. 1, subpara. (n).

¹⁴ Article 1, para. 2 of the Single Convention; International Narcotics Control Board, *Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium in 1971* (subsequently referred to as *Estimated World Requirements*, 1971), para. 11 of the narrative part.

Paragraph 1, subparagraph (b)

(b) Quantities of drugs to be utilized for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;

Commentary

1. Three different kinds of figures must be furnished under subparagraph (b) by Governments: (1) estimates of the amounts of drugs to be utilized for the manufacture of other drugs, (2) estimates of the amounts of drugs to be utilized for the manufacture of substances not covered by the Single Convention, and (3) estimates of the amounts of drugs needed for the (wholesale) compounding of preparations in Schedule III. These three kinds of data must be stated separately.¹ Under the régime preceding the Single Convention, a single figure had to be given for the estimated quantity of each drug needed for conversion, which included transformation by a chemical process into other drugs as well as into uncontrolled substances.² The quantities needed for the manufacture of “preparations for the export of which export authorizations are not required”, i.e., of preparations whose position

¹ The column provided for in the form B/S of the Board (6th edition, March 1970) for the information required pursuant to subpara. (b) is therefore divided in three sub-columns.

² Article 1, para. 4 and article 5, para. 2, subpara. (b) of the 1931 Convention. Article 8, para. 1, subpara. (b) of the 1953 Protocol requires information on the estimated quantities of opium needed for the manufacture of alkaloids; no distinction is made between controlled and uncontrolled alkaloids.

corresponded to preparations in Schedule III of the Single Convention, were to be included in the consumption estimates.³

2. All these three types of figures must include the whole quantities of drugs to be utilized, no matter whether the products to be obtained are for domestic consumption, for renewal of stocks or for export.⁴ It is, however, important that export requirements should not be overestimated in calculating the needs of drugs for the manufacture of other drugs or non-controlled substances or preparations in Schedule III.⁵ When taking this factor into account, Governments should proceed on the basis of the existing extent of the export trade, making an appropriate allowance for a justified expectation of an increase in that trade.

3. The estimated quantities to be utilized for the three different purposes mentioned in subparagraph (b) must be given, but not the estimated amounts of the products to be obtained nor the names thereof.⁶

4. The figures giving the estimated quantities of drugs to be utilized for the manufacture of other drugs should include the amounts of the drugs to be transformed by a chemical process into other drugs, but not the quantities of drugs to be transformed into their salts⁷ or to be compounded into preparations.⁸ The quantities of drugs needed for refining and for preparation for use in form of tablets or ampoules etc. should also be excluded.⁹ The amounts of drugs to be utilized for the manufacture of their isomers, esters and ethers must however be included.¹⁰ An estimate of the amount of "concentrate of poppy straw" to be utilized for the manufacture of morphine must be furnished, but only if the concentrate in question is to be made available in trade, and not if it is to represent only an intermediary stage in a continuous process of the manufacture of morphine from poppy straw.¹¹

³ See above, comments on article 19, para. 1, subpara. (a).

⁴ Form B/S referred to in foot-note 1, general instruction 10; see also *Estimated World Requirements*, 1970, para. 28. For "drugs", see Schedules I and II of the Single Convention (article 1, para. 1, subpara. (j)); the "Yellow List" mentioned in foot-note 1 to the comments on article 19, para. 1, introductory part, and the Multilingual List of Narcotic Drugs under International Control referred to in foot-note 13 to the comments on article 18, para. 1, subpara. (a). Substances not covered by the Single Convention which may be obtained from "drugs" by a chemical process are, for example, nalorphine and apomorphine.

⁵ See also *Commentary* on the 1931 Convention, para. 51 (pp. 83 and 84), and League of Nations, document C.521.M.362.1937.XI, p. 15.

⁶ See, however, statistical form C/S of the Board (4th edition, November 1969) table I, column C; see also *Commentary* on the 1931 Convention, para. 51 (p. 82).

⁷ E.g. the quantity of morphine base to be transformed into morphine hydrochloride or morphine sulphate.

⁸ Article 2, para. 3; the quantities of drugs to be utilized for the compounding of preparations in Schedule III must however be given, but separately; see above comments on subpara. (b) and also those on subpara. (a).

⁹ Form B/S (foot-note 1), general instruction No. 11; *Estimated World Requirements*, 1970, para. 11.

¹⁰ See above, comments on article 19, paragraph 1, introductory part.

¹¹ Only the concentrate of poppy straw "made available in trade" is a "drug" different from morphine; see Schedule I of the Single Convention; under the terms of the 1931 Convention concentrate of poppy straw is considered to be (crude) morphine. See form B/S (foot-note 1), general instruction 2; see also *Records*, vol. I, pp. 191-192 and vol. II, pp. 114-115 and 122.

5. More generally, in calculating the estimates of the quantities of drugs needed for the manufacture of other drugs and of those required for the manufacture of substances not covered by the Single Convention, drugs or substances which present only intermediary stages in a continuous manufacturing process should not be taken into account, but only the final products.¹² For example, heroin may be an intermediary product in a continuous process of the manufacture of nalorphine,¹³ an uncontrolled substance, from morphine. In such a case the amount of morphine required for the manufacture of nalorphine, but not the amount of heroin to be used for that purpose, should be included in the estimates to be furnished pursuant to subparagraph (b) of the quantities of drugs to be utilized for the manufacture of substances not covered by the Single Convention; nor should the quantity of morphine needed for the manufacture of heroin be included in an estimate of the quantity of that drug "to be utilized for the manufacture of other drugs". However, if after obtaining the heroin the process of manufacture of nalorphine is to be interrupted, as where, for example, heroin made by one manufacturer is to be delivered to another manufacturer for transformation into nalorphine, the amount of morphine should be included in the estimate of the amount of that drug to be utilized for the manufacture of other drugs, heroin being such "other drug", and the amount of heroin should be included in the estimate of the quantity of heroin to be utilized for the manufacture of substances not covered by the Single Convention.

6. The quantities of cannabis required for the manufacture of extracts and tinctures of cannabis for non-medical consumption in accordance with article 49 should not be included in the estimate of the quantity of cannabis to be utilized for the manufacture of other drugs. Only the amount needed for the extracts and tinctures intended for medical and scientific purposes should be taken into account in calculating this estimate. The quantity of cannabis required for the manufacture of drugs for non-medical purposes would be the subject of separate estimates to be supplied to the Board pursuant to article 49, paragraph 3, subparagraph (b).

7. Similarly, the amounts of coca leaves to be used exclusively for the manufacture of a flavouring agent and not simultaneously for the extraction of alkaloids should not be included in the estimate of the quantity of coca leaves needed for the manufacture of substances not covered by the Single Convention, but should be made the subject of separate estimates pursuant to article 27, paragraph 2. If the leaves are intended for both uses, their quantity should be included in the estimate of the amount of coca leaves to be utilized for other drugs; but the fact of use for both purposes and the extent of that use should be explained in the statement of the method of calculating the estimates, to be indicated to the Board under article 19, paragraph 4.¹⁴

8. It may be recalled that the estimate of the quantity of a drug to be utilized for the manufacture of preparations in Schedule III should include the amount to be so used by manufacturers or wholesalers, but not that employed

¹² *Commentary* on the 1931 Convention, para. 51 (p. 84); see also *Records*, vol. I, p. 192.

¹³ See above, foot-note 4.

¹⁴ Form B/S of the Board (6th edition), foot-note *d* on page 5.

by retail pharmacists for that purpose. The latter amount, being destined for retail distribution, is to be included pursuant to subparagraph (a) in the estimate of the quantity of the drug concerned to be consumed.¹⁵

9. As regards the question of calculating the estimates so as to include a margin allowing for possible fluctuations in demand, see above, comments on article 19, paragraph 1, introductory part. As in the case of the computation of consumption estimates under subparagraph (a), statistical data relating to preceding years will also be helpful to Governments in establishing the estimates under subparagraph (b).

¹⁵ See above comments on article 19, para. 1, subpara. (a) and the references in foot-note 14 to these comments.

Paragraph 1, subparagraph (c)

(c) Stocks of drugs to be held as at 31 December of the year to which the estimates relate; and

Commentary

1. The Single Convention expressly provides that the stocks whose size should be estimated are those to be held as at 31 December of the year to which the estimates relate.¹ In view of the definition of “stocks” and “special stocks” in article 1, paragraph 1, subparagraphs (x) and (w), the Board explains that the term “stocks” as used in the subparagraph under consideration means the amounts of drugs held in a country or territory except (1) retail “stocks” as defined in article 1, paragraph 1, subparagraph (x) clause (iv), i.e. drugs held “by retail pharmacists or other authorized retail distributors and by institutions or qualified persons in the duly authorized exercise of therapeutic and scientific functions”, and (2) “special stocks”, i.e. drugs held by the Government in a country or territory for “special Government purposes” (in particular for requirements of the armed forces) and to meet “exceptional circumstances” (i.e. such catastrophic events as large-scale epidemics and major earthquakes). The Board holds that drugs held by the Government for the normal needs of the civilian population are covered by the term “stocks” as used in article 19, paragraph 1, subparagraph (c).² It may be added that “stocks” as defined by the Single Convention and by the Board would also include drugs held by manufacturers or wholesalers for “special Government purposes” or “to meet exceptional circumstances”. Stocks held for these purposes are “special stocks” only if they are held by the Government.² The Single Convention enumerates three different purposes for which stocks are held:

¹ See, however, article 5, para. 2, subpara. (c) of the 1931 Convention and article 8, para. 1, subpara. (c) of the 1953 Protocol dealing with estimates of stocks; the Protocol provides, however, (article 9, para. 1, subpara. (b)) that the opium stocks on which Parties must furnish statistical information should be those held on 31 December. No such reference to a date is included in the provision of the 1925 Convention (article 22, para. 1, subpara. (c)) requiring statistical data on stocks. The reference to 31 December in the Single Convention includes in the treaty only what had already been the previous practice.

² Form B/S of the Board (6th edition, March 1970) general instructions 14 and 13; see above comments on article 1, para. 1, subparas. (w) and (x).

- (i) Consumption in the country or territory for medical and scientific purposes;
- (ii) Utilization in the country or territory for the manufacture of drugs and other substances, and
- (iii) Export.³

2. As regards drugs held for consumption, estimates of the quantities of drugs⁴ to be held in "stock"⁵ for non-medical consumption allowed pursuant to article 49 during a transitional period should not be included in the figures to be furnished pursuant to article 19, paragraph 1, subparagraph (c). These data must be supplied to the Board separately.⁶

3. As regards drugs held for manufacture of other drugs, the estimates of stocks under subparagraph (c) should not include the quantities of cannabis to be utilized for the manufacture of extracts and tinctures of cannabis for non-medical consumption pursuant to article 49. The amounts to be held for manufacture of salts and preparations other than preparations in Schedule III would have to be taken into account as intended for consumption or for export, as the case may be.

4. Drugs to be utilized for the manufacture of "other substances", which must be taken into account in establishing the stock estimates, must include not only those held for the manufacture of such substances as apomorphine or nalorphine and for the compounding of preparations in Schedule III, but also drugs which are intended for use in industry for other than medical and scientific purposes under article 2, paragraph 9.

5. The quantities of coca leaves to be held exclusively for the manufacture of a flavouring agent and not also for the extraction of alkaloids should not be included in the stock estimates pursuant to the subparagraph under consideration, but rather in the separate information to be furnished to the Board in accordance with article 27, paragraph 2.⁷ Coca leaves to be held both for the manufacture of the flavouring agent and for the extraction of alkaloids should be taken into account in calculating the estimates under article 19, paragraph 1, subparagraph (c); but this use for both purposes and its extent should be explained in the "method" to be indicated to the Board in accordance with article 19, paragraph 4.⁸

6. As regards drugs held for export, since quantities of drugs to be held as at 31 December of the year to which the figures relate must be estimated, it is submitted that the amounts of exports to be carried out during the currency of that year should not be included in the calculation, but only those to be

³ Article 1, para. 1, subpara. (x).

⁴ I.e., opium, coca leaf, cannabis, cannabis resin and extract and tincture of cannabis.

⁵ Such "stocks" would not be "stocks" in the sense of the definition of article 1, para. 1, subpara. (x).

⁶ Article 49, para. 3, subpara. (b); see also article 19, para. 4, subpara. (b) of the 1953 Protocol. The Board prescribes the use of form E/S for this purpose at the time of this writing.

⁷ See also above, comments on article 19, para. 1, subpara. (b).

⁸ Form B/S (6th edition, March 1970) of the International Narcotics Control Board, foot-note (d) on p. 5.

effected in the following year. The Board states, in regard to countries which rely for their requirements on the import of drugs, that in computing their stock estimates, they should consider the export factor only to the extent that they might be called upon to fill unexpected or emergency orders.⁹

7. The Board does not request separate figures for the drugs to be held in stock for different purposes;¹⁰ nor does article 19, paragraph 1, subparagraph (c) require this. It is, however, submitted that the Board may call for these separate data in the exercise of its right to determine the manner and form in which the estimates should be furnished.¹¹ The Board may also ask for this separate information if it considers it necessary to explain the stock estimates of a particular Government.¹² Some Governments may also themselves find it appropriate to indicate the separate figures in explaining to the Board the method which they use in computing their estimates.¹³

8. Stocks to be held in bonded warehouses, free ports and free zones of the country or territory concerned should not be excluded from the calculation of its stock estimates.¹⁴

9. In establishing their stock estimates, Governments may be guided by such considerations as the statistics, regarding stocks actually maintained in the country or territory concerned and regarding the trend of consumption and of the export trade, in particular data regarding consumption and exports in the months preceding the data of computation of the estimates for the following year. The information supplied by manufacturers and wholesalers regarding the size of stocks which they desire to maintain is also a relevant factor; but Governments should subject such information to a critical evaluation. The estimates of stocks should not be identical with the total of stocks which manufacturers and wholesalers wish to hold, but should be quantities which the Government decides to be desirable in the light of the role which the stocks play in the Single Convention in limiting narcotics supplies to the quantities needed for medical and scientific purposes in each country or territory and in the world as a whole.¹⁵

10. In the case of a country or territory which does not produce or manufacture the drugs involved, the distance from the sources of supply and the available means of transportation may also be an important consideration. The Board maintains as a "general principle" that the stocks may reach a level corresponding to consumption in one year or a year and a half, and that in the case of a country or territory distant from its sources of supply even higher stocks may be justified.¹⁶

⁹ *Estimated World Requirements*, 1970, para. 30.

¹⁰ With the exception of the separate information under article 27, para. 2 and article 49, para. 3, subpara. (b); form B/S (6th edition), table, column 4.

¹¹ Article 12, para. 1, article 19, para. 1, introductory part.

¹² Article 12, para. 4.

¹³ Article 19, para. 4.

¹⁴ Form C/S of the Board (4th edition 1969), foot-note (b) to table II, p. 9.

¹⁵ See *Commentary* on the 1931 Convention, para. 52, pp. 93 and 94; and League of Nations, document C.521.M.362.1937.XI.

¹⁶ *Estimated World Requirements*, 1970, para. 29 of the narrative part.

11. The conditions and circumstances which may determine the required size of stocks are very different in different countries or territories. It is therefore hardly possible to establish exact guide-lines which would be universally valid for establishing the stock estimates. The Board has come to the conclusion that more definite rules for their calculation can be suggested to Governments only in regard to consumption estimates. In respect to other estimates (including the stock estimates), the Board considers that in view of the variations in the situation from country to country, it can propose only certain guiding principles.¹⁷

12. Since "stocks" of drugs held by retail pharmacists are not "stocks" within the meaning of subparagraph (c) and such drugs are to be held to be "consumed", small countries or territories which rely for their drug supplies on imports by their retail pharmacists, and which neither manufacture the drugs nor have a wholesale trade in them, do not have "stocks", and the provision of subparagraph (c) does not apply to them.¹⁸

13. As regards the inapplicability of the idea of a "margin" to the calculation of stock estimates, see above, comments on article 19, paragraph 1, introductory part.

¹⁷ *Estimated World Requirements*, 1971, para. 22 of the narrative part. The Board decided at its session in autumn 1970 to draw up a guide for the use of national administrations responsible for preparing the estimates; see also *Commentary* on the 1931 Convention, para. 52, p. 94.

¹⁸ *Estimated World Requirements*, 1970, para. 18 of the narrative part.

Paragraph 1, subparagraph (d)

(d) Quantities of drugs necessary for addition to special stocks.

Commentary

1. The term "special stocks" as used in the Single Convention denotes the amounts of drugs held by the Government of a country or territory for "special Government purposes" and "to meet exceptional circumstances".¹ The phrase "special Government purposes" is interpreted by the Board to "include in particular the requirement of the armed forces", and the words "exceptional circumstances" to cover such disasters as major earthquakes or epidemics. Drugs which are held by a Government in a free port or free zone or in a bonded warehouse for such purposes form also a part of its "special stocks". The Board excludes from the term "special stocks" drugs held by the Government for the normal needs of the civilian population.² It has also been submitted above that drugs not held by governmental authorities, although destined for "special Government purposes" and "to meet exceptional circumstances", should be excluded.³

¹ Article 1, para. 1, subpara. (w) and above, comments on article 1, para. 1, subparas. (w) and (x).

² Forms of the Board: B/S (6th edition, March 1970) general instruction 13; C/S (4th edition, November 1969), foot-notes (c) and (d) to table II, p. 9; see also form A/S (5th edition, November 1969), instruction 12.

³ Comments on article 1, para. 1, subpara. (w) and (x) and on article 19, para. 1, subpara. (c).

2. The Single Convention allows Governments to maintain “special stocks”⁴ whose management is not subject to control of the Board, nor to its examination, its inquiries or its right of criticism.⁴

3. The provision of subparagraph (*d*) does not apply to a country or territory whose Government authorities purchase currently from dealers the drugs which they require for their armed forces and for use in the case of natural disasters or epidemics, without maintaining anything of the nature of a standing stock.⁵ It is submitted that such a Government does not have a “special stock” within the meaning of the Single Convention.

4. It will be noted that the Single Convention requires Governments to furnish only estimates of additions to, and not of deductions from, special stocks, while the 1931 Convention provided for both kinds of information from Governments in regard to “Government stocks”.⁶ Parties to the Single Convention are, however, required to furnish statistical information in respect of the actual deductions as well as of the additions.⁷

5. It may also be mentioned in this connexion that the Single Convention, unlike the 1931 Convention and the 1953 Protocol,⁸ makes no provision for the furnishing of information by Governments on the quantities required to be added to or deducted from their (general) “stocks”⁹ of narcotic drugs to bring them to the level which, in accordance with their estimates pursuant to article 19, paragraph 1, subparagraph (*d*), they desire to maintain. Under the Single Convention the necessary deductions and additions are computed by the Board on the basis of the estimates which it receives pursuant to article 19, paragraph 1, subparagraph (*c*) concerning the stocks of drugs to be held on 31 December of a given year, and on the basis of the statistical information at its disposal in accordance with article 20, paragraph 1, subparagraph (*f*) respecting the stocks actually held on 31 December of the preceding year.¹⁰

6. The estimates of the “quantities of drugs necessary for addition to special stocks” should be furnished in respect of amounts required for the establishment of “special stocks” as well as in regard to those needed for addition to already existing “special stocks”, regardless of the means by which the drugs are to be obtained by the Government, whether by importation,

⁴ Article 12, para. 4 and article 13, para. 4 and comments to these provisions; article 20, para. 4; see also comments on article 1, para. 1, subparas. (*w*) and (*x*). Article 4, para. 2, of the 1931 Convention expressly authorizes Governments to maintain “Government stocks”. As regards freedom from international control of “Government stocks” under the earlier treaties, see article 22, para. 3 of the 1925 Convention and article 5, para. 6, second subpara. of the 1931 Convention.

⁵ League of Nations, document C.521.M.362.1937.XI, pp. 7 and 18.

⁶ Article 5, para. 2, first subpara., clause (*d*) and second subpara.; similarly, the 1953 Protocol requires both kinds of information regarding opium stocks held for “military purposes”; see article 8, para. 1, subpara. (*d*) of the Protocol.

⁷ Article 20, para. 4; see also article 22, para. 4 of the 1925 Convention.

⁸ Article 5, para. 2, second subpara. of the 1931 Convention; article 8, para. 1, subpara. (*c*) and para. 2 of the 1953 Protocol.

⁹ Article 1, para. 1, subpara. (*x*).

¹⁰ Article 19, para. 2 and article 21, para. 3 of the Single Convention and comments to these provisions.

acquisition from domestic sources, or appropriation for the “special stocks” of drugs seized from the illicit traffic.

7. Under the Single Convention, as under the corresponding provisions of the earlier treaties,¹¹ Governments need not supply either estimates of the level of special stocks they desire to maintain, or statistics on the actual size of such stocks.¹² It is, on the other hand, not only required but also useful for Governments to furnish estimates of the quantities of drugs which they find necessary to add to their special stocks, because these amounts are added to the quantities of drugs which they may obtain by manufacture and import.¹³

¹¹ Article 5, para. 2 of the 1931 Convention; article 22, para. 1, subpara. (c) of the 1925 Convention; article 8 and article 9, para. 1, subpara. (b) of the 1953 Protocol.

¹² Article 20, para. 4.

¹³ Article 21, para. 1, subpara. (e).

Paragraph 2

2. Subject to the deductions referred to in paragraph 3 of article 21, the total of the estimates for each territory and each drug shall consist of the sum of the amounts specified under subparagraphs (a), (b) and (d) of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in subparagraph (c) of paragraph 1.

Commentary

1. The notion of “the total of the estimates” has been taken over by the Single Convention from the 1931 Convention¹ and from the 1953 Protocol.² It was introduced as a device of legislative technique in order to avoid the need for repeating all the addenda and subtrahends of which it is composed, in provisions in which all of them form the basis of a computation of legally relevant quantities. This phrase was used in the 1931 Convention twice for this purpose: in article 12, paragraph 2, to define the import limit of drugs which no country or territory shall exceed, and in article 14, paragraph 2, to compute those excessive imports of a country or territory which should cause the former Permanent Central Board³ to require the Parties to discontinue further exports of the drug or drugs concerned to the country or territory involved during the currency of the year in question.⁴

¹ Article 5, para. 2, second subpara.

² Article 8, para. 2 of the 1953 Protocol; see also para. 11 of that article.

³ This authority of the former Permanent Central Board has been transferred to the International Narcotics Control Board under article 45, para. 2 of the Single Convention; see resolution 1106 (XL) of the Economic and Social Council.

⁴ The view is also held that the words “the estimates for the importing country” in article 14, para. 1 of the 1931 Convention mean “the total of the estimates” for the importing country; *Commentary* on the 1931 Convention, para. 54, p. 100; see also article 8, para. 11 of the 1953 Protocol for the use of the phrase “the total of estimates” in defining limits of opium imports.

2. The Single Convention also uses the formula “the total of the estimates” twice to define import limits; once in article 21, paragraph 4 (a provision corresponding to article 14, paragraph 2 of the 1931 Convention), and a second time in article 31, paragraph 1, subparagraph (b), which requires Parties not knowingly to permit the export of drugs to any country or territory except within the limits of that country’s or territory’s total of the estimates, with the addition of the amounts intended to be re-exported. The phrase occurs also in article 21, paragraph 3.⁵

3. The question arises whether the definition of “total of the estimates” as given in article 19, paragraph 2 includes the words “subject to the deductions referred to in paragraph 3 of article 21”, and whether consequently wherever this phrase occurs these deductions must be made in computing the total unless the context otherwise requires. The Board appears to be of this opinion. It calls “total of the estimates” the result obtained after having made the deductions.⁶

4. In two places where this formula is employed, namely in article 21, paragraphs 3 and 4, express provision is, however, made for making these deductions. Therefore in these cases the phrase cannot be understood to include the words because the deductions would otherwise have to be made twice.

5. In the third place where the phrase “the total of the estimates” occurs, namely in article 31, paragraph 1, subparagraph (b), no reference to a requirement to make deductions from this total can be found. In view of article 19, paragraph 2 and of the apparent understanding by the Board of the phrase “the total of the estimates”, it may nevertheless be assumed that exporting Parties, when examining whether export orders would be “within the limits of the total of the estimates” for the importing country or territory, must take the deductions into account as soon as they can learn them.⁷

6. The calculation of the quantity of excess manufacture and import which is to be deducted pursuant to article 21, paragraph 3 from the total of the estimates of a given year is made by the Board, which has decided to compute the subtractions in the light of the stocks available at the end of the year preceding that to which the estimates relate and of the estimate of the stocks to be held on 31 December of the subsequent year,⁸ i.e. of the year for which “the total of the estimates” is to be established.⁹ The statistical data on the stocks available as at 31 December of any given year are due to be furnished to the Board only by the following 30 June,¹⁰ and often reach the Board much later. The Board can therefore make the computation of the excess manu-

⁵ As regards the use of this phrase, see below, comments on that paragraph.

⁶ See, e.g., document E/INCB/6 and E/INCB/10, headings of columns 5 and 6 of the tables.

⁷ See below, comments on article 31, para. 1, subpara. (b).

⁸ Article 19, para. 1, subpara. (c).

⁹ For the way in which the Board makes the computation see: *Estimated World Requirements*, 1970, paras. 22-24 of the narrative part; and *Estimated World Requirements*, 1971, paras. 17 and 18 of the narrative part; see also below, comments on article 21, para. 3.

¹⁰ Article 20, para. 1, subpara. (f) and para. 2, subpara. (a).

facture and import often only rather late in the year for which the deductions have to be made.

7. The Board can use its calculations for its work in the current year.¹¹ The exporting Party, however, can learn the figures to be deducted only when it has received the Board's publication containing them.¹² An exporting Party can therefore take the deductions into account, in the case of many importing countries and territories, only very late in the year, and in the case of some, only after the expiration of the year in which the subtractions must be made. The fact that article 31, paragraph 1, subparagraph (b) uses the phrase "the total of the estimates" in another sense than article 21, paragraphs 3 and 4 so as to cover also "the deductions referred to in paragraph 3 of article 21" may therefore be of very little practical importance.

8. For the somewhat different meaning of the term "the total of the estimates" in earlier treaties, see article 5, paragraph 2, second subparagraph of the 1931 Convention and article 8, paragraph 2 of the 1953 Protocol.

¹¹ For establishing whether a country or territory has in the previous year not complied with the provisions of the Single Convention by exceeding its manufacturing and import limits, or for the purpose of applying article 21, para. 4. The Board reports that at the end of the third quarter of 1970, i.e. on 30 September, it had calculated the deductions of excess manufacture and import in respect of 120 countries and territories. It points out that the excess quantities to be deducted have, in fact, been few in relation to the total number of drugs utilized in each country; *Estimated World Requirements*, 1971, paras. 17 and 18.

¹² The Board publishes the deductions and the result obtained after having made them, i.e. what it calls "the total of the estimates" in its third and fourth quarterly supplements to its Annual Statement of the Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium; see, e.g., documents E/INCB/6/Add.1, 2 (United Nations publications, Sales Nos. E/F/S.70.XI.5, 6, 7, 8.)

Paragraph 3

3. Any State may during the year furnish supplementary estimates with an explanation of the circumstances necessitating such estimates.

Commentary

1. A "supplementary estimate" is any estimate which alters an estimate furnished by a Government or established¹ by the Board, or adds to estimated figures so furnished or established a new estimated figure, for example, in respect of a drug on which no data were included in the original or earlier supplementary estimates.² The term covers revising as well as supplementary estimates.

2. A supplementary estimate must be furnished as soon as the Government concerned finds it necessary. Its dispatch to the Board should not be delayed. Supplementary estimates should whenever possible be furnished well in advance of the time when the additional supplies will have to be obtained

¹ Article 12, para. 3.

² *Commentary* on the 1931 Convention, p. 65.

in order to allow the Board sufficient time to examine the document and to allow the Government in question to take the administrative steps required by the new figures as they emerge from the Board's examination. The idea of supplementary estimates was introduced in order to enable Governments to comply with the Single Convention under circumstances different from those which prevailed at the time at which the original estimates or prior supplementary estimates were established, for example, new circumstances requiring increases or decreases in manufacture, in imports, in the stock level desired earlier, or in additions to special stocks. Supplementary estimates are not intended to serve as a means of justifying *post factum* actions which at the time at which they were taken were incompatible with the provisions of the Single Convention regarding estimates.³

3. It is for this reason that supplementary estimates must be furnished "during the year" to which they relate. Supplementary estimates which reach the Board after the end of that year are not admitted, and cannot be taken into account in the Board's examination whether the country or territory concerned has carried out its obligations under the estimate system, in particular those requiring the limitation of narcotics supplies to be obtained by manufacture and import. Supplementary estimates must in any event be dispatched to the Board early enough so as to arrive before the end of the year for which they are made. Moreover, it would be incompatible with the aims of the estimate system if supplementary estimates, though received before the end of the year, were sent so late that not enough time was left for proper examination of the document by the Board nor for the Government concerned to take the steps needed to give effect to the new figures, which should be acted on only after review of the supplementary estimates by the Board.⁴

4. Supplementary estimates which, in the light of the preceding considerations or on account of the need for quick drug supplies, call for urgent consideration may be furnished by telegram. It is the practice of the Board—as it was of the former Drug Supervisory Body, its predecessor in this matter⁵—to provide, if not in session, for telegraphic consultation of its members in urgent cases. The Board also in such a case communicates in the same way its decision to the Government concerned, and cables the new figures to the authorities of the exporting country indicated by that Government if it is requested to do so.⁶

5. The question arises whether supplementary estimates may be furnished to the Board prior to the beginning of the year to which they refer. It is submitted that the aim of inserting the words "during the year" in the subparagraph under consideration was to exclude too late supplementary estimates and not to prevent early ones. Supplementary estimates which are in the hands of the Board before the commencement of the year to which they relate would in any event have to be considered to have arrived by 1 January of that year. A requirement that their examination be delayed until that date would

³ See, however, in this connexion article 21, para. 4, subpara. (b), clause (i).

⁴ League of Nations, document C.521.M.362.1937.XI, pp. 9 and 20; *Commentary* on the 1931 Convention, para. 37.

⁵ Article 45.

⁶ See above, comments on article 12, paras. 5 and 6.

make no sense; it would only complicate the task of the Board and of the Government concerned, without any advantage for other Governments, particularly if the supplementary estimates arrive in time to be taken up by the Board at its regular autumn session at which it examines the estimates for the next year.

6. Any estimates revising or adding to figures in earlier estimates, no matter whether the latter have been established by a Government or by the Board, are "supplementary estimates" in the sense of the Single Convention, whether they are referred to in the document containing them as "supplementary" or not. This applies also to original estimates which arrive after the Board has already established estimates for the country or territory concerned in accordance with article 12, paragraph 3 of the Single Convention.

7. Governments must use for their supplementary estimates the forms prescribed and supplied to them by the Board for the preparation of all estimates, whether original or supplementary. They should therefore always have at their disposal a sufficient number of forms for use in case of need for supplementary estimates. Supplementary estimates which require urgent attention of the Board may, however, be furnished by telegram, as mentioned above. Governments should make it clear in respect of each figure which they include in their supplementary estimates whether it is an entirely new figure or constitutes only an addition to or deduction from an earlier figure. When furnishing the new estimates by telegram, they should also indicate to which heading of the Board's form ⁷ each of them belongs, or otherwise state to which of the various quantities mentioned in article 19, paragraph 1, the figure relates. ⁸ They should also state how urgent the new needs are.

8. Governments should also furnish supplementary estimates if they find that their requirements will be significantly smaller than those stated in their original estimates.

9. The possibility of revising estimates by supplementary estimates should not be a reason for failing to make the greatest possible effort to calculate the original figures accurately. The need for supplementary estimates should be avoided as far as possible. The Single Convention allows supplementary estimates to cope with unforeseen conditions, and not to lessen the need for care in preparing the original documents. Supplementary estimates may nevertheless also be furnished to revise original estimates which have been prepared less carefully than they could have been. Governments must explain the circumstances which necessitate their supplementary estimates. They should in particular describe the nature of the unforeseen conditions which changed their original estimates of their drug requirements. This explanation is additional to the information which article 19, paragraph 4 requires Parties to furnish to the Board in regard to the method which they used for determining the quantities shown in their estimates. ⁹ Governments must describe this method in their supplementary estimates to the extent that the information has not been given in earlier documents, or that the method used for computing

⁷ Form B/S.

⁸ *Estimated World Requirements*, 1970, para. 31 of the narrative part; and *Estimated World Requirements*, 1971, para. 3 of the narrative part.

⁹ *Commentary* on the 1931 Convention, para. 36.

the supplementary data differs from the one employed for determining their earlier estimates.

10. "Any State", whether a Party to the Single Convention or not, may furnish supplementary estimates. A Party may furnish such estimates also in respect of "territories"¹⁰ to which the Convention does not apply according to the terms of article 42.¹¹

11. The Board may establish supplementary estimates revising those which it has established itself, but only as long as the Government of the country or territory involved has not furnished its own figures.¹²

12. Unlike the 1931 Convention,¹³ the Single Convention does not expressly state that its provisions regarding estimates also govern supplementary estimates unless the context otherwise requires. It is, however, submitted that it would be in accordance with the purpose of the estimate system if these provisions did so apply. This seems also to have been the intention of the authors of the Single Convention, since one of their principal aims was that of codifying the existing multilateral treaty law on narcotic drugs.¹⁴ The practice of the International Narcotics Control Board also appears to be based on the assumption that, so far as the context permits, the rules of the Single Convention concerning "estimates" also apply to "supplementary estimates", and no Government has raised any objections to that practice. It is only on that assumption that the Board can, for example, require Governments to furnish their supplementary estimates on its forms.¹⁵

13. For provisions of earlier narcotics treaties corresponding to that of article 19, paragraph 3 of the Single Convention, see article 3 of the 1931 Convention and article 8, paragraph 6 of the 1953 Protocol. For express references to supplementary estimates in the Single Convention, see article 12, paragraphs 4 and 5 and article 21, paragraph 4, clause (i).

¹⁰ Article 1, para. 1, subpara. (y).

¹¹ See also above, comments on article 12, paras. 2 and 3.

¹² See above, comments on article 12, para. 3 (and *Commentary* on the 1931 Convention, para. 35).

¹³ Article 1, para. 4, third subpara. of the 1931 Convention; see also article 8, para. 6 of the 1953 Protocol.

¹⁴ Economic and Social Council, resolutions 159 II D (VII) and 246 D (IX); see also resolution 689 J (XXVI) of the Council.

¹⁵ Article 12, para. 1 and article 19, para. 1, introductory part.

Paragraph 4

4. The Parties shall inform the Board of the method used for determining quantities shown in the estimates and of any changes in the said method.

Commentary

1. The statement of the "method" required by paragraph 4 need not be repeated in each document in which a Government furnishes its annual or supplementary estimates to the Board. The information needs to be given

only once. Only changes in the earlier method and new methods employed need to be communicated afterwards. However, each time a Government furnishes estimates which were calculated by a method which has already been communicated in an earlier document, it should clearly refer to that document in its estimates.¹

2. The Board's form for the estimates contains a special space for the statement of the method.² Governments should use this space for a description of their method or of changes in their earlier method, or should indicate the previous document in which the earlier method still used by them is outlined. It would be useful if Governments would explain the reasons which caused them to change their earlier methods.³

3. The Board has pointed out that the "method" which Governments must state should not consist merely of explanations in support of the estimated figures and that such explanations, although certainly necessary, are only complementary to what the Convention means by "the method".⁴ The statement of method pursuant to this paragraph should contain all the facts and considerations which have been taken into account in establishing the estimated figures.⁵ It should explain how each of the items inserted in the estimates has been established,⁶ with the exception of the quantities necessary for addition to special stocks. An explanation of these quantities is not required.⁷ The attention of Governments is specially drawn to the usefulness of giving the Board as complete background information as possible in their explanation of increased requirements or of estimates for a drug previously not needed in their countries.⁸ The Board states that a good method not only allows Governments to calculate accurately their estimated requirements, but also enables the Board to assess the value of the estimates if it is informed of the method.⁹

4. For some of the considerations to be taken into account by Governments in establishing their estimates, see above, comments on article 19, paragraph 1, subparagraphs (a), (b) and (c); see also the following publications of the International Narcotics Control Board:

Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium in 1970, paragraphs 6-32 of the narrative part;¹⁰ and *Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium in 1971*, paragraphs 20-22 of the narrative part.¹¹

¹ League of Nations document C.521.M.362.1937.XI, pp. 7 and 19.

² Form B/S (6th edition, March 1970), p. 3.

³ *Records*, vol. II, p. 190; see, however, *Records*, vol. I, p. 134.

⁴ *Estimated World Requirements*, 1970, para. 26 of the narrative part.

⁵ Form B/S (6th edition, March 1970), p. 3; see also *Commentary* on the 1931 Convention, para. 57.

⁶ Article 19, para. 1, subparas. (a)-(c); *Commentary* on the 1931 Convention, para. 57, League of Nations document C.521.M.362.1937.XI, pp. 7 and 19.

⁷ Article 12, para. 4 and article 13, para. 4.

⁸ *Estimated World Requirements*, 1970, para. 32 of the narrative part.

⁹ *Estimated World Requirements*, 1971, para. 20.

¹⁰ Document E/INCB/6, United Nations publication, Sales No. 70.XI.1.

¹¹ Document E/INCB/10, United Nations publication, Sales No. 71.XI.1.

5. It may, however, be emphasized here again that the information supplied by manufacturers and importers should not determine the size of the estimates, although it may be a relevant factor in calculating the stocks of drugs to be held.

6. The Board has drawn the following conclusion from its examination of the methods communicated by Governments:

“So far as the consumption estimate is concerned, a method in the strict sense of the term could be suggested to governments; with regard to the other sections,¹² in view of the variations in the situation from country to country, the Board can only suggest certain guiding principles”.¹³

7. For corresponding provisions in earlier treaties see article 5, paragraph 3 of the 1931 Convention and article 8, paragraph 5 of the 1953 Protocol.

8. For early suggestions of international organs on the subject see:

League of Nations (Drug) Supervisory Body. *Notes on the Preparation of Estimates*, pp. 7-8 and 18-19; League of Nations, document C.521.M.362.1937.XI; and

Model Administrative Codes to the International Opium Conventions of 1925 and 1931, chapter III, paragraph 11, page 5 and annex, pp. 8-10; League of Nations, document C.774.M.365.1932.XI.

¹² I.e. the estimates mentioned in article 19, para. 1, subparas. (b) and (c).

¹³ *Estimated World Requirements*, 1971, para. 22; the Board proposes in this paragraph “to draw up a guide for the use of administrations responsible for preparing the estimates; this will include one or two model methods and an indication of the most common errors revealed by examination of the methods reported or of the estimates themselves”. For some guiding principles, see above, comments on article 19, para. 1, subparas. (a), (b) and (c).

Paragraph 5

5. Subject to the deductions referred to in paragraph 3 of article 21, the estimates shall not be exceeded.

Commentary

1. The estimates which “shall not be exceeded” are those referred to in article 19, paragraph 1.¹ It is submitted that paragraph 5 requires that a country’s or territory’s actual consumption, actual utilization for manufacture of other drugs, of uncontrolled substances or of preparations in Schedule III, actual stocks held at the end of the year in question and actual additions to “special stocks”² should, as far as possible, not exceed their respective estimates as originally furnished to, or established³ by the Board or as modified by supplementary estimates.⁴

¹ The term “estimates” as used in para. 5 is not synonymous with the phrase “the total of the estimates”, as in article 14, para. 1 of the 1931 Convention; see *Commentary* on the 1931 Convention, para. 144.

² Article 1, para. 1, subpara. (w).

³ Article 12, para. 3.

⁴ Article 19, para. 3.

2. It is, however, submitted that it is sometimes impossible to avoid such excesses. This may be the case if domestic consumption is greater than could be foreseen, particularly as a result of the outbreak of an epidemic near the end of a year, or if the country or territory concerned receives near the end of a year unforeseen orders for export of drugs, of uncontrolled substances or of preparations in Schedule III which it must manufacture from drugs. The Government in question may, in a situation of this kind be unable to furnish to the Board in due time ⁵ the necessary supplementary estimates of its drug requirements for the increased consumption or for such a manufacture. ⁶

3. The obligation of Parties, pursuant to paragraph 5, not to exceed their estimates is "subject to the deductions referred to in paragraph 3 of article 21". It is submitted that the Single Convention uses this phrase to take into account the fact that one or several of the estimates of a country or territory might have to be larger than the actual items to which they relate if that country's or territory's manufacturing and import limits and "total of the estimates" are to be reduced under the terms of article 21, paragraph 3. ⁷

4. The "deductions referred to in paragraph 3 of article 21" are computed by the Board, ⁸ which can quite often make the actual calculation of the excess manufacture and imports to be subtracted only rather late in the year; but even if a Government does not learn of the Board's figures in time ⁹ to deduct them in a given year, it has at its disposal all the data ¹⁰ required to make its own computation of the deductions for the purpose of article 19, paragraph 5.

⁵ See above, comments on article 19, para. 3.

⁶ See below, comments on article 21, paras. 1 and 3; see also, *Commentary* on the 1931 Convention, para. 89, pp. 135-136.

⁷ For possible larger estimates than the actual items to which they relate and which are used in the calculation under article 21, para. 1, see subparas. (a), (b) and (e) of that paragraph and the phrase "within the limit of the relevant estimate" used therein.

⁸ See above, comments on article 19, para. 2 and below, comments on article 21, para. 3.

⁹ The Board informs in writing the Governments concerned of the deductions made from their totals of estimates and from their manufacturing and import limits. The deductions are moreover published in the Quarterly Supplements to the Board's Annual Statement of the Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium; see, for instance, documents E/INCB/6/Add. 1-4, United Nations publication, Sales Nos. E/F/S.70.XI.5-8.

¹⁰ I.e., the items mentioned in article 21, paras. 1 and 2.

Article 20

STATISTICAL RETURNS TO BE FURNISHED TO THE BOARD

General comments

1. The international narcotics régime has from its beginning provided for statistical reports of Governments.¹ A few examples may be given of the use which can be made by intergovernmental organs and Governments of the statistical data furnished under the terms of the Single Convention.

2. The statistical returns indicate whether a country or territory has exceeded its manufacturing and import limits;² they may reveal the extent of illicit traffic and the effectiveness of the enforcement organs fighting it;³ and they may show whether a Government is carrying out its obligation to prevent the excessive accumulation of drugs in the possession of manufacturers, traders and State enterprises.⁴ A comparison of export figures and corresponding import data may disclose the possibility of diversion of international shipments into illicit channels. A study of the figures on the area in a country cultivated with the opium poppy for the production of opium⁵ and of those on the extent of the opium harvest may throw some light on the size of diversion of opium from the legal crops into the illicit traffic. It may also lead to the conclusion that legal opium production is not profitable in the country concerned, and that its farmers can undertake it only because many of them sell a part of their crop at the higher prices of the illicit market. The consumption figures may show a medical abuse of drugs, that is, abuse of drugs obtained on medical prescription, and may offer some clue to the incidence of addiction in a country which permits addicts to obtain maintenance dosages from legal sources. Import and export statistics also assist Governments in carrying out their obligation not knowingly to permit the export of drugs to any country and territory except within the limits of the total of the estimates for that country or territory,⁶ and those statistics are employed by the Board in determining whether it is authorized to order the cessation of the export of a drug or drugs to a particular country or territory.⁷

3. For provisions regarding statistical information on drugs required for temporarily authorized non-medical consumption and on coca leaves

¹ Article 21, subpara. (b) of the 1912 Convention; article 10 of the 1925 Agreement, articles 22 and 23 of the 1925 Convention; article 22 of the 1931 Convention, and article 4, para. (c) and article 9 of the 1953 Protocol; see also article 13, para. 2, subpara. (c) of the 1931 Convention.

² Article 21, para. 1; see also in this respect article 14, para. 3 of the 1931 Convention, article 12, para. 2 of the 1953 Protocol and article 15, para. 1 of the Single Convention.

³ Article 20, para. 1, subpara. (e).

⁴ Article 29, para. 3 and article 30, para. 2, subpara. (a).

⁵ Article 20, para. 3; see below, comments on that para.

⁶ Article 31, para. 1, subpara. (b).

⁷ Article 21, para. 4 of the Single Convention; see also article 14, para. 2 of the 1931 Convention and article 8, para. 11 of the 1953 Protocol.

whose alkaloids are destroyed and which are needed for making a flavouring agent, see respectively article 49, paragraph 3, subparagraph (b), and article 27, paragraph 2; see also article 2, paragraph 9, subparagraph (b) in respect of statistical information on drugs used in industry for other than medical or scientific purposes.

Paragraph 1, introductory part

1. The Parties shall furnish to the Board for each of their territories, in the manner and form prescribed by the Board, statistical returns on forms supplied by it in respect of the following matters:

Commentary

1. The Board must supply to Parties and non-Parties alike the forms which it requires to be used for the statistical returns. While the Single Convention does not expressly authorize the Board to request non-Parties to furnish statistical information pursuant to its provisions, the authors of the treaty appear to have considered that such an authority is implied by the terms of the Convention.¹

2. All Governments should therefore inform the Secretariat of the Board in time of their need for supplies of statistical forms. Non-Parties may take into account not only that it is in the interest of the family of nations as a whole that they furnish the required statistical data, but also that a failure to do so may cause them disadvantages or at least inconveniences in their international trade in drugs.¹

3. At the time of this writing the Board requires the use of one form for the annual reports,² and of another form³ for the quarterly reports to be made under article 20. A third form⁴ is prescribed for annual statistics on narcotic drugs used for the non-medical purposes temporarily authorized under article 49.⁵

¹ See above, comments on article 13, para. 1.

² Form C/S (4th edition, November 1969); the form is also to be used for annual statistical information to be supplied under provisions of earlier treaties which are still in force, i.e. of the 1925 Convention, the 1931 Convention, the 1948 Protocol and the 1953 Protocol. Separate information on the utilization of coca leaves for the manufacture of a flavouring agent if the leaves are not also used for the extraction of alkaloids, is also to be given on this form (table I, page 4 and foot-note *j* on page 7).

³ Form A/S (5th edition, November 1969). This form is also used for quarterly statistics under the earlier treaties referred to in the preceding foot-note.

⁴ Form R/S.

⁵ See also the annex to the statistical forms ("Yellow List") (14th edition, March 1970) containing a list of narcotic drugs in Schedule I of the Single Convention, a list of drugs in Schedule II, a list of preparations in Schedule III, an alphabetical list of names of narcotic drugs, their salts or preparations (including some trade names) and tables showing the pure drug content of bases and salts as well as the equivalents, in terms of the pure drug, of extracts and tinctures; see also the *Multilingual List of Narcotic Drugs under International Control*; document E/CN.7/513, United Nations publication, Sales No. E/F/S/R.69.XI.1, published and brought up to date from time to time by the United Nations Secretariat.

4. The statistical information which must be furnished under article 20 must be expressed in terms of the pure drug content of the crude drugs, refined drugs, salts and preparations to be taken into account.⁶ As regards preparations in Schedule III, however, the only information which needs to be supplied is the quantities of drugs utilized for the (wholesale) compounding of such preparations, again expressed in terms of the pure drug content of the drugs involved.⁷

5. The Board requests, however, that in the case of opium preparations (including medicinal opium),⁸ extracts and tinctures of opium, coca leaf and cannabis and other coca leaf preparations, a special method that it describes in detail should be employed,⁹ rather than taking account of the actual content of the basic drug (opium, coca leaf or cannabis as the case may be) in the calculation of the statistical figures to be reported by Governments.

6. As regards the "manner and form" which may be prescribed by the Board, see above, comments on article 13, paragraph 1.

7. The term "territories", as used in the subparagraph under consideration, includes not only "territories" within the meaning of article 1, paragraph 1, subparagraph (y), i.e. parts of a State treated as separate entities for the application of the import certificate and export authorization system provided in article 31, but also whole States which are not so divided.¹⁰

⁶ Form C/S (4th edition) of the Board, instruction 3 and form A/S (5th edition) of the Board, instructions 3 and 5; article 2, para. 3 of the Single Convention; see also above, comments on article 1, para. 1, subpara. (n), article 2, para. 3 and article 19, para. 1, introductory part.

⁷ Article 2, para. 4 and the above comments on that paragraph; see also the references in the preceding foot-note.

⁸ Article 1, para. 1, subpara. (o).

⁹ Form C/S referred to in foot-note 2, instruction 4; see also form A/S, instruction 4.

¹⁰ See above, comments on article 1, para. 1, subpara. (y); see also article 19, para. 1, introductory part.

Paragraph 1, subparagraph (a)

(a) Production or manufacture of drugs;

Commentary

1. For the terms "production" and "manufacture", see article 1, paragraph 1, subparagraphs (t) and (n), and comments on those subparagraphs. It may be noted that only the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained constitutes "production" in the sense of the Single Convention. All other processes by which drugs are obtained are "manufacture", even if they involve separation from a plant. At present, Schedules I and II contain no substance other than the four just mentioned which is obtained by separation from a plant. It cannot, however, be excluded that in the future another substance which is obtained by separation from a plant will be added to Schedules I and II by the operation of article 3, and thus become a "drug". The separation of such a drug from its plant would be "manufacture", and not "production".

2. The separation of poppy straw and cannabis leaves (when not accompanied by the tops of the cannabis plant) from their plants is neither “manufacture” nor “production” in the sense of the Single Convention; but if in the future particularly potent kinds of cannabis leaves (not accompanied by the tops), for example, are included either in Schedule I or II and thus become “drugs”, their separation from the plant would become “manufacture” and not “production”.

3. Statistical information must be given on the manufacture of all drugs, whether they are obtained from uncontrolled substances, poppy straw¹ or other “drugs”.

4. The salts, which are separately listed in the Schedules, must be considered to be “drugs” separate from their “bases”. The Board could therefore, under the subparagraph under consideration, require separate statistics on the manufacture of base drugs and their salts. Governments are not, however, requested to furnish such separate information, but only to supply figures on the pure drug content of the drugs which they manufacture, whether in the form of their bases or their salts. The Board does not need and therefore does not request such separate data. As at present applied by the Board, the term “manufacture” as used in subparagraph (a) does not include the transformation of base drugs into their salts.²

5. According to the definition in article 1, paragraph 1, subparagraph (n), the term “manufacture” includes “refining”. The Board could therefore ask for separate information on the manufacture of crude drugs and on their refining. It does not, however, at present request such separate data. The information which States are requested to supply covers only the pure drug content of the drugs which they manufacture, whether they are in a crude or in a refined form.³ As subparagraph (a) is at present applied by the Board, refining is therefore not “manufacture” for the purposes of this paragraph; it is, however, governed by other rules of the⁴ Convention controlling “manufacture”.

6. In one case, however, in which the crude drug is listed in Schedule I separately from its refined form, the Board requests figures on the manufacture of both, since both “concentrate of poppy straw” (which is in fact crude morphine)⁵ and morphine are separate drugs for the purposes of the Single Convention; but only “concentrate of poppy straw” which is “made available in trade”⁶ is held to be a separate drug. Separate figures need not be furnished

¹ Poppy straw is neither listed in Schedule I nor in Schedule II, and is therefore not a “drug”, but is subject to some control measures specially applying to it; see above, comments on article 1, para. 1, subparas. (p), (q) and (r).

² This transformation would however, be “manufacture” for other provisions of the Single Convention; see above, comments on article 1, para. 1, subpara. (n).

³ Form C/S (4th edition, November 1969) of the International Narcotics Control Board, instruction 3.

⁴ See above, comments on article 1, para. 1, subpara. (n).

⁵ It was in fact considered to be crude morphine under the terms of the 1931 (and 1925) Convention; see form C/S (referred to in the preceding foot-note), instruction 2.

⁶ Schedule I, form C/S, foot-note (1) to table I (p. 7).

on the concentrate when it forms only an intermediary stage in a continuous process of the manufacture of morphine from poppy straw.

7. When a drug is manufactured and then transformed into another drug, figures must be furnished on the quantities obtained by both processes; for example, a country which manufactures morphine and makes codeine, ethylmorphine, heroin, hydromorphone and pholcodine therefrom must furnish figures on the manufacture of morphine and on that of each of those other drugs which it makes from morphine, but data need not be furnished on the manufacture of a drug which appears only as an intermediary stage in a continuous process of manufacturing a drug or a substance not covered by the Single Convention.

8. Since the Board is authorized to determine “the manner and form” in which Parties should supply their statistics, it may require that the total quantity of a drug obtained by manufacture be divided into subitems giving the various quantities of that drug obtained from different source materials. The Board thus calls upon Governments not only to indicate the total quantity of morphine that they manufacture, but also the amounts of morphine that they obtain from “the concentrate of poppy straw”, from opium or from poppy straw; likewise, they are required not only to furnish the figure of the total quantity of codeine that they manufacture, but also information on the amounts of this drug obtained from morphine, or as a by-product direct from “concentrate of poppy straw” used for the manufacture of morphine, or as a by-product of the process of manufacture of morphine from poppy straw.⁷

9. Since the rules of the Single Convention which apply to a drug generally also govern its preparations,⁸ Governments could also be requested to furnish data on the manufacture of preparations. They could, however, be required to furnish figures only on the amounts of drugs contained in the various preparations that they have manufactured.⁸ The Board does not, however, need this information, and specifically calls the attention of Governments to the fact that they should not include data on preparations in their statistical returns on the manufacture of drugs.⁹

10. The Single Convention also requires Parties to furnish separate statistical data on the production¹⁰ of opium, coca leaves, cannabis and cannabis resin and on the manufacture of extracts and tinctures of cannabis whenever these processes are undertaken for non-medical purposes temporarily authorized under article 49.¹¹

⁷ Form C/S, table I, columns A and B, see also article 22, para. 1, subpara. (b) of the 1925 Convention.

⁸ Article 2, para. 3.

⁹ Form C/S, instruction 3.

¹⁰ The Board requests at present that the data on production be furnished on form R/S.

¹¹ Article 49, para. 3, subpara. (b).

Paragraph 1, subparagraph (b)

(b) Utilization of drugs for the manufacture of other drugs, of preparations in Schedule III and of substances not covered by this Convention, and utilization of poppy straw for the manufacture of drugs;

Commentary

1. Separate figures must be furnished on the utilization of drugs for each of the three purposes mentioned in the subparagraph under consideration.¹ The form which the Board prescribes for the annual statistical returns under article 20 therefore divides its column on the utilization of drugs for manufacture into three sections, one for the quantity of each drug used for the manufacture of other drugs, the second for the quantity of each drug used for the (wholesale) compounding of preparations in Schedule III, and the third for the quantity of each drug used for making substances not covered by the Single Convention.² The Board requires Governments to indicate the name of each drug or uncontrolled substance so obtained, but not the designations of preparations in Schedule III. The quantity of each drug made is reported to the Board under article 20, paragraph 1, subparagraph (a), which provides for the furnishing of data on manufacture. These manufacturing figures are sometimes subdivided into the amounts obtained from each source material.³ The quantities of substances not covered by the Single Convention which are made from drugs need not be given. The amounts of drugs used in industry for other than medical or scientific purposes would also have to be furnished to the Board.⁴ The quantity of coca leaves used for preparation of a flavouring agent must be given to the extent that the leaves are not also used for the extraction of alkaloids.⁵

2. The Board has thus at its disposal the quantity of each drug utilized for each of the three purposes mentioned in subparagraph (b), as well as the quantity of each drug so obtained, but not the quantities of the manufactured substances not covered by the Single Convention nor those of the compounded preparations in Schedule III.

3. The quantities of drugs utilized by retail pharmacists for the compounding of preparations in Schedule III should not be included in the figures to be given under subparagraph (b). Drugs obtained by the pharmacists for such a purpose are considered to have been "consumed", since they form a part of the amounts "supplied to any person or enterprise for retail distribution, medical use or scientific research".⁶ They are included in the figures

¹ See also above, comments on art. 19, para. 1, subpara. (b).

² Form C/S (4th edition, November 1969) of the International Narcotics Control Board, column C of table I, subdivided into sections 1, 2 and 3.

³ Form C/S, table I, columns A and B, see under entries "morphine and its salts" and "codeine and its salts".

⁴ Article 2, para. 9, subpara. (b).

⁵ Article 27, para. 2; Form C/S, table I, column C, section 3, entry "coca leaf", foot-note (j), (p. 7). If the coca leaves are used for both purposes, this must be indicated (in the space headed "Remarks" on page 3 of the form).

⁶ Art. 1, para. 2.

which Governments report on “consumption” of drugs under article 20, paragraph 1, subparagraph (c).

4. The Board does not require Governments to report the amounts of drugs used for the manufacture of their salts ⁷ or those used for the compounding of preparations other than those in Schedule III. The Board does not need this information, although it could hypothetically ask for it since salts, being separately listed in Schedules I and II, are drugs separate from their bases, and article 2, paragraph 3 provides that these preparations are subject to the same measures of control as the drugs which they contain. ⁸

5. It is submitted, on the other hand, that the Board may not under the subparagraph under consideration require information on the quantities of crude drugs utilized for the making of refined drugs, although the process of “refining” is “manufacture” as defined in article 1, paragraph 1, subparagraph (n).

6. A refined drug is not a different drug from the same drug in its crude state. An exception is concentrate of poppy straw (which is in fact crude morphine) and morphine, because both are separately listed in Schedule I, and thus are different drugs for the purposes of the Single Convention. Governments must therefore report the quantities of “concentrate of poppy straw” utilized for the manufacture of morphine, but only if the concentrate in question has been “made available in trade”. ⁹ “Concentrate of poppy straw” which forms only an intermediary stage in a continuous process of manufacture of morphine from poppy straw need not be taken into account in computing the amounts to be reported to the Board. In such a case, only the quantity of poppy straw utilized for the manufacture of morphine must be reported, but this quantity need not be indicated as having been used for the manufacture of the concentrate of the poppy straw, nor has the quantity of the concentrate to be reported as having been utilized for the manufacture of morphine.

7. More generally, drugs which form only an intermediary stage in a continuous process of manufacturing from drugs, other drugs or substances not covered by the Single Convention need not be taken into consideration in the reports under subparagraph (b); for example, if codeine is only an intermediary stage in a continuous process of manufacturing dihydrocodeine from thebaine, only the quantity of thebaine utilized for the manufacture of dihydrocodeine, and not that of codeine used for that purpose, has to be reported. Nor, for the purposes of subparagraph (b), has the thebaine to be considered as having been utilized for the manufacture of codeine. Similarly, if heroin forms only an intermediary stage in a continuous process of manufacturing nalorphine, an uncontrolled substance from morphine, only the morphine should be considered to have been utilized for the manufacture of nalorphine and not the heroin; nor in such a case would it be necessary to consider the morphine as having been utilized for the manufacture of heroin. ¹⁰

⁷ Whether hydrochlorides or sulfates.

⁸ Form C/S, table I, column C, foot-notes (c) and (d) (p. 7); see also comments on art. 20, para. 1, subpara. (a).

⁹ See the definition of the “concentrate of poppy straw” in Schedule I.

¹⁰ See also *Commentary* on the 1931 Convention, para. 51, p. 84.

8. Isomers, esters and ethers, on the other hand, must be considered as drugs separate from those whose chemical variations they are. The quantity of a drug utilized for the manufacture of its isomer, ester or ether has therefore to be reported under subparagraph (b). Poppy straw is the only substance which, while not being a drug ¹¹ is subject to reporting pursuant to subparagraph (b). The quantities of poppy straw utilized for the manufacture of morphine or for that of concentrate of poppy straw must be reported, but in the latter case only if the concentrate has been "made available in trade". ¹²

9. The quantities of drugs utilized for the purposes mentioned in subparagraph (b) must be reported in terms of their pure drug content. ¹³

10. See above, comments on article 19, paragraph 1, subparagraph (b).

¹¹ See above, comments on art. 1, para. 1, subparas. (p), (q) and (r).

¹² It will be noted that Governments are not required to furnish estimates of their requirements of poppy straw to be utilized for the manufacture of drugs; art. 19, para. 1, subpara. (b).

¹³ Form C/S, instruction 3.

Paragraph 1, subparagraph (c)

(c) Consumption of drugs;

Commentary

1. In view of the definition of the terms "consumed" and "consumption" in paragraph 2 of article 1, the Board explains that, for the purposes of reporting under subparagraph (c), the phrase "quantity consumed" means "the amounts supplied for retail distribution, medical use or scientific research, to any person, enterprise or institute (retail pharmacists, other authorized retail distributors, institutions or qualified persons duly authorized to exercise therapeutic or scientific functions: doctors, dentists, veterinarians, hospitals, dispensaries and similar health institutions, both public and private; scientific institutes)". ¹ To express this in more general terms, the term "consumption" as used in the Single Convention means the transfer of drugs from the manufacturing or wholesale level of the drug economy to its retail level. Drugs acquired by retail pharmacists for the compounding of preparations in Schedule III are therefore to be considered to have been "consumed" for the purposes of statistical reporting under subparagraph (c), and when so utilized are not to be taken into account in compiling the figures under subparagraph (b) on drugs utilized for the manufacture of such preparations. ²

2. Similarly, the quantities of drugs imported by retail pharmacists must be taken into account in calculating the figures on consumption as well as those on imports pursuant to subparagraph (d). In the case of small territories which do not produce, manufacture or engage in wholesale trade in drugs and which obtain all their drug requirements by means of import by

¹ Form C/S (4th edition, November 1969) of the Board, table II, foot-note a, p. 9; see also comments on article 19, para. 1, subpara. (a).

² See above, comments on subpara. (b).

retail pharmacists, the consumption figures will be equal to their import figure.

3. The figures on consumption of drugs, whether in the form of crude or refined drugs, salts or preparations, must be expressed in terms of their pure drug content. The Board requires, however, that in the case of opium preparations (including “medicinal opium”,³ extracts and tinctures of opium, coca leaf and cannabis and other coca leaf preparations, other methods of computation should be employed, which it describes in detail in the form which it prescribes for annual statistics in accordance with article 20.⁴ Drugs contained in preparations in Schedule III which are “consumed”, i.e. transferred from the wholesale level to the retail level of the drug economy, are, however, not to be taken into consideration in the calculation of consumption statistics.

4. The figures concerning consumption to be furnished under subparagraph (c) relate to consumption for medical and scientific purposes. Data on the temporarily authorized non-medical consumption of opium, coca leaves, cannabis, cannabis resin and extracts and tinctures of cannabis must be separately supplied to the Board under article 49, paragraph 3, subparagraph (b). The Board has prescribed a separate form for annual statistics on narcotic drugs used for non-medical purposes.⁵

5. It will be noted that the Single Convention provides for “consumption” statistics on all drugs, no matter whether they are listed in Schedule I or II. The narcotics régime preceding that Convention excluded from the requirement of consumption statistics drugs in Group II,⁶ i.e., drugs having a similar legal position to that of drugs in Schedule II of the Single Convention.

6. See also above, comments on article 1, paragraph 2 and article 19, paragraph 1, subparagraph (a).

³ Article 1, para. 1, subpara. (o).

⁴ Form C/S, instruction 4; see also above, comments on article 20, para. 1, introductory part.

⁵ Form R/S.

⁶ Article 13, para. 2, subpara. (c) of the 1931 Convention.

Paragraph 1, subparagraph (d)

(d) Imports and exports of drugs and poppy straw;

Commentary

1. On the basis of its authority¹ to determine the manner and form of the statistical returns which Governments should supply, the Board requires exporting countries to specify the amounts they ship to each country and territory, and requires importing countries to subdivide the quantities which they obtain by country or territory of origin.² The Board needs these details

¹ Article 13, para. 1 and article 20, para. 1, introductory part.

² Article 22, para. 2 of the 1925 Convention expressly required itself this specification; see however article 9, para. 1, subpara. (c) of the 1953 Protocol; see form A/S (5th edition, November 1969) of the Board, first column of parts I and II of the tables.

not only to check the accuracy of the figures by comparing the import data with corresponding export data, but also to determine the advisability of requesting Governments to investigate whether a discrepancy between export and import figures is due to diversion of international shipments into illicit channels. Moreover, by having this detailed information at its disposal, the Board is not only in a position to determine *post factum* whether a country or territory exceeded its supply limits (i.e. the quantities of drugs which it was entitled to obtain by manufacture and import)³ in the preceding year, but may also be able to correct during the course of any year a situation in which a country or territory has exceeded the limits for that year,⁴ since the international trade statistics are furnished quarterly. It may be noted that the Single Convention requires quarterly statistics on the international trade in all drugs, both those in Schedule I and Schedule II,⁵ while the international régime preceding that Convention provided only for annual returns in regard to exports and imports of drugs in Group II.⁶

2. For quarterly statistics on the international drug trade, the Board requires the use of a form⁷ different from that prescribed for the annual statistics under article 20.⁸ At the time of this writing, the Board requests that the separate information which Governments should supply on the international trade in opium, coca leaves, cannabis (including extracts and tinctures of cannabis) and cannabis resin for temporarily authorized non-medical purposes⁹ should be sent on a third form specially provided for annual statistics on narcotic drugs used for non-medical purposes.¹⁰ Governments are thus asked to furnish data on their imports and exports for non-medical purposes only annually, and not quarterly. The Board is, however, entitled to require this information on a quarterly basis.

3. The Board explains that statistics on international trade should be based on the time of actual movement of the drugs across frontiers, and not on the date of the import and export authorization or on that of customs clearance.¹¹ The establishment of the exact date on which an import or export takes place is sometimes of importance for determining in which of two succeeding submissions of quarterly statistics the transaction should be reported. See above, comments on article 1, paragraph 1, subparagraph (*m*).

4. The country or territory which exported the goods and whose competent authorities have issued the export authorization is to be considered the exporting country or territory. The Board adds in its present instructions that if no such authorization has been issued, the country or territory from

³ Article 21, paras. 1 to 3.

⁴ Article 21, para. 4.

⁵ Article 20, para. 2, subpara. (*b*).

⁶ Article 13, para. 2, subpara. (*c*), clause (*i*) of the 1931 Convention. Drugs in Group II such as codeine correspond to those in Schedule II of the Single Convention.

⁷ See the form referred to in foot-note 2 above.

⁸ See form C/S (4th edition, November 1969).

⁹ Article 49, para. 3, subpara. (*b*).

¹⁰ Form R/S of the International Narcotics Control Board.

¹¹ Form A/S, instruction 10.

which the goods were actually despatched to the importing country or territory¹² should be deemed to be the exporting country or territory.

5. In order to determine which country or territory is to be considered to be the importer, exporting Governments are advised to consider that entity as importer which imported the goods and whose competent authorities have issued the import certificate. The Board adds here again in its present instructions that if no such certificate has been issued, the country or territory to which the goods were actually despatched¹³ should be considered to be the importer.

6. The term "import" should be considered to include entrance of drugs from abroad into a bonded warehouse, free port or free zone, and the term "export" to include despatch of drugs from a bonded warehouse, free port or free zone to another country or territory, no matter what the status of such a shipment may be under national customs laws. Shipments of drugs between, on the one hand, an area of a country or territory which is subject to the customs levies of the country or territory and, on the other, a bonded warehouse, free port or free zone located in the same country or territory should, however, not be deemed to be imports and exports for the purpose of statistical reporting.¹⁴

7. A consignment of drugs which passes through a country or territory in transit to another country or territory should not be considered to be an import and export of the country or territory of transit, even if pending its further shipment it is placed temporarily in a bonded warehouse, free port or free zone located therein.¹⁵

8. Imported drugs returned by a country or territory to the exporting country or territory—whatever the reason for the return—should be considered to be exported by the former, and to be imported by the latter.¹⁶

9. A shipment which, while in transit in a country or territory, is diverted to another destination in accordance with article 31, paragraph 12 should be considered to be an import to and export from the country or territory of transit which authorizes the diversion, and to be an import to the country or territory of the new destination. The Government of the entity which originally exported the consignment, and which is informed of the diversion under the terms of article 31, paragraph 12, must accordingly rectify the statistical computation of its exports, treating as importer the country or territory of transit which authorized the diversion.

10. In calculating the figures for the purpose of subparagraph (d), the pure drug content of the refined drugs, crude drugs and preparations involved

¹² Form A/S, instruction 11, first para.

¹³ *Ibid.*, second para.; for the rules on import and export authorizations, see article 31, paras. 4 to 16; for use of the term "import certificate", see paragraph 5 of that article. No international shipments without such authorizations would be legal under the Single Convention or under the 1953 Protocol (art. 6, para. 4). They are, however, exceptionally authorized under the régime preceding the Single Convention; see art. 18, 1925 Convention.

¹⁴ Form A/S, instruction 11, third para.

¹⁵ *Ibid.*, fourth para.

¹⁶ *Ibid.*, fifth para.

should be taken into account. The Board prescribes, however, for opium preparations (including “medicinal opium”)¹⁷ extracts and tinctures of opium, coca leaf and cannabis and other coca leaf preparations, another method of computation which it describes in the form to be used for quarterly statistics of imports and exports.¹⁸ International shipments of preparations in Schedule III must not be included in the reports furnished pursuant to the subparagraph under consideration.¹⁹

11. Where the actual quantity of a drug in an ampoule is greater than its nominal content, the actual and not the nominal amount should be used in making the statistical calculations.²⁰

12. The Board requests that, in cases in which the reported figures on morphine or cocaine include quantities of the pure substance contained in the crude drugs, the weight of the crude drug and its pure drug content should also be given separately.²¹

13. Isomers, esters and ethers are to be treated as drugs different from those whose chemical variations they are.

14. Concentrate of poppy straw which is imported or exported should always be considered to have been “made available in trade”,²² whether or not the purpose of its shipments is commercial. It must therefore always be reported separately from morphine.²³

15. All international consignments of poppy straw must be included in the figures compiled for the purpose of subparagraph (d), including those which are not intended for the manufacture of drugs.

16. The Board requests that the amounts of drugs imported for “special purposes” into a country or territory should be included in the total figure of import of each drug involved,²⁴ as well as stated separately in accordance with article 20, paragraph 4. See below, comments on article 20, paragraph 4.

¹⁷ Article 1, para. 1, subpara. (o).

¹⁸ Form A/S, instructions 3 and 4.

¹⁹ *Ibid.*, instruction 5.

²⁰ *Ibid.*, instruction 9.

²¹ *Ibid.*, foot-notes (d) and (f) to part I of the tables (pp. 4 and 5) and foot-notes (d) and (f) to part II of the tables (pp. 7 and 8).

²² See the definition of the concentrate in Schedule I.

²³ Form A/S, columns 6 of part I and II of the tables.

²⁴ Form A/S, item II in the first column of part I of the tables.

Paragraph 1, subparagraph (e)

(e) Seizures of drugs and disposal thereof; and

Commentary

1. All seizures of drugs from the illicit traffic¹ must be taken into account for the purpose of calculating the figures under subparagraph (e),

¹ See article 1, para. 1, subpara. (l) and comments thereon.

and not merely those which are of importance under the terms of article 18, paragraph 1, subparagraph (c) and reported to the Secretary-General of the United Nations.² Domestic and international seizures, that is, both seizures which are effected in the interior of the country or territory concerned and also those which are made on account of illicit import or export, must be included.³ The Board at present does not require separate figures on domestic and international seizures,⁴ but is entitled to do so.⁵ Since the leaves of the cannabis plant when not accompanied by the tops are not “cannabis” and therefore not “drugs”,⁶ statistical information on seizures of the leaves need not be furnished under subparagraph (e). The Commission on Narcotic Drugs could, however, request Parties to supply this information to the Secretary-General if it finds it necessary for the performance of its functions.⁷

2. In view of article 2, paragraph 4, Governments should not include in the figures pursuant to the subparagraph under consideration the amounts of drugs contained in preparations listed in Schedule III which they may seize.

3. As regards statistical information on the disposal of seized drugs, the Board asks Governments to indicate separately what quantities of the total amounts seized were destroyed, taken over by the Government for special purposes or utilized for licit purposes (consumption, manufacture, addition to stocks other than “special stocks”, or export). The Board at present does not request separate information on the different amounts utilized for different licit purposes, nor even an indication of the specific licit purpose for which the seized drugs were appropriated.⁸ The statistical figures on disposal of seized drugs should include drugs which were disposed of in the course of the year to which the statistics relate, whether they were seized in that year or in an earlier year.⁹ Information on the quantities of seized drugs released for licit use is of particular importance to the Board since they must be deducted from the amounts which the country or territory may obtain by manufacture and import in the year in which they are so released.¹⁰

² See above, comments on that provision.

³ Article 22, para. 1, subpara. (c) of the 1925 Convention limits the reporting to international seizures while article 9, para. 1, subpara. (a), clause (iv) of the 1953 Protocol requires statistical reporting on both domestic as well as international opium seizures.

⁴ Form C/S (4th edition, November 1969), table II, column E.

⁵ Article 13, para. 1 and article 20, para. 1, introductory part.

⁶ Article 1, para. 1, subpara. (b).

⁷ Article 18, para. 1, introductory part and article 28, para. 3.

⁸ Form C/S, table II, heading of column F.

⁹ Form C/S, table II, foot-note (e) to the heading of table II (p. 9).

¹⁰ Article 21, paras. 1 and 2.

Paragraph 1, subparagraph (f)

(f) Stocks of drugs as at 31 December of the year to which the returns relate.

Commentary

1. In view of the definition of stocks in article 1, paragraph 1, subparagraph (x), the Board calls to the attention of Governments that “the term stocks means the amounts of drugs held in a country or territory for any purpose except: (i) the quantities held by retail pharmacists or other authorized retail distributors and by institutions or qualified persons in the duly authorized exercise of therapeutic or scientific functions. . .;” and (ii) “special stocks” held by the Government.¹ The Board explains that these duly authorized institutions and persons include “doctors, dentists, veterinarians, hospitals, dispensaries and similar health institutions, both public and private; scientific institutes”.²

2. Under the definition of stocks in article 1, paragraph 1, subparagraph (x), drugs intended for consumption for other than medical or scientific purposes are not included in the stocks. The quantities of opium, coca leaves, cannabis, cannabis resin and extracts and tinctures of cannabis which are held in a country or territory for temporarily authorized non-medical purposes,³ except for the amounts held for such use by retail outlets or by the Government as “special stocks”, must be separately reported to the Board.⁴ The Board is, however, authorized⁵ to request that these separate figures should also be included in the totals of stocks of each of these drugs to be furnished by Governments under article 20, paragraph 1, subparagraph (f).

3. Drugs held by retail outlets and “special stocks” (that is, drugs held by the Government “for special government purposes and to meet exceptional circumstances”)⁶ are excluded from the stocks to be reported in accordance with this subparagraph. The Board explains that the words “special Government purposes” include in particular the requirements for the armed forces, and the phrase “exceptional circumstances” is meant to cover such catastrophic events as large-scale epidemics and major earthquakes.⁷ Drugs held by the Government for the normal needs of the civilian population should, however, be included in the figures to be reported;⁸ so should drugs not held by the Government which are intended for sale to the Government “for special Government purposes and to meet exceptional circumstances”.

¹ Form C/S (4th edition, November 1969) of the Board, foot-note (b) to table II (p. 9).

² Form C/S, foot-note (a) to table II (p. 9); see also above, comments on article 20, para. 1, subpara. (c).

³ Article 49, para. 1, subparas. (a) to (d).

⁴ Article 49, para. 3, subpara. (b); the Board requires at present that this separate figure be furnished on form R/S.

⁵ Article 13, para. 1, and article 20, para. 1, introductory part.

⁶ Article 1, para. 1, subpara. (w) and subpara. (x), clause (v).

⁷ Form C/S, foot-notes (c) and (d) to table II (p. 9); see also form A/S (5th edition, November 1969) of the Board, instruction 12.

⁸ Form C/S, foot-notes (b) and (d) to table II (p. 9).

4. Drugs held in a bonded warehouse, free port or free zone should be included in the stock statistics of the country or territory in which that warehouse, port or zone is located, but not if they are placed temporarily in such an institution in a country or territory through which they are passing in transit.⁹

5. Since drugs held by retail outlets are not “stocks” in the sense of the Single Convention, small countries or territories which do not manufacture nor engage in the wholesale trade in drugs, but obtain all their narcotics requirements by imports of retail pharmacists, do not have “stocks”, and consequently need not furnish stock statistics to the Board.

6. For a more extensive discussion of the term “stocks”, see above, comments on article 1, paragraph 1, subparagraphs (w) and (x).¹⁰

7. Refined and crude drugs, their salts and their preparations other than preparations in Schedule III¹¹ must be taken into account in the calculation of the stock figures. As regards the computation of these figures in terms of the pure drug content, and by other methods in the case of opium preparations (including “medicinal opium”), extracts and tinctures of opium, extracts and tinctures and other preparations of coca leaf and extracts and tinctures of cannabis, see above, comments on article 20, paragraph 1, introductory part, and also on subparagraphs (c) and (d).¹²

8. For provisions of earlier treaties regarding stock statistics, see article 22, paragraph 1, subparagraph (c) of the 1925 Convention and article 9, paragraph 1, subparagraph (b) of the 1953 Protocol.

⁹ Form C/S, foot-note (b) to table II (p. 9); see also form A/S, instruction 11.

¹⁰ See also comments on article 19, para. 1, subpara. (c).

¹¹ Article 2, para. 4.

¹² Instructions 3 and 4 of forms C/S and A/S.

Paragraph 2

2. (a) The statistical returns in respect of the matters referred to in paragraph 1, except subparagraph (d), shall be prepared annually and shall be furnished to the Board not later than 30 June following the year to which they relate.

(b) The statistical returns in respect of the matters referred to in subparagraph (d) of paragraph 1 shall be prepared quarterly and shall be furnished to the Board within one month after the end of the quarter to which they relate.

Commentary

1. The statistical data other than those relating to the international trade must be furnished to the Board not later than 30 June following the year which they concern. This gives Governments more time than they had under the earlier treaties for furnishing their annual statistics.¹ This change

¹ The 1925 Convention allows for stock statistics five months and for the other annual statistics three months after the end of the year to which they relate (article 22, para. 1, introductory part; see also article 23, first paragraph). The 1953 Protocol does the same, although in different words (article 9, para. 1, subparas. (a) and (b)).

was made because several representatives, particularly of large countries, stated at the Plenipotentiary Conference that their Governments could not collect the required information in time to furnish annual returns to the Board by the dates provided in the earlier treaties.² Early receipt of the annual statistics is, however, helpful to the Board in carrying out its functions under the Single Convention. Moreover, many Governments do not experience the same difficulties in gathering the information as those which at the Plenipotentiary Conference proposed an extension of the time limit for supplying the annual statistics. The Board therefore at present asks Governments to send their annual statistics “as soon as possible, but not later than 30 June, after the end of the year to which they relate.”³

2. The Board needs the import and export statistics at shorter than annual intervals. A discrepancy between import and corresponding export statistics may be due to a diversion of an international shipment into illicit channels. The Board sometimes asks Governments, when such discrepancies have arisen, to investigate whether a diversion has occurred. It is obvious that it is in the interest of effective investigation that as little time as possible should elapse between the diversion and the search by the enforcement authorities.

3. The receipt of quarterly import and export statistics also makes it possible for the Board to take corrective action in some cases in which a country or territory has exceeded its import limits.⁴ The Board may be able to take this action in the year to which the limits apply, and thus to prevent an excessive import computed on an annual basis.⁵ Without quarterly statistics, and thus without the possibility of adopting early remedial steps, the Board could only comment *post factum* on the matter in its reports,⁶ or finally resort to the procedure of article 14, which is generally not a very desirable way of coping with such a situation.⁷

4. The Single Convention therefore retains the quarterly reporting of earlier treaties on the international trade in narcotic drugs.⁸ It may perhaps also be concluded from the use of the words “shall be furnished” in both subparagraphs of paragraph 2 that the time limits for which they provide apply not to the despatch of the information, but to its arrival at the Board. The use of the passive form instead of the active form with reference to the Governments supplying the information makes it appear that the authors of the Single Convention had in mind the arrival of the information, rather than its despatch.

² *Records*, vol. I, pp. 76-79.

³ Form C/S (4th edition, November 1969) of the Board, p. 3.

⁴ Article 21, para. 4.

⁵ Article 21, para. 1.

⁶ Article 15.

⁷ See above, comments on article 14; see also the general comments on article 20.

⁸ The 1925 Convention (article 22, para. 2) and the 1953 Protocol (article 9, para. 1, subpara. (c)) provided, however, for a period of “four weeks” after the end of the quarter, for the supply of the quarterly import and export statistics.

Paragraph 3

3. In addition to the matters referred to in paragraph 1 of this article the Parties may as far as possible also furnish to the Board for each of their territories information in respect of areas (in hectares) cultivated for the production of opium.

Commentary

1. The Third Draft¹ which the Plenipotentiary Conference used as its basic working document contained a provision² which would have required Parties to furnish to the Board information on the area on which they cultivated the opium poppy, coca bush or cannabis plant for the production of opium, coca leaves or cannabis and cannabis resin respectively. The Conference deleted this provision, but adopted the optional clause which appears as article 20, paragraph 3 of the Single Convention, as a concession to those delegates who believed that information on the area of poppy cultivation for opium was important for the Board's work.³ The data which Governments may furnish under paragraph 3 enable the Board to compute the average opium yield per hectare. This yield, although by itself by no means conclusive, is one of the factors which may be taken into account in estimating the approximate extent of diversion of legally produced opium in to the illicit traffic. It may also help to determine, in the light of the average man-hours required for collecting the opium harvest from a hectare of land and of the prevailing local wages of farmhands, whether legal opium production is profitable, or whether it can be carried on only because the farmers sell a part of the crop at the higher prices of the illicit market.⁴

2. The Parties have of course no obligation under paragraph 3 to furnish the information for which it provides.⁵ Parties to the 1953 Protocol are, however, bound to do so.⁶ Moreover, the Commission on Narcotic Drugs at present requests Governments not only to furnish statistical figures on the area of poppy cultivation for opium, but also on the area on which the coca bush is grown and on that on which the cannabis plant is cultivated for cannabis and cannabis resin.⁷

¹ Document E/CN.7/AC.3/9, reproduced in *Records*, vol. II, pp. 2 *et seq.*

² Article 27, para. 1, subpara. (a), *Records*, vol. II, p. 10.

³ *Records*, vol. I, pp. 76-79, 129-132 and 136-137; vol. II, pp. 179-181 and 273; see also document E/CONF.34/L.22, *Records*, vol. II, p. 41.

⁴ See also the above general comments on article 20.

⁵ The original text as proposed by India would have established an obligation, but the word "shall" of this text was replaced by "may" in the plenary meeting; see document E/CONF.34/L.22, *Records*, vol. II, p. 41 and *Records*, vol. I, p. 137.

⁶ Article 9, para. 1, subpara. (a), clause (i) of the Protocol; the Board provides for this information in its form C/S (4th edition, November 1969) which the Board supplies not only for annual statistics under the Single Convention, but also under the 1925 and 1931 Conventions and under the 1948 and 1953 Protocols; see table I, column A of this form, p. 5.

⁷ Form E/NR.FORM/Rev.2 (21 March 1966) which the Commission has prepared for the annual reports on the working of the Single Convention and of other narcotics treaties; see chapter IX, questions 19 (b), 24 (b), and 28 (b), pp. 10, 12 and 13 of this form.

3. The term “territories” as used in paragraph 3 not only covers territories in the sense of article 1, paragraph 1, subparagraph (y), i.e. parts of a State treated as separate entities for the application of the import certificate and export authorization system provided for in article 31, but also whole States not so divided.⁸

⁸ See above, comments on article 1, para. 1, subpara. (y).

Paragraph 4

4. The Parties are not required to furnish statistical returns respecting special stocks, but shall furnish separately returns respecting drugs imported into or procured within the country or territory for special purposes, as well as quantities of drugs withdrawn from special stocks to meet the requirements of the civilian population.

Commentary

1. All drugs destined for uses other than “special purposes”, and all their movements at the different stages of the drug economy, are subject to the statistical accounting system of the Single Convention, while drugs held in special stocks and their use for “special purposes” are not. The latter are not subject to the control of the Board, nor to its inquiries or criticism.¹ Article 20, paragraph 4, requiring Governments to report to the Board the quantities of drugs moving from and to the uncontrolled sphere, is intended to prevent gaps in the statistical control system or the appearance of figures which cannot be accounted for.

2. Three different kinds of figures must be furnished to the Board under this paragraph:

- (a) The quantities of drugs imported for “special purposes”;
 - (b) The quantities procured from domestic sources for “special purposes”;
- and
- (c) The quantities withdrawn from “special stocks to meet the requirements of the civilian population”.

3. The term for “special purposes” in the phrase “drugs imported . . . or procured . . . for special purposes” means for the purpose of being held by the Government “for special Government purposes and to meet exceptional circumstances”, i.e. for the purpose of being held in “special stocks”, or of passing through “special stocks” in order to be used “for special Government purposes and to meet exceptional circumstances”.

4. It will be recalled that the term “special stocks” is defined in article 1, paragraph 1, subparagraph (w) to mean “the amounts of drugs held . . . by the Government for special Government purposes and to meet exceptional circumstances”. It may also be repeated here that in the Board’s view the phrase “for special Government purposes” includes, in particular, the use of the armed

¹ Article 12, para. 4 and article 13, para. 4.

forces, and the phrase “exceptional circumstances” covers such catastrophic events as large-scale epidemics and major earthquakes.²

5. The term “special purposes” also does not cover the purpose of being held by the Government for the normal needs of the civilian population.

6. It has been suggested above that a Government which purchases currently from dealers the drugs which it needs for its armed forces and for use in the case of natural disasters or epidemics, without maintaining anything of the nature of a standing stock, does not have “special stocks”. If such a Government effects such a current purchase by an import, this transaction is not to be considered to have been undertaken for “special purposes”.³ Paragraph 4 does not state at what intervals the statistical information on imports for “special purposes” should be supplied. It may, however, be assumed that this must be done quarterly in accordance with the terms of article 20, paragraph 2, subparagraph (b), and the Board actually so requires.⁴ Since the exporting country must include in its quarterly reports all its shipments abroad, including those for “special purposes” of importing Governments, failure to report imports under paragraph 4 at the same intervals would unfavourably affect the capacity of the Board to use the international trade statistics for the performance of its functions, in particular that of supervising the observance by all countries or territories of their import limits, that of enforcing these limits by the imposition of an embargo in appropriate cases and, in the case of a suspected diversion of an international consignment into illicit channels, to ask the Governments concerned to initiate the required investigations.⁵

7. The Board requests that the figures on imports to be furnished under paragraph 4 should not only be stated separately, but should also be included in the total import figures to be reported pursuant to article 20, paragraph 1, subparagraph (d) in respect of the drugs involved.⁶

8. The figures on drugs procured from domestic sources for “special purposes” mentioned under (b) in paragraph 2 above, should be furnished to the Board annually in accordance with article 20, paragraph 2, subparagraph (a), that is, not later than 30 June following the year to which they relate; and this is in fact what the Board requires.⁷ This requirement is not expressly stated in the Single Convention, but it was undoubtedly intended by the authors of the treaty and it is necessary to enable the Board to determine whether the country or territory has observed its manufacturing and import limits, as the Board is required to do under the terms of the Single Convention.⁸ It may also be pointed out that drugs which are bought from domes-

² See above, comments on article 1, para. 1, subparas. (w) and (x), article 12, para. 4, article 13, para. 4, article 19, para. 1, subpara. (d) and article 20, para. 1, subpara. (f); see also form C/S (4th edition, November 1969) of the Board, foot-notes (b), (c) and (d) to table II (p. 9) and form A/S (5th edition, November 1969), instruction 12.

³ See above, comments on article 19, para. 1, subpara. (d); see also League of Nations, document C.521.M.362.1937.XI, pp. 7 and 18.

⁴ Form A/S, part I of the tables, first column, line II, pp. 4-6.

⁵ See above, comments on article 20, para. 2, subpara. (b); see article 21, para. 4.

⁶ See the reference in foot-note 4 above; see also comments on article 20, para. 1, subpara. (d).

⁷ Form C/S, table II, column D.

⁸ Article 21, paras. 1 to 3, article 13, para. 2, and article 15, para. 1; see also article 14.

tic sources for the needs of the armed forces and for use in the case of natural disasters and epidemics, by a Government which does not maintain standing stocks of drugs but acquires its medical supplies currently from dealers, should not be considered to have been procured for “special purposes”, and should therefore not be included in the information to be supplied under paragraph 4. The same applies to drugs procured by a Government for the normal needs of the civilian population.³

9. In the case of a socialist drug economy, quantities of drugs transferred from stocks held for general purposes to stocks held “for special Government purposes and to meet exceptional circumstances” should, however, be considered to have been procured from domestic sources for “special purposes”, and should therefore be included in the figures to be supplied to the Board under paragraph 4.

10. What has been said above in paragraph 8 in regard to the timing of the supply of statistical information to the Board applies also to the reporting on the quantities of drugs withdrawn from stocks to meet the requirements of the civilian population.⁷ The question arises whether drugs taken from “special stocks” to be used by the civilian population in such exceptional circumstances as earthquakes or epidemics should be taken into account in computing the figures on withdrawals from special stocks pursuant to paragraph 4. It is submitted that this should not be done if the distribution to the civilian consumers is directly carried out by government officials administering the “special stocks”, in particular by the armed services themselves. If, however, the distribution is entrusted to retail outlets which normally supply civilian consumers, the withdrawals from special stocks should be reported under paragraph 4, but should also be taken into account in computing the consumption statistics to be furnished under article 20, paragraph 1, subparagraph (c). This appears to follow from the definition of the words “consumed” and “consumption” in article 1, paragraph 2.

11. Drugs taken from special stocks to be exported directly should be reported as withdrawals from special stocks to meet the requirements of the civilian population even if—though this may often not be the case—the exporting Government has information that the drugs are intended for “special purposes” of the importing country or territory. Drugs exported for special purposes of the importing country or territory must also be taken into account in computing the export figures under article 20, paragraph 1, subparagraph (d). The Single Convention does not require separate figures on exports destined for special purposes.⁹

12. In the case of the drug economy in a socialist country, drugs transferred from stocks held by the Government for special purposes to stocks destined for general purposes should be reported as withdrawals from special stocks.

13. For corresponding provisions of earlier treaties, see article 22, paragraph 3 of the 1925 Convention and article 9, paragraph 1, subparagraph (b) of the 1953 Protocol.

⁹ Form A/S, part II of the tables, first column, pp. 7-9.

Article 21

LIMITATION OF MANUFACTURE AND IMPORTATION

General comments

1. The system of control over all stages of the drug economy which the Single Convention provides has two basic features: limitation of narcotics supplies of each country and territory to the quantities that it needs for medical and scientific purposes, and authorization of each form of participation in the drug economy, that is, licensing of producers, manufacturers and traders, governmental authorizations of each import and export, and the requirement of medical prescriptions for consumption.¹ In the case of the production² of opium, coca leaves, cannabis and cannabis resin, this régime is supplemented by the requirement of maintaining government monopolies for the wholesale and international trade in these drugs in countries which produce them,³ and by provisions aimed at keeping down the number of countries which produce opium for export.⁴

2. Article 21 contains the rules by which the supply limits of each country or territory are determined,⁵ and also those by which the Board is authorized in certain circumstances to order the discontinuation of the export of the drugs involved to a country or territory which has exceeded its import limits⁶ in respect of those drugs. The figures to be used for the calculation of the supply limits are the estimates furnished by Governments⁷ or established by the Board,⁸ and the statistical data supplied by the Government,⁹ both kinds of figures being subject to the Board's scrutiny.¹⁰ The elements that are to be added together in calculating the supply limits are defined in paragraph 1, and those that are to be subtracted in paragraphs 2 and 3.

3. It is submitted that, in order to be able to remain within their limits of manufacture and import as defined in article 21, paragraphs 1 to 3 and in order not to exceed the individual estimates as required by article 19, paragraph 5,¹¹ Governments should allocate individual quotas from within the total annual drug supplies they need to manufacturers or importers, or both.

¹ In the common sense of this word and not in that of article 1, para. 2 of the Single Convention; State enterprises engaged in manufacture or trade need not be licensed.

² Article 1, para. 1, subpara. (i).

³ Articles 23, 26 and 28, para. 1.

⁴ Article 24.

⁵ Paras. 1 to 3.

⁶ Para. 4.

⁷ Article 19.

⁸ Article 12, para. 3.

⁹ Article 20.

¹⁰ Articles 12 and 13.

¹¹ See above, comments on this paragraph.

They can do this by an appropriate application of the import certificate and export authorization system provided for in article 31 and by the implementation of article 29, paragraph 2, subparagraph (c), which obligates them to require that drug manufacturers obtain periodical permits specifying the kinds and amounts of drugs which they shall be entitled to manufacture. The quotas may have to be adjusted more or less frequently in the light of the actual manufacture and import of the allotted quantities. It is therefore suggested that Governments should be kept currently informed about the quantities manufactured, sold to retailers (i.e. "consumed"),¹² kept in stock by manufacturers and wholesalers, imported and exported, and should maintain a running account of these data. They can obtain the required information from periodical reports of manufacturers and wholesalers, and in the course of their administration of the import certificate and export authorization system.¹³

4. In order effectively to carry out such a system of quotas and governmental records, it may be advisable or even essential to keep to a minimum the number of licences of manufacturers and international traders (importers as well as exporters), or of the state enterprises engaged in these activities.¹⁴

5. The quota system need not be applied to exports.

6. The limitation régime of article 21 governs all drugs controlled by the Single Convention, that is, all substances listed in Schedules I and II, while before the entry into force of the Single Convention the system of limiting narcotics supplies applied only to the substances falling under the 1931 Convention, 1948 Protocol and 1953 Protocol, that is, it applied only to manufactured drugs other than extracts and tinctures of cannabis, and to opium. It did not apply to such extracts and tinctures, cannabis, cannabis resin and coca leaves.

7. The limitation régime of the Single Convention, however, does not govern poppy straw and the leaves of the cannabis plant (when not accompanied by the tops), because these substances are not listed in Schedule I or II and are therefore not "drugs". It of course does not apply to "production", and therefore applies only to the importation of those drugs, i.e. of opium, coca leaves, cannabis and cannabis resin, which are not obtained by "manufacture", but by "production".

8. For corresponding provisions of earlier narcotics treaties, see articles 6, 7, 8, 12 and 14, paragraph 2 of the 1931 Convention¹⁵ and article 8, paragraphs 10 and 11 of the 1953 Protocol.

¹² Article 1, para. 2.

¹³ Model Code, chapter IV, p. 5; see also United Nations document E/CN.7/484/Rev. 1, para. 89; article 17 of the 1931 Convention was not taken over by the Single Convention; article 17 provides that Governments require manufacturers to make quarterly reports stating *inter alia* the quantities of drugs manufactured, disposed of and remaining in stock in the quarter concerned; see also *Commentary* on the 1931 Convention, para. 83, p. 129.

¹⁴ See below, comments on article 29, para. 1 and article 31, para. 3, subpara. (a).

Paragraph 1

1. The total of the quantities of each drug manufactured and imported by any country or territory in any one year shall not exceed the sum of the following:

(a) The quantity consumed, within the limit of the relevant estimate, for medical and scientific purposes;

(b) The quantity used, within the limit of the relevant estimate, for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;

(c) The quantity exported;

(d) The quantity added to the stock for the purpose of bringing that stock up to the level specified in the relevant estimate; and

(e) The quantity acquired within the limit of the relevant estimate for special purposes.

Commentary

1. This paragraph describes what must be added up in computing the maximum supplies which a country or territory may in a given year obtain by manufacture or import or both, while paragraphs 2 and 3 define what must be subtracted. The sum of the estimates referred to in subparagraphs (a), (b) and (e) of paragraph 1, plus the quantity actually added to stocks to bring them to the level of the stock estimate referred to in subparagraph (d), plus the amount actually exported, forms the outside limit of the quantity of the drug concerned which a country or territory may obtain in the year in question. It will be noted that this sum, without the exports, is very close to "the total of the estimates" as defined in article 19, paragraph 2, leaving aside any subtractions which may be required under paragraphs 2 and 3. The sum differs from the total of the estimates in that it includes the quantity actually added to the stocks to raise them to the level of the stock estimate, while the total of the estimates includes, instead, the amount required for this purpose.

2. But the manufacturing and import limits will often be smaller than these outside limits, because it is not the estimated requirements that are to be added up, but only actual "consumption",¹ actual use for the manufacture of other drugs, of preparations in Schedule III and of substances not covered by the Single Convention, and actual additions to special stocks, within the limits of their respective estimates,² plus the quantity which actually is added to the stocks in order to bring them to the level indicated in the stock estimates.³ In fact, the quantities which may be manufactured and imported cover all needs for domestic requirements⁴ and for exports.⁵

¹ Within the meaning of article 1, para. 2.

² For consumption estimates, see article 19, para. 1, subpara. (a); for estimates of use for manufacture, see article 19, para. 1, subpara. (b); and for estimates of additions to special stocks, see article 19, para. 1, subpara. (d).

³ For stock estimates, see article 19, para. 1, subpara. (c).

⁴ Subparas. (a), (b), (d) and (e) of the paragraph under consideration.

⁵ Subparas. (b) and (c) of the paragraph under consideration.

3. Whenever the estimates of a country or territory do not include figures for a particular drug, this should be understood to denote the absence of a need for that drug, and not the absence of a manufacturing and import limit.⁶

4. Only the manufacture of base drugs is to be taken into account in determining whether the limits are exceeded, and not the transformation of bases into their salts, the refining of crude drugs or the compounding of preparations. The quantity of the concentrate of poppy straw which is manufactured and "made available in trade",⁷ but not the amount of the concentrate which exists only as an intermediary stage in a continuous process of manufacturing morphine from poppy straw, is to be counted in calculating the limit for the concentrate.⁸ It will be recalled that under the terms of the Single Convention, concentrate of poppy straw when "made available in trade" being separately listed in Schedule I, is a drug separate from morphine.

5. Drugs which appear only as intermediary stages in a continuous process of manufacturing drugs or substances not covered by the Single Convention are not counted in computing the manufacturing and import limits for them; e.g. heroin, which appears only as an intermediary product in a continuous process of making nalorphine from morphine, is not to be considered in computing the limit for heroin.

6. The pure drug content of imported refined drugs, crude drugs, salts and preparations must be counted in determining the limits of manufacture and import, but not of imported preparations in Schedule III. Such preparations must also be left aside in establishing the export figures under subparagraph (c).⁹

7. Exported drugs which for any reason whatsoever are returned to the exporting country or territory are to be included not only in the exports, but also in the "imports" of that country or territory. Imported drugs which are re-exported are to be counted as imports as well as exports.

8. The phrase "for special purposes" means "for the purpose of being held in special stocks or of passing through special stocks for special Government purposes and to meet exceptional circumstances".¹⁰

9. It will be recalled that Parties must not only observe the manufacturing and import limits as computed under article 21, paragraphs 1 to 3, but should also not exceed their individual estimates pursuant to article 19, paragraph 1, subparagraphs (a) to (d). See above, comments on article 19, paragraph 5.

⁶ *Records*, vol. II, p. 287, foot-note 38.

⁷ Schedule I.

⁸ See above, comments on article 19, para. 1, subpara. (b) and on article 20, para. 1, subpara. (a).

⁹ See above, comments on article 20, para. 1, subpara. (d); see also these comments as regards the computation of the pure drug content in opium preparations (including medicinal opium), extracts and tinctures of opium, coca leaf and cannabis and other coca leaf preparations; see also instructions 3 and 4 of forms C/S (4th edition, November 1969) and A/S (5th edition, November 1969) of the Board.

¹⁰ See above, comments on article 1, para. 1, subparas. (w) and (x), article 12, para. 4, article 13, para. 4 and article 20, para. 4.

10. Although the Spanish text of the introductory paragraph of paragraph 1 of article 21 reads “*fabricada o importada*” for “*manufactured and imported*” in the English version, and for “*fabriquée et importée*” in the French version, the meaning of the three texts is the same. A country or territory may acquire the maximum amounts of drugs allowed under its supply limits pursuant to article 21, paragraphs 1 to 3 either by manufacture or by imports or both. What it imports reduces the quantity of a drug which it may manufacture, and vice versa.

11. It may finally be mentioned that a country or territory may occasionally exceed its manufacturing and import limits even if it applies the provisions of the Convention correctly. This may in particular happen if, near the end of the year, its consumption is unexpectedly high, or if it receives at that time unforeseen large orders for the export of drugs made from other drugs or of substances made from drugs and not covered by the Single Convention. This may occur at a moment at which no time is left for preparing the required supplementary estimates and for their proper examination by the Board.¹¹ The quantities by which a country or territory would in such a case exceed its manufacturing and import limits might not be “available” for its requirements in the following year. Such “paper” excesses would not be deducted under paragraph 3; see below, comments on that paragraph.¹²

12. For the corresponding provisions of earlier treaties, see articles 6 and 12, paragraph 2 of the 1931 Convention.

¹¹ See above, comments on article 19, para. 3.

¹² See also document E/CN.7/484/Rev.1, para. 88.

Paragraph 2

2. From the sum of the quantities specified in paragraph 1 there shall be deducted any quantity that has been seized and released for licit use, as well as any quantity taken from special stocks for the requirements of the civilian population.

Commentary

1. While the deductions of paragraph 2 must be subtracted by the Governments concerned from the manufacturing and import limits of the year in which seized drugs are released for licit use or the withdrawal from “special stocks” for the requirements of the civilian population takes place, the amounts manufactured and imported in a given year in excess of the limits for that year are deducted under paragraph 3 by the Board from the limits for the following year.

2. The amounts of seized drugs released for licit use are generally of very little importance,¹ although the Single Convention, unlike earlier treat-

¹ See, e.g. table IX of document E/INCB/7 (United Nations publication, Sales No. E.69.XI.10), giving data for 1968. This table shows that only seized opium was released in significant amounts. Argentina released 20 tons of seized coca leaves, apparently for still authorized chewing.

ties,² does not impose any restrictions on such release. The seized drugs released must be subtracted from the limits set for the year in which the release occurs, no matter in what year they were seized. The Board requires Governments to report in their annual statistics the amounts of seized drugs released for licit use in the year in question.³ Not only drugs released to commercial outlets, but also those handed over to non-profit distributors, are to be deducted in accordance with paragraph 2.⁴ For the meaning of the words “any quantity taken from special stocks for the requirements of the civilian population”, see above, comments on article 20, paragraph 4.⁵

3. See also comments on article 19, paragraph 2.

4. For corresponding provisions of earlier treaties, see article 7, first paragraph, subparagraph (ii) of the 1931 Convention.

² Article 18 of the Convention and article 7 of the 1953 Protocol.

³ Form C/S (4th edition, November 1969), table II, column F (p. 8); see also above, comments on article 20, para. 1, subpara. (e).

⁴ The French text employs the phrase “mise sur le marché licite” while the English version reads “released for licit use” and the Spanish version “entregada para usos licitos”; the exclusion from the deduction of the quantities handed over to non-profit distributors would not be in accordance with the purpose of para. 2.

⁵ See also form C/S, table II, column D. p. 8.

Paragraph 3

3. If the Board finds that the quantity manufactured and imported in any one year exceeds the sum of the quantities specified in paragraph 1, less any deductions required under paragraph 2 of this article, any excess so established and remaining at the end of the year shall, in the following year, be deducted from the quantity to be manufactured or imported and from the total of the estimates as defined in paragraph 2 of article 19.

Commentary

1. It has been mentioned above in the comments on article 21, paragraph 1 that even a country or territory which correctly applies the provisions of the Single Convention may exceed its manufacturing and import limits computed pursuant to paragraphs 1 and 2. This may sometimes be unavoidable, since Governments have to work within limits which cannot be ascertained with exactness until the end of the year in question.¹

2. The Board is not required to deduct all manufacturing and import excesses established under the rules of paragraphs 1 and 2, but only those quantities which, as a result of excessive manufacture or import or both, remain at the end of the year, that is, which are actually in stock in the country or territory concerned at that time. Amounts which were manufactured and imported in excess of the limits, but were used up by a consumption which was higher than foreseen in the consumption estimates pursuant to article 19,

¹ See also *Commentary* on the 1931 Convention, para. 89.

paragraph 1, subparagraph (a),² do not “remain”, i.e. are not in stock at the end of the year. This may also be the case if larger quantities of drugs than foreseen in the estimates under article 19, paragraph 1, subparagraph (b)³ were used for the manufacture of other drugs, of substances not covered by the Single Convention, or of preparations in Schedule III. The manufacture and import of the drugs employed for this purpose may have been in excess of the limits of article 21, paragraphs 1 and 2.⁴

3. The Board has decided to consider as excess manufacture and import the amount by which the stocks existing at the end of a given year are greater than the estimates, pursuant to article 19, paragraph 1, subparagraph (c), of the stocks to be held at the end of the same year; but in order not to complicate the task of Governments, the Board deducts under paragraph 3 only that part of the excess which is not needed to bring the existing stocks to the estimated level for the end of the following year. The Board therefore does not deduct any amount which would be equal to or smaller than the quantity needed to bring the actual stocks at the end of the year in which the excessive manufacture and import occurred to the level of stocks to be held at the end of the following year according to the stock estimates of the country or territory concerned in accordance with article 19, paragraph 1, subparagraph (c). The quantity deducted under paragraph 3 is therefore not greater than the amount which should be deducted from existing stocks at the end of a given year to reduce them to the estimated level for the following year.⁵

4. The Board does not deduct insignificant quantities.

5. The Board can make the deductions, and therefore notify them to Governments, only when it has received the relevant stock statistics under article 20, paragraph 1, subparagraph (f), which are due only by 30 June⁶ of the year following that in which the excess has occurred. It will not often be able therefore to publish the amounts which it has actually subtracted before it issues the third or even the fourth of the quarterly supplements to its current *Annual Statement of the Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium*.⁷ The Board informs, however, by letter each Government of the deductions affecting it as soon as it makes them; but this may not infrequently be rather late or even too late for Governments which must take these deductions into account in calculating the limits within which they should keep their manufacture and imports. They have, however, at their disposal all the data which are required for determining the deductions, and therefore can make the computations themselves in accordance with the rules applied by the Board for this purpose at a sufficiently early moment in order to be able to take the necessary administrative measures, in particular also in order to allocate appropriate quotas to manufacturers and importers;

² See article 21, para. 1, subpara. (a).

³ See also article 21, para. 1, subpara. (b).

⁴ See also above, comments on article 21, para. 1.

⁵ *Estimated World Requirements*, 1970, United Nations publication, Sales No. 69.XI.10, para. 24; see also document E/INCB/W.7 (21 May 1968), para. 12.

⁶ Article 20, para. 2, subpara. (a).

⁷ See, e.g. document E/INCB/6/Add.1-4, United Nations publication, Sales Nos. 70.XI.5-8.

but where there is a discrepancy between the Board's figures and those of the Government concerned, the Board's figures would prevail, since it is the Board which under paragraph 3 is charged with making the deductions.

6. It may be noted that the Single Convention does not contain any provisions which would require Governments to give the reasons for their excessive manufacture and imports when forwarding to the Board their statistical returns showing such a situation.⁸ The Board, however, may request such explanations under article 13, paragraph 3.

7. The deductions under paragraph 3 must be made from the manufacturing and import limits computed pursuant to paragraphs 1 and 2 and from "the total of the estimates as defined in paragraph 2 of article 19". It will be noted that the same deductions from this total are already required by article 19, paragraph 2, defining the phrase "the total of the estimates", and by article 21, paragraph 4, employing this phrase in calculating import limits. No express reference to the deductions is, however, made in article 31, paragraph 1, subparagraph (b) in connexion with the phrase "within the limits of the total of the estimates" used in this subparagraph.

8. The Spanish text uses the words "*la cantidad fabricada o importada*" for the English words "the quantity manufactured and imported" and for the French words "*la quantité fabriquée et importée*". As has been stated in the comments on article 21, paragraph 1 in respect to a similar divergence, the meaning of these three language versions is the same. The Board must under paragraph 3 deduct what a country or territory acquires by manufacture or import or both in excess of the limits computed under paragraphs 1 and 2.

9. See also above, comments on article 19, paragraph 2.

10. For corresponding earlier provisions see article 5, paragraph 2, second paragraph and article 6, paragraph 2 of the 1931 Convention.

⁸ See, however, article 6, para. 2 of the 1931 Convention.

Paragraph 4

4. (a) If it appears from the statistical returns on imports or exports (article 20) that the quantity exported to any country or territory exceeds the total of the estimates for that country or territory, as defined in paragraph 2 of article 19, with the addition of the amounts shown to have been exported, and after deduction of any excess as established in paragraph 3 of this article, the Board may notify this fact to States which, in the opinion of the Board, should be so informed;

(b) On receipt of such a notification, Parties shall not during the year in question authorize any further exports of the drug concerned to that country or territory, except:

- (i) In the event of a supplementary estimate being furnished for that country or territory in respect both of any quantity over-imported and of the additional quantity required, or
- (ii) In exceptional cases where the export, in the opinion of the government of the exporting country, is essential for the treatment of the sick.

Commentary

1. It will be noted that the Board may, under the conditions of paragraph 4, order the discontinuation of exports of the drug or drugs in question not only to Parties, but also to non-Parties and to territories of Parties to which the Single Convention does not apply in accordance with article 42. The Board may send its notification by which the embargo is put into effect both to Parties and to non-Parties, that is, to "States which, in the opinion of the Board, should be so informed", on the assumption that the non-Parties concerned will co-operate in the Board's efforts to implement the provisions of the Single Convention and in particular article 21, paragraph 4. In formulating in subparagraph (b), introductory clause, the obligation to carry out the Board's decision, the Convention naturally makes reference only to "Parties" as being bound to implement the Board's action. It is theoretically possible that under paragraph 4 a Party may be required, and a non-Party requested, to discontinue the export of the drugs in question to one of its territories from its other territories.¹

2. In contrast to the corresponding provisions of the earlier narcotics treaties,² this provision does not require the Board to send its notification to all Parties, but the Board may choose the States, whether Parties or not, which in its opinion should be informed. These States will obviously include those which in the Board's view might make the exports which should be discontinued. Also, while under the earlier provisions the former Permanent Central Board had an obligation to impose the embargo in the case of excessive imports, under the Single Convention it is left to the discretion of the Board whether to do so. In making these two changes, however, the Single Convention only incorporated in law what had already been the practice of the Permanent Central Board before the coming into force of that Convention.

3. The Board's notification should indicate the drug or drugs whose imports have been excessive, the total of the estimates of the country or territory concerned, the total of its exports in the year in question and the amount of the actual excess.³

4. An embargo imposed under paragraph 4 is in effect only "during the year in question", i.e. during the year in which the Board has made the notification of excessive imports, and in which the country or territory concerned has exceeded its import limits as defined in subparagraph (a). It ceases in any case on 1 January following that year, when new import limits based on new estimates come into force for the country or territory which was subject to the import embargo.

5. The Board may establish the existence of excessive imports either on the basis of import statistics or of export statistics or of both. Since the quarterly statistical returns on the international trade in narcotic drugs are due only "within one month after the end of the quarter to which they relate",⁴ the Board cannot determine the existence of excessive imports in the first three

¹ See also above, comments on article 14, para. 1, subpara. (a) and para. 2.

² Article 14, para. 2 of the 1931 Convention and article 8, para. 11 of the 1953 Protocol.

³ See also *Commentary* on the 1931 Convention, para. 150.

⁴ Article 20, para. 2, subpara. (b).

or four months of each year, and is therefore not in a position to apply paragraph 4 during that time. Moreover, the statistical information concerning the fourth quarter reaches the Board only after the end of the year in respect of which the Board may impose an embargo based on those data. Excessive imports occurring in the last three months of the year therefore cannot form the basis of action by the Board under paragraph 4.

6. The Board may apply the provisions of this paragraph to excessive imports of all drugs under international narcotics control, of those in Schedule I as well as of those in Schedule II, since Governments furnish under the Single Convention quarterly statistical information in respect of all of them. The corresponding provision of the 1931 Convention,⁵ however, did not cover drugs in Group II,⁶ because Governments were not required to furnish quarterly statistics in regard to the international trade in them, but only annual reports⁷ which arrived after the end of the year during which the embargo could have been imposed.

7. The quantities of imports which must be exceeded in order to authorize the Board to take action pursuant to the paragraph under consideration will differ from, and often be greater than, the manufacturing and import limit computed in accordance with the three preceding paragraphs.

8. In the first place, the Board under paragraph 4 is not required to deduct the amounts of the drug in question that the importing country or territory has manufactured.⁸ This is explained by the fact that the Board receives the manufacturing statistics only after the end of the year during which it could impose the embargo, and during which such a measure would remain in force. Consequently paragraph 4 will remain rather ineffective in regard to a drug which the country or territory involved manufactures itself.

9. Secondly, "the total of the estimates" is the sum of estimated quantities, while the manufacturing and import limits include only the amounts actually used or added to stocks or special stocks *within* those estimates.

10. Thirdly, the quantities of seized drugs released for licit use or the quantity of drugs taken from "special stocks" for the requirements of the civilian population must under paragraph 2 be deducted from the manufacturing and import limits of the current year in which these measures are taken. They are, however, reported to the Board only after the end of the year to which the total of the estimates to be taken into account under paragraph 4 applies, and therefore cannot be deducted from this total. However, such quantities released in the preceding year may have a bearing on the question whether there has been an excessive import in the following year under paragraph 4, because under paragraph 3 they must be taken into account in determining whether manufacture and import was excessive in the year in which they were released. Such an excess must be deducted from "the total of the estimates" of the subsequent

⁵ Article 14, para. 2.

⁶ Of that Convention or of the 1948 Protocol; it will be recalled that the legal position of drugs in this Group corresponds in general to that of drugs in Schedule II of the Single Convention.

⁷ Article 13, para. 2, subpara. (c), clause (i) of the 1931 Convention.

⁸ Article 21, para. 3.

year, that is of the year in respect of which the Board may take the action provided for in paragraph 4.

11. Fourthly, the manufacturing and import excess which occurred in the preceding year, and which under paragraph 4⁹ must be deducted by the Board from the total of the estimates of the following year, is not known to the Board before it receives all the data required for the computation of this excess. Most of these figures do not reach the Board before 30 June¹⁰ of the year in respect of which the Board must make the deduction for the purpose of determining excessive imports under paragraph 4.

12. Finally, for the purpose of determining the manufacturing and import limit under paragraph 1, the exports effected by the country or territory concerned during the entire year are to be taken into account, while under paragraph 4 the Board can add to the import limit of the country or territory in question only those exports which have already taken place and have been reported to the Board at the time when it determines whether there have been excessive imports.¹¹

13. Cutting off medical supplies is a very serious matter, since it may endanger the treatment of the sick. This is the reason why the Board does not apply article 21, paragraph 4 in case of minor import excesses, and why the Permanent Central Board, its predecessor in this matter, chose in many cases not to apply the corresponding provisions of article 14, paragraph 2 of the 1931 Convention and of article 8, paragraph 11 of the 1953 Protocol, despite their mandatory character. This is also the reason why a Party is authorized not to carry out the Board's decision to discontinue exports of drugs to the country or territory in question in exceptional cases where the export is, in its opinion, essential for the treatment of the sick.¹² As long as a Party makes use of this authority in good faith its opinion about the need of the drugs for the treatment of the sick cannot be questioned.

14. Moreover, a country or territory which is subject to an embargo under paragraph 4 can at any time raise its import limits, and thus end the embargo, by furnishing to the Board supplementary estimates in respect of the excess import and of additional quantities which it requires.¹³ The country or territory may call the attention of the Board to the urgency of the

⁹ Article 21, paras. 3 and 4; see also article 19, para. 2.

¹⁰ Article 20, paras. 1 and 2; article 21, paras. 1 and 2.

¹¹ Under para. 4 of article 21 of the Single Convention, only actual exports to the country or territory in excess of its import limits are counted, and not those which have only been authorized but not yet carried out, as was done under article 14, para. 2 of the 1931 Convention. The International Narcotics Control Board does not receive information on export authorizations, as the Permanent Central Board did on some of them pursuant to article 14, para. 1 of the 1931 Convention. Article 8, para. 11 of the 1953 Protocol also does not provide for counting authorized exports.

¹² Article 21, para. 4, subpara. (b), clause (ii); see also article 14, para. 2, subpara. (ii) of the 1931 Convention and article 8, para. 11, subpara. (b) of the 1953 Protocol. The word "country" in article 21, para. 4, subpara. (b), clause (ii) is in this context equivalent to "Party". The exports of a non-Party would also be justified in such a situation and could not be considered as non-compliance with provisions of the Single Convention under article 13, para. 2 and article 14, para. 1, subpara. (a).

¹³ Article 21, para. 4, subpara. (b), clause (i); see also article 14, para. 2, subpara. (i) of the 1931 Convention and article 8, para. 11, subpara. (a) of the 1953 Protocol.

matter, and request the Board to inform immediately the exporting States concerned of the end of the embargo.¹⁴ It will be recalled that the embargo would in any event cease to be in force on 1 January following the year in which it has been imposed.

15. It must be emphasized that the embargo of article 21, paragraph 4 does not have a punitive character. It may be imposed even if the import excess is not due to any failure of the Government concerned to comply with provisions of the Single Convention, for example, if supplementary estimates which are sent by that Government to the Board in order to raise the limit of the importing country or territory are lost in the mail.

16. In contradistinction to the embargo of article 14, paragraph 2, which has only the character of a recommendation, that of article 21, paragraph 4 is mandatory, that is, Parties which are notified by the Board must carry it out. It may be imposed only in respect of drugs whose imports have been excessive, while the embargo of article 14, paragraph 2 can be recommended even in regard to drugs in respect of which there has been no failure to comply with provisions of the Single Convention. Under article 21, paragraph 4, the Board can only stop exports to the country or territory against which it acts, while under article 14, paragraph 2 it may recommend the discontinuation of exports to or imports from the offending country or territory, or both.

17. See also above, general comments on article 14 and comments on article 14, paragraph 1, subparagraph (a) and paragraph 2; see also comments on article 19, paragraph 2 and article 21, paragraph 3.

18. In view of the fact that article 21, paragraph 4, does not have any punitive character and involves mainly mathematical calculations, there can hardly be any objection to the Board authorizing its secretariat to implement this provision while the Board is not in session, provided that the decision to delegate this authority is unanimously adopted.

¹⁴ See above, comments on article 19, para. 3.

Article 22

SPECIAL PROVISION APPLICABLE TO CULTIVATION

Whenever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of the opium poppy, the coca bush or the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit cultivation.

Commentary

1. The opium poppy, the coca bush and the cannabis plant are the sources of widely abused substances: opium, coca leaves and cannabis drugs (i.e. cannabis and cannabis resin).¹ Opium and coca leaves obtained from uncontrolled or inadequately controlled cultivation are, moreover, available to clandestine manufacturers of morphine (which is easily transformed into heroin) and of cocaine, respectively. Except in remote and often rather inaccessible regions, the cultivation of these plants can hardly be hidden from enforcement authorities, while their products can be concealed with relative ease. Cultivators of the poppy in some areas under effective Government administration sell on the illicit market part of their opium crops which they are legally bound to deliver to their national opium agency.² A situation may arise in which the Government concerned might come to the conclusion that it cannot possibly suppress a significant diversion into the illegal traffic without prohibiting the cultivation of the plant, a measure which it could effectively enforce.

2. A Party must prohibit the cultivation of the plant concerned if it considers such a step to be “the most suitable measure . . . for protecting the public health and welfare *and* preventing the diversion of drugs into the illicit traffic”. Any diversion is likely to cause harm to the health of human beings, but cultivation must be prohibited only if it is also necessary “for protecting the public health and welfare”. This additional condition appears to indicate that the authors of article 22 did not consider that any diversion whatever constitutes *ipso facto* a problem of *public* health and welfare, but only one which is sufficiently large to present such a problem. A Party is therefore not bound to prohibit cultivation if the drug in question is diverted only in relatively minor quantities.

3. The “public health and welfare” which is to be protected is not only that of the local population, but also that of foreign countries. A Government which considers that the prohibition of cultivation is the most suitable measure for preventing diversion into illicit channels and for protecting the public health and welfare of foreign countries must adopt such a measure,

¹ As regards the leaves of the cannabis plant, see article 28, para. 3.

² Article 23, para. 2, subpara. (d).

even if its own population does not abuse the drugs concerned in significant quantities.

4. Under the conditions of article 22, not only the cultivation of the poppy for the production of opium, but also that undertaken for the seeds and straw, must be prohibited.

5. Article 28, paragraph 2 provides that the Single Convention does not apply “to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes”. It is, however, submitted that article 22 would apply to cultivation authorized only for industrial or horticultural purposes if such cultivation should prove to be a significant source of cannabis or cannabis resin in the illicit traffic, since it would in this case not be undertaken “exclusively” for the authorized purposes.

6. Article 22 would not, on the other hand, cover a situation in which only the leaves of the cannabis plant (not accompanied by the tops)³ are diverted into the illicit traffic, since the leaves are not “drugs”;⁴ it is, however, suggested that it is very improbable that a situation would arise in which only the leaves and not simultaneously cannabis or cannabis resin was obtained from the plants for the illicit market.

7. It is, on the other hand, hypothetically possible, although not very probable except in very extreme cases, that a Party may, pursuant to article 28, paragraph 3, be bound to prohibit the cultivation of the cannabis plant for any purpose if such an action proves to be a measure “necessary to prevent the misuse of, and illicit traffic in, the leaves” of the plant.

8. A Party must prohibit the cultivation of the plant concerned only if such a measure “*is in its opinion*” required under the conditions of article 22; but this provision, like the rest of the Single Convention, must be applied in good faith. The real opinion of the Government concerned is relevant, and not what it may falsely pretend to be its opinion. The decision whether the conditions of article 22 for prohibition exist is left to the *judgement*, but not entirely to the *discretion* of the Party concerned.⁵ A Government which for many years, despite its efforts, has been unable to prevent large-scale diversion of drugs from cultivation can hardly be of the opinion that prohibition of such cultivation would not be “the most suitable measure . . . for protecting public health and welfare and preventing the diversion of drugs into the illicit traffic”. It is submitted, however, that this applies only to areas which are under the effective control of the Government, and not to those which are not so controlled.

9. Article 22 might also have to be applied to cultivation of the opium poppy, coca bush and cannabis plant, which is temporarily authorized for production for non-medical purposes under article 49⁶ if diversion from such

³ Article 1, para. 1, subpara. (b) and article 28, para. 3.

⁴ Article 1, para. 1, subpara. (j); they would become drugs if they were included in Schedule I or II by the operation of article 3; the illicit trade in the leaves would moreover not be “illicit traffic” as defined in article 1, para. 1, subpara. (l) although article 28, para. 3, uses this phrase in respect of such a trade (as long as the leaves do not become drugs pursuant to article 3).

⁵ See also above, comments on article 2, para. 5.

⁶ See below, comments on article 49, paras. 1 and 2.

cultivation makes it essentially more difficult for the Government gradually to abolish non-medical consumption.

10. There is also a slight difference between the English version, on the one hand, and the French and Spanish versions on the other hand. The English expression “the public health and welfare” is rendered in French by “*la santé publique*” and in Spanish by “*la salud pública*”. The meaning of the three texts is, however, the same.⁷

11. See also article 24, paragraph 1, subparagraph (b).

⁷ See also above, comments on article 2, para. 5.

Article 23

NATIONAL OPIUM AGENCIES

General comments

1. Governments of countries or territories which do not produce¹ opium, coca leaves, cannabis and cannabis resin, but import them, can establish rather exactly the quantities of these drugs which enter their legal drug economy (manufacturing and distribution processes). From import on they can control the movements of the known quantities of these drugs, whether in their original form or transformed into other substances, in particular by requiring enterprises in the drug trade to keep detailed records of each acquisition, transformation and disposal, and by being able to compare the relevant entries in the books of both parties to each transaction in narcotic drugs.

2. Countries or territories which produce opium, coca leaves, cannabis or cannabis resin are in a different position. In so far as they permit private farmers to cultivate the plants from which these drugs are obtained, they cannot establish with sufficient exactitude the quantities harvested by individual producers. If they allowed the sale of the crops to private traders, they would not be in a position to ascertain with reasonable exactitude the amounts which enter their controlled trade. The effectiveness of their control régime would thus be considerably weakened. In fact, experience has shown that permitting licensed private traders to purchase the crops results in diversion of large quantities of drugs into illicit channels. Those who, under the auspices of the League of Nations and of the United Nations, planned the control régime for the production of opium, coca leaves, cannabis and cannabis resin, as well as the authors of the 1953 Protocol² and of the Single Convention,³ therefore came to the conclusion that the acquisition of the crops and the wholesale and international trade in these agricultural products cannot be entrusted to private traders, but must be undertaken by governmental authorities in the producing countries. Article 23, article 26, paragraph 1 and article 28, paragraph 1 therefore require a government monopoly of the wholesale and international trade in the agricultural product in question in the country which authorizes its production.

3. For corresponding provisions of earlier treaties, see article 3 of the 1953 Protocol; see also article 1 of the 1912 Convention and article 2 of the 1925 Convention.

¹ Article 1, para. 1, subpara. (f).

² In regard to opium (article 3).

³ In regard to opium, coca leaves, cannabis and cannabis resin.

Paragraph 1

1. A Party that permits the cultivation of the opium poppy for the production of opium shall establish, if it has not already done so, and maintain, one or more government agencies (hereafter in this article referred to as the Agency) to carry out the functions required under this article.

Commentary

1. The question arises whether a Party which permits the production of opium only in one or several of its territories,¹ but not in all of them, must apply the provisions of article 23 regarding the wholesale and international trade and the maintenance of stocks even in those territories in which the cultivation of the poppy for opium is prohibited. It is of course true that, generally speaking, Parties may apply the provisions of the Single Convention separately to their different territories;¹ this follows either from the text or the nature of the provisions in question. Article 23, however, nowhere uses the term "territory", nor does its text in any way imply that it may be applied only to one or some of the territories of the same Party. Moreover, if such separate implementation were permitted, the provision expressly allowing Parties to entrust more than one government agency with the execution of the functions of article 23 would appear to be superfluous. The possibility of more than one national opium agency would be the natural consequence of the right to apply article 23 separately to different territories of the same State. A Party could always set up as "territory", that is, as "separate entity for the application of the system of import certificates and export authorizations", any of its political subdivisions for which its constitution might require a separate "national opium agency". It is therefore submitted that a Party which permits the cultivation of the poppy for the production of opium in any of its territories must apply in all of its territories the provisions of article 23 regarding the wholesale and international trade and the maintenance of stocks. Only a part of the national area which, as "non-metropolitan territory" within the meaning of article 42, is excluded under the terms of that article from the obligation of a Party to apply the Single Convention, would also be exempted from the requirement to apply article 23; but such a territory would have to be treated as if it were a foreign country for the purposes of article 23, as indeed for those of other provisions of the Single Convention regulating the narcotics trade.

2. A Party which, in accordance with a reservation made pursuant to article 49, temporarily permits the production of opium for quasi-medical use or smoking must apply the provisions of article 23 to poppies cultivated for such purposes and to opium.

3. A number of countries permit the cultivation of the poppy for seeds used for industrial purposes (the extraction of oil) or culinary purposes, while prohibiting the production of opium by law or by administrative means (refusal to issue the required licence). A Party whose laws authorize the production of opium on licence need not establish a national opium agency and apply article 23 as long as it does not issue such a licence.² A country

¹ Article 1, para. 1, subpara. (y).

² *Records*, vol. II, p. 158.

which permits the cultivation of the poppy for the production of opium need not apply article 23 to the cultivation of this plant when it is authorized exclusively for the seeds and for the straw as a possible by-product, but only to the poppy grown for opium and to the trade in, and stocks of, that drug, however obtained (whether by domestic production, importation or seizure from the illicit traffic). It is, however, suggested that countries authorizing opium production should also apply article 23 to the cultivation of the plant when it is permitted only for the seeds, particularly in those areas in which opium production takes place, because the purpose of article 23 might otherwise be frustrated. It would even be advisable not to permit the cultivation of the poppy only for the seeds in areas designated for the production of opium. It has been submitted elsewhere that, under the conditions of article 22, not only the cultivation of the poppy for opium but also that authorized exclusively for seeds and straw must be prohibited.³

4. As regards the need for a single government agency, see below, comments on article 23, paragraph 3.

³ See above, comments on article 22.

Paragraph 2 and subparagraph (a)

2. Each such Party shall apply the following provisions to the cultivation of the opium poppy for the production of opium and to opium:

(a) The Agency shall designate the areas in which, and the plots of land on which, cultivation of the opium poppy for the purpose of producing opium shall be permitted.

Commentary

1. The provisions of paragraph 2 must be applied to opium however obtained, whether by domestic production, importation or seizure from the illicit traffic.¹

2. The "areas" to be designated by the Agency are to be understood in the geographic sense, as the French text, which uses the word *régions*, and the Spanish text, which employs the term *zonas*, more clearly show. It seems advisable that the areas in which the production of opium is permitted should be definite administrative units. It is also suggested that they should to the greatest extent possible be located in the same part of the country, and be contiguous in order to facilitate more effective control. A location distant from the borders of the country may generally also be in the international interest. It would be useful if areas which do not have land registers or real estate cadastres are not chosen for opium production. If a Government designates an area for opium production which does not have such registers, it should as soon as possible undertake a cadastral survey to establish them.

¹ See above, comments on para. 1.

3. It would also be advantageous to concentrate in each area concerned the plots of land on which opium production is authorized.² They should be clearly identified in the licences issued to cultivators, either by reference to the relevant entries in the cadastre or by a detailed description, so as to leave no doubt as regards the location, extent and exact demarcation of each of them.

4. It has been recommended³ that the Agency should take the measures described below to carry out its functions in respect of the control of the cultivation of the poppy for the production of opium.³

5. The Agency should first estimate the size of the opium crop which it wishes to obtain in accordance with the Single Convention, which requires the limitation of the production of opium to the quantities required for medical and scientific purposes.⁴ It should then, in the light of past statistics on the average yield per hectare,⁵ determine the extent of land which is required to obtain this crop, and allocate portions of this extent to each of the various "areas" (i.e. administrative units) which it has designated for the production of opium. The total extent of all the plots of land which the Agency designates for the production of opium in all the licences issued to farmers in an area should be equal to the extent of land allocated to that area.

6. The plots sown with the poppy should be inspected from time to time by officials of the Agency. The first such inspection should take place when the plants have reached a stage of growth permitting effective control. The inspectors should, when possible, estimate the amount of the prospective opium crop, and should make a note of this estimate and of other results of their inspections both on the licence of the cultivator concerned and in a file kept by the Agency. Such a file should be maintained for each farmer licensed to produce opium.

7. The Agency should also carry out inspections in areas in which the cultivation of the poppy for the production of opium is not permitted in order to verify that there is no such production.⁶

² Document E/NT/9 (November 1955), United Nations publication, Sales No. 1956.XI.I, para. 25.

³ *Ibid.*, para. 35. The recommendation was made for the work of the Agency to be set up pursuant to art. 3 of the 1953 Protocol; it is, however, suggested that it is equally valid for the Agency governed by art. 23 of the Single Convention, since these treaty provisions are substantially alike.

⁴ Art. 4, para. (c) and art. 24; for production for other legitimate purposes see art. 49, para. 1.

⁵ Or in acres or any other unit of measuring land.

⁶ See para. 34 of the document referred to in foot-note 2.

Paragraph 2, subparagraphs (b) and (c)

(b) Only cultivators licensed by the Agency shall be authorized to engage in such cultivation.

(c) Each licence shall specify the extent of the land on which the cultivation is permitted.

Commentary

1. Licences to grow the poppy for the production of opium may be issued to individual farmers or to corporate bodies. An application for

a licence may be made orally or in writing. The applicant should exactly indicate the plot or plots on which he intends to grow the poppy for opium. Persons convicted of an offence against laws or regulations governing narcotics control should not be granted a licence, nor should licensed cultivators be permitted to employ them in the cultivation of the poppy and in the harvesting of the opium.¹

2. Each licence should contain, *inter alia*, the particulars of the identity of the licensee and an exact indication of the plots on which opium production is authorized. The latter indication should be given either by reference to entries in the cadastre or by a detailed description of the situation, size and demarcation of the plots.² The licence should also indicate the conditions of the delivery of the crop to the Agency (including in particular, the final date) and should give its duration. It should be valid only for a single crop period. An official of the Agency should, on the occasion of his inspections, enter on the document the area actually sown and an estimate of the prospective crop.² The amount of the opium harvested should also be noted.

3. If a licence is granted to a corporate body (a corporation or co-operative, including a collective farm), the document should name an individual responsible for the observance of the laws and regulations governing opium production, and for compliance with the conditions imposed by the licence. Such a person should under the statute or by-laws of the corporate body concerned have real control over the cultivation of the poppy and the collection of the opium harvest.

4. Licences should not be transferable. Their issue and revocation should be at the discretion of the authorities.³ It appears to be advisable that cultivators who, according to their opium deliveries to the Agency, have obtained a high yield per unit of measurement of land in earlier years should in the issue of licences be given preference over those who had a low yield.

5. It may be mentioned here that article 34, paragraph (a) also applies to cultivators of the poppy for the production of opium. Natural persons engaged in such cultivation should therefore have "adequate qualifications for the effective and faithful execution" of those rules of the narcotics régime which concern them. State enterprises or corporate bodies engaged in the cultivation should have a managerial or supervisory personnel which has such qualifications.⁴

6. The authorization of a state farm to cultivate the poppy for opium would be a "licence" within the meaning of the subparagraphs under consideration.

¹ See also article 34, para. (a).

² See above, comments on article 23, para. 2, introductory part and subpara. (a).

³ Document E/NT/9 (November 1955), United Nations publication, Sales No. 1956.XI.I, paras. 26, 27 and 29. See also para. 35, subparas. (b) and (c).

⁴ See below, comments on article 34, para. (a), which also applies to the cultivators of the cannabis plant for the production of cannabis and cannabis resin, and to the cultivators of the coca bush.

Paragraph 2, subparagraph (d)

(d) All cultivators of the opium poppy shall be required to deliver their total crops of opium to the Agency. The Agency shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest.

Commentary

1. The time during which the opium crop is in the hands of the individual farmer is the most critical period from the view point of narcotics control. It is during this period that diversion of legally harvested opium into illicit channels usually takes place. It is often quite impossible to estimate with exactitude the amount of opium actually harvested by the farmers, who are often very poor and are attracted by the relatively high prices offered by illicit traffickers. For this reason it is important that the time between the harvest and the delivery of the crop should be as short as possible. The Convention therefore requires that the Agency should take "physical possession" of the opium crop "as soon as possible".¹ It prescribes for this purpose a maximum period of four months after the end of the harvest.² The Convention cannot fix a definite day of the year, since the harvesting periods are not the same in different opium producing countries. National laws or regulations should, however, set a final date after which possession of harvested opium by a private cultivator is in any event illegal and the opium subject to confiscation.

2. It may be pointed out that the time of four months constitutes the maximum period within which the Agency must collect the total opium crop. It should not be concluded from this provision that it is advisable to allow cultivators to keep their crops for so long a time. Farmers should be required to deliver the opium as soon as the Agency requests it, that is, is in a position to take physical possession of the crops of the cultivator concerned. Opium retained after such a request should be considered illegal, and should be confiscated whatever the final date stated in the licence.

3. The Convention not only requires that the Agency should take physical possession of the opium, but also that it should "purchase" it as soon as possible, but not later than four months after the end of the harvest. Prompt payment, a good price and other favourable conditions of purchase may be incentives to producers to deliver speedily their total opium crop, particularly in countries in which legal opium production is still profitable (that is, where its profitability does not depend on the diversion of a part of the harvest into illicit channels).

4. Opium production under conditions of share-cropping appears to be incompatible with the requirements of the Single Convention. The cultivator, being bound to hand over the total harvest to the Agency, must of course not deliver part of its crop to his landlord. Opium must also not be used to pay part of the wages of farm hands.³ Adequate penal sanctions may also be instrumental in securing the prompt delivery of the total opium crop.⁴

¹ As does article 3, para. 5 of the 1953 Protocol.

² The 1953 Protocol did not provide for such a maximum; *ibid.*

³ Document E/NT/9 (November 1955), United Nations publication, Sales No. 56.XI.1, paras. 30 and 31.

⁴ Article 36, para. 1.

Paragraph 2, subparagraph (e)

(e) The Agency shall, in respect of opium, have the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of opium alkaloids, medicinal opium or opium preparations. Parties need not extend this exclusive right to medicinal opium and opium preparations.

Commentary

1. Paragraph (e) requires the maintenance of a Government monopoly for the import and export of, and wholesale trade in, opium as well as for the maintenance of opium stocks.¹

2. From this obligatory Government monopoly medicinal opium² and opium preparations may be excluded. The last sentence of the subparagraph under consideration contains an express provision to this effect. Medicinal opium and opium preparations would otherwise be subject to the same measures of control as opium.³ Opium-producing countries may thus authorize private manufacture of, and private international and domestic wholesale trade in, medicinal opium and opium preparations.⁴ The opium other than medicinal opium needed for such manufacture must however be procured from the national opium agency.

3. Stocks of opium held by manufacturers of opium alkaloids, medicinal opium and opium preparations are excluded from the obligatory monopoly by the terms of the Convention. This opium must, however, be obtained from the national Agency.

4. "Special stocks"⁵ and likewise retail "stocks" (i.e. opium held in stock by retail pharmacists or other authorized retail distributors and by institutions or qualified persons in the duly authorized exercise of therapeutic or scientific functions) are both excluded from the scope of the obligatory Government monopoly. Such special stocks and retail stocks are not "stocks" within the meaning of the Single Convention.¹

5. The retail trade in, and other retail distribution of, opium (including medicinal opium and opium preparations), need not be in the hands of the monopoly. Retail traders or distributors must, however, acquire their opium from the Agency. They may of course obtain medicinal opium and opium preparations from domestic private sources and from foreign sources.

6. It is submitted that the provision of article 30, paragraph 2, subparagraph (a) does not apply to stocks of opium held by national opium

¹ Article 1, para. 1, subpara. (x).

² Article 1, para. 1, subpara. (o); medicinal opium is in fact a kind of opium preparation (article 1, para. 1, subpara. (s)); see also form C/S of the Board (4th edition, November 1969), instruction 4 and form A/S (5th edition, November 1969), instruction 4.

³ Article 2, para. 3.

⁴ Under article 3 of the 1953 Protocol opium producing countries may however not permit the private manufacture of or wholesale trade in medicinal opium; see document E/NT/9 (November 1955), United Nations publication, Sales No. 56.XI.1, para. 38.

⁵ Article 1, para. 1, subpara. (w).

agencies. This provision requires Parties to prevent the accumulation in the possession of traders, distributors, State enterprises or persons duly authorized to perform therapeutic or scientific functions, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business. National opium agencies do not appear to be traders, distributors or state enterprises within the meaning of this provision. Moreover, it is one of the essential purposes of article 23 to ensure that national opium agencies purchase the whole opium crop, no matter how big the harvest and whether or not they can dispose of purchased opium in the reasonably near future, that is, under conditions which may be termed "normal conduct of business".

7. The provisions of article 5 of the 1953 Protocol, requiring that the opium stocks of Parties should not exceed certain limits, were not taken over by the Single Convention.

Paragraph 3

3. The governmental functions referred to in paragraph 2 shall be discharged by a single government agency if the constitution of the Party concerned permits it.

Commentary

The implementation of the provisions of article 23 requires planning on a national scale in order to limit production of opium to the quantities needed for domestic and foreign medical and scientific purposes¹ and to prevent diversion of a part of the authorized opium harvest into illicit channels. In order to facilitate such planning and a co-ordinated management of the various tasks imposed upon an opium-producing country by article 23, paragraph 3 thereof requires the maintenance of a single government agency for the discharge of these functions if the constitution of the Party concerned permits it. If the establishment of more than one agency is needed on constitutional grounds, administrative arrangements should be made to ensure the required co-ordination of their work.²

¹ Article 4, para. (c).

² Document E/NT/9 (November 1955), United Nations publication, Sales No. 56.XI.1, para. 24.

Article 24

LIMITATION ON PRODUCTION OF OPIUM FOR INTERNATIONAL TRADE

General comments

1. Four basic provisions of the Single Convention are intended to ensure the limitation of opium production¹ to medical and scientific needs: (i) article 4, subparagraph (c), establishing this general aim of the treaty;² (ii) article 22, providing under certain conditions for the prohibition of the cultivation of the opium poppy in order to prevent diversion of opium into illicit channels; (iii) article 23, requiring that opium-producing countries establish adequate machinery for the control of opium production and that they make the international and wholesale trade in opium a government monopoly, and finally (iv) article 24, which as a general principle obligates Parties not to contribute to overproduction of opium, and more specifically establishes rules by which the number of countries producing opium for exports should be reduced in order to contribute to the achievement of this aim. Only countries which in the recent past before the adoption of the Single Convention have exported opium which they produced, or which obtain the authorization of the Economic and Social Council to engage in such export, are free to export opium which they produce. Other countries may, however, annually export a maximum of five tons of opium of their own production, provided they comply with the procedure provided in article 24.³ The provision of article 6, paragraph 2, subparagraph (a) of the 1953 Protocol, limiting the international trade in opium to that produced in expressly named countries,⁴ was not taken over by the Single Convention.

¹ Article 1, para. 1, subpara. (t).

² See, however, article 49.

³ Para. 2, subpara. (a) and para. 4, subpara. (a), clause (ii).

⁴ I.e. Bulgaria, Greece, India, Iran, Turkey, Union of Soviet Socialist Republics and Yugoslavia.

Paragraph 1, subparagraph (a)

1. (a) If any Party intends to initiate the production of opium or to increase existing production, it shall take account of the prevailing world need for opium in accordance with the estimates thereof published by the Board so that the production of opium by such Party does not result in over-production of opium in the world.

Commentary

1. A Party which permits the cultivation of the poppy for the production of opium can carry out its treaty obligations relating thereto only if it deter-

mines in advance the size of the opium crop which it desires to harvest and establishes the extent of land which should be cultivated with the poppy for this purpose.¹ In making these calculations, it must take account of the prevailing legitimate world need for opium if part of the crop is intended for export, and of its own legitimate domestic requirements; in making the plans for the initiation of opium production or its expansion, it is moreover expressly required by subparagraph (a) to ensure that its new or increased production does not result in overproduction of opium in the world. A Party may therefore not authorize the commencement of opium production, or its expansion, if such action can be expected to have such a result; furthermore, planning opium production even at the level existing in preceding years would be incompatible with the spirit of the Single Convention if experience has proven that a crop of that size cannot be disposed of for the purposes authorized by the treaty. The Government's plan should in such a case provide for measures to bring about an appropriate reduction of the opium harvest. This appears to follow from the general obligation of Parties to limit exclusively to medical and scientific purposes² the production of opium,³ and to take such legislative and administrative measures as may be necessary to co-operate with other States in the execution of that treaty obligation, as well as of other provisions of the Single Convention.⁴

2. A Party would not, however, be prevented by article 24, paragraph 1, subparagraph (a) alone from initiating or increasing opium production to the extent that such action is needed for its own requirements.⁵

3. In determining whether its action would result in overproduction, the Party concerned must take as a basis the estimates of the world need for opium published by the International Narcotics Control Board. The Board publishes⁶ such estimates in accordance with the figures that it receives from Governments⁷ or that it establishes itself for countries or territories in respect of which the Governments concerned fail to furnish the required data.⁸ It publishes at the time of this writing estimates of opium requirements of each country or territory and of the world as a whole, as well as estimates of the requirements of other drugs,⁹ in an annual document which is supplemented by four quarterly addenda each year.¹⁰

¹ See above, comments on article 23, para. 2, introductory part and subpara. (a).

² See however article 49, para. 1.

³ Article 4, para. (c).

⁴ Article 4, introductory part and para. (b).

⁵ Article 24, para. 5, subpara. (a).

⁶ Article 12, para. 6; see also article 15, para. 1.

⁷ Article 19, para. 1.

⁸ Article 12, para. 3.

⁹ Article 1, para. 1, subpara. (j).

¹⁰ See *Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium in 1971*; document E/INCB/10, United Nations publication, Sales No. 71.XI.1, and addenda.

Paragraph 1, subparagraph (b)

(b) A Party shall not permit the production of opium or increase the existing production thereof if in its opinion such production or increased production in its territory may result in illicit traffic in opium.

Commentary

1. This provision should be read in connexion with article 22, which *inter alia* requires a Party to prohibit the cultivation of the opium poppy for any purpose, and not only for the production of opium, if the prevailing conditions in its country or territory render such prohibition “the most suitable measure” in its opinion for protecting the public health and welfare, and for preventing the diversion of opium into the illicit traffic.¹

2. Under the conditions of article 24, paragraph 1, subparagraph (b), a Party is not required to prohibit the cultivation of the opium poppy, but only not to permit the production of opium (i.e. the separation of opium from the poppy)² or an increase in such production. It could continue to permit the cultivation of the plant for its seeds.

3. The illicit traffic in opium must be significant if the risk thereof is to call for the measures of prohibition provided in subparagraph (b). The possibility of diversion of very minor quantities of opium would not require a Party to apply this subparagraph. If the probability of insignificant illicit traffic were sufficient to obligate the Government concerned to take the measures provided for in this subparagraph, no opium production or increase in opium production by individual farmers could be permitted, since experience has shown that opium production by private cultivators is always accompanied by some diversion, however minor this may be and no matter how effectively the national control authorities may operate.

4. Whether the risk of illicit traffic calling for the application of subparagraph (b) exists is left to the determination of the Party concerned. A Party is required not to permit opium production or its increase only if this may in *its opinion* result in illicit traffic in opium; but the real opinion of the Party, and not what it might allege to be its opinion, is what is relevant. Subparagraph (b), like all other provisions of the Single Convention, must be carried out in good faith. Here again, the determination of the existence of a risk of illicit traffic is left to the judgement of the Party involved, but not to its arbitrary discretion.³

5. The term “territory” as used in this subparagraph means “geographic area”, and is not employed in the sense of article 1, paragraph 1, subparagraph (v) or article 42.

6. It appears to follow from article 24, paragraph 5, subparagraph (a) that article 24, paragraph 1, subparagraph (b) does not apply to production of opium exclusively for domestic requirements. Article 22, however, governs cultivation of the poppy for any purpose, including production of opium for domestic needs.¹

¹ See above, comments on article 22.

² Article 1, para. 1, subpara. (r).

³ See above, comments on article 2, para. 5 and on article 22.

Paragraph 2, subparagraph (a)

2. (a) Subject to paragraph 1, where a Party which as of 1 January 1961 was not producing opium for export desires to export opium which it produces, in amounts not exceeding five tons annually, it shall notify the Board, furnishing with such notification information regarding:

- (i) The controls in force as required by this Convention respecting the opium to be produced and exported; and
- (ii) The name of the country or countries to which it expects to export such opium;

and the Board may either approve such notification or may recommend to the Party that it not engage in the production of opium for export.

Commentary

1. It will be noted that the description of a Party as mentioned in subparagraph (a) differs from that of a Party as referred to in subparagraph (b). The former provision refers to “a Party which as of 1 January 1961 was not producing opium for export”, while the latter refers to “a Party other than a Party referred to in paragraph 3” (of article 24). The only countries which produced opium for export as of 1 January 1961 seem to have been India, North Viet-Nam, Turkey, the Union of Soviet Socialist Republics and Yugoslavia,¹ while the countries described in paragraph 3, i.e. those which during ten years immediately prior to 1 January 1961 exported opium which they produced,² comprise Afghanistan, Bulgaria, Burma, India, Iran, North Viet-Nam, Pakistan, Turkey, the Union of Soviet Socialist Republics and Yugoslavia.³ These different definitions of the Parties to which subparagraphs (a) and (b) respectively apply must be read in connexion with paragraph 3, which authorizes the Parties that it describes to export opium of their own production without following the procedures of paragraph 2. Subparagraph (a)—like subparagraph (b)—therefore does not apply to the Parties mentioned in paragraph 3.

2. Subparagraph (a) appears to exclude from its scope Parties which, although during ten years prior to 1 January 1961 they did not export opium of their own production, nevertheless harvested this drug for export as of that date. This exclusion would, however, be without any practical importance, since all Parties which produced opium for export as of that day also exported opium of their own harvest in the preceding ten years.⁴

¹ Reports of the Permanent Central Board E/OB/17, table I, pp. 12-13 and table IX.1, pp. 44-45, and E/OB/18, table I, pp. 12-13 and table IX.1, pp. 44-45; and information furnished by the Secretariat of the International Narcotics Control Board.

² See below comments on paragraph 3.

³ Information furnished by the Secretariat of the International Narcotics Control Board; see also the statistical data published in the Reports of the Permanent Central Board, E/OB/8-E/OB/17; see also *Records*, vol. II, p. 162.

⁴ See the above enumeration of countries and foot-note 3. Governments may, however, for the purposes of article 24, resort to other means of evidence than the statistical data received by the former Permanent Central Board and now in the possession of the International Narcotics Control Board.

3. Paragraph 2, subparagraph (a) thus applies in fact only to those Parties which during ten years prior to 1 January 1961 did not export opium which they produced—as does its subparagraph (b). Both subparagraphs, however, do not apply to non-Parties, nor to opium produced in those non-metropolitan territories of Parties to which the Single Convention does not apply.⁵

4. The question arises whether the subparagraph under consideration imposes upon the Parties to which it applies a legal obligation not to export opium of their own harvest, even in quantities not exceeding five tons annually, without the notification to the Board for which the subparagraph provides, or whether failure of a Party to make such a notification only obligates the other Parties not to import opium produced in the territory of such a Party under paragraph 4, subparagraph (a), clause (ii). In the latter case the Party which has neglected to make the notification would be in a position to export its opium to a non-Party. While the wording of paragraph 4 imposes only on importing Parties an obligation not to engage in the international transactions concerned, the text of paragraph 3 and paragraph 5, subparagraph (b) justifies the conclusion that exporting Parties are also bound to abide by the prohibitions of article 24,⁶ as accords with the object and purpose of this article.

5. In view of article 2, paragraph 3, the subparagraph under consideration, like the other restrictions imposed by article 24 on the international trade in opium, applies not only to opium as base drug, but also to preparations of opium, including medicinal opium, but not to other drugs made from opium, e.g. morphine or codeine. The application of article 24 to opium preparations and medicinal opium may, however, cause considerable difficulties in practice.⁷

6. The notification under paragraph 2, subparagraph (a), need not be repeated for each year in which a Party desires to export up to five tons of opium which it produces. Once made, it enables the Parties to import continuously such opium pursuant to paragraph 4, subparagraph (a), clause (ii).⁸

7. The “controls in force” on which the notifying Party must furnish information to the Board are in any event those required by the provision of article 23 and article 31, paragraphs 4-15. This information has to be given to the Board even if it duplicates information already sent to the Secretary-General under article 18, and in particular under paragraph 1, subparagraphs (a) and (b) of that article.

8. When considering whether to approve the notification or to recommend to the notifying Party not to engage in the production of opium for export, the Board should take into account not only whether the Party has enacted satisfactory laws and regulations for the control of opium production and of the domestic and international trade in opium as required by the Single Convention, but also, *inter alia*, whether the Party under its particular condi-

⁵ Articles 42 and 46; see on the other hand article 24, para. 4, subpara. (b).

⁶ See also article 6, para. 2, subpara. (a) of the 1953 Protocol.

⁷ See below, comments on para. 4; as regards the calculation of the amount of opium in preparations, see form C/S (4th edition, November 1969) of the Board, instruction 4 and form A/S (5th edition, November 1969), instruction 4.

⁸ *Records*, vol. II, p. 162.

tions would be able to exercise effective control, and whether there is any potential need for the additional opium, especially in the country or countries which are indicated as destination of the new exports. The Board will especially have to keep in mind that the application of article 24, paragraph 2, subparagraph (a) is "subject" to the provisions of paragraph 1 of that article, which are intended to prevent new or increased opium production from resulting in overproduction of opium in the world or in illicit traffic in opium.⁹

9. A Party may not in any event initiate the production of opium even for the limited export allowed by paragraph 2, subparagraph (a), or increase its production for this purpose, if this action would be incompatible with the provisions of paragraph 1.

10. In view of the fact that the Party making a notification under subparagraph (a) must furnish information on "the controls in force", it must be concluded that the Board may in no case give its approval before the required laws and regulations have entered into force, and before the administrative machinery established pursuant to article 23 has actually been set up and is capable of operation.¹⁰

11. The Board's disapproval of the Party's notification and its recommendation to the Party not to engage in the production of opium for export do not create any legal obligation for that Party or for other Parties.¹¹ Whatever the Board's decision the Party's notification has the effect of admitting annually five tons of opium produced in its territory to the international trade authorized under article 24.¹²

12. It may finally be mentioned that the opinion was expressed in the discussion at the Plenipotentiary Conference of subparagraph (a), that in view of the expenses of the required controls, it was not very likely that a Party would wish to enter the world market of opium with such limited quantities as would be authorized under this subparagraph.¹²

⁹ See above, comments on para. 1, subpara. (a) and subpara. (b) respectively.

¹⁰ See however below, subpara. (b), clause (ii).

¹¹ Para. 4, subpara. (a), clause (ii).

¹² *Records*, vol. II, pp. 161-163.

Paragraph 2, subparagraph (b)

(b) Where a Party other than a Party referred to in paragraph 3 desires to produce opium for export in amounts exceeding five tons annually, it shall notify the Council, furnishing with such notification relevant information including:

- (i) The estimated amounts to be produced for export;
- (ii) The controls existing or proposed respecting the opium to be produced;
- (iii) The name of the country or countries to which it expects to export such opium;

and the Council shall either approve the notification or may recommend to the Party that it not engage in the production of opium for export.

Commentary

1. The Parties referred to in paragraph 3¹ are those whose opium harvest is automatically admitted to the international trade in opium authorized under article 24. Any other Party may, under paragraph 2, subparagraph (a),² unilaterally enter the world market with a maximum annual amount of five tons of its own opium production. If it desires to do so, however, with a larger quantity, it must obtain the approval of the Council in accordance with the procedure of paragraph 2, subparagraph (b).

2. Such a Party must notify to the Council its desire by a communication sent to the Secretary-General of the United Nations, furnishing such information as may be relevant to the Council's decision in the light of the provisions of the Convention governing opium production and trade, and in particular of that treaty's aim to limit the world's supplies of opium to those needed for medical and scientific purposes.³ The subparagraph under consideration indicates in its clauses (i)-(iii) several items which the Party must in any event include in that information.

3. The Party's estimate⁴ of the amount of opium which it intends to produce for export and the names of the countries to which it expects to sell the drug⁵ represent important factors for the Council's consideration; but these data do not legally obligate the Party after it has obtained the Council's approval of its notification. Under the provisions of the Single Convention governing all opium-producing Parties, either it may be entitled to produce more, or it may be bound to produce less; it may also export to other countries than those named in the notification.

4. The Party's information on controls should cover not only those respecting the opium to be produced,⁶ but also those which would govern the export of the drug,⁷ and in any event all those required by the provisions of articles 23 and 31, paragraphs 4-15. The controls need not already exist at the time of the Party's notification. They may be established after the Council's approval.⁸ They must, however, in any event be already in operation when the activities to be governed by them commence.

5. The information which the Party must supply under subparagraph (b) has to be given even if it duplicates information already furnished to the Secretary-General in accordance with article 18.

¹ For a list of the countries which, if they are Parties, enjoy this privilege, see above, comments on paragraph 2, subpara. (a); see also below, comments on para. 3.

² And para. 4, subpara. (a), clause (ii); see also comments on para. 2, subpara. (a).

³ See however art. 49.

⁴ Clause (i).

⁵ Clause (iii).

⁶ Clause (ii).

⁷ See above, para. 2, subpara. (a), clause (i).

⁸ See, however, the provision cited in the preceding foot-note.

6. Whether the controls existing or proposed by the Party are satisfactory under the terms of the Single Convention, whether there is any need for the additional opium particularly in the countries indicated by the Party as potential importers, and especially whether the Party would in fact be able to exercise effective controls to prevent the diversion of significant quantities of opium into the illicit traffic, will be relevant questions in the Council's consideration of the Party's notification. It can be assumed that the Council will not give its approval if the Party's production for export would result in overproduction of opium in the world, or if conditions exist in its territory which would require measures of prohibition under the terms of article 22 or of article 24, paragraph 1, subparagraph (b).

7. The Plenipotentiary Conference rejected a motion that the Council should be required to consult the Board before taking a decision on the Party's notification under the subparagraph under consideration. It seems, however, that the Council may find it necessary to undertake such a consultation in order to obtain all the technical data that it requires for its decision.⁹

8. The use of the word "recommend" causes some difficulties of interpretation. The question may be raised whether the notifying Party is bound by the Council's recommendation, or whether the recommendation has only the legal effect of preventing other Parties from importing the opium concerned under paragraph 4, subparagraph (a), clause (iii). A Party which does not wish to accept the Council's recommendation would in the latter case be in a position to export its opium to non-Parties. While the use of the word "recommend" may suggest that the Council's decision is not binding upon the notifying Party, the text of paragraph 3 must lead to another conclusion. This paragraph authorizes the Parties described therein to export opium which they produce "notwithstanding the provisions of subparagraphs (a) and (b) of paragraph 2". It appears to follow *a contrario* that other Parties are entitled to do so only in accordance with these provisions, and that consequently the Council's recommendation under paragraph 2, subparagraph (b) not to engage in the production of opium for export is legally binding upon the notifying Party involved. This interpretation seems also to be justified because it accords with the object and purpose of the Single Convention, which in regard to opium are those of regulating and limiting to medical and scientific purposes the production of and trade in opium in the whole world, and not only in the territory of Parties.¹⁰

9. The Council's approval of a Party's production of opium for export does not and cannot cover opium produced in a non-metropolitan territory to which the Single Convention does not apply under article 42.¹¹

10. It seems to follow from article 2, paragraph 3 that article 24, paragraph 2, subparagraph (b) also applies to preparations of opium.¹² This may,

⁹ *Records*, vol. II, p. 167.

¹⁰ See also above, comments on para. 2, subpara. (a); this interpretation is also supported by the provision of para. 5, subpara. (b).

¹¹ Or art. 46.

¹² Including medicinal opium.

however, create considerable difficulties in practice.¹³ The subparagraph under consideration does not, however, apply to opium alkaloids.

11. The Council's approval of a Party's production of opium for export does not relieve that Party from adopting measures of prohibition which may be required under the conditions of article 22 of or article 24, paragraph 1, subparagraph (b).

¹³ See above, comments on para. 2, subpara. (a) and below comments on para. 4. As regards the computation of the quantity of opium contained in the preparations, see instruction 4 of the Board's forms C/S (4th edition) and A/S (5th edition).

Paragraph 3

3. Notwithstanding the provisions of subparagraphs (a) and (b) of paragraph 2, a Party that during ten years immediately prior to 1 January 1961 exported opium which such country produced may continue to export opium which it produces.

Commentary

1. The question arises whether, in order to qualify under paragraph 3, a Party must have been an exporter of opium of its own harvest throughout the whole period defined in that provision, or whether it is sufficient that it exported such opium in any one of the ten years involved. Does the word "during" have in this context the meaning of "throughout", or that of "at some point in"?¹ According to the records of the International Narcotics Control Board, only India and Turkey would in the former case be authorized by paragraph 3 to export opium which they produced,² while in the latter case Afghanistan, Bulgaria, Burma, India, Iran, North Vietnam, Pakistan, Turkey, Union of Soviet Socialist Republics and Yugoslavia would have that right.³ It appears from the *Records of the Plenipotentiary Conference* that the second of these two interpretations was the view held by the authors of the Single Convention.⁴ This interpretation is also confirmed by the practice of the Parties following the coming into force of the Convention.⁵

2. The second question which may require clarification is whether the export of any amount, however small, in the ten years in question would be sufficient for the purpose of paragraph 3. It is submitted that in the light of the *Records of the Plenipotentiary Conference*⁴ and of the subsequent practice of Parties,⁵ this question must be answered in the affirmative.

3. Only the export of opium which the Party itself produced is relevant under the terms of the provision under consideration. The re-export by an

¹ *The Concise Oxford Dictionary of Current English*, fifth edition, Oxford, at the Clarendon Press, 1964, p. 381.

² Documents E/OB 12, 14 and 17.

³ See above, comments on art. 24, para. 2, subpara. (a).

⁴ *Records*, vol. II, pp. 162-163.

⁵ E.g. document E/INCB/11, United Nations publication, Sales No. 70.XI.7, table I, pp. 14-15; see also table VIII, 1, foot-note a, p. 57.

opium-producing Party of opium which it did not harvest, but imported itself, cannot be taken into account for the purposes of this paragraph. It may be very difficult to establish the relevant facts in the case of opium-producing countries which during the ten years concerned not only exported but also imported opium, particularly if the exports were small. Even the Government of the exporting country may in such circumstances find it difficult to determine whether it exported opium of its own harvest or re-exported foreign opium.

4. Paragraph 3 not only establishes the right of the Parties referred to therein, but also formulates corresponding obligations of importing and re-exporting Parties.⁶

5. In view of article 2, paragraph 3, article 24, paragraph 3 applies also to opium preparations, including medicinal opium, but not to opium alkaloids.⁶ This may cause considerable difficulties in practice.⁶ Parties may, for the purpose of applying paragraph 3, rely on other evidence than the statistical data received by the former Permanent Central Board and now in the possession of the International Narcotics Control Board.⁷

6. A non-metropolitan territory which after becoming independent becomes a Party may also qualify under paragraph 3 if opium which was produced in its area was exported in the ten years in question.

⁶ See above, comments on para. 2, subparas. (a) and (b) and below, comments on para. 4.

⁷ This may perhaps be necessary if, e.g. a State becomes a Party which for other than technical reasons was not in communication with the former Permanent Central Board in the period concerned.

Paragraph 4

4. (a) A Party shall not import opium from any country or territory except opium produced in the territory of:

- (i) A Party referred to in paragraph 3;
- (ii) A Party that has notified the Board as provided in subparagraph (a) of paragraph 2; or
- (iii) A Party that has received the approval of the Council as provided in subparagraph (b) of paragraph 2.

(b) Notwithstanding subparagraph (a) of this paragraph, a Party may import opium produced by any country which produced and exported opium during the ten years prior to 1 January 1961 if such country has established and maintains a national control organ or agency for the purposes set out in article 23 and has in force an effective means of ensuring that the opium it produces is not diverted into the illicit traffic.

Commentary

1. The provisions of this paragraph must be read in connexion with paragraph 5, subparagraph (b). Parties may therefore import not only the opium produced in the territory of Parties mentioned in subparagraph (a),

clauses (i) to (iii), and of non-Parties covered by the terms of subparagraph (b) of paragraph 4, but also seized opium wherever produced, if obtained from a Party. If paragraph 4 were interpreted so as to exclude the *importation* of such seized opium by Parties, it would be incompatible with paragraph 5, subparagraph (b) because it would *prevent* Parties from exporting seized opium to other Parties.

2. It has already been mentioned above¹ that the restriction of the international trade in opium to that produced in the territory of these Parties or non-Parties not only obligates importing Parties, but also exporting Parties. Apart from the admission of seized opium to international trade under the conditions of paragraph 5, subparagraph (b), the question whether a Party may import opium from, or export opium to, a Party or a non-Party does not depend on who the importer or exporter is, but on where the opium was produced, that is, whether it was produced in the territory of those Parties or of those non-Parties mentioned in paragraph 4. Any Party may therefore re-export opium to any Party or non-Party, and import opium re-exported by any Party or non-Party, as long as the opium involved was produced in such a territory.

3. The view that exporting Parties have obligations corresponding to those of importing Parties under paragraph 4 is also corroborated by the provision of paragraph 5, subparagraph (b), since if exporting Parties were not bound to limit their exports to opium privileged under the terms of paragraph 4, there would be no need for an express provision authorizing them to export seized opium no matter where produced.²

4. As regards opium produced in the territory of a Party referred to in paragraph 4, subparagraph (a), clause (ii), the amount of it admitted to international trade each year must not exceed five tons. It appears that the implementation of this restriction by importing Parties may cause some difficulties in practice. The importing Parties will normally have to rely on the Parties mentioned in clause (ii) to be faithful to their treaty obligation. Excessive exports of the latter would be revealed in the statistical information received by the Board, which could take any of the actions provided for in the Single Convention in cases of non-compliance with its provisions.³

5. More generally, it would be very difficult, and very often impossible, for the importing Parties to determine whether the opium they buy was really produced in any of the countries mentioned in paragraph 4. It cannot be assumed that the authors of the Single Convention intended to require them to determine by scientific tests⁴ the geographic origin of each shipment of opium which they intend to import. This would render the international opium trade very cumbersome indeed. Moreover, the existing methods may in a general way be rather reliable in the determination of the region in which the opium was harvested, but not necessarily in that of the particular country in which it was produced. Two neighbouring countries may produce the

¹ See above, comments on article 24, para. 2, subparas. (a) and (b) and para. 3.

² See also article 6, para. 2, subpara. (a) of the 1953 Protocol.

³ See article 13, paras. 2 and 3, article 14 and article 15, para. 1 and Comments on these provisions.

⁴ See Council resolutions 159 C (VII) II and 246 F (IX).

same kind of opium, one of them entitled to export it under article 24, and the other one not. It is, however, suggested that it might be advisable that Parties, when buying opium from a non-Party, request from the competent authorities of the exporting country an assurance that the opium in question was produced in the territory of one of the Parties or non-Parties mentioned in paragraph 4, and an indication of where the opium was produced.

6. In view of article 2, paragraph 3, it must be assumed that paragraph 4 applies also to opium preparations including medicinal opium, but not to opium alkaloids. Parties may therefore not import opium preparations made from opium which under the terms of article 24 they would not be authorized to obtain.⁵ They may export only such opium preparations as are made from opium which would be admitted to international trade under this article. They are, however, authorized to export opium alkaloids made from opium which they would not be allowed to export. The practical difficulties of determining the geographic origin of opium contained in opium preparations are obviously even greater than those of determining the origin of raw opium. Here again, it may be suggested that Parties must rely on the loyal execution of the Convention by the other Parties, or on assurances of non-Parties.

7. Subparagraph (b) of paragraph 4 describes the non-Parties which it authorizes as sources of opium in terms which seem to be somewhat different from those of paragraph 3 dealing with Parties. Under subparagraph (b), the countries concerned must have produced and exported opium during the ten years prior to 1 January 1961, while under paragraph 3 the Parties must during the same period have exported opium which they produced. If the text of subparagraph (b) is interpreted literally, a Party could import opium harvested in the territory of a non-Party which, during the period in question, produced opium of its own and exported any opium, whether of its own or foreign production; while it would be authorized to import opium produced by a Party only if that Party exported opium of its own harvest during that period. Such an interpretation would, however, place non-Parties in a better legal position than Parties. It is submitted that this was undoubtedly not the purpose of the authors of the Single Convention. To qualify under the provisions of subparagraph (b), it is not required that the country concerned should have produced and exported opium during the whole time in question. A single export of opium of its own production, however small, would suffice. What has been said on this point in the comments on paragraph 3 applies also to subparagraph (b) of paragraph 4.

8. Opium produced in the territory of a non-Party referred to in subparagraph (b) may moreover be imported by Parties only if the non-Party concerned has the control machinery which the Single Convention requires opium-producing Parties to maintain, and if the non-Party has in force effective means of preventing diversion of a significant part of its opium crop into the illicit traffic. Insignificant diversions which may occur would not be relevant in this context. As has been stated above, they are unavoidable in the event of opium production by private farmers.⁶ In any event, opium should not be imported if it was produced in countries not Parties to the Single Convention

⁵ See also above, comments on para. 2, subparas (a) and (b) and on para. 3.

⁶ See above, comments on article 24, para. 1, subpara. (b), and on article 22.

which produce opium under such conditions as would require Parties to prohibit opium production, or even the cultivation of the opium poppy, for any purpose under article 24, paragraph 1, subparagraph (b) or article 22 respectively.

9. It may be noted that the introductory paragraph of subparagraph (a) of paragraph 4 uses the term “territory” in two different meanings, first in the sense of article 1, paragraph 1, subparagraph (y), and then in the sense of geographic area.⁷ The first use of this word seems, however, to be in this context superabundant since, like article 23,⁸ article 24 requires the application of its provisions to the total area of a Party or non-Party covered by its conditions. Article 24 does not provide for a separate territorial application (i.e. for separate territorial entities of the same State) for the purpose of its implementation. This is also corroborated by the text of subparagraph (b), which does not add the words “or territory” to the word “country”, which it uses twice. Shipments of opium between “territories” as defined in article 1, paragraph 1, subparagraph (y), of the same State are consequently not imports or exports for the purposes of article 24, paragraphs 2 to 4, although they are such transactions for the purpose of article 31, paragraphs 4-15, and are subject to the import certificate and export authorization system regulated by those paragraphs. A non-metropolitan territory of a Party to which the Single Convention does not apply under article 42 or 46 is, however, to be considered to be a non-Party for the application of article 24, and in particular of its paragraphs 4 and 5.⁹

⁷ See also above, comments on article 1, para. 1, subpara. (y).

⁸ See above, comments on article 23, para. 1.

⁹ See also comments on article 23, para. 1.

Paragraph 5

5. The provisions of this article do not prevent a Party:

(a) From producing opium sufficient for its own requirements;

or

(b) From exporting opium seized in the illicit traffic, to another Party in accordance with the requirements of this Convention.

Commentary

1. It appears to follow from paragraph 5, subparagraph (a) that paragraph 1 does not apply to a Party's production of opium for its own requirements. A Party may therefore commence, continue and increase its opium production to the extent needed for its own requirements, even if it may thereby contribute to overproduction of opium in the world; but in so doing it is not relieved from the obligation of all Parties to limit the production of opium to medical and scientific requirements and to co-operate with other States to this end pursuant to article 4, subparagraphs (b) and (c). The exemption of a Party's opium production for its own requirements from the provision of article 24, paragraph 1, subparagraph (a) therefore does not mean

that the Party concerned, in making its production plans, need not give due weight to the problem of overproduction of opium. How this freedom to act can be reconciled with this obligation to co-operate will depend on the differing circumstances of each case.¹

2. Subparagraph (a) also seems to free a Party, in regard to opium production for its own requirements, from the obligation of paragraph 1, subparagraph (b) not to permit such production or an increase in production if, in its opinion, this may result in illicit traffic in opium;² but this seems to be of little, if any, practical importance, since paragraph 5, subparagraph (a) does not affect the application of article 22, which under the conditions stated therein would require a Party to prohibit the cultivation of the poppy not only for opium production for either domestic or foreign needs, but also for any purpose whatever (including that of obtaining the seeds of the plant for culinary purposes).³

3. The Party's own requirements include the needs of opium and opium preparations (including medicinal opium) for domestic consumption, and also the quantities of opium required for domestic manufacture of alkaloids, whether for domestic use or export. They comprise the needs of the whole area of the Party, whether undivided or divided into "territories",⁴ for the application of the system of import certificates and export authorizations provided for in article 31. They do not, however, cover the needs of a non-metropolitan territory of a Party to which the Single Convention does not apply under article 42 or article 46.

4. Under subparagraph (b), the limitation of the international trade in opium to opium produced in the territory of a Party or of a non-Party referred to in paragraph 4, does not apply to the international trade between Parties in opium seized from the illicit traffic. Seized opium may be exported only to Parties and imported only from Parties. It may not be exported to or imported from a non-metropolitan territory of a Party to which the Single Convention does not apply. The obligation of the importing Parties may be inferred from article 4, paragraph (b), requiring them to co-operate in the execution of the provisions of the Single Convention. But seized opium is not excluded from the privileged position which paragraph 4 confers on opium produced in the territory of any of the Parties or non-Parties referred to in that paragraph. It may therefore be assumed that Parties are authorized to import seized opium from a non-Party if it can be made certain that it was legally produced in such a territory. It will, however, generally be very difficult indeed, and often impossible, to establish this certainty except in some cases of opium seized by the authorities of the country which produced it.

5. Apart from its regulation of the trade in seized opium just discussed, the Single Convention does not restrict the free use of seized drugs, including opium, for medical or scientific purposes.⁵ It did not take over the provision of article 7 of the 1953 Protocol or of article 18 of the 1931 Convention.

¹ See above, comments on art. 24, para. 1, subpara. (a).

² See above, comments on that subparagraph.

³ See above, comments on art. 22.

⁴ Art. 1, para. 1, subpara. (y).

⁵ See, however, art. 49.

6. The words in subparagraph (b) “in accordance with the requirements of this Convention” only state what would have been the position in any case. The import and export of seized opium is of course governed by the provisions of the Single Convention concerning the international trade in drugs. Parties must therefore apply the import certificate and export authorization system of article 31, paragraphs 4-15 to the import and export of seized opium; they must not knowingly permit the export of seized opium except in accordance with the laws and regulations and within the limits of the total of the estimates of the importing country or territory pursuant to article 31, paragraph 1; and they must generally ⁵ limit such imports and exports exclusively to medical and scientific purposes according to article 4, paragraph (c). They must not authorize the import of seized opium if their supply limit under article 21, paragraphs 1 to 3 would thereby be exceeded, etc. ⁶

7. From article 2, paragraph 3, it follows that subparagraph (b) of article 24 paragraph 5, also applies to seized opium preparations (including seized medicinal opium), and to opium preparations (including medicinal opium) made from seized raw opium.

⁶ See also *Records*, vol. II, p. 168.

Article 25

CONTROL OF POPPY STRAW

1. A Party that permits the cultivation of the opium poppy for purposes other than the production of opium shall take all measures necessary to ensure:

- (a) That opium is not produced from such opium poppies; and**
- (b) That the manufacture of drugs from poppy straw is adequately controlled.**

2. The Parties shall apply to poppy straw the system of import certificates and export authorizations as provided in article 31, paragraphs 4 to 15.

3. The Parties shall furnish statistical information on the import and export of poppy straw as required for drugs under article 20, paragraphs 1 (d) and 2 (b).

Commentary

1. The opium poppy is cultivated for opium or for its seeds or both, but not exclusively for its straw.¹ Cultivation of the poppy solely for its straw would not be economical. Until the discovery of an economically feasible method for the extraction of morphine from poppy straw in Hungary in the nineteen-twenties, the straw was an agricultural waste product which was burned, or at best used as stable litter or cattle fodder. With the spread of the manufacture of morphine from the straw, the capsules and stems of the plant have become a marketable by-product of cultivation of the opium poppy, whether undertaken for the seeds or for opium. While the cultivation of the poppy exclusively for its straw would still be uneconomical, the straw can now very often be sold by the cultivator for the manufacture of morphine. According to the statistical data received by the International Narcotics Control Board, 64.2 per cent of world morphine production in 1969 was from opium, 30.4 per cent from poppy straw and 5.4 per cent from concentrate of poppy straw, which in turn is made from poppy straw.²

2. The third draft of the Single Convention provided for the cultivation of the poppy for straw and for the straw itself the same régime as for opium.³ The Plenipotentiary Conference found that so strict a régime would be neither justified nor practicable. It was led to this view by the consideration that the straw as such was not liable to particularly dangerous abuse, and was not

¹ For the definition of poppy straw see article 1, para. 1, subpara. (r); see also article 1 of the 1953 Protocol.

² Document E/INCB/11, United Nations publication, Sales No. 70.XI.7, table III, pp. 18-21; the corresponding figures for the preceding years are: 61.4, 30.6 and 8 per cent in 1968; 67.6, 24.6 and 8.2 per cent in 1967; and 76.6, 17.2 and 6.2 per cent in 1966.

³ Articles 31-34 and Schedule I, Conference documents E/CN.7/AC.3/9 and Add. 1, *Records*, vol. II, pp. 11-13 and 23.

likely to be employed as raw material by clandestine manufacturers of morphine.

3. The morphine content of the straw of different varieties of the poppy differs, and is moreover greater in the upper parts of the stem, and particularly in the capsules, than in the lower parts. Even with the present advanced methods of morphine extraction employed by legal manufacturers, the average yield of morphine is 0.2 per cent of the quantity of straw used.⁴ This means that an average quantity of five hundred kilogrammes of straw is needed for the manufacture of 1 kilogramme of morphine, while generally less than 10 kilogrammes of opium are required for this purpose. Since the straw has only a very low specific weight, relatively voluminous means of transportation and large storage facilities are needed for it. Moreover, the manufacturing process is a difficult one, requiring complicated and expensive apparatus and access to water and energy. It was brought to the attention of the Plenipotentiary Conference that the manufacture of one kilogramme of morphine by the Kabay process, which was one of the simplest, would require among other things 700 to 800 kg of poppy capsules, for which an apparatus including vessels with a total capacity of approximately 10,000 litres would be needed.⁵ A plant of the size needed for such activities could hardly be concealed from the authorities, while the extraction of morphine from opium can easily be carried out with simple equipment in a small kitchen. In fact, although the process of extracting morphine from poppy straw has been known for more than four decades, no clandestine manufacture of the drug from this raw material has been discovered, nor has any international illicit traffic of significance in the straw.

4. The great role which poppy straw plays at present in the legal manufacture of morphine makes it, on the other hand, essential for the proper functioning of the national and international statistical accounting system needed for narcotics control that the amounts of poppy straw used for the manufacture of alkaloids⁶ be made known to the authorities. While rejecting the application of the full narcotics system to poppy straw, as provided in the Third Draft of the Single Convention, the Plenipotentiary Conference therefore included in the limited régime for poppy straw which it adopted provisions requiring Parties to furnish to the Board statistical data on the quantities of poppy straw which they use for the manufacture of drugs, and on those which they import or export.

5. The régime of the Single Convention applicable to poppy straw is generally based on the corresponding provisions of article 4 of the 1953 Protocol. It requires, however, quarterly statistics on the international trade in the straw, while the Protocol provides for this information only on an annual

⁴ Document E/INCB/11, United Nations publication, Sales No. 70.XI.7, table III; the highest yield in 1969 was 0.29 per cent (Hungary) and the lowest 0.1 per cent (Romania).

⁵ Conference document E/CONF.34/L.34; *Records*, vol. II, pp. 66-69; see in particular p. 67; see also vol. II, pp. 150 and 151 and vol. I, pp. 37-38.

⁶ Small quantities of codeine may appear as a by-product in the manufacture of morphine from poppy straw; see also form C/S (4th edition, November 1969), table I (p. 4), column A under the entry "Codeine and its salts".

basis.⁷ It moreover incorporates some control measures provided in the 1925 and 1931 Conventions, and extends to straw the import certificate and export authorization system of paragraphs 4-15, of article 31 governing drugs.⁸

6. Article 25, paragraph 1, subparagraph (a) applies to Parties which prohibit the production of opium, as well as to those which permit it but also authorize some cultivation of the poppy only for the seeds.⁹ As regards paragraph 1, subparagraph (b), it may be noted that this provision seems to require only those Parties which permit the cultivation of the opium poppy for purposes other than opium production, to ensure that the manufacture of drugs from poppy straw is adequately controlled.¹⁰ It follows, however, from other provisions of the Single Convention¹¹ that all Parties have this obligation.

7. As just mentioned, the international trade statistics mentioned in paragraph 3 must be furnished quarterly, as required by the provisions referred to in that paragraph.¹²

8. Several provisions of the Single Convention governing poppy straw are not mentioned in article 25. Article 20, paragraph 1, subparagraph (b) is one of them. It requires Parties to furnish to the Board annual statistics on the quantities of poppy straw utilized for the manufacture of drugs.¹³ Article 22, paragraph 1, subparagraph (b) of the 1925 Convention¹⁴ obligated Parties to furnish to the Permanent Central Board annual statistics not only on the quantities of poppy straw used for the manufacture of drugs,¹⁵ but more generally on the quantities of "raw material" used for that purpose; but at the time of the adoption of the 1925 and 1931 Conventions, no fully synthetic process of the manufacture of narcotics had yet been developed. The term "raw material" as used by these Conventions covered only dangerous substances from which drugs were made,¹⁶ that is, substances which, with the

⁷ Article 4, para. (c).

⁸ Poppy straw is not a "drug" in the sense of the Single Convention; see above, comments on article 1, para. 1, subpara. (j) and subparas. (p)-(r).

⁹ See also article 4, para. (a), subpara. (i) of the 1953 Protocol.

¹⁰ See also article 4, para. (b), subpara. (ii) of the 1953 Protocol.

¹¹ Article 4, para. 1, subpara. (c), article 20, para. 1, subparas. (a) and (b), article 21, para. 1, article 29, article 34 and articles 35-37 in connexion with article 1, para. 1, subpara. (n).

¹² Article 20, para. 1, subpara. (d) itself also states that it applies to poppy straw; article 31, paras. 4-15 however do not refer to poppy straw. The application of these paragraphs is extended to poppy straw by article 25, para. 2.

¹³ In connexion with para. 2, subpara. (a).

¹⁴ See also article 13 of the 1931 Convention.

¹⁵ As regards "poppy straw" being a "raw material" within the meaning of article 22, para. 1, subpara. (b) of the 1925 Convention and articles 16 and 17 of the 1931 Convention, see *Commentary* on the 1931 Convention, para. 175, pp. 200-201.

¹⁶ Principally raw opium, coca leaves and cannabis and cannabis resin, and to a very limited extent poppy straw; see chapter B of the Form of Annual Reports for the Use of Governments, prepared by the League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs; League of Nations document O.C. 1600, reproduced as annex VII, in Bertil A. Renborg, *International Drug Control*, Carnegie Endowment for International Peace, Washington, 1947. At the time of the adoption of the 1931 Convention (but not of the 1925 Convention) the process of extracting morphine from poppy straw had already been discovered, but still played

exception of poppy straw, are “drugs” under the terms of the Single Convention. In view of the progress in synthetic chemistry and the development of “synthetic” narcotics, the “raw materials” which are at present used for the manufacture of drugs include substances which are commonly used in chemical synthesis, and which are not dangerous substances whose abuse the international narcotics régime is intended to combat. The Single Convention therefore does not provide for statistical reports on the quantities of “raw materials” used for the manufacture of drugs, but rather requires reports only on the quantities of other drugs and of poppy straw used for drug manufacture. This change represents an adjustment of treaty terminology to new scientific conditions, and by no means a weakening of control or a reduction in the obligations of Parties.

9. Article 29, paragraph 3 of the Single Convention, which is also not mentioned in article 25, requires Parties to prevent the accumulation in the possession of drug manufacturers of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions. The 1931 Convention provided¹⁷ for a corresponding obligation of Parties to prevent the accumulation of excessive amounts of “raw materials” in the possession of drug manufacturers.

10. Article 25 moreover does not refer to article 30, paragraph 2, subparagraph (a) which requires Parties, in the same terms as those employed in regard to drug manufacturers, to prevent the excessive accumulation of drugs¹⁸ and poppy straw in the possession of authorized traders and other authorized distributors.

11. As regards the question of periodical reports of drug manufacturers on the quantities of drugs and poppy straw held by them, see below, comments on article 29, paragraph 3.

12. It will be noted that the estimate system of the Single Convention does not apply to poppy straw.

13. Poppy straw, not being a “drug”, cannot be an object of the “illicit traffic” as this term is defined in the Single Convention. Parties seem therefore not to be required to apply articles 35 to 37 to the unauthorized import or export of poppy straw.

14. Generally speaking, it may be said that the Single Convention controls poppy straw only after it has arrived in a drug factory or entered the international trade.¹⁹

only a minor role in the manufacture of narcotics. Poppy straw was considered by the League’s Advisory Committee on the Traffic in Opium and Other Dangerous Drugs to be a “raw material” within the meaning of article 22, para. 1, subpara. (b) of the 1925 Convention and articles 16 and 17 of the 1931 Convention; see *Commentary* on the 1931 Convention, para. 175 (pp. 200-201). No drugs derived from cannabis or cannabis resin were controlled by the 1931 Convention (or the 1948 Protocol).

¹⁷ Article 16, para. 2. What is to be considered excessive is defined in the 1931 Convention in terms somewhat different from those of the Single Convention, particularly as an upper limit is prescribed equal to the requirements for six months or one year respectively.

¹⁸ But not of drugs in Schedule II which are held by retail distributors; see article 30, para. 6.

¹⁹ *Records*, vol. II, p. 150.

15. For other provisions of the Single Convention, in addition to article 25, article 20, paragraph 1, subparagraphs (b) and (d), article 29, paragraph 3 and article 30, paragraph 2, subparagraph (a), expressly referring to poppy straw, see article 1, paragraph 1, subparagraph (r) (definition) and article 2, paragraph 7.²⁰

16. As regards “concentrate of poppy straw”, see above, comments on article 1, paragraph 1, subparagraph (j), on article 19, paragraph 1, subparagraph (b) and on article 20, paragraph 1, subparagraph (b).

²⁰ At the time of this writing the form prepared by the Commission on Narcotic Drugs for annual reports to be furnished by Governments under the 1931 and 1936 Conventions, under the 1953 Protocol and under the Single Convention contains questions regarding the quantity of poppy straw used for the manufacture of alkaloids, the measures taken for the control of such manufacture, the quantities of poppy straw imported or exported, and, if the reporting Government is not a Party to the Single Convention, whether it applies the import certificate and export authorization system to the international trade in poppy straw; see document E/NR.FORM/Rev.2 (21 March 1966), chapter IX, questions 22 and 23.

Article 26

THE COCA BUSH AND COCA LEAVES

1. If a Party permits the cultivation of the coca bush, it shall apply thereto and to coca leaves the system of controls as provided in article 23 respecting the control of the opium poppy, but as regards paragraph 2 (d) of that article, the requirements imposed on the Agency therein referred to shall be only to take physical possession of the crops as soon as possible after the end of the harvest.

2. The Parties shall so far as possible enforce the uprooting of all coca bushes which grow wild. They shall destroy the coca bushes if illegally cultivated.

Commentary

1. See above, comments on article 23.

2. It may be noted that only those Parties which permit the cultivation of the coca bush¹ must apply to coca leaves² the provisions of article 23. All Parties, whether permitting such cultivation or not, must apply to the leaves the provisions of the Convention governing drugs listed in Schedule I, the coca leaf being such a drug.³

3. Parties which under article 49, paragraph 1, reserve temporarily the right to permit coca leaf chewing and the production⁴ of, and trade in, coca leaves for chewing must nevertheless apply the provisions of article 26, paragraph 1 to the cultivation of the plant and to the trade in the leaves undertaken for this purpose.

4. While article 23 applies only to those Parties which permit the cultivation of the opium poppy for the production of opium, and not to those which prohibit such production but authorize the cultivation of the poppy only for other purposes, article 26, paragraph 1 applies to all Parties which allow the cultivation of the coca bush, no matter for what purpose this may be undertaken.

5. With the temporary exception of use for quasi-medical purposes or smoking or both in the territory of Parties which have made a reservation to that effect pursuant to article 49, opium production must not be permitted for other than medical or scientific purposes.⁵ The production of coca leaves, on the other hand, may not only temporarily be authorized for chewing under article 49, but also permanently for the non-medical purpose of making a

¹ Article 1, para. 1, subpara. (e).

² Article 1, para. 1, subpara. (f).

³ Article 1, para. 1, subpara. (j) and Schedule I.

⁴ Article 1, para. 1, subpara. (t).

⁵ Article 4, para. (c).

flavouring agent, which, however, must not contain any alkaloids.⁶ Apart from these exceptions, coca leaf production must be limited exclusively to medical and scientific purposes, including in particular the manufacture of cocaine for such purposes.

6. Extracts and tinctures of coca leaf are coca leaf preparations for the purposes of article 26, paragraph 1. Parties permitting the cultivation of the coca bush may therefore exempt such extracts and tinctures from the requirement of article 26, paragraph 1 and article 23 that the exclusive right, in respect of coca leaves, to engage in the international and wholesale trade and to maintain stocks must be vested in their national coca leaf agencies. Manufacturers of the extracts and tinctures may therefore be authorized to maintain stocks of coca leaves, like manufacturers of other coca leaf preparations and manufacturers of the alkaloids of the coca leaf.

7. The régime of article 26, paragraph 1 differs from that of article 23 in that in the latter case cultivators of the poppy must deliver to the national opium agency their total opium harvest "as soon as possible, but not later than four months after the end of the harvest", while in the former case the cultivators of the coca bush must hand over to the national coca leaf agency their entire crop of leaves only "as soon as possible after the end of the harvest". No more specific time limit is foreseen for the delivery of this crop. This difference was adopted by the Plenipotentiary Conference because the representative of one of the two principal coca leaf producing countries explained that it would be practically impossible for the national coca leaf agency to collect the entire crop within such a definite period, since the coca bush was often grown in areas which were isolated and difficult of access.⁷

8. It may be pointed out that the Single Convention does not contain provisions on the cultivation of the coca bush and on the leaves corresponding to those of article 24, limiting opium production for international trade.⁸ It is also not specifically required that the production of coca leaves should not be initiated, nor existing production be increased, if such action would result in over-production of coca leaves in the world;⁹ but such an obligation may be implied in the general provision of article 4, paragraphs (b) and (c), requiring Parties to co-operate in limiting the production of coca leaves exclusively to medical and scientific purposes, subject to the provisions of the Single Convention.¹⁰

9. It may also be noted that coca leaves from which all ecgonine, cocaine and other ecgonine alkaloids have been removed are not "coca leaves" within the meaning of the Single Convention.¹¹ The provisions of article 26,

⁶ Article 27, para. 1.

⁷ *Records*, vol. I, p. 153; vol. II, pp. 172-173.

⁸ A provision (article 37) was contained in the Third Draft which would have limited the international trade in coca leaves and crude cocaine to leaves produced in Bolivia, Indonesia or Peru and to the crude drug obtained from such leaves. *Records*, vol. II, p. 14. This provision was not adopted; *Records*, vol. II, p. 173 and vol. I, p. 153.

⁹ Article 24, para. 1, subpara. (a).

¹⁰ Article 27, para. 1 and article 49; see also article 2, para. 9.

¹¹ Article 1, para. 1, subpara. (f).

paragraph 1, therefore do not apply to the trade in and stocks of such leaves, nor do the provisions governing drugs in Schedule I.³

10. It may be mentioned that the representatives of several countries expressed doubts at the Plenipotentiary Conference that the provisions of article 23, governing the poppy and opium, were adequate for the control of the cultivation of the coca bush, which was carried on under basically different economic and social conditions, and of coca leaves.¹² Paragraph 2 of article 26 seems to prescribe a specific method, namely “uprooting”, by which coca bushes growing wild should “so far as possible” be destroyed, while more generally requiring the destruction of illegally cultivated bushes without, however, mentioning the particular way in which this should be done. It is, however, submitted that, if the problem is examined in the light of the aims of the Single Convention, any effective method of destroying bushes growing wild would be satisfactory and not only uprooting.¹³ It may be noted that the words “so far as possible” qualify the obligation to enforce the uprooting of coca bushes growing wild, but not that of destroying illegal cultivation. This difference may be explained by the consideration that wild growth will often be much more difficult to discover than cultivated plants. Wild growth may in small quantities occur in numerous locations which may be remote from inhabited places and difficult to reach.

11. Article 22 applies to the cultivation of the coca bush. Under the conditions provided in that article, a Party must prohibit such cultivation to combat not only the illicit traffic in coca leaves, but also that in cocaine.¹⁴ The multilateral narcotics treaties concluded prior to the Single Convention did not contain any provisions expressly governing the cultivation of the coca bush.

¹² *Records*, vol. II, pp. 169-171.

¹³ For background information regarding the cultivation of the coca bush and coca leaf chewing and its problems, see the report of the Commission of Enquiry on the Coca Leaf (May 1950), *Official Records of the Economic and Social Council, Twelfth session, Special Supplement No. 1* (E/1666).

¹⁴ See above, comments on article 22.

Article 27

ADDITIONAL PROVISIONS RELATING TO COCA LEAVES

Paragraph 1

1. The Parties may permit the use of coca leaves for the preparation of a flavouring agent, which shall not contain any alkaloids, and, to the extent necessary for such use, may permit the production, import, export, trade in and possession of such leaves.

Commentary

1. The production, import and export of, trade in, possession and use of coca leaves for the preparation of a flavouring substance represent a permanent exception from the general requirement of article 4, paragraph (c) that Parties must limit these activities regarding drugs and manufacture of drugs exclusively to medical and scientific purposes.¹ The coca leaf, being listed in Schedule I, is a “drug” within the meaning of the Single Convention.² The flavouring substance extracted from the leaves must not contain any alkaloids. Parties have to take all measures necessary to ensure that alkaloids obtained in the process of making the flavouring agent are either destroyed or used exclusively for medical and scientific purposes. The leaves, that is, the material remaining after the making of the flavouring agent, are freed from the control of the Single Convention if all the alkaloids which they contained have been removed, since they cease to be “coca leaves”,³ and consequently to be “drugs” in the sense of the Convention. If, however, they retain a part of their alkaloids, they continue to be “coca leaves”, and therefore to be subject to the provisions of the Single Convention governing drugs listed in Schedule I.

2. The exemption from the general rule of article 4, paragraph (c) of production of, domestic and international trade in, and possession of coca leaves is, however, authorized only “to the extent necessary for such use”, i.e. for the making of the flavouring agent. It is submitted that this may mean that no greater quantities should be produced or traded for the preparation of the flavouring agent than would be needed for that purpose. This limitation, however, seems to be of little if any practical importance. The cultivator of the coca bush will generally not know whether his product will be used for the extraction of the flavouring substance when he collects his crop of leaves. The Single Convention does not prohibit the use of coca leaves for a legitimate purpose different from that for which they were produced or traded. It may, however, be mentioned in this connexion that not all varieties of coca leaves are suitable for the preparation of the flavouring agent which is in use at the time of this writing.

¹ See above, comments on article 26; for another permanent exception see article 2, para. 9; for temporary exceptions see article 49.

² Article 1, para. 1, subpara. (j).

³ Article 1, para. 1, subpara. (f).

Paragraph 2

2. The Parties shall furnish separately estimates (article 19) and statistical information (article 20) in respect of coca leaves for preparation of the flavouring agent, except to the extent that the same coca leaves are used for the extraction of alkaloids and the flavouring agent, and so explained in the estimates and statistical information.

Commentary

1. Paragraph 2 does not state which of the data mentioned in articles 19 and 20, Parties must furnish separately in respect of coca leaves used only for the preparation of the flavouring agent, and not also for the extraction of alkaloids. It is submitted that Parties should furnish an estimate of their requirements of coca leaves to be utilized for the manufacture of the flavouring agent¹ in order to increase by this amount the quantity of coca leaves which they may import in the year in question.² The provisions of article 19, paragraph 1, subparagraphs (a)³ and (d)⁴ are in any event not applicable to such a situation. It is, however, also suggested that there is no need for separate estimates of the amount of coca leaves to be held in stock exclusively for the preparation of the flavouring agent.⁵ Stocks of coca leaves originally held only for flavouring purposes may later be used for the extraction of alkaloids, or for both purposes. It would be impractical, and it is in any case unnecessary for the working of the accounting system of the Single Convention, to furnish separate estimates for the two stocks to be held for each of the two purposes. In fact, the only separate estimate which the Board at the time of this writing requires Governments to furnish in respect of coca leaves to be used only for the manufacture of the flavouring agent is that of the quantity to be utilized exclusively for this purpose, and not also for the extraction of alkaloids.⁶

2. It is moreover submitted that the only separate statistical figures which the Board needs in regard to coca leaves used only for the flavouring substance are those concerning the quantity utilized exclusively for this purpose.⁷ Here again, the purpose for which coca leaves are originally imported or exported⁸ or held in stock⁹ or for which seized¹⁰ coca leaves may be first intended may be different from that for which they are finally used. It would therefore be impractical to furnish separate import, export, stock and seizure figures for coca leaves to be used exclusively for the manufacture of the flavour-

¹ Article 19, para. 1, subpara. (b).

² Article 21, para. 1.

³ Estimates of quantities of drugs to be consumed for medical and scientific purposes.

⁴ Estimates of the quantities of drugs necessary for addition to "special stocks" (article 1, para. 1, subpara. (w)).

⁵ Article 19, para. 1, subpara. (c).

⁶ Form B/S (6th edition, March 1970) of the Board, foot-note (d) on page 5 relating to column 2 (c) of the entry "Coca leaf and its preparations" on page 4.

⁷ Article 20, para. 1, subpara. (b).

⁸ Article 20, para. 1, subpara. (d).

⁹ Article 20, para. 1, subpara. (f).

¹⁰ Article 20, para. 1, subpara. (e).

ing substance, on the one hand, and, on the other hand, for coca leaves which are to be used for the extraction of alkaloids or for both purposes. The Board does not need these separate figures for its administration of the accounting system of the Single Convention. It must, however, know the quantity of coca leaves used exclusively for the preparation of the flavouring substance in order to be able to deduct this amount from the quantity of leaves available to the Party by production,¹¹ import or seizure, and thus to calculate the remainder which is used for manufacture of alkaloids, consumption, export or maintenance of stocks. The Board receives figures on these various ways of acquisition and use of coca leaves.¹¹ It must review the correctness of these data under the terms of the Convention,¹² and knowledge of the quantity of leaves used exclusively for the preparation of the flavouring substance is essential for this purpose. The only separate statistical information which at the time of this writing the Board therefore requires Governments to furnish in respect of coca leaves used exclusively for the flavouring substance is that regarding the quantity utilized for this end.¹³

3. The provisions of article 20, paragraph 1, subparagraphs (a)¹⁴ and (c)¹⁵ are of course not applicable to the conditions of use of coca leaves exclusively for the preparation of the flavouring agent, with which article 27, paragraph 2 deals.

4. As regards coca leaves to be used, or in fact used, for both purposes, the extraction of alkaloids as well as the preparation of the flavouring agent, the Board asks¹⁶ Governments to indicate such double use in the estimates of their requirements of coca leaves to be utilized for the manufacture of alkaloids, i.e. of "other drugs",¹⁷ and in the statistical information which they must supply on such actual use.¹⁸ The Board makes this request in order to implement the express provision of article 27, paragraph 2 which requires this explanation.

5. Contrary to the situation which existed before World War II and in the early years after that war, coca leaves are at the time of this writing rarely if ever used exclusively for preparing the flavouring agent.

6. See also above, comments on article 19, paragraph 1, subparagraph (b) and on article 20, paragraph 1, subparagraph (b).

¹¹ Article 20, para. 1.

¹² Article 13, paras. 2 and 3, and article 21, paras. 1 to 3.

¹³ Article 20, para. 1, subpara. (b); form C/S (4th edition, November 1969) of the Board, foot-note (j) on page 7 relating to column C3 of table I, entry "Coca leaf" on page 4.

¹⁴ Statistical data on production or manufacture of drugs.

¹⁵ Statistical data on consumption of drugs.

¹⁶ See above, references in foot-notes 6 and 13.

¹⁷ Article 19, para. 1, subpara. (b).

¹⁸ Article 20, para. 1, subpara. (b).

Article 28

CONTROL OF CANNABIS

Paragraphs 1 and 2

1. If a Party permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin, it shall apply thereto the system of controls as provided in article 23 respecting the control of the opium poppy.

2. This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes.

Commentary

1. The cannabis plant is grown for its fibre, its seeds, for drugs (cannabis and cannabis resin) and for its leaves.¹ The horticultural purposes mentioned in paragraph 2 seem to be of little importance. Paragraph 2 excludes from the scope of the Single Convention, and thus also from the application of its article 23, the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes.

2. This paragraph, however, only emphasizes what follows in any case from paragraph 1 prescribing the control régime applicable to the cultivation of the plant. Paragraph 1 expressly states that this régime applies only to the cultivation of the cannabis plant for the production of cannabis or cannabis resin. Cultivation of the plant for any other purpose, and not only for the purposes mentioned in paragraph 2, is consequently exempted from the control régime provided for in article 23. This exemption thus appears also to apply to cultivation undertaken only for the leaves, unless the application of article 23 appears to be a measure “necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant”, pursuant to article 28, paragraph 3.

3. It has been stated that the control of the production of cannabis and cannabis resin offers great difficulties, because many varieties of the cannabis plant, containing different amounts of the psycho-active principle, are spread over many countries.² Wild growth also is important in a number of them.³ Varieties of the plant which contain only very small quantities of the dangerous substance are grown in a considerable number of countries in which—at least at the time of this writing—the cultivators and the native population do not

¹ The leaves are consumed in different ways by smoking or as ingredient of beverages or sweets; the leaves are not “drugs”; see article I, subparas. (b) and (j), and Schedules I and II.

² Document E/CN.7/AC.3/4/Rev.1, para. C.358.

³ Documents E/CN.7/324, para. 46 and E/CN.7/286, p. 10; for a survey of the various aspects of the cannabis problem in a great number of countries as they were seen to exist in the nineteen fifties, see documents E/CN.7/286 and addenda.

appear to be interested in misusing locally produced cannabis drugs or cannabis leaves.⁴ This at least was the situation as it appeared to the participants in the Plenipotentiary Conference.

4. But this does not mean that the cultivation of the plant exclusively for industrial or horticultural purposes is entirely without risk. An official investigation undertaken in the United States of America in 1937⁵ came to the conclusion that only the pith, lower stalks and roots of the plant do not contain the active principle during the growth of the plant. It was also assumed that this ingredient disappeared from the upper stalks after the fruits were mature, and that the seeds either did not contain it at all or contained it only in such minor quantities as to exclude any possibility of misuse. While opium must be collected by incision of the capsules while the poppies are still standing in the field, substances for misuse can be obtained from the cannabis plant after its harvesting and removal from the field. To prevent any abuse, it would be necessary to prohibit removal from the fields of any parts of the cannabis plant except the mature stalks and the seeds, and to burn the remainder; but such a measure would be very difficult to enforce, and would render uneconomical the harvesting for the fibre or seeds.

5. It may be mentioned in this connexion that the Commission considered in the nineteen-fifties two possibilities of solving the problem of abuse of cannabis plants grown for industrial purposes:⁶ breeding a drug-free or drug-poor strain of the cannabis plant for the production of fibre, and replacement of the cannabis plant by other fibre yielding plants.⁷

6. Although the conditions under which the cannabis plant is cultivated for the production of drugs are very different from those under which the opium poppy is grown for opium, the Single Convention provides the same régime for both, namely that of article 23. It will be noted that, unlike the rules applicable to coca leaves,⁸ the crop of cannabis and cannabis resin must be taken over from the cultivators by the national cannabis agency within a maximum period of four months after the end of the harvest.⁹

⁴ Document E/CN.7/324 (1957), paras. 49-56.

⁵ Report of the Marihuana Investigation (Summer 1937) of the United States Bureau of Narcotics, pp. 9 and 12.

⁶ Resolutions 548 F II (XVIII) and 588 C (XX) of the Council; Commission on Narcotic Drugs, report on the ninth session (1954) para. 118; report on the tenth session (1955), paras. 199-206; report on the eleventh session (1956), paras. 282-288; report on the twelfth session, paras. 322-335; *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 8* (E/2606); *ibid.*, *Twentieth Session, Supplement No. 8* (E/2768/Rev.1), *ibid.*, *Twenty-Second Session, Supplement No. 8* (E/2891); and *ibid.*, *Twenty-Fourth Session, Supplement No. 10* (E/3010/Rev. 1).

⁷ As regards the breeding see G. Bredemann, F. Schwanitz, and R. von Sengbusch, "Problems of modern hemp breeding with particular reference to the breeding of varieties of hemp containing little or no hashish," in *United Nations Bulletin on Narcotics*, vol. VIII, No. 3 (July-September 1956), pp. 31-34. As regards breeding or replacement, see document E/CN.7/297 (prepared by the secretariat of the Food and Agriculture Organization of the United Nations in consultation with the Secretariat of the United Nations); see also document E/CN.7/324, paras. 49-56.

⁸ Article 27, para. 1 and above comments thereon.

⁹ Article 23, para. 2, subpara. (d). The adequacy of the régime governing the opium poppy for the control of the production of cannabis and cannabis resin might have to be tested in practice.

7. With the temporary exception permitted under article 49, the production of cannabis and cannabis resin must not be undertaken for other than medical and scientific purposes.¹⁰ It is submitted that use in such non-Western medical systems as the Ayurvedic, Unani and Tibbi systems of India and Pakistan may be considered to be a medical purpose.

8. A Party which pursuant to article 49 temporarily permits the cultivation of the cannabis plant for cannabis and cannabis resin must apply the provisions of article 23 to such cultivation, and to the wholesale and foreign trade in, and stocks of, these drugs.

9. The application of the provision of article 23, paragraph 2, subparagraph (e) concerning stocks to manufacturers of extracts and tinctures of cannabis gives rise to a question. Subparagraph (e) exempts from the requirement of an opium stock monopoly of the national opium agency manufacturers of opium alkaloids, medicinal opium or opium preparations. It is submitted that, although the extracts and tinctures of cannabis, being expressly listed in Schedule I, are drugs¹¹ within the meaning of the Single Convention, they are in fact preparations of cannabis, or may at least be assimilated to such preparations for the purpose of implementing subparagraph (e).¹² It may be assumed that the authors of the Single Convention intended to permit manufacturers of the extracts and tinctures to possess stocks of cannabis and cannabis resin for the same reason for which they authorized the possession of opium stocks by manufacturers of opium alkaloids, medicinal opium or opium preparations. Otherwise, the private manufacture of the extracts and tinctures would not be possible in countries producing cannabis or cannabis resin, and their manufacture would become a monopoly of the national cannabis agency.

10. A Party permitting the cultivation of the cannabis plant for cannabis and cannabis resin must, pursuant to article 23, paragraph 2, subparagraph (e) in connexion with article 28, paragraph 1, grant its national cannabis agency the exclusive right of wholesale and foreign trade in these drugs. It need not extend this exclusive right to extracts and tinctures of cannabis. This opinion can be held whether the extracts and tinctures are considered to be drugs different from cannabis or cannabis resin, which indeed they legally are since they are separately listed in Schedule I, or whether they are held to be cannabis preparations.

11. A Party permitting the cultivation of the plant for the drugs, but also permitting cultivation elsewhere exclusively for other purposes, must apply article 23 to the former, but not to the latter. It must in such a case also apply article 23 to the wholesale and international trade in and stocks of cannabis and cannabis resin. It may under such circumstances exempt from the régime of article 23 not only cultivation undertaken for industrial or horticultural purposes, but also cultivation for the leaves;¹³ but a failure

¹⁰ Article 4, para. (c).

¹¹ Article 1, para. 1, subpara. (j); they are not "alkaloids".

¹² See article 4, para. (f) of the 1925 Convention using the term "galenical preparations".

¹³ See above as regards the application of article 23 to cultivation for the leaves as a "necessary" measure pursuant to article 28, para. 3, see also below comments on this paragraph.

to apply article 23 to cultivation for industrial or horticultural purposes, and particularly to cultivation for the leaves, might give rise to very difficult enforcement problems in regard to cannabis and cannabis resin. Cannabis and cannabis resin are listed in Schedule IV, and therefore also subject to the provisions which govern drugs in that Schedule ¹⁴ in all countries, whether they permit their production or not.

12. It will be noted that the Single Convention does not contain provisions on the production of cannabis and cannabis resin corresponding to those of article 24 concerning the limitation on production of opium for international trade.

13. As regards the application of article 22 to the cultivation of the cannabis plant, see above, comments on that article. See also above, comments on article 23.

14. The multilateral narcotics treaties preceding the Single Convention do not contain any provision expressly relating to the cultivation of the cannabis plant; see, however, article 11, paragraph 2 of the 1925 Convention.

¹⁴ Article 2, para. 5.

Paragraph 3

3. The Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant.

Commentary

1. The leaves of the cannabis plant, when not accompanied by the tops of the plant, are not “cannabis”,¹ and being listed neither in Schedule I nor in Schedule II are not “drugs” in the sense of the Single Convention.² In referring to the “illicit traffic in the leaves”, this paragraph does not use the expression “illicit traffic” in the meaning defined in article 1, paragraph 1, subparagraph (i).³ The illicit traffic which under paragraph 3 the Parties must take measures to prevent, is trade in the leaves contrary to domestic legal provisions intended to combat their misuse, or to foreign laws governing such trade. Only paragraph 3 applies to the traffic in leaves and not the other provisions of the Single Convention concerning the illicit traffic (articles 35 to 37). Parties need not furnish to the Secretary-General and to the Board information on seizures of leaves of the cannabis plant, as they are required to do for drugs by article 18, paragraph 1, subparagraph (c) and article 20, paragraph 1, subparagraph (e). Parties may, however, be required to adopt in respect to the leaves measures such as those stated in articles 35 to 37 if these are necessary to prevent the misuse of, and illicit traffic in, the leaves.

2. As regards a possible obligation to apply to the cultivation of the cannabis plant measures such as those provided in article 23 if necessary

¹ Article 1, para. 1, subpara. (b).

² Article 1, para. 1, subpara. (j).

³ See above, comments on that provision.

to prevent the illicit traffic in or misuse of the leaves, see above, comments on article 28, paragraphs 1 and 2.

3. It has also been suggested that it would theoretically be possible, although except in extreme cases not very probable, that a Party would be bound under article 28, paragraph 3 to prohibit the cultivation of the cannabis plant for any purpose if this measure is necessary to prevent the misuse of, and illicit traffic in, the leaves of the plant.⁴

4. Parties are not bound to prohibit the consumption of the leaves for non-medical purposes, but only to take the necessary measures to prevent their misuse. This might involve an obligation to prevent the consumption of very potent leaves, or of excessive quantities of them. It may be assumed that Parties would in any case not be permitted by paragraph 3 to authorize the uncontrolled use of the leaves. Any authorized consumption would have to be governed by such regulations as would be required to prevent illicit traffic and misuse. The conditions under which non-medical consumption might be permitted might also depend on the outcome of the studies which at the time of this writing are being carried out concerning the effects of the use of the leaves.

⁴ See above, comments on article 22.

Article 29

MANUFACTURE

Paragraph 1

1. The Parties shall require that the manufacture of drugs be under licence except where such manufacture is carried out by a State enterprise or State enterprises.

Commentary

1. The meaning of the term “licence” as used in the Single Convention is not limited to a governmental permit designated “licence” or some similar name.¹ It refers to a written governmental authorization—whatever its name in the applicable municipal law—whose issuance is at least to some degree left to the discretion of the government department concerned, such discretion to be exercised for the purpose of carrying out the aims of the Convention. It is suggested that a permit which every person or national fulfilling the conditions required by law would automatically have a legal claim to would not be a “licence” within the meaning of article 29 and other provisions of the Single Convention,² although it may so be named in the national law or administrative practice in question.

2. Article 29 uses the term “licence” for two different kinds of government authorization: for the authorization to engage in the manufacture of drugs (paragraph 1), and for that to use a particular establishment or particular premises for this purpose (paragraph 2, subparagraph (b)).

3. Any State enterprise authorized to manufacture drugs is automatically “licensed” to do so as this term is used in the Single Convention, and therefore exempted from the formal requirement of a manufacturing licence.

4. The requirement of paragraph 1 that the manufacture of drugs should be carried out by a licensed enterprise or by a State enterprise applies not only to basic drugs and their salts, but in accordance with article 2, paragraphs 3 and 4 also to preparations, including preparations in Schedule III. It appears, however, to have been the understanding of the Plenipotentiary Conference that retail pharmacists and medical practitioners do not need a manufacturing licence under article 29, paragraph 1 for their compounding of preparations.³ Such compounding may be considered to be a part of the process of sale, distribution, dispensation or administration of drugs and their preparations which retail pharmacists or medical practitioners are

¹ See also article 10, second para., subpara. (b) of the 1912 Convention and article 6, second para., subpara. (b) of the 1925 Convention.

² Article 23, para. 2, subpara. (b), article 30, para. 1 and article 31, para. 3, subpara. (a).

³ *Records*, vol. I, p. 26.

entitled to carry out. This view accords also with the common practice of Governments in executing the paragraph under consideration.⁴

5. A manufacturing licence may be granted to an individual, to a partnership or to a corporate body. The licence must specifically allow the manufacture of narcotic drugs, and should indicate which drugs the licensee may make.

6. A general authorization to manufacture chemicals, or even one to manufacture all pharmaceuticals, would not be sufficient, but the licence issued under paragraph 1 need not be a separate document. A more general document authorizing other activities, e.g. the manufacture of chemicals or pharmaceuticals, but also specifically mentioning the narcotic drugs whose making is authorized, would fulfil the requirements of this paragraph. The authorization of the manufacture of particular drugs appears to be required in order to enable the Government to allocate to enterprises so authorized quotas from the amount of the drug in question which may be manufactured in the particular country or territory in the year concerned.⁴

7. It is similarly submitted that not every State enterprise would be authorized under article 29, paragraph 1 to manufacture narcotic drugs, but only one to which the Government has assigned such manufacture, or which has a division which has been given that task by the Government. The assignment of the work to the State enterprise or its division should also refer to specific drugs in order to enable the Government, by allocation of quotas, to ensure that the amount of a particular drug which may be manufactured in its country or territory should not exceed the limit permitted by the Single Convention.

8. The competent Government department should also have wide discretion to revoke a manufacturing licence and to change its contents, in particular the conditions under which the manufacture of drugs is permitted. This discretionary power would, however, have to be limited to the extent necessary to facilitate the economical conduct of business by a law-abiding manufacturer. The administrative unit concerned should have a corresponding authority in respect of the manufacture of drugs by a State enterprise or division of a State enterprise.

9. By exercising its discretionary powers in issuing manufacturing licences or in arranging for manufacture by State enterprises or divisions of State enterprises, the Government is able:

- (i) To ensure the high technical and moral standards of the management of drug factories required by article 34, paragraph (a);
- (ii) To restrict, as required to facilitate control, the number of drug factories;
- (iii) To obtain compliance with such conditions as are indicated in the licence, or in the Government's instructions to the State enterprise, regarding such matters as the quantities of the drugs concerned to be manufactured⁴ and to be held in stock,⁵ the kind of records to be

⁴ The Secretariat of the United Nations is not aware of any other practice.

^{4a} Article 21, paras. 1-3; see above, general comments on article 21.

⁵ Article 29, para. 3.

maintained ⁶ and other details of business management; and finally also

- (iv) To facilitate the administrative elimination of drug factories as may be advisable in the light of the requirements of effective drug control. ⁷

10. The need for restricting the number of factories which manufacture basic drugs and their salts was emphasized by the League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs, as well as by the United Nations Commission on Narcotic Drugs. At its nineteenth session in 1934, the Advisory Committee decided “to urge the manufacturing countries not to issue new licences to manufacture drugs if the factories at present existing in their respective countries have a manufacturing capacity sufficient for the needs of their domestic and export markets”. ⁸ The decision was approved by the Council of the League. ⁹

11. At its eleventh session in 1956, the Commission on Narcotic Drugs unanimously adopted a resolution inviting Governments of countries where opium alkaloids are manufactured “to limit to the strictly necessary minimum the number of the firms in the country permitted to extract morphine from opium and to manufacture its salts and derivatives”. ¹⁰

12. A limitation of the number of licences to manufacture basic drugs is also suggested by the need to facilitate adjustments in the manufacturing quotas, which because of changing conditions may become repeatedly necessary during a given year in order to prevent excess manufacture during that year, in compliance with the provisions of article 21, paragraphs 1 and 2. ¹¹

13. For corresponding provisions of earlier narcotics treaties, see article 10, second paragraph, subparagraph (b) of the 1912 Convention and article 6, second paragraph, subparagraph (b) of the 1925 Convention.

⁶ Article 34, para. (b).

⁷ Document E/CN.7/519 (1968), pp. 32-33 and 92-93.

⁸ League of Nations document C.530.M.241.1934.XI, O/C/1581 (2) section VII (d), p. 10.

⁹ At its meeting of 24 January 1935 (third meeting of its eighty-fourth session); *League of Nations Journal*, 16th Year, No. 2, February 1935, p. 102.

¹⁰ Commission on Narcotic Drugs, report on the eleventh session; *Official Records of the Economic and Social Council, Twenty-second Session, Supplement No. 8* (E/2891), annex II, p. 44; see also paragraph 258 (p. 30). For a recent list of the factories of the world authorized to manufacture narcotic drugs, see document E/NF.1966 (1). According to the procedure in force at the time of this writing, changes in the list are communicated by the Governments concerned to the Secretary-General, who forwards this information periodically to other Governments. A complete list is to be issued by him every four years; see Commission on Narcotic Drugs, report on the twenty-second session, para. 372C, *Official Records of the Economic and Social Council, Forty-fourth Session, Supplement No. 2* (E/4455).

¹¹ Article 19, para. 3 and article 12, para. 5 and comments on these provisions; see also the general comments on article 21.

*Paragraph 2, subparagraph (a)***2. The Parties shall:**

(a) Control all persons and enterprises carrying on or engaged in the manufacture of drugs;

Commentary

1. This subparagraph incorporates a similar provision contained in the 1912¹ and 1925² Conventions. Its very general meaning was recognized to be rather vague in its discussion at the Plenipotentiary Conference.³ The “persons” mentioned are all physical persons participating in the manufacturing process, not only the owners or managers of the firm, but also office workers, technicians and manual labourers. The term “enterprises” covers all drug factories, whether owned by individuals, partnerships, corporate bodies or by the State, and the buildings and other premises (e.g. rented parts of buildings), including appurtenances and equipment used by the factories.

2. Subparagraph (a) establishes a general obligation of control, and thus binds Parties to do more than merely applying the licensing system or the requirement of State ownership to the manufacture of drugs under paragraph 1, and applying the licensing system of paragraph 2, subparagraph (b) to the establishments and premises in which the manufacture of drugs may take place.

3. Subparagraph (a) must of course be interpreted in a reasonable manner. It does not, for example, require physical search of each worker leaving a drug factory, nor the continuous presence of a Government inspector on the premises, but only such measures of control as may be necessary and are practical under the special circumstances of the Party concerned. Examples of such control measures would be the exclusion from participation in the manufacturing process of persons convicted or suspect of illicit traffic, and periodic or at least occasional Government inspections of the drug factory. It may be noted that despite the inclusion of the word “inspection” in the heading of article 34, the Single Convention nowhere explicitly requires such inspections. It may, however, be assumed that the general obligation to control under subparagraph (a) also includes the duty to carry out inspections.⁴

4. More generally, it is submitted that subparagraph (a) does not require Parties to apply other control measures than those which they have carried out in the past in implementing the similar provisions of the 1912 and 1925 Conventions, and which have been sufficient to prevent any significant diversion of drugs from legal manufacture into the illicit channels. If, however, this satisfactory situation should change in the future, subparagraph (a) would obligate a Party to adopt such additional measures as would be required in the light of its particular problems.⁵

¹ Article 10, first para.

² Article 6, first para. of the 1925 Convention.

³ *Records*, vol. II, pp. 124-125. See also vol. I, p. 209.

⁴ The obligation to carry out inspections arises also from the introductory paragraph of article 4; see also comments on article 4.

⁵ See also document E/CN.7/519, pp. 33 and 93.

5. In view of article 2, paragraphs 3 and 4, subparagraph (a) applies also to the manufacture of preparations, including preparations in Schedule III.

Paragraph 2, subparagraph (b)

(b) Control under licence the establishments and premises in which such manufacture may take place; and

Commentary

1. Subparagraph (b) follows a similar provision in earlier narcotics treaties.¹ It applies not only to drugs listed in Schedule I or II of the Single Convention, but in view of article 2, paragraphs 3 and 4, also to their preparations, including preparations in Schedule III. Establishments or premises in which a retail pharmacist or medical practitioner compounds preparations do not, however, require a licence pursuant to subparagraph (b), because such compounding is not manufacture in the sense of this subparagraph but rather a part of the process of sale, distribution, dispensation or administration which the retail pharmacist or medical practitioner is entitled to carry out.²

2. A licence pursuant to subparagraph (b) (that is, a grant of authority by the competent Government department to use the establishment or premises in question for drug manufacture) is required in addition to the licence prescribed by article 29, paragraph 1. A State enterprise is not exempted from the licensing requirement of subparagraph (b).

3. The term "establishment" as used in this subparagraph means place of business with its fixtures and organized staff.³ A drug manufacturer or State enterprise engaged in drug manufacture may have one or more places of business, that is, "establishments". A "licence" under subparagraph (b) is required for each "establishment", and for all "premises", i.e. all whole buildings or parts of buildings used for drug manufacture. Premises must be licensed even though they form part of a licensed establishment. The connecting word between the word "establishments" and "premises" is "and", and not "or".

4. The licence required by subparagraph (b) need not be a formal "licence" as understood in the particular national law or administration in question.⁴ It means authorization granted in writing by the Government concerned to use the establishment or premises involved. One document may "license" the use of more than one establishment and of several premises. The document issued pursuant to article 29, paragraph 1, which contains the

¹ Article 10, second para., subpara. (a) of the 1912 Convention and article 6, second para, subpara. (a) of the 1925 Convention. The provision of the 1925 Convention replaces that of the 1912 Convention as between Parties to the former treaty; article 31 of the 1925 Convention.

² Article 30, para. 11, subpara. (b), clause (ii); see also above, comments on article 29, para. 1.

³ See *Webster's New International Dictionary of the English Language*, Second Edition, p. 874, G. & C. Merriam Company, Springfield, Massachusetts, 1954.

⁴ See also above, comments on article 29, para. 1.

licence to manufacture drugs may also simultaneously grant the “licence” under paragraph 2, subparagraph (b) for the use of specified establishments and premises for such manufacture.

5. The purpose of the licensing under the subparagraph under consideration is to ensure that the establishments and premises concerned conform to the conditions required to facilitate control, particularly to prevent theft or other diversions of drugs.⁵ The required safeguards, which must not be changed without authorization by the competent control authorities, should be indicated in the “licence”.

6. It is suggested that, in order to facilitate control, the licensing system under subparagraph (b) should be employed to ensure that the manufacture of drugs, their salts and preparations is restricted to as small a number of establishments and premises as is practicable.

7. It was explained to the Plenipotentiary Conference that the word “may” meant in this context “is permitted to”.⁶

⁵ Document E/CN.7/519, pp. 33 and 93.

⁶ *Records*, vol. II, p. 281, foot-note 9.

Paragraph 2, subparagraph (c)

2. (c) Require that licensed manufacturers of drugs obtain periodical permits specifying the kinds and amounts of drugs which they shall be entitled to manufacture. A periodical permit, however, need not be required for preparations.

Commentary

1. A Party which obtains all or part of its requirements by the manufacture of basic drugs must be able to allocate to its individual manufacturers, whether private or State enterprises, quotas from the total amounts of drugs to be obtained by manufacture in order to be in a position not to exceed the quantities which in the year in question it may obtain by manufacture and import under the rules of the Single Convention. If a Party has “territories” within the meaning of article 1, paragraph 1, subparagraph (y), it must make separate allocations for each of those territories which manufactures basic drugs, since the limits of narcotics supplies must be computed separately for each of such territories.¹

2. A non-Party manufacturing basic drugs must also make such quota arrangements if it wishes to carry out the provisions of the Single Convention regarding the limitation of narcotic supplies, and thus to avoid the disadvantages which it may incur in the event of its failure to abide by these provisions and which may include an inability to import needed drugs from Parties to the Single Convention.²

¹ Article 21, paras. 1-3.

² Article 14, article 21 and article 31, para. 1, subpara. (b).

3. The 1931 Convention, in respect of manufactured narcotic drugs,³ contained rules⁴ similar to those of the Single Convention which limit the narcotics supplies of each country and territory. The implementation of these provisions of the 1931 Convention also required the allocation of manufacturing quotas in a country or territory which obtains all or a part of its drug supplies by its own manufacture. Nevertheless, neither the 1931 Convention nor any other narcotics treaty preceding the Single Convention contained a provision corresponding to the subparagraph under consideration, which obligates Parties to require their drug manufacturers to obtain the periodical permits in question.

4. Experience showed, however, that under the narcotics régime preceding the Single Convention, Governments of drug manufacturing countries or territories occasionally did not allocate quotas to their drug manufacturers, but by an incorrect use of the institution of supplementary estimates⁵ adjusted their supply limits to the quantities which they actually made, and thus failed to carry out the treaty provisions as they were intended. When they did not or could not furnish in time the required supplementary estimates, their failure to allocate manufacturing quotas quite often resulted in excessive manufacture, in obvious violation of the treaty provisions involved.

5. Those drug manufacturing countries and territories whose legislation under the earlier international narcotics régime did not provide for periodical permits such as those required by the subparagraph under consideration, and which consequently were not able to make the necessary allocations of manufacturing quotas, must now implement this subparagraph, and they thereby obtain the means for the required regulation of drug manufacture by allocating quotas.

6. The quantities of drug which have to be manufactured in a given year may, however, change in the light of changing conditions. Moreover, an enterprise may not manufacture the full amount of its quota. The allocations to the various manufacturers may thus have to be modified during the year. It is for this reason that subparagraph (c) does not provide for annual, but for "periodical" permits. It is suggested that it would in many cases be advisable to require them on a quarterly basis; but Governments may in the light of their particular circumstances provide for more or less frequent periodical permits. They may even require only annual permits if the conditions that they have to take into account in establishing the amounts to be manufactured are simple enough to make this determination possible with accuracy once a year, or if their legislation provides for the possibility of modifying such annual authorizations at any time when needed. To require the periodical permits less frequently than annually would, however, not be in accordance with the obligation of Parties under subparagraph (c).

7. It has been stated above that some enterprises may not manufacture the full quotas allotted to them. Governments must, however, know the exact quantities actually manufactured in order to carry out their obligations under

³ But not in respect of extracts and tinctures of cannabis.

⁴ Article 6, para. 1 and article 12, para. 2; see also article 1, para. 4 of the 1948 Protocol.

⁵ Article 3 and article 5, para. 5 of the 1931 Convention.

article 21, paragraphs 1 to 3, and in order to determine the amounts and other specifications provided in the periodical permits to be granted to drug manufacturers, and to be able, if necessary, to modify the amounts in any permits which they have issued on an annual basis. It is suggested that Governments should for this purpose keep a running account, not only of the quantities of drugs which have in fact been imported and exported, but also of those which have actually been manufactured.⁶ In any event, they cannot carry out their obligations, and in particular they also cannot implement the subparagraph under consideration, without periodically obtaining from drug manufacturers information on the quantities of drugs which they have made. While unlike the 1931 Convention⁷ the Single Convention does not expressly obligate Governments to require such periodical reports from drug manufacturers, it may be assumed that such an obligation is implied under the terms of the 1961 treaty.

8. The word “kinds” refers to the identity of the drugs involved. The periodical permit must identify by name or chemical formula the drugs whose manufacture is authorized.

9. The permit is granted to the drug enterprise as a whole, which is not prevented by the Single Convention⁸ from using its discretion to divide its quota among its separate establishments.⁹

10. Subparagraph (c) applies only to “licensed manufacturers”, and therefore not to State enterprises. This follows from paragraph 1, whose text requires the exclusion of such enterprises from the term “licensed manufacturers”. It is, however, suggested that Parties which have a socialist system of drug manufacture must, in order to be able to carry out their treaty obligations, allot to their individual state enterprises quotas from the total quantities of drugs which they may manufacture under the terms of the Single Convention in a given year, and must modify these quotas during the year if required to do so by changing conditions. Such allotments and modifications are in fact nearly the same thing as the periodical permits provided in subparagraph (c), and in any case fulfil the same control function.

11. The subparagraph does not apply to “preparations” because the provisions of the Single Convention governing the quantities of narcotics which may be obtained by manufacture or import or both refer only to basic drugs, whether in their original form, in the form of their salts, or compounded in preparations. There is no provision for limiting the quantities of preparations which may be manufactured.¹⁰ Preparations had to be expressly

⁶ See above, general comments on article 21.

⁷ Article 17, first para., subpara. (a), which *inter alia* requires manufacturers to furnish such data.

⁸ National law may of course provide that the permit issued to the enterprise should also indicate what amounts it should allot to its individual establishments. The Plenipotentiary Conference deleted a provision of the Third Draft which would have required that the permit should specify the amounts of drugs which the drug manufacturer may make in each of his establishments; see *Records*, vol. II, pp. 14 and 126.

⁹ For the term “establishment”, see above, comments on article 29, para. 2, subpara. (b).

¹⁰ *Records*, vol. I, p. 27 and vol. II, pp. 124-125.

excluded from subparagraph (c) because otherwise under article 2, paragraphs 3 and 4, that provision would apply to preparations.

12. The “permits” referred to in subparagraph (c) must be distinguished from the licences mentioned in paragraph 1 and paragraph 2, subparagraph (b).

13. See also the general comments on article 21. Reference is also made to the Report of the Commission on Narcotic Drugs on its eighth session, paragraph 154.¹¹

¹¹ Commission on Narcotic Drugs, report on the eighth session. *Official Records of the Economic and Social Council, Sixteenth Session, Supplement No. 4* (E/2423).

Paragraph 3

3. The Parties shall prevent the accumulation, in the possession of drug manufacturers, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions.

Commentary

1. Paragraph 3 corresponds to article 16, paragraph 2 of the 1931 Convention. However, it uses the phrase “drugs and poppy straw” for the material whose excessive accumulation in the possession of drug manufacturers it requires Parties to prevent, while the 1931 Convention employs the term “raw materials”. No fully synthetic process of manufacturing narcotic drugs had yet been developed in 1931, and the “raw materials” which were then used were (apart from poppy straw which played only a very minor role) all substances which are now “drugs” within the meaning of the Single Convention. Since the late nineteen hundred and thirties, however, narcotic drugs are in an increasing measure made by fully synthetic processes from “raw materials” which are commonly used in chemical industry, e.g. coal tar products, which are freely available in trade and which do not present dangers to health whose prevention would be within the range of the aims of international narcotics control. To prevent an excessive accumulation of such generally available substances in the possession of drug manufacturers would not make sense from the viewpoint of the purposes of the Single Convention. The new treaty therefore substituted the more specific phrase “drugs and poppy straw” for the more general term “raw material” used by the 1931 Convention.¹

2. Paragraph 3 thus covers all substances controlled by article 16, paragraph 2 of the 1931 Convention, and has an even wider scope than the earlier provision. It applies also to drugs² which are not intended for transformation into other drugs, and are therefore not “raw materials”. Article 16, paragraph 2 of the 1931 Convention, on the other hand, did not require Parties to prevent an excessive³ accumulation in the possession of drug manufacturers

¹ See also above, comments on article 25.

² Within the meaning of article 1, para. 1, subpara. (j).

³ The Parties to the 1931 Convention are, however, bound to “exercise a strict supervision over . . . the amounts of raw material *and* manufactured drugs in the

of all drugs which that treaty controlled, but only of those of them which were also “raw materials”, i.e. destined for the manufacture of other drugs. The amounts “required for the normal conduct of business” which should not be exceeded will vary in accordance with the different conditions under which the business is carried on. They will be different in the case of different drugs, and may also vary in different countries or territories and at different times in the same country or territory. “The prevailing market conditions” are specifically mentioned as being relevant in this context; but the consideration of other factors is not excluded. A state of international relations which may lead to difficulties in obtaining new supplies of, for example, opium may also be a pertinent factor.⁴ An expectation of rising prices, particularly in periods of inflation, may also be taken into account.

3. It is suggested that, under normal conditions, the maximum amounts in the possession of drug manufacturers should not exceed their requirements for six months, and under exceptional conditions, those for one year; but unlike article 16, paragraph 2 of the 1931 Convention, the Single Convention does not prescribe such a time limit. It leaves it to the judgement of the Parties to determine in the light of their special circumstances whether they should impose on their manufacturers such a general limit, and if so what that limit should be.

4. The 1931 Convention⁵ obligated Parties to require drug manufacturers to submit to the competent authorities quarterly reports on the amounts of raw materials and drugs received and disposed of by them during the quarter, and on those remaining in their stock at the end of the quarter. Although the Single Convention does not contain a corresponding provision, Parties may find it advisable to require periodical reports of this kind at least as regards drugs, in order to be able to implement article 29, paragraph 3. These reports need not necessarily be quarterly, but the annual information which Governments must in any event obtain from manufacturers and wholesalers in respect of stocks of drugs held by them in order to be able to furnish to the Board their stock statistics pursuant to article 20, paragraph 1, subparagraph (f), might often not be sufficient for the purpose of implementing article 29, paragraph 3.

5. In view of article 2, paragraphs 3 and 4, article 29, paragraph 3 must be assumed to apply also to preparations. There is no express provision excluding preparations in Schedule III from this application. In view of the fact, however, that such preparations are excluded, except for data on the quantities of drugs required for their manufacture,⁶ from the statistical provisions forming the basis of the quantitative controls of the Single Convention, it is submitted that the authors of the Single Convention did not intend to apply article 29, paragraph 3 to preparations of this kind, and that the lack of

possession of each manufacturer for the purpose of the manufacture or conversion of any of the drugs or otherwise” (article 16, para. 1, subpara. (a)); an obligation to impose some limitations on manufacturers’ drug stocks follows also from the estimate system introduced by that Convention and taken over by the Single Convention.

⁴ See also above, comments on article 19, para. 1, subpara. (c).

⁵ Article 17, first para.

⁶ Article 2, para. 4.

an explicit provision excluding them is due to an oversight. See also comments on article 2, paragraph 4 and on article 34, paragraph (b).

6. The paragraph under consideration also applies to State enterprises engaged in the manufacture of drugs.⁷ The Spanish text of paragraph 3 uses the word “*poder*” for “possession” in the English and French versions. The word “*poder*” has in this context the same meaning as “possession” in the two other language texts.

7. See also article 30, paragraph 2, subparagraph (a).⁸

⁷ But never to “special stocks” manufactured by a State enterprise and held by that enterprise on behalf of the Government “for special Government purposes and to meet exceptional circumstances”; see article 1, para. 1, subpara. (w) and above comments on subparas. (w) and (x) of this paragraph; see also the express inclusion of State enterprises in article 30, para. 2, subpara. (a).

⁸ The implementation of article 5, para. 1, subparas. (a) and (b) of the 1953 Protocol would also require Parties to limit the opium stocks held by their drug manufacturers.

Article 30

TRADE AND DISTRIBUTION

General comments

1. It may be concluded from the word “special” in the heading of article 31, which is entitled “Special Provisions Relating to International Trade”, that article 30 governs trade in general, and not only domestic trade and distribution. This was also the understanding of the Plenipotentiary Conference.¹ The provision of article 30, paragraph 1, subparagraph (b), clause (i) would therefore also apply to the international trade even if it were not repeated in article 31, paragraph 3, subparagraph (b).

2. The international trade is governed by all provisions of article 30 which can be so applied.

3. Article 30 provides for four different kinds of authorizations:

(a) A specific authorization, referred to as a “licence”, to be granted by the Government to engage in the trade in and distribution of drugs (paragraph 1, subparagraph (a));

(b) A specific authorization, also referred to as a “licence”, to be granted by the Government to use an “establishment” or “premises” for the trade in and distribution of drugs (paragraph 1, subparagraph (b), clause (ii));

(c) The general authorization, which may be provided in domestic law, of persons who are duly authorized to perform therapeutic or scientific functions, to trade in and distribute drugs and to use their premises for such trade and distribution while performing such functions, without the special authorizations (licence) referred to under (a) and (b) (paragraph 1, subparagraph (c)); and

(d) The special authority to be granted by a medical prescription, required for the supply or dispensation of drugs to individuals (paragraph 2, subparagraph (b), clause (i)).

¹ *Records*, vol. I, pp. 71 and 72.

Paragraph 1, subparagraph (a)

1. (a) **The Parties shall require that the trade in and distribution of drugs be under licence except where such trade or distribution is carried out by a State enterprise or State enterprises.**

Commentary

1. The “licence” referred to in this subparagraph must be a special authorization in writing, issued by the competent Government department, to engage in the trade and distribution of drugs. A general authorization to

trade in everything would not be sufficient. The "licence" need not, however, be physically a separate document. The special authorization relating to drugs may be included in another document, e.g. in a licence to trade in pharmaceuticals or chemicals, but the authority in respect of the drugs should in such cases be explicitly mentioned. An authorization to operate a retail pharmacy may, however, be understood to include the right of retail trade in narcotic drugs. The name given by national law to the governmental authorization is irrelevant, and it need not be called "licence" or the equivalent in other languages.

2. The licence should expressly state whether it authorizes wholesale or retail trade. It might be advantageous from the viewpoint of carrying out the provisions of the Single Convention if the wholesale licence specified to which individual drugs it relates.¹ The licence of a manufacturer (article 29, paragraph 1) may be considered to cover the right to engage in all trade activities which normally fall within the scope of a manufacturer's operations. This includes the purchase for sale of drugs which he is authorized to make himself, but which he does not have in stock for the execution of an order at a particular moment. It is submitted that a manufacturer's licence cannot be deemed to include authority to trade in drugs which he is neither authorized to make nor could need for the manufacture of such drugs. If he deals in drugs he is not authorized to make and does not need for manufacture, he requires a separate licence to engage in the wholesale trade in the drugs involved. His licence does not in any event automatically include the retail trade in drugs. It is also suggested that authorization of a drug manufacturer to engage in the retail trade may in some cases result in gaps of control.²

3. As mentioned elsewhere,³ the notion of "licence" requires that the Government department concerned should have some degree of discretion in issuing it. An appropriate measure of freedom for the authorities to grant or refuse a licence will be helpful in ensuring the high technical and moral qualifications of the management of the trade enterprises in accordance with article 34, paragraph (a), in limiting the number of traders to facilitate control, and in obtaining compliance with desirable conditions by the licensee. The authorities should for the same reasons also have some discretion to revoke a licence to trade in drugs.

4. A licence to undertake the wholesale or retail trade in drugs may be granted to an individual, to a partnership or a corporate body (including a co-operative).

5. A State enterprise does not need a "licence" to trade in drugs; but it does not follow that any Government owned enterprise may engage in such

¹ The statistical information which Governments require for the purpose of compiling their statistical returns in respect of each drug under article 20 must generally be based on data supplied by manufacturers and wholesalers; information furnished by them may also be needed for the preparation of some of the estimates pursuant to article 19, para. 1.

² E.g. where the retail sale of drugs in Schedule II or of preparations of drugs in Schedule II or of those included in Schedule III is permitted without medical prescription; see article 30, para. 6 in connexion with article 2, paras. 3 and 4. In such cases, it may also be advisable not to grant to the same enterprise a licence to engage simultaneously in the wholesale and retail trade in drugs.

³ See above, comments on article 29, para. 1.

trade. The only State enterprises which may do so are those given that function by the Government authorities concerned, which in making such assignments must be guided by similar considerations of control as those which must be taken into account by Government authorities when issuing trade licences to private businesses.

6. The subparagraph under consideration also applies to preparations of all drugs, including preparations in Schedule III as required by article 2, paragraphs 3 and 4. Unlike the corresponding provisions of the narcotics treaties preceding the Single Convention, drugs in Schedule II,⁴ their preparations and all preparations in Schedule III⁵ may not be sold to individual users by unlicensed vendors.

7. The duly authorized persons who under article 30, paragraph 1, subparagraph (c) are exempted from the requirement of licensing for retail trade and retail distribution when performing their therapeutic or scientific functions are medical practitioners (including veterinary surgeons and dentists) and scientists.⁶

8. The text of article 30, paragraph 1, subparagraph (a) closely follows the wording of article 29, paragraph 1 requiring the licensing of drug manufacturers; see comments on the latter provision.

9. For the relation between article 30, paragraph 1, subparagraph (a) and article 31, paragraph 3, subparagraph (a), see below, comments on that provision of article 31.

10. For corresponding provisions of earlier narcotics treaties, see article 10, second paragraph, subparagraph (b) of the 1912 Convention and article 6, second paragraph, subparagraph (b) of the 1925 Convention.

⁴ I.e. those corresponding to drugs in Group II of the 1931 Convention and of the 1948 Protocol.

⁵ I.e. those corresponding to preparations excluded under the earlier treaties by express provision or by operation of article 8 of the 1925 Convention, from administrative controls. See article 4, para. (d) of the 1925 Convention and article 13 of the 1931 Convention. See also, *Commentary* on the 1931 Convention, para. 135.

⁶ See below, comments on article 30, para. 1, subpara. (c).

Paragraph 1, subparagraph (b), clause (i)

(b) The Parties shall:

(i) Control all persons and enterprises carrying on or engaged in the trade in or distribution of drugs;

Commentary

1. The clause under consideration follows closely the text of article 29, paragraph 2, subparagraph (a) requiring Parties to “control all persons and enterprises carrying on or engaged in the manufacture of drugs”. The comments made above on that provision of article 29 therefore apply *mutatis mutandis* to clause (i).

2. The admittedly rather vague term “control” must be interpreted in a reasonable and practicable manner; but it may be assumed that it covers

such measures as periodical, or at least occasional, inspections,¹ and exclusion from the wholesale and retail trade of persons who are suspected of engaging in the illicit traffic.

3. The term “persons” covers all physical persons engaged in the trade, not only the owners or managers of the trade enterprise, but also technical personnel, office workers and manual labourers.

4. The term “enterprise” covers also the buildings or parts of buildings (premises) and their appurtenances and equipment used in the trade; it includes “State enterprises”. Clause (i) must also be applied to persons duly authorized to perform therapeutic or scientific functions when distributing drugs in the exercise of those functions. Article 30, paragraph 1, subparagraph (c) exempts such “trade” activities of these persons only from the licensing requirements of subparagraphs (a) and (b), but not from other control measures. Clause (i) therefore applies to medical practitioners, including dentists and veterinary surgeons, and to scientists using drugs in their experiments.

5. It may be noted that the clause governs the wholesale and retail trade in all drugs (including drugs in Schedule II) and in their preparations, including preparations in Schedule III.

6. For corresponding provisions of earlier treaties, see first paragraph of article 10 of the 1912 Convention and first paragraph of article 6 of the 1925 Convention.²

¹ The obligation to carry out inspections may also be based on the introductory paragraph of article 4; see comments on this article.

² See also article 13 of the 1931 Convention and article 1, paragraph 4 of the 1948 Protocol. Article 6 of the 1925 Convention does not apply to retail trade in drugs in Group II of the 1931 Convention and of the 1948 Protocol, i.e. those corresponding to the drugs in Schedule II of the Single Convention; it also does not apply to preparations exempted from the administrative controls of the 1925 Convention by operation of article 8 of that treaty, or by specific provisions (article 4 of the 1925 Convention and article 13 of the 1931 Convention).

Paragraph 1, subparagraph (b), clause (ii)

(ii) Control under licence the establishments and premises in which such trade or distribution may take place. The requirement of licensing need not apply to preparations.

Commentary

1. Clause (ii) contains in respect of the trade in drugs the same provision as article 29, paragraph 2, subparagraph (b) in respect of the manufacture of drugs and their preparations. The above comments to the provision of article 29 apply *mutatis mutandis* to the interpretation of corresponding words in this clause of article 30.

2. An enterprise trading in drugs must have a licence or licences pursuant to clause (ii) in addition to the licence required by article 30, paragraph 1, subparagraph (a).

3. As in the case of the other licences provided for in articles 29 and 30, the designation in national law of the licence required by clause (ii) is irrelevant. Any written authorization by the competent Government department allowing the use of the establishments or premises in question in the trade in drugs is a "licence" in the sense of clause (ii).

4. A trade enterprise may have one or more establishments¹ and premises. It needs a separate "licence", i.e. a special authorization in writing for each of its establishments and premises; but these separate "licences" for different establishments and premises of the same enterprise need not be separate documents. Authorizations to use different establishments or premises may be included in a single document, and even in the licence provided for in paragraph 1, subparagraph (a). The use of particular premises must be separately "licensed", i.e. expressly authorized, even though those premises form a part of a "licensed" establishment. The licence of premises should clearly identify the building or part of the building concerned, and should describe the safeguards against diversion of drugs which it requires.

5. The premises of medical practitioners and scientists do not require a licence if used for the distribution of drugs under the conditions of subparagraph (c).²

6. State enterprises are not exempted from the requirement of authorization of establishments and premises under clause (ii). The written assignment by the competent government department of an establishment,³ building or part of a building to use by a State enterprise for the trade in drugs constitutes a "licence" in the sense of clause (ii); but in making such assignments the Government must provide for the same kind of safeguards against diversion of drugs as in the case of private enterprises.

7. The clause under consideration does not apply to the trade in preparations; it applies, however, to the trade in salts of drugs, since such salts are "drugs" in the sense of the Single Convention.⁴

8. Prior to the coming into force of the Single Convention, the international narcotics régime did not require "licences" for establishments and premises used for the trade in drugs.

¹ For the meaning of the term "establishment", see in particular above, comments on article 29, para. 2, subpara. (b).

² See below, comments on subpara. (c).

³ I.e. place of business; see above, comments on article 29, para. 2, subpara. (b).

⁴ See last paragraphs of Schedules I and II in connexion with article 1, para. 1, subpara. (j).

Paragraph 1, subparagraph (c)

(c) The provisions of subparagraphs (a) and (b) relating to licensing need not apply to persons duly authorized to perform and while performing therapeutic or scientific functions.

Commentary

1. Medical practitioners, including physicians, veterinarians and dentists, are the "persons duly authorized to perform . . . therapeutic functions"

referred to in subparagraph (c). The authorization which is required may be obtained in some countries by a special licence from the competent health authorities, and in other countries by acquiring a relevant academic degree or by passing prescribed examinations. Pharmacists do not perform therapeutic functions, and therefore do not fall under subparagraph (c); they require a licence under article 30, paragraph 1, subparagraph (a) to engage in the retail trade in drugs, and also an authorization pursuant to subparagraph (b) clause (ii) to use an establishment or premises in such trade.¹ Their licence as pharmacist may, however, be deemed to include a licence to engage in the retail trade in narcotic drugs.²

2. Scientists using drugs in their experiments appear to be the scientists whom subparagraph (c) exempts from the licensing requirements.

3. Medical practitioners who, in addition to the performance of their therapeutic functions, use drugs in scientific experiments may in respect of such use be considered to perform also scientific functions under subparagraph (c).

4. Only the medical practitioner's administration or dispensation of drugs,³ including the sale of drugs to his own patients or to possessors of animals which he treats, and the acquisition of drugs for these purposes are under subparagraph (c) exempted from the licensing requirements. There is no exemption for his sale of drugs to persons who are not his patients or to possessors of animals which he does not treat. Physicians in some countries are authorized to engage in the retail trade in drugs, that is, to sell drugs to persons who are not their patients, particularly in places without an authorized pharmacist. Such retail trade does not appear to be a "therapeutic" function in the sense of subparagraph (c), and therefore appears not to be exempted from the licensing requirements of subparagraphs (a) and subparagraph (b), clause (ii).

5. Subparagraph (c) exempts only from the licensing requirements but not from other controls. Subparagraph (b), clause (i) therefore applies "to persons duly authorized to perform while performing therapeutic or scientific functions".

6. The principal effect of subparagraph (c) is that medical practitioners and their offices, and also scientists using drugs in their experiments and their laboratory facilities, do not require licences, but must otherwise be controlled under the relevant terms of the Single Convention.⁴

¹ As regards the compounding of preparations by medical practitioners and pharmacists, see above, comments on article 29, para. 1.

² In some countries medical practitioners need a separate narcotics licence, which may be withdrawn on such grounds as alcoholism or personal drug addiction, although the practitioners concerned may be allowed to continue to exercise their profession without using or prescribing narcotic drugs.

³ *Records*, vol. I, p. 31.

⁴ In addition to article 30, para. 1, subpara. (b), clause (i), e.g., article 4, para. (c) and, if they import drugs, article 31, paras. 4-15.

Paragraph 2, subparagraph (a)**2. The Parties shall also:**

(a) Prevent the accumulation in the possession of traders, distributors, State enterprises or duly authorized persons referred to above, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions; and

Commentary

1. The subparagraph under consideration applies to wholesale and retail trade and distribution a rule very similar to that of article 29, paragraph 3 concerning drug manufacturers.¹ It does not apply to the retail trade and distribution of drugs in Schedule II, and in view of article 2, paragraphs 3 and 4, consequently also does not apply to the retail trade in preparations of these drugs and in preparations in Schedule III, whatever may be the schedule of the drug that they contain.² It governs State enterprises, but not drugs in Schedule II and the two groups of preparations just mentioned in the possession of State enterprises, or of divisions of such enterprises, engaged only in the retail trade and distribution. In view of the fact that the provision of article 30, paragraph 2, subparagraph (a) does not apply to drugs in Schedule II held by retail traders and retail distributors, it may appear somewhat surprising that the Single Convention does not provide for the same exemption in respect of poppy straw, which is not even a “drug” in the sense of this Convention.³ Moreover these retail outlets will generally not hold any poppy straw.

2. The amounts required for the normal conduct of business will differ in the case of different drugs, of different countries or territories and at different times in the same country or territory. The “prevailing” market conditions have to be taken into account; but they are not the only consideration which may be relevant.⁴

3. The Convention does not prescribe the methods by which Parties should prevent the excessive accumulation of drugs and poppy straw in the possession of traders and distributors. In order to be able to furnish to the Board their statistical returns under article 20, Governments must require wholesalers to report at least annually, on *inter alia* their drug stocks⁵ and the quantities of drugs which they have supplied “to any person or enterprise for retail distribution, medical use or scientific research”⁶ in the year in question.

¹ In the English and French versions both texts are *mutatis mutandis* practically identical. In the Spanish version, the provision of article 30 is drafted in terms somewhat different from the wording of the corresponding provision of article 29, e.g. the former provision uses the word “comercio” for the “empresa” in the latter. Both provisions use the word “poder” for “possession” in the English and French texts; but these drafting divergencies appear to be without substantive importance.

² Article 30, para. 6; for the reasons given in the comments on article 29, para. 3 it may be assumed that article 30, para. 2, subpara. (a) is also not intended to apply to the wholesale trade in preparations in Schedule III.

³ Article 1, para. 1, subpara. (j); see above, comments on article 25.

⁴ See above, comments on article 29, para. 3.

⁵ Article 20, para. 1, subpara. (f).

⁶ Article 1, para. 2 in connexion with article 20, para. 1, subpara. (c).

This annual information on stocks may in many cases be sufficient to enable Governments to implement the subparagraph under consideration in respect of drugs in the possession of wholesale traders; some Governments, however, require more frequent stock reports on drugs held by wholesalers.⁷

4. Drugs held by retail traders, by retail distributors and by persons duly authorized to perform therapeutic and scientific functions are, however, not “stocks” in the sense of the Single Convention,⁷ but are considered to have been “consumed”.⁶ Governments are not required to obtain from these retail outlets the information which they need on consumption, but they may receive the necessary data from wholesalers, who report on their supplies to retail outlets. Some Governments, however, require retail distributors, including medical practitioners and scientists, to report periodically on the quantities of drugs in their possession. Many countries do not provide such an obligation, in particular for medical practitioners and scientists, and in general limit themselves, for the purpose of subparagraph (a), to investigating those retail distributors whom, on the basis of information which they received or as a result of occasional inspections, they suspect of holding excessive quantities of drugs.

5. It has already been mentioned above that it appears somewhat surprising that the subparagraph under consideration covers poppy straw held in the retail trade; but the application of this subparagraph to the straw presents some other problems. If—as the context suggests—only poppy straw held by drug traders and distributors, including State enterprises engaged in the drug trade, are covered by the subparagraph, there would be no obligation to prevent the excessive accumulation of the straw in the hands of other traders dealing in agricultural products. If, on the other hand, all traders in the straw were covered by subparagraph (a), State farms and farmers who accumulate large amounts of straw because they have been unable to sell all they have grown, may also be considered to be “traders”, and therefore have to be included among those to be controlled.

6. It may seem somewhat incongruous to limit the quantities of poppy straw held by licensed traders in drugs and by State enterprises engaged in the drug trade, that is, by persons and enterprises whose operations are under Government control and to permit excessive quantities of the straw to remain in the hands of businesses and persons who are not controlled. In view of the fact, however, that poppy straw not in the possession of drug manufacturers and not in international trade is not covered by the statistical control system of the Single Convention,⁸ and that the limitation of the amounts of straw held by traders is of very little if any value from the standpoint of narcotics control, it is suggested that the more restrictive interpretation of subparagraph (a), which the context undoubtedly permits, should be given preference. This view accords also with the practice of many Parties to the Single Convention, who do not control the quantities of poppy straw held by other enterprises than those manufacturing⁹ or trading in drugs, and in particular not those

⁷ Including manufacturers; see article 1, para. 1, subpara. (x), clause (iv).

⁸ Article 20, para. 1, subparas. (b) and (d); see also article 25 and comments thereon.

⁹ See article 29, para. 3.

held by farmers. It may therefore be concluded that subparagraph (a) applies only to poppy straw held by traders, distributors and State enterprises engaged in the drug trade or in drug distribution.

7. The failure to exclude from the application of the subparagraph under consideration preparations in Schedule III held by wholesale traders or distributors may be due to an oversight of the authors of the Single Convention.⁴

8. Subparagraph (a) does not apply to stocks of drugs held by a State enterprise on behalf of the Government "for special Government purposes and to meet exceptional circumstances", since they form "special stocks".¹⁰

9. Apart from their obligation arising from the subparagraph under consideration, Parties are also bound under the provisions of the estimate system of the Single Convention¹¹ to exercise control over, and to limit, the stocks of drugs held by wholesale traders. They are also obligated under the provisions requiring them to limit possession and consumption of drugs to medical and scientific purposes,¹² to carry out some measures of supervision over the quantities of drugs in Schedule I and II in the possession of retail outlets. Such measures might be periodical or at least occasional inspections of, and inquiries about, their inventories and records.¹³

10. The narcotics régime preceding the Single Convention did not have a provision corresponding to article 30, paragraph 2, subparagraph (a). It required Governments, however, to limit the stocks of wholesalers, and to control the quantities held by retail outlets, by provisions very similar to those of the Single Convention regarding estimates and restriction of consumption to medical and scientific purposes.¹⁴

¹⁰ Article 1, para. 1, subpara. (w); see also comments on subparas. (w) and (x) of that paragraph. But if the provision of the Convention were taken literally, this exemption would not cover poppy straw, because the straw cannot form a part of "special stocks". It is, however, more than doubtful that the authors of the Single Convention wished to apply article 30, para. 2, subpara. (a) to poppy straw held by a State enterprise on behalf of the Government for the purposes for which "special stocks" are destined, e.g. to form a reserve stock for the manufacture of morphine and codeine for the needs of the armed forces in the event of a shortage of raw materials (opium or poppy straw) available for this purpose.

¹¹ Article 19, para. 1, subpara. (c) and para. 5; article 21, para. 1, especially subpara. (d).

¹² Article 4, para. (c); see also article 33.

¹³ Article 34, para. (b).

¹⁴ Article 5, para. 2, first subpara., clause (c) and second subpara. and article 6, para. 1, subpara. (d) of the Convention; and article 5 of the 1925 Convention.

Paragraph 2, subparagraph (b), clauses (i) and (ii)

(b) (i) Require medical prescriptions for the supply or dispensation of drugs to individuals. This requirement need not apply to such drugs as individuals may lawfully obtain, use, dispense or administer in connexion with their duly authorized therapeutic functions; and

(ii) If the Parties deem these measures necessary or desirable, require that prescriptions for drugs in Schedule I should be written

on official forms to be issued in the form of counterfoil books by the competent governmental authorities or by authorized professional associations.

Commentary

1. The first question which arises is whether “oral” prescriptions, which would be permitted in urgent cases, would be “medical prescriptions” in the sense of clause (i). Some countries authorize pharmacists to supply some drugs in urgent cases on the basis of “oral” prescriptions.

2. An “oral” prescription is an authorization given by a medical practitioner by telephone to a pharmacist to supply an indicated quantity of a given drug. If Governments find it necessary to admit such telephonic authorizations, they must of course take all measures necessary to ensure that the supply of drugs on “oral” prescriptions takes place under such conditions as to achieve the aims of the requirement of medical prescriptions in the Single Convention. It is suggested that it would in any event be necessary to require that the pharmacist should accept oral prescriptions only from physicians personally known to him, and that he should record the name of the physician as well as all the other data which a medical prescription should contain. He should in particular take down the name and address of the patient, and if the drug is to be sold to another person buying on behalf of the patient, also the name and address of that person. He should verify the identity of the person to whom he sells the drug by demanding the production of an appropriate document of identification. The pharmacist should also be required to keep the record of a sale on oral prescription for a period of not less than two years.¹ It is advisable to require the physician giving the telephonic authorization to confirm it by a written medical prescription, to be sent to the pharmacist without delay.

3. In any event, if oral prescriptions are allowed, they should be subjected to restrictive conditions. They should be limited to urgent cases. The drugs which may be so prescribed should be indicated in the legislation, and the amounts to be sold on oral prescription should be limited to such small quantities as would be needed until a written medical prescription could be obtained under local circumstances.

4. A medical prescription should contain the data required to identify the authorizing physician as well as the patient, and in a veterinary case, the person in possession of the animal, the date of issue, the name and quantity of the drug to be supplied, and when appropriate, instructions on the use of the medicine. It is also suggested that it would be necessary to limit the quantities of drugs which may be authorized by a single prescription, particularly in the case of potent substances. It also appears strongly advisable not to permit the refilling of prescriptions for drugs. In any event, refilling should be authorized only in the case of less potent drugs, and each filling should be recorded on the prescription. Prescriptions which are not refillable or no longer refillable should be retained by the pharmacist. He should make a copy of all refillable prescriptions which he does not retain.

¹ Article 34, para. (b).

5. The Single Convention does not require medical prescriptions for drugs in Schedule II,² for their preparations, or for preparations in Schedule III.³ It might, however, be advisable to limit this exemption from the prescription requirement to preparations in Schedule III and to such preparations of drugs in Schedule II as offer a relatively minor risk of abuse.⁴

6. The word "dispensation" means in this context "making up and giving out".⁵ The making up includes the compounding of preparations.⁶

7. The term "individuals" is used twice.⁷ The first time it refers to patients by whom the drugs are to be used, to the possessors of the animals for which the drugs are destined, or to persons acquiring the drug on behalf of such patients or possessors of animals. The second time, the term "individuals"⁸ covers persons duly authorized to perform therapeutic functions, that is, medical practitioners, whether physicians, dentists or veterinarians.

8. The second sentence of clause (i) exempts from the requirement of medical prescription the acquisition of drugs by medical practitioners for use in carrying out their therapeutic functions, and such use. It is, however, submitted that the exemption of such acquisition only makes explicit what is already implied in the notion of "medical prescription". Authorized persons engaged in the drug trade and distribution, including manufacturers,⁹ wholesale and retail traders,¹⁰ medical practitioners and scientists¹¹ are of course entitled to acquire the drugs required for the performance of their legal business functions, professions or occupations. Medical prescriptions in the common sense, and within the meaning of the Single Convention, are authorizations given by medical practitioners to acquire drugs for use, or to use drugs on particular human beings or animals. Prescriptions do not refer to authorizations for acquisition of drugs by authorized persons in carrying out their legal trade in or distribution of drugs. These persons normally have general authority to acquire drugs on the basis of their licence or their right to carry out their therapeutic or scientific profession. They may be required by their respective national laws to use official order forms. Although

² Article 30, para. 6.

³ Article 2, paras. 3 and 4.

⁴ Article 39.

⁵ The *Concise Oxford Dictionary of Current English*, Fifth Edition, Oxford, Clarendon Press, 1964, p. 352, entry "dispense"; the Spanish version uses for "dispensation" "*despacho*" and for "dispense" "*entregar*". Although the meaning of the Spanish words differs from that of the English words and of the corresponding words "*dispensés*" and "*dispenser*" in the French version, it is submitted that the meaning of the three language texts of clause (i) as a whole is the same.

⁶ See also above, comments on article 29, para. 1.

⁷ In the English text. The French text uses in both cases the word "*particuliers*" and the Spanish text the first time "*particulares*" and the second time "*una persona*". This difference in the Spanish version does not affect the identity of the meaning of the three versions, "*una persona*" having the sense of "individuals" or "*particuliers*" respectively used the second time in the two other language texts.

⁸ "*Particuliers*" in the French text and "*una persona*" in the Spanish text.

⁹ Article 29, para. 1.

¹⁰ Article 30, para. 1, subpara. (a).

¹¹ Article 30, para. 1, subpara. (c).

this may be advantageous from the viewpoint of drug control, it is not required by the international treaty. Medical practitioners who acquire drugs for use in carrying out their therapeutic functions should, however, if they are not bound by national rules to use special order forms, confirm in writing to the selling pharmacists the receipt of the drugs. The receipts¹² should be retained by the pharmacists for a period of not less than two years.¹³ They may be written on the medical practitioner's prescription forms, and may therefore often be called "medical prescriptions", though they are not prescriptions within the meaning of the Single Convention.

9. The word "administer" means in this context "to apply the remedy in question to the patient or animal concerned".¹⁴ In the case of an administration of the drug, the medical practitioner injects the medicine into the patient or animal or makes the patient or animal ingest it. The term "dispense", as defined above, involves the handing over of the drug to the patient or possessor of the animal,¹⁵ who may use it outside the medical practitioner's office or in his absence. The term "use" has a wider meaning, and covers "administer" as well as "dispense". It covers any employment of the drug by the medical practitioner in performing a therapeutic function.

10. The question may arise whether self-administration of a drug by a medical practitioner is performance of an authorized therapeutic function within the meaning of clause (i). Some countries permit physicians to acquire drugs for their personal use without the prescription of another physician, while others do not. Since the incidence of drug addiction is relatively great among physicians in several countries, it may be advisable to require for a physician's acquisition of drugs for personal use the prescription of another physician. As far as dentists are concerned, self-administration will generally be apart from treatment within the scope of their profession, and therefore will normally not be the performance of a therapeutic function as intended by clause (i), and consequently not be exempted from the requirement of a physician's prescription. Self-administration by a veterinarian will of course never be so exempted. Clause (i), on the other hand, does not bind Parties to require veterinarians to obtain the prescription of another veterinarian for use of drugs on their own animals.

11. One will note that in contrast to the exemption of article 30, paragraph 1, subparagraph (c) from the licencing requirement, the exemption of clause (i) of paragraph 2 does not expressly refer to "scientific functions". In practice, however, scientific experiments on human beings, in order to be permitted at all, would have to be carried out by physicians, and would generally have simultaneously some purpose of treatment, and thus qualify as being therapeutic for the purpose of clause (i). A scientist authorized to use drugs on animals would, for the reasons mentioned above, not need a medical prescription for the acquisition of the drugs, nor—it is suggested—would he

¹² Or copies of the official order forms where their use is required.

¹³ Article 34, para. (b).

¹⁴ The *Concise Oxford Dictionary* referred to in foot-note 5 above, entry "administer", p. 17.

¹⁵ The word "*entregar*", which the Spanish text uses for the English "dispense" and the French "*dispenser*", actually means "to hand over" or "to deliver".

need one for their administration to animals. He would, however, be required to keep the records provided for in article 34, paragraph (b), and would have to be under the control provided for in article 30, paragraph 1, subparagraph (b), clause (i).¹⁶

12. A physician's sale of drugs to persons who are not his patients would not be a therapeutic function in the sense of article 30, paragraph 2, subparagraph (b), clause (i), and would therefore require a prescription of another physician. As mentioned elsewhere, in several countries certain physicians are authorized to engage in such sales.¹⁷

13. The counterfoil books mentioned in clause (ii) contain prescription forms, each form consisting of two parts: one to be retained by the prescribing physician, and the other to be given to the patient. The part kept by the doctor must contain the basic data of those included in the patient's prescription. The physician has thus a record of all prescriptions which he issues. Where the use of counterfoil books is required, the physician must preserve these books including the counterfoils for a period of not less than two years.¹⁸

14. Clause (ii) must be carried out in good faith, like all the other provisions of the Single Convention.¹⁹ It is therefore not the views which a Party claims to have, but its real views, that are relevant for the purposes of this clause. If a Party considers the use of official forms in the shape of counterfoil books necessary, or only desirable, it has an obligation to make their use mandatory; but this obligation relates only to the prescription of drugs in Schedule I and their preparations, and is, as formulated, of hardly any practical importance.

15. It may finally be mentioned that a survey undertaken by the World Health Organization in 1956 found that the results obtained from the employment of official forms for the prescription of drugs justified the introduction of such a system.²⁰

16. For the requirement of medical prescriptions under the narcotics régime preceding the Single Convention, see article 6, second paragraph, subparagraph (c) in connexion with article 9 of the 1925 Convention.

17. As regards the exemption from this requirement of drugs in Group II of the 1931 Convention or the 1948 Protocol (i.e. of drugs corresponding to those in Schedule II of the Single Convention), see article 13, paragraph 2, subparagraph (a) of the 1931 Convention and *Commentary* on the 1931 Convention, paragraph 135, pp. 174-175; see also article 1, paragraph 4 of the 1948 Protocol.

¹⁶ See above, comments on article 30, para. 1, subpara. (b), clause (i) and on subpara. (c).

¹⁷ See above, comments on article 30, para. 1, subpara. (c).

¹⁸ Article 34, para. (b).

¹⁹ See above, comments on article 2, para. 5, article 22 and article 24, para. 1, subpara. (b).

²⁰ *Records*, vol. II, p. 33.

Paragraph 3

3. It is desirable that Parties require that written or printed offers of drugs, advertisements of every kind or descriptive literature relating to drugs and used for commercial purposes, interior wrappings of packages containing drugs, and labels under which drugs are offered for sale indicate the international non-proprietary name communicated by the World Health Organization.

Commentary

1. Paragraph 3 represents only a wish (“*vœu*”) of the Plenipotentiary Conference, and is in fact only a recommendation. No legal obligation is provided. Even if a Party should find it desirable to require the use of non-proprietary names as indicated in this paragraph, it would not be legally bound to do so.

2. It is very difficult indeed to select any non-proprietary name which, after thorough search, would not be found to have possibilities of conflict with existing rights, or could be legally protected in all of the numerous countries of the world.¹ Moreover, such a name may have a meaning, or be similar to a word having a meaning, in one or more of the world's many languages which would make its use unacceptable in the country or countries involved. This explains why the authors of the Single Convention refrained from imposing on the Parties a legal obligation under paragraph 3.

3. The Single Convention does not prescribe the procedure by which the World Health Organization should establish non-proprietary names for the purposes of paragraph 3. The World Health Organization may to this end adopt the procedure it considers appropriate,² and may modify it in the light of changing conditions.³

¹ Commission on Narcotic Drugs, report on the twelfth session, para. 54; *Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 10* (E/3010/Rev. 1).

² The procedure applied by the World Health Organization at the time of the Plenipotentiary Conference is described in paragraph 50 of the report of the Commission referred to in the preceding foot-note; see resolution of the Executive Board of the World Health Organization E.B.15.R7 (January 1955) and *Official Records of the World Health Organization* No. 60, annex 3; see also resolution E.B.37.R9 (January 1966) with annex and the earlier resolutions of the World Health Assembly WHA 3.11 (May 1950) and of the Executive Board E.B.12.R.24 (May 1953). The procedure in force in 1961 at the time of the Plenipotentiary Conference distinguishes between “proposed” and “recommended” non-proprietary names. “Proposed” names were published in the *Chronicle of the World Health Organization* and notified to States members of the World Health Organization, and to national Pharmacopoeia Commissions or other bodies designated by these States. Notice could also be given to persons having an interest in the proposed name. If no formal objection from any interested person was filed within four months of the date of publication in the *Chronicle*, the “proposed” name became a “recommended” name, and the same procedure of notification was followed as in the case of “proposed” names. States members of the World Health Organization were at the same time requested to recognize the recommended name as the non-proprietary name and to prevent the acquisition of proprietary rights therein. No name could be selected as a recommended name if and as long as there existed any formal objection to it.

³ Resolution E.B.37.R9 referred to in foot-note 2 authorized the Director General of the World Health Organization to modify the General Principles governing the

4. The World Health Organization communicates its actions on non-proprietary names to all its member States. It is, however, suggested that for the purposes of paragraph 3, the Organization should also communicate the names that it selects to the Secretary-General of the United Nations who in turn should forward this information to the Members of the United Nations, to non-member States Parties to the Single Convention and to other States whose co-operation in this matter he finds desirable. The Convention does not state to whom the World Health Organization's communication should be addressed. It is submitted that the Secretary-General of the United Nations, being the depositary of the Single Convention, would at all times be in the best position to have an up-to-date list of the Parties to that treaty. Moreover, it has been submitted elsewhere that the Members of the United Nations are bound under the Charter of this Organization to co-operate in the international fight against drug abuse.⁴ Finally, the Secretary-General furnishes the secretariat services of the Commission on Narcotic Drugs and of the International Narcotics Control Board, which are the main organs charged with functions under the Single Convention,⁵ and may consequently also be in the best position to know which countries, in addition to Members of the United Nations and non-member States Parties to the Single Convention, should be addressed because their co-operation in the case involved would be essential.

5. The "advertisements of every kind" include those in periodicals destined for medical practitioners or pharmacists, and also those in newspapers or on television addressed to the general public. It may, however, be mentioned that advertisement of dangerous drugs to the general public would in any event be undesirable from the viewpoint of public health, even if they indicate the non-proprietary names in question.⁶ By adopting the text of the paragraph under consideration, the Plenipotentiary Conference does not seem to have expressed any view as to the desirability of indicating the non-proprietary names of drugs on the labels of bottles or other containers of medicines sold to individual patients. It will be noted that paragraph 3 does not declare it desirable to use non-proprietary names in descriptive literature which often accompanies medicines so sold, but only in literature which is used for commercial purposes. Unlike the paragraph under consideration, article 31, paragraph 4, subparagraph (b) makes mandatory an indication of the non-proprietary names of drugs, if such a name exists, in import and export authorizations.⁷

6. See also article 19 of the 1931 Convention, which *inter alia* requires that the labels under which drugs controlled by that treaty or their prepara-

determination of non-proprietary names in the light of scientific developments and suggestions of the WHO Expert Advisory Panel on the International Pharmacopoeia and Pharmaceutical Preparations.

⁴ See above, comments on article 3, paragraph 7 and on article 14, para. 1, subpara. (a); see also foot-note 21 to comments on article 8.

⁵ Article 16; the Secretary-General is even the organ of communication in regard to actions taken by the World Health Organization under article 3.

⁶ See also the Vienna Convention on Psychotropic Drugs, article 10, para. 2, document E/CONF.58/6.

⁷ See below, comments on article 31, para. 4, subpara. (a).

tions are offered for sale should indicate “the name of the drugs as provided for in the national legislation”.⁸

⁸ See also article 1, para. 4 of the 1948 Protocol.

Paragraph 4

4. If a Party considers such measure necessary or desirable, it shall require that the inner package containing a drug or wrapping thereof shall bear a clearly visible double red band. The exterior wrapping of the package in which such drug is contained shall not bear a double red band.

Commentary

1. Paragraph 4 applies to the domestic as well as to the international trade.¹ The measure described in this provision is primarily intended to facilitate the task of control officers, and particularly of customs officials checking shipments crossing the border of a country or territory, or checking carriage of drugs by international travellers.² Such offices and officials will often not be familiar with the names and characteristics of narcotic drugs, and in particular of synthetic drugs which are developed in increasing numbers.³ It has also been asserted that the suggested double red band might be helpful in calling the attention of physicians to the dangerous character of some medicines which they might prescribe.⁴ Marking of narcotics consignments for purposes of identification is, on the other hand, of very little use, if any in the fight against the illicit traffic. It may be of some value in the rare cases in which drugs diverted or stolen from legal sources are shipped in their original wrappings.⁵

2. Opponents of the marking by a double red band pointed to the danger that it would call the attention of illicit traffickers or addicts to the narcotics contents of the consignment concerned and thus invite theft.⁶ The last sentence of paragraph 4 therefore expressly prohibits the double red band on the exterior wrapping of the package containing drugs. It is submitted that the purpose of this provision would also require that such wrapping should not have any other marking which would indicate the narcotic contents of the package.

3. The English and Spanish texts of the paragraph under consideration mention the inner (*interior*) wrapping⁷ as a place on which the “clearly visible double red band” may be affixed. They do not, however, exclude

¹ *Records*, vol. I, p. 72; see also above, general comments on article 30.

² Article 1, para. 1, subpara. (v); *Records*, vol. II, pp. 140-141.

³ *Records*, vol. I, p. 28, 29 and 30.

⁴ *Records*, vol. I, pp. 28 and 32.

⁵ *Records*, vol. II, pp. 29-31.

⁶ *Records*, vol. I, p. 33.

⁷ Spanish: “*la envoltura interior*”.

any other place on or in the inner package.⁸ The double band may be affixed on bottles or other containers included in the package, and particularly on the labels of such bottles or containers; but it must not be visible to a person looking at the exterior wrapping of the package.⁹

4. It may be mentioned in this connexion that the narcotic content of an international shipment¹⁰ is indicated to the examining customs or other official by the copy of the export authorization which, according to article 31, paragraph 6, must accompany the consignment. It must be concluded from the wording of paragraph 4 that a Party is legally bound to require the double red band as provided in the first sentence of this paragraph if it “considers such measure necessary or desirable”.¹¹

5. The earlier narcotics treaties do not contain a provision corresponding to the paragraph under consideration.¹²

⁸ The Spanish text separates by a comma the words “*el paquete*” from the words “*o la envoltura interior*”. The context and in particular the last sentence of the paragraph make it clear, however, that what is meant is the interior package (“*el paquete interior*”).

⁹ The French text does not specifically refer to the inner wrapping. The word “*conditionnement*” means in this context inner package, whether the whole contained in an inner wrapping or the individual bottles or containers included in the exterior wrapping. The word “*colis*” used in the last sentence of para. 4 means in the context the exterior package, and thus gives the prohibition the same meaning as the two other language texts which forbid the double red band on the exterior wrapping (“*envoltura exterior*”).

¹⁰ Or of a consignment from one territory to another territory of the same State; article 1, para. 1, subparas. (m) and (y).

¹¹ Para. 4 must of course be implemented in good faith; see above, comments on article 2, para. 5, article 22, article 24, para. 1, subpara. (b) and article 30, para. 2, subpara. (b).

¹² The Economic and Social Council adopted, on the recommendation of the Commission on Narcotic Drugs, resolution 436 G (XIV) in 1952. Operative para. 3 (e) of this resolution requested the Secretary-General to draw the attention of Governments to the desirability of making regulations to ensure that all packages containing *synthetic* narcotic drugs should be clearly marked by a double red line to facilitate identification by the competent services. In 1959 the Council decided to take no action on a draft resolution recommended by the Commission which would have urged all Governments to require that any package moving in trade and containing a narcotic drug, whether natural or synthetic, show a clearly visible double red band on its label, but not on the exterior wrapping; Commission on Narcotic Drugs, report on the fourteenth session, *Official Records of the Economic and Social Council, Twenty-eighth Session, Supplement No. 9* (E/3254), chapter XIV, section 1, draft resolution E; and resolution 730 F (XXVIII) of the Economic and Social Council.

Paragraph 5

5. A Party shall require that the label under which a drug is offered for sale show the exact drug content by weight or percentage. This requirement of label information need not apply to a drug dispensed to an individual on medical prescription.

Commentary

1. It will be noted that paragraph 5 does not apply to the retail trade in drugs in Schedule II and their preparations, and consequently not to the

retail trade in any preparation in Schedule III, no matter whether the latter contains a drug in Schedule I or II.¹ As regards the retail trade the provision under consideration relates only to drugs in Schedule I² and to their preparations other than those included in Schedule III. It is intended to call attention to the degree of risk of abuse of medicines containing the more potent drugs under the narcotics régime.

2. The bottles or other packages containing drugs or their preparations, which are offered for sale or sold by manufacturers to traders (wholesalers or retailers) or by traders to other traders, must in any event have labels containing the information indicated in paragraph 5. It is submitted that “the exact drug content” means in this context “the pure drug content”.

3. The term “individual” in the second sentence of the paragraph under consideration covers the patient acquiring the drug for his own use, the possessor of the animal for which the drug is destined, or the person obtaining the drug on behalf of the patient or of the possessor of the animal.³

4. If the second sentence were interpreted literally, only drugs dispensed on medical prescription, and consequently not those dispensed by physicians to their patients without any prescription in accordance with article 30, paragraph 2, subparagraph (b), clause (i), second sentence, would be exempted from the requirement of label information. It is, however, suggested that it would be compatible with the aims of paragraph 5 to exempt from this requirement not only drugs dispensed on medical prescription by pharmacists or by physicians to other persons than their own patients,⁴ but also those dispensed by physicians to their own patients without prescriptions.

5. It has been mentioned above⁴ that the word “dispense” means “to make up and give out”. It is suggested that in the context of paragraph 5 the making up which is an element of dispensing not only includes the compounding of preparations, but also the removal from the original package or the weighing of such a quantity of the drug or preparation concerned as the medical prescription in question may indicate.⁵

6. It seems to have been the intention of the Plenipotentiary Conference to exempt from the requirement of label information all drugs and preparations sold on medical prescription.⁵

7. The second sentence of paragraph 5 of course does not prevent a Party from making obligatory the label information required by this paragraph in respect of all sales or certain kinds of sales of drugs or preparations which would be exempted from this requirement by the Single Convention.⁶

¹ Article 30, para. 6 in connexion with article 2, paras. 3 and 4.

² Whether or not also listed in Schedule IV.

³ See above, comments on article 30, para. 2, subpara. (b).

⁴ See above, comments on article 30, para. 2, subpara. (b) and foot-note 5 thereto.

⁵ See also *Records*, vol. II, p. 131, right-hand column (summary of the Committee's instruction to the Drafting Committee) and page 268.

⁶ Article 39. Attention is also drawn to the French use of “*prescription magistrale*” for the English phrase “medical prescription”. The French text of article 30, para. 2, subpara. (b) uses the term “*ordonnance médicale*”. The Spanish text uses “*rotulado*” for “label information” in the English version, and “*renseignements sur l'étiquette*” in the French version. “*Rotulado*” means label; (*New Revised Velazques, Spanish and*

8. For a corresponding provision in earlier narcotics treaties, see article 19 of the 1931 Convention. The first sentence of that article required that the labels under which any of the drugs controlled by that Convention or preparations containing those drugs were offered for sale should show the percentage of the drugs.⁷ Drugs in Group II⁸ of that Convention, and even preparations “for the export of which export authorizations are not required”,⁹ that is, preparations corresponding to those in Schedule III of the Single Convention, were not exempted from that requirement of article 19.¹⁰ It must also be assumed from the text of article 19 that drugs and preparations dispensed to individuals on medical prescriptions were subject to this provision. Numerous Parties to the 1931 Convention have, however, without objection by other Parties, permitted the dispensation of drugs and preparations on medical prescription without this label information.

English Dictionary, Heinemann, London, 1961, p. 584). Freedom from the requirement of the label includes of course freedom from the requirement of information on this label. The Spanish text employs on the other hand “*etiqueta*” for the English “label” and the French “*étiquette*” in the first sentence of para. 5.

⁷ See also article 1, para. 4 of the 1948 Protocol.

⁸ I.e. those corresponding to drugs in Schedule II of the Single Convention.

⁹ Articles 4, 8 and 12 to 17 of the 1925 Convention; article 13, para. 2, subpara. (b) of the 1931 Convention and article 1, para. 4 of the 1948 Protocol.

¹⁰ *Commentary* on the 1931 Convention, para. 189 (p. 208).

Paragraph 6

6. The provisions of paragraphs 2 and 5 need not apply to the retail trade in or retail distribution of drugs in Schedule II.

Commentary

1. Paragraphs 2 and 5 of article 30 as applied to the retail trade and distribution are the only provisions among those governing drugs in Schedule I from which the Single Convention expressly exempts drugs in Schedule II.

2. Parties are thus not required under article 30, paragraph 2, subparagraph (a) to prevent the accumulation of excessive quantities of drugs in Schedule II and their preparations¹ in the possession of retail traders, retail distributors and of State enterprises or their divisions engaged only in the retail trade or retail distribution.²

3. They are also not bound under article 30, paragraph 2, subparagraph (b), clause (i) to require medical prescriptions for the supply or dispensation of drugs in Schedule II and their preparations¹ to individuals, and under clause (ii) of that paragraph they are not obligated to require the use of official forms in the shape of counterfoil books for medical prescriptions of these drugs and preparations¹ even if they consider such a measure “necessary

¹ And of preparations in Schedule III, whether or not containing drugs in Schedule I or II; article 2, paras. 3 and 4.

² As regards some supervisory measures concerning the quantities of drugs in Schedule II held by retail outlets, see above, comments on article 30, para. 2, subpara. (a).

or desirable". Finally, Parties need not, under article 30, paragraph 5, require that packages (bottles or other containers) holding drugs in Schedule II or their preparations,³ which are offered for sale or sold in the retail trade,⁴ should have labels showing the exact drug content by weight or percentage.

4. As regards the suggestion that an understanding exists among Parties to the Single Convention that retail traders (pharmacists) need not under article 34, paragraph (b) keep records of individual disposals of drugs in Schedule II and their preparations,¹ see above, comments on article 2, paragraph 2.

5. It may again be pointed out in this connexion that, apart from the provisions just mentioned, all rules of the Single Convention governing drugs in Schedule I also apply to drugs in Schedule II, while under the earlier narcotics régime the whole retail trade in drugs in Group II of the 1931 Convention, that is, in those drugs corresponding to drugs in Schedule II of the Single Convention, was exempted from control. The retail trade in drugs in Group II could even be carried on by unlicensed businesses.⁵ Attention may be invited here to article 39, which provides *inter alia* that the Single Convention does not preclude a Party from requiring that preparations in Schedule III and drugs in Schedule II be subject to all or some of the control measures which are applicable to drugs in Schedule I, but from which these preparations or the drugs in Schedule II are respectively exempted.

6. See also above, comments on article 2, paragraph 2 and on article 30, paragraph 2, subparagraphs (a) and (b) and paragraph 5.

³ Or preparations in Schedule III, whether or not containing drugs in Schedule I or II; article 2, paras. 3 and 4.

⁴ Or given out in the course of retail distribution.

⁵ Article 13, para. 2 of the 1931 Convention and article 1, para. 4 of the 1948 Protocol; see also *Commentary* on the 1931 Convention, para. 135, p. 174. Article 19 of the 1931 Convention applies, however, to the retail trade in drugs in Group II.

Article 31

SPECIAL PROVISIONS RELATING TO INTERNATIONAL TRADE

General comments

1. As mentioned elsewhere,¹ the international trade in drugs is controlled not only by the special provisions of article 31, but also by those of article 30 which can be applied to it. The provisions of article 30, paragraph 1, subparagraph (b), clause (ii), paragraph 2, subparagraph (a) and paragraphs 3, 4 and 5, although not repeated in article 31, thus govern also the international trade; see therefore the above comments on those provisions.

2. As regards the relationship between article 30, paragraph 1, subparagraph (a) and article 31, paragraph 3, subparagraph (a), see below, comments on that subparagraph of article 31.

3. The provisions of paragraphs 4 to 16 reproduce in substance, and often in very similar language, the system of import certificates and export authorizations introduced by chapter V of the 1925 Convention.

¹ See above, general comments on article 30, see also *Records*, vol. I, p. 72 and vol. II, p. 135.

Paragraph 1

1. The Parties shall not knowingly permit the export of drugs to any country or territory except:

(a) In accordance with the laws and regulations of that country or territory; and

(b) Within the limits of the total of the estimates for that country or territory, as defined in paragraph 2 of article 19, with the addition of the amounts intended to be re-exported.

Commentary

1. The paragraph under consideration establishes two legal obligations of Parties: (1) not knowingly to permit the export of drugs except in accordance with the laws and regulations of the importing country or territory (subparagraph (a)); and (2) not knowingly to permit exports of drugs which would exceed the import limits of the importing country or territory as defined in subparagraph (b).

2. As regards the first of these obligations, the implementation of subparagraph (a) will generally not cause any practical difficulties. The exporting Parties will normally be in a position to know the relevant laws and regulations of the importing countries and territories, since they should receive them from the other Parties to the Single Convention through the

intermediary of the Secretary-General of the United Nations pursuant to article 18, paragraph 1, subparagraph (b).¹ But there is of course an interval between the time at which the laws and regulations are promulgated and the moment at which they reach the authorities of the exporting Parties; moreover, the Government of the importing country or territory concerned may not have forwarded the legislative texts involved to the Secretary-General as provided in the subparagraph just mentioned.

3. The task of exporting Parties under article 31, paragraph 1, subparagraph (a) is generally made very easy by the rules of the import certificate and export authorization system.² Under this system, the export of drugs and their preparations (other than preparations in Schedule III) may not be authorized unless the person or the establishment applying for such an authorization produces an import certificate, issued by the authorities of the importing country or territory concerned and confirming that the importation of the drugs in question has been approved. An exporting Party is of course in principle entitled to assume that the import certificate of the competent authorities was granted in full compliance with their own laws and regulations. Such a Party, when relying on an import certificate, will hardly ever be held to have acted contrary to the requirement of subparagraph (a). Hypothetically, however, there might occasionally be some exceptions. The conditions surrounding a particular case of application for an export authorization may be such as to make it quite obvious that the import certificate, although issued by the competent authorities, was nevertheless granted in clear violation of the laws and regulations of the importing country or territory involved. Such a case may arise, for example, if the shipment would be sent to a notorious illicit trafficker.

4. Two special cases may, however, be mentioned in which difficulties may arise. The first may arise from the facts that the Single Convention does not provide for import and export authorizations of international shipments of preparations in Schedule III;³ but that some Governments require such authorizations for all or some of these preparations.⁴ The national laws prescribing them must of course be respected by the exporting Parties under article 31, paragraph 1, subparagraph (a) if they are aware of them. The Parties must not “knowingly” act contrary to the provision of this subparagraph. It is therefore suggested that the Governments of the importing countries or territories concerned should specially call the attention of those Parties from which they normally import preparations in Schedule III to their requirement of import authorizations in order to ensure international respect for their legislation. It will be noted that article 31, paragraph 1, subparagraph (a) applies to preparations in Schedule III, since neither article 2, paragraph 4, nor article 31, paragraph 16 exempts them from this provision.

5. Another case which may cause difficulties in implementing subparagraph (a) is that in which Governments require that international shipments

¹ See also the references to other treaty provisions in foot-note 1 to the comments on that subparagraph.

² Laid down in article 31, paras. 4-16.

³ Article 31, para. 16; see also article 2, para. 4

⁴ Article 39.

of drugs should be accompanied not only by a copy of the export authorization—as provided by article 31, paragraph 6—but also by a copy of the import certificate or authorization. It is suggested that such Governments indicate their special requirement in the import certificates or authorizations that they issue.

6. The international narcotics régime preceding the Single Convention did not contain a provision corresponding to that of article 31, paragraph 1, subparagraph (a). It is, however, evident that the authorization of exports of drugs and their preparations in conscious violation of the legislation of the importing country or territory would in any case hardly be compatible with the principles which should govern friendly international relations, whatever may be its formal legal position.

7. As regards the obligation of subparagraph (b), the Board requires that in computing “the total of the estimates” referred to in article 31, paragraph 1, subparagraph (b), not only the elements mentioned in article 19, paragraph 2,⁵ which are added into this total, but also the deductions referred to in paragraph 3 of article 21, must be taken into account.⁶

8. There is also the deduction required under article 21, paragraph 2, that is, the deduction of the quantity that has been seized and has been released for licit use in the year to which the estimates refer, and of the amount taken in that year from “special stocks” for the requirements of the civilian population; but the statistical data on seized drugs released for licit use, and on the drugs withdrawn from “special stocks” for normal civilian use, are required to be furnished to the Board by Governments only by 30 June of the year following that to which the estimates relate.⁷ The deductions required by article 21, paragraph 2 are therefore normally not known to the exporting Parties, and therefore cannot be taken into account by them in computing the import limits in accordance with article 31, paragraph 1, subparagraph (b).

9. Article 21, paragraph 3 also requires the deduction from the total of the estimates of the quantities which the countries or territories concerned have acquired by manufacture or import, or both, in excess of their supply limits, as defined in article 21, paragraphs 1 and 2, in the year preceding that to which this total relates; but an exporting Party can make the required deduction for the purposes of the subparagraph under consideration only if it knows its amount, that is, only after it has learned the figure in question from the publications of the Board. This organ publishes⁸ in its four quarterly addenda to its

⁵ I.e., the estimated quantities of drugs to be consumed domestically for medical and scientific purposes, the estimated quantities of drugs to be utilized for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by the Single Convention, the estimated amounts required for bringing the actual stocks at hand at 31 December of the preceding year to the level to be held as at 31 December of the year to which the estimates relate and the estimated quantities necessary for addition to “special stocks”.

⁶ See e.g., table 1 in *Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium in 1970*, document E/INCB/6, United Nations publication, Sales No. 70.XI.1 and in the four addenda to this document.

⁷ Article 20, para. 2, subpara. (a) and comments on article 20, para. 4.

⁸ At the time of this writing; see article 12, para. 6 and article 15, para. 1 and the comments on these provisions.

annual document entitled "Estimated World Requirements of Narcotic Drugs and Estimates of World Production of Opium" ⁶ the amounts to be subtracted and the "total of the estimates" as reduced by the deductions; it needs for this computation most of the statistical data ⁹ to be furnished by Parties pursuant to article 20 concerning the year preceding that to which the totals of the estimates relate. In view of the dates by which these figures are due to be furnished to the Board under the terms of the Single Convention, ¹⁰ and of the tardiness of a number of Governments in furnishing this information, the Board is able in respect of many countries and territories to make and publish the required deductions only late in the year for which the reduced totals are to be calculated, and sometimes even only after the end of that year. The exporting Parties are therefore very often not in a position to take these deductions into consideration for the purpose of implementing article 31, paragraph 1, subparagraph (b).

10. Considerable difficulties may also arise from applying the provision of this subparagraph which requires that "the amounts intended to be re-exported" should be added. It will very often be extremely difficult for an exporting Party to know what amounts the importing country or territory intends to re-export. It would therefore be very helpful in this connexion if the authorities of the importing country or territory indicated in the import certificates that they issue the quantities that they intend to re-export.

11. While subparagraph (b) expressly permits the addition only of those amounts which are intended for *re-export*, it is suggested that it would be compatible with the spirit and the aims of the Single Convention to allow the addition not only of those quantities, but more generally of all amounts which are to be exported. This consideration is based on those provisions of the Single Convention which for the purpose of calculating the supply limits of a country or territory provide for the addition of all amounts actually exported, and not only of those which were *re-exported*. ¹¹ It may moreover be mentioned that when considering article 31, paragraph 1, subparagraph (b), the Plenipotentiary Conference had in mind article 12, paragraph 2 of the 1931 Convention. ¹² This provision of the Convention provides for the addition of all amounts exported, and not only of those re-exported, in the calculation of the import limits of each country and territory. ¹³

12. The value of article 31, paragraph 1, subparagraph (b) as a means for ensuring the limitation of the narcotics supplies of an importing country or territory to the quantities allowed under the terms of the Single Convention ¹⁴ is also affected by the fact that an exporting Party will generally not know the quantities which other exporting Parties may have shipped to the importing country or territory in the year to which the total of the estimates

⁹ I.e. on manufacture, utilization of drugs for the manufacture of other drugs, preparations in Schedule III and substances not covered by the Single Convention, consumption, import and export, seized drugs released for licit use, stocks and drugs withdrawn from "special stocks" for the requirements of the civilian population.

¹⁰ Article 20, para. 2.

¹¹ Article 21, para. 1, subpara. (c) and para. 4, subpara. (a).

¹² *Records*, vol. I, page 34 and vol. II, p. 135.

¹³ See also article 14, para. 2 of the 1931 Convention.

¹⁴ Article 4, para. (c); article 21, paras. 1-3.

and more generally the limits provided in this subparagraph relate. The relevant data on the international trade are published by the Board only after the end of that year, and cannot therefore be taken into account in time by exporting Parties for the purposes of the subparagraph under consideration. The Board, however, by resorting to the provisions of article 21, paragraph 4, can take measures by which the export of all countries or territories can be taken into account in ensuring the observance of the import limits of an importing country or territory. See above, comments on that paragraph.

13. The narcotics régime preceding the Single Convention did not impose on exporting Parties an express obligation to respect the import limits of an importing country or territory, except when required to do so by the Permanent Central Board pursuant to article 14, paragraph 2 of the 1931 Convention.¹⁵ Only the importing Parties were bound by an explicit legal obligation to observe their own import limits.¹⁶ The Permanent Central Board, however, expressed the view that it would be in accordance with the spirit of the 1931 Convention if each exporting Party would give heed to the import limits of the importing countries or territories.¹⁷

14. The term "territory" is used as defined in article 1, paragraph 1, subparagraph (y).¹⁸ It may be noted that while article 31, paragraph 1, subparagraph (a) applies to exports of preparations in Schedule III, subparagraph (b) does not.¹⁹

15. See also above, comments on article 19, paragraph 2 and on article 21, paragraphs 2 and 3.

¹⁵ Article 14, para. 2 of the 1931 Convention corresponds to article 24, para. 4 of the Single Convention.

¹⁶ Article 12, para. 2 of the 1931 Convention; as regards the observation of the manufacturing limit, see article 6, para. 1 of that Convention.

¹⁷ *Commentary* on the 1931 Convention, para. 122, p. 164; League of Nations document C.364.M.185.XI, p. 3.

¹⁸ See above, comments on that subparagraph.

¹⁹ Article 2, para. 4 and article 31, para. 16.

Paragraph 2

2. The Parties shall exercise in free ports and zones the same supervision and control as in other parts of their territories, provided, however, that they may apply more drastic measures.

Commentary

1. This paragraph reproduces the substance of article 14 of the 1925 Convention. The control of shipments of narcotic drugs over borders is generally entrusted to the organs of the customs administration. Only a very limited supervision, if any, is normally exercised over shipments of goods from abroad into free ports and free zones, or from such ports or zones to foreign countries. Such limited control or lack of control would make it possible for illicit traffickers to use free zones or free ports as convenient places of depot of their contraband goods, and to smuggle drugs over uncontrolled

or insufficiently controlled border lines. In fact, the conditions normally existing in free zones and free ports not only require the application of those measures which Governments generally adopt for the control of narcotic drugs, but might even call for more drastic arrangements. It is this possible need for increased watchfulness which caused the authors of the Single Convention¹ to include a specific provision that the Parties “may apply more drastic measures” in free ports and free zones, although Governments could of course do this even without such an express treaty provision and although article 39 generally provides that nothing contained in the Single Convention should preclude a Party from adopting more strict or more severe control measures than those required by that treaty.

2. The term “their territories” as used in the context of paragraph 2 may also mean “the areas under their control”.²

¹ Like the authors of the second para. of article 14 of the 1925 Convention.

² See above, comments on article 1, para. 1, subpara. (y).

Paragraph 3, subparagraph (a)

3. The Parties shall:

(a) Control under licence the import and export of drugs except where such import or export is carried out by a State enterprise or enterprises.

Commentary

1. It has been stated above that article 30 governs not only domestic trade, but trade in general, and that those of its provisions which can be applied to the international trade apply to that trade.¹ If article 31 did not contain paragraph 3, subparagraph (a), then article 30, paragraph 1, subparagraph (a) would govern international as well as domestic trade. The inclusion in article 31 of a specific provision requiring the licensing of the international trade in drugs except when carried on by a State enterprise or State enterprises must, however, lead to the conclusion that a licence to trade in or distribute drugs, under the terms of the Single Convention as stated in article 30, does not include the right to engage in the international trade. Under the Convention, the only traders in drugs other than State enterprises who are authorized to carry on the international trade in drugs are those who have obtained from their Governments a special licence to that effect.² Such a licence need not be a separate document, and may be included in the text of the licence to engage in the trade in drugs. It need not be called “licence” in the municipal legislation concerned, nor be designated by any corresponding term in other languages. It must, however, in any case be a written or printed authorization to carry on the international trade in drugs.³

¹ See above, general comments on article 30 and on article 31.

² The “rule of effectiveness” is one of the considerations which has led to this conclusion; A. McNair, *The Law of Treaties*, Oxford, Clarendon Press, 1961, pp. 383-392.

³ See also above, comments on article 29, para. 1 and on article 30, para. 1, subpara. (a).

2. Moreover, there will be hardly any cases in which an importer does not sell at least a part of his imported drugs on the domestic market, or in which an exporter does not obtain from domestic sources at least a portion of the goods which he needs for his export shipments. International traders will thus generally also be engaged in domestic trade, and unless they are State enterprises, will require an authorization to trade in drugs, including expressly the right to carry on the international trade.

3. A State enterprise does not need a "licence" to engage in the international trade in drugs; but it is submitted that it would be wrong to conclude that under the terms of subparagraph (a) any State enterprise, whatever its nature, is entitled to carry on the business of importing and exporting drugs. Only those State enterprises or divisions of State enterprises would be entitled to do so which are given this task by the national authorities concerned. It is suggested that State enterprises or their divisions should be granted this function only if they are also entitled to engage in the domestic trade in or distribution of drugs. In selecting State enterprises or their divisions for the function of international trade in drugs, the national Government concerned must of course take into account considerations of control similar to those which must guide Governments in issuing to private businesses licences to carry on the international trade in drugs.⁴

4. In order to be able to fulfil their obligation to limit to the quantities prescribed by the Single Convention the narcotics supplies which they may obtain by manufacture or import or both,⁵ Governments must be in a position to determine the amount of each drug which may be imported in a given year, and if they obtain part or all of their supplies by import, they must allocate to individual authorized importers quotas from the total quantities to be imported. Such allocations may also quite frequently have to be modified during the course of the year in question. It is suggested that it would facilitate this task of the Governments if the number of enterprises engaged in the international trade in drugs was reduced to a minimum, or at least was rather small. The requirement of the subparagraph under consideration that the international trade in drugs should be restricted only to State enterprises or businesses specially licensed to that effect makes it possible for Governments to follow such a policy of numerical limitation. The national authorities should to this end also have a considerable degree of discretion in issuing, refusing, modifying and revoking international trade licences or—as the case may be—assignments of the function of international trade to State enterprises. Such licences or assignments should also specifically indicate the drugs in which the international trade is authorized, since separate supply limits have to be computed for each drug under the terms of the Single Convention.⁵

5. Paragraph 3, subparagraph (a) applies to drugs and their preparations other than preparations in Schedule III. Paragraph 16 of article 31 exempts preparations in that Schedule from the obligatory application of paragraph 3.⁶ Unfortunately, however, the English version of article 2, paragraph 4, which

⁴ See above comments on article 29, para. 1 and on article 30, para. 1 subpara. (a).,

⁵ Article 21, paras. 1-3.

⁶ The English, French and Spanish texts of paragraph 16 agree on this point.

summarizes the régime to be applied to such preparations, does not exempt them from article 31, paragraph 3, and is therefore on this point inconsistent with paragraph 16 of article 31 of the English text. The French and Spanish texts of article 2, paragraph 4, on the other hand, are in accord with article 31, paragraph 16 in those languages, and exempt these preparations from article 31, paragraph 3. It is submitted that the omission of article 31, paragraph 3 from the English version of article 2, paragraph 4 was made in error, and that the authors of the Single Convention did not wish to subject preparations in Schedule 3 to the provision of article 31, paragraph 3. Article 2 is intended to give a synopsis of the various régimes applicable to different groups of drugs and preparations.⁷ Where a difference exists between this synopsis and the articles describing the régime in question, preference must be given to those latter articles. There are also other divergences between article 2 and the régimes defined in other articles.⁸ The suggested preference given to article 31, paragraph 16 is also supported by the fact that the omission from article 2, paragraph 4 occurs only in the English and not in the French and Spanish versions. In fact, article 2 as prepared by the Drafting Committee of the Plenipotentiary Conference left blank the spaces for the numbers of the provisions to which reference was made.⁹ The blank spaces were to be filled later in accordance with the decisions of the Conference on provisions to be laid down in other articles.

6. While article 31, paragraph 3, subparagraph (a) thus does not apply to the international trade in preparations listed in Schedule III, article 30, paragraph 1, subparagraph (a) does apply to the trade in such preparations.¹⁰ Only State enterprises made responsible by their Governments for the trade in drugs, and private businesses licensed to engage in the trade in drugs, may therefore carry on the international trade in preparations in Schedule III.

7. The international trade in “preparations for the export of which export authorizations are not required” under the international régime preceding the Single Convention did not under that régime require any licence, even if carried on by a private business and not by a State enterprise. These preparations correspond to those listed in Schedule III of the Single Convention.¹¹

8. Only imports and exports carried out in the course of “trade”, whether carried out by State enterprises or private businesses, are subject to article 31, paragraph 3, subparagraph (a). It is submitted that medical

⁷ *Records*, vol. I, pp. 16 and 17.

⁸ See above, comments on article 2, paras. 6 and 7.

⁹ See e.g. Conference document E/CONF.34/15, *Records*, vol. II, p. 279. The same document containing the blanks in the draft of article 2, provides in its draft of article 42, para. 16 (corresponding to article 31, para. 16 of the Single Convention as finally adopted) for the exemption of preparations in Schedule III from the licensing requirement of para. 3, subpara. (a); *Records*, vol. II, p. 282. See also the draft provisions of Conference document E/CONF.34/21, vol. II, pp. 284 and 288; see also *Records*, vol. I, p. 188.

¹⁰ See above, general comments on article 30 and on article 31.

¹¹ See above, comments on article 2, para. 4 of the Single Convention; see also article 8 in connexion with article 6, second para., subpara. (b) of the 1925 Convention.

practitioners or scientists who import small quantities of drugs for therapeutic or scientific purposes, or patients who import minor amounts for their own medically prescribed use do not need a licence pursuant to subparagraph (a), and neither do scientists who supply fellow scientists in other countries with drugs needed for research purposes. Such non-commercial imports and exports remain, of course, under the effective control of the import certificate and export authorization system laid down in paragraphs 4-15 of article 31.¹²

9. Article 30, paragraph 1, subparagraph (b), clause (ii) also applies to the international trade in drugs, but not to that in preparations.¹⁰ Establishments and premises in which the international trade in drugs, carried on by State enterprises or private businesses takes place, therefore require a licence, that is, must be controlled "under licence".¹³

¹² See also article 30, para. 1, subpara. (c).

¹³ See above, comments on article 30, para. 1, subpara. (b), clause (ii).

Paragraph 3, subparagraph (b)

(b) Control all persons and enterprises carrying on or engaged in such import or export.

Commentary

1. The subparagraph under consideration describes the control which Governments must exercise over the international trade in drugs in the same general terms as those used in article 30, paragraph 1, subparagraph (b), clause (i) in respect of the trade in drugs in general. Its inclusion in article 31 would thus appear to be superabundant. If it had not been included, the equivalent provision of article 30, subparagraph (b), clause (i) would apply to the domestic as well as to the international trade.¹

2. Preparations in Schedule III are excluded from the application of article 31, paragraph 3, subparagraph (b).² It is, however, submitted that this is without practical importance, since article 30, paragraph 1, subparagraph (b), clause (i), which makes the same requirement, must be applied to the international trade in such preparations,¹ and since that requirement would also apply because international trade would normally involve some domestic trade.³

3. For the nature of control to be exercised under article 31, paragraph 3, subparagraph (b), see above, comments on article 30, paragraph 1, subparagraph (b), clause (i).

¹ See above, general comments on article 30 and article 31.

² Article 31, para. 16; see also above comments on article 31, para. 3, subpara. (a).

³ See comments on article 31, para. 3, subpara. (a).

Paragraph 4, subparagraph (a)

4. (a) Every Party permitting the import or export of drugs shall require a separate import or export authorization to be obtained for each such import or export whether it consists of one or more drugs.

Subparagraph (d)

(d) The import authorization may allow an importation in more than one consignment.

Commentary

1. It will be noted that each exported consignment requires a separate export authorization, while an import authorization may allow an importation in more than one consignment. An importer may find that his supplier does not have in stock the whole quantities of drugs which his Government has authorized him to import, and that he must consequently acquire the drugs from his supplier in more than one consignment. Since such a situation occurs not infrequently, the Single Convention, like the 1925 Convention¹ provides that an import authorization may permit an importation in more than one consignment.

2. It follows that in some cases the amount allowed by one import authorization is covered by two or more corresponding export authorizations relating to portions of the authorized import; but a Government issuing an export authorization, which must relate to a single consignment, has to know the quantity which should be permitted to be exported in the particular shipment, and that quantity may be smaller than the total amount whose import is permitted if the corresponding import authorization allows import in more than one consignment. For this purpose the import certificate is used; it is the document which *inter alia* indicates to the Government of the exporting Party the amounts of drugs which it may permit to be exported in a particular consignment. While the import authorization is a document indicating the total amounts of drugs which an individual person, business or State enterprise may import, the import certificate is a document certifying to the Government of the exporting country or territory that a particular person, business or State enterprise is authorized to import given quantities of drugs.² The sums of the quantities of drugs whose approval for importation has been confirmed by two or more import "certificates" relating to the same import "authorization" must not exceed the totals allowed by that authorization.

3. Since a particular import authorization cannot allow importation from more than one exporter,³ all the import certificates relating to the same

¹ Second para. of article 12.

² League of Nations, records of the second Opium Conference held in Geneva, 17 November 1924 to 19 February 1925, League of Nations document C.760.M.260. 1924.XI. vol. II, p. 254 and vol. I, p. 291; see also above, comments on article 18, para. 1, subpara. (d).

³ Article 31, para. 4 (b) describing the required contents of an import authorization prescribes the inclusion of the name and address of the "exporter" and not of "exporters".

import authorization may name as exporter only the one designated in the import authorization.

4. Where the importation is authorized only in one consignment, an authenticated copy of the import authorization can undoubtedly take the place of an import certificate. It is, moreover, submitted that, even when the import authorization permits import in more than one consignment, such copies of the import authorization may also be used as “import certificates” in the procedure under article 31, paragraph 5 in order to obtain the two or more export authorizations required for shipments of portions of the totals permitted. A Government authorizing an importation in more than one consignment may for this purpose issue to the importer an appropriate number of copies of the import authorization involved.

5. In order to be able to regulate the quantities of their narcotics supplies as they are required to do by article 21, paragraphs 1 to 3, Governments may find it advisable to require their importers actually to import the total quantities of drugs that they are permitted to import.

6. Export and import authorizations and import certificates must not be transferable.

7. It may be noted that the Single Convention does not contain a provision corresponding to that of article 18 of the 1925 Convention. It will be recalled that this article provided that if a Party to the 1925 Convention—which introduced the import certificate and export authorization system as an institution of multilateral treaty law—found it impossible to apply any rule of that system to trade with another country by reason of the fact that such country was not a Party to that Convention, such a Party was only bound to apply the provisions of this system so far as circumstances permitted. It has been mentioned elsewhere that Members of the United Nations are bound by the provisions of the Charter to co-operate in the promotion of solutions of problems of drug abuse, even if they have not accepted the relevant provisions of the narcotics treaties, and that the view has been maintained that the basic rules of the international narcotics régime have become rules of customary general international law. The import certificate and export authorization system undoubtedly constitutes one of the basic parts of the international narcotics régime.⁴ If this view is accepted, there remains no reason for any exception from the application of the import certificate and export authorization system like that laid down in article 18 of the 1925 Convention; and the Single Convention, in fact, does not provide for such an exception.⁵

8. The import certificate and export authorization system must also be applied to consignments of drugs which are shipped from one area of a State to another area of the same State but which must cross the territory of another State, unless the drugs are transported by aircraft which does not land in the foreign State.⁶ This follows from paragraphs 5, 6, 10 and 11 of article 31,

⁴ See above, comments on article 14, para. 1, subpara. (a) and the references in foot-note 23 to those comments; see also article 5, article 8, para. (d), article 12, para. 3 and article 13, paras. 2 and 3 and comments on these provisions; see also comments on article 3, para. 7.

⁵ The exception of article 18 of the 1925 Convention was abrogated by article 6, para. 4 of the 1953 Protocol in regard to the international trade in opium.

⁶ Article 31, para. 14 and comments on that paragraph.

which require that each export consignment should be accompanied by a copy of the export authorization, that this authorization should be granted to the exporter only if he produces a corresponding import certificate confirming the approval of the importation of the drug or drugs in question, and that the transit of drugs not accompanied by a copy of the export authorization should not be permitted. A State authorizing such consignments shipped through the territory of a foreign country must therefore treat the two areas in question as different territories or as parts of different territories in the sense of article 1, paragraph 1, subparagraph (y).⁷ It must however be admitted that the formal application of the import certificate and export authorization system to consignments of drugs sent from the main territory of a State to one of its enclaves which is surrounded by another State and located in the border region of the two States may not always be considered to be very practical and that other controls of such movements of drugs may appear to be sufficient, particularly where international agreements limit the control which the foreign State may exercise over the transit of goods shipped from the State to its enclave or vice versa.⁸

9. The two subparagraphs under consideration, like the other provisions of article 31, paragraphs 4 to 15, apply to all drugs⁹ and their preparations¹⁰ other than preparations in Schedule III. The Single Convention follows in this the preceding treaties, which exempted from the application of the import certificate and export authorization system certain preparations corresponding to the preparations in Schedule III, which were referred to as "preparations for the export of which export authorizations are not required".¹¹

10. Export and import authorizations may be granted not only to State enterprises and licensed traders (article 31, paragraph 3, subparagraph (a)), but also to non-licensed scientists for research purposes, to physicians for therapeutic purposes and to individual patients for medically authorized personal use. The quantities involved in such authorizations will, however, be minor.¹²

11. For earlier provisions corresponding to those of article 31, paragraph 4, subparagraphs (a) and (d), see article 12 and article 13, paragraph 1 of the 1925 Convention; see also article 13, paragraph 2 of the 1912 Convention, which however is obsolete and in any event ceased to be in force as between Parties to the 1925 Convention (see article 31 of that Convention).

⁷ See above, comments on that subparagraph.

⁸ See below, comments on article 31, para. 15.

⁹ Article 1, para. 1, subpara. (j).

¹⁰ Article 2, para. 3.

¹¹ Article 2, para. 4 and comments thereon; article 31, para. 16.

¹² See above, comments on article 31, para. 3, subpara. (a).

Paragraph 4 (b) and (c)

(b) Such authorization shall state the name of the drug, the international non-proprietary name if any, the quantity to be imported or exported, and the name and address of the importer and exporter, and shall specify the period within which the importation or exportation must be effected.

(c) The export authorization shall also state the number and date of the import certificate (paragraph 5) and the authority by whom it has been issued.

Commentary

1. It is suggested that, in addition to the information explicitly required by the Convention, the import authorizations and export authorizations should contain such other data as might be useful for:

(a) Achieving the principal aims of the import certificate and export authorization system, which are (i) to prevent diversion of international shipments into illicit channels, and, if necessary, to trace diverted or lost consignments, and (ii) to regulate the quantities of imports and exports as required by the provisions of article 21, paragraphs 1 to 4 and article 31, paragraph 1, subparagraph (b);¹

(b) Facilitating the task of the national control organs in respect to the supervision of the international trade in drugs.

2. In view of the numerous trade names under which drugs and particularly their preparations are offered for sale, it is essential that they should be designated by names by which they can be easily identified by the authorities of the exporting countries and particularly by those of the importing countries. The use of such names might moreover be of considerable convenience to the importers. If an international non-proprietary name exists, its use in the import and export authorizations is therefore mandatory. It must be assumed that it has also to be used in the "import certificate" referred to in paragraph 5.²

3. It appears that the Plenipotentiary Conference was of the opinion that the mandatory use of non-proprietary names in Government documents, which would not be published, would not give rise to the legal difficulties which might result, as a consequence of possible conflicts with national laws for the protection of trade names,³ from an obligatory use of such names in advertisements and the commercial literature and on the interior wrappings and labels referred to in article 30, paragraph 3.

4. The Single Convention does not state by whom and by what method international non-proprietary names are to be determined for the purposes of article 31, paragraph 4, subparagraph (b). With reference to article 30, paragraph 3 it is, however, submitted that the non-proprietary names "communicated by the World Health Organization" pursuant to that provision are

¹ See also article 14, paragraph 2 and article 31, paragraph 1, subparagraph (a).

² See above, comments on paragraph 4, subparagraphs (a) and (d).

³ See above, comments on article 30, paragraph 3.

also the ones to be used under article 31, paragraph 4, subparagraph (b). It has been suggested in the comments on that paragraph of article 30 that the World Health Organization should communicate to the Secretary-General of the United Nations the international non-proprietary names of drugs⁴ which it selects.⁵ As has also been proposed in these comments, the Secretary-General should in his turn forward this information to all Parties to the Single Convention and to all non-Parties whose co-operation in this matter he might find desirable, in order to enable those Governments to carry out the provisions of the Single Convention concerning non-proprietary names.⁶

5. It is suggested that if the drug in question has no "international non-proprietary name" its generic name (common or chemical) should be given, preferably the one used in the national legislations of the importing and exporting countries, and if this legal name differs in those two countries, the designations used in the laws of both countries should be indicated. There is of course no objection to using trade names in addition.

6. Subparagraph (b) describes the mandatory data which must be included in import and export authorizations as well as in "import certificates". Subparagraph (c) states the information which an export authorization must contain in addition to that provided for in subparagraph (b).⁷

7. While a single document (import or export authorization or import certificate) may relate to more than one drug, it may list only one exporter and only one importer, whether a State enterprise, private trader, physician, scientist or patient.⁸ The corresponding import and export authorizations must name the same importer and exporter. An import certificate must always indicate the same importer and exporter as the import authorization to which it relates.⁸

8. All these documents must of course name the authorities by which they were issued. The export authorization must in addition identify the authority which issued the import certificate on which the authorization is based pursuant to article 31, paragraph 5. It must indicate the number and date of the certificate in order to facilitate the identification of that document. Parties must furnish to the Secretary-General of the United Nations the names and addresses of the Government authorities which are empowered to issue import and export authorizations and import certificates. The Secretary-General forwards this information to Governments.⁹ The quantities should be given in terms of the decimal system (metric tons, kilograms and grams), because other units of weight used in one of the two countries engaged in an international transaction may not be widely known, or may sometimes have a different meaning in the other country.

⁴ Article 1, paragraph 1, subparagraph (j).

⁵ As regards the procedure of the World Health Organization for the selection of non-proprietary names of drugs, see above, comments on article 30, para. 3.

⁶ I.e. article 30, para. 3 and article 31, para. 4, subpara. (b).

⁷ For additional information to be included in an "import certificate" and in an export authorization, see also article 31, para. 9.

⁸ See above, comments on article 31, para. 4, subparas. (a) and (d) and on para. 3, subpara. (a).

⁹ Article 18, para. 1, subpara. (d) and comments thereon.

9. It would facilitate the tasks of the control authorities if the period during which the importation or exportation must be effected is not too long. It was suggested in the League of Nations Model Code that it would generally be appropriate to limit the time for importation to three months, and the time for exportation to two months. A number of countries, however, issue export and import authorizations which are valid for a period of six months, and have adopted the practice of prolonging this period if required for the execution of the authorized transactions. When determining the duration of the validity of an export authorization or prolongation of that duration, the Government must be guided by the consideration that the drugs in question should not be permitted to be exported at such a late time as to arrive in the importing country or territory after the end of the duration of the validity of the corresponding import certificate (import authorization).¹⁰ An exporter asking for extension of the time of validity of an export authorization must be required to produce to his competent authorities a revised import certificate (or a copy of the revised import authorization) or other official documentary evidence showing a corresponding prolongation of the validity of the import authorization involved.

10. Other data which have been suggested for inclusion in the documents involved are: the profession, business or status¹¹ of the importer and exporter, the numbering and marks of the packages containing the exported drugs, the customs office through which the goods are to enter or leave the country, the means of transportation and the route to be followed.¹² Import and export authorizations may also impose special conditions.¹³ Those prescribed by the export authorization may be in addition to these contained in the corresponding import certificate or import authorization, but should not be incompatible with the latter.

11. It has also been suggested¹² that a duplicate of the export authorization should be sent to the customs house through which the drugs are to be exported, and a duplicate of the import certificate (or of the import authorization used as "import certificate")¹⁴ to the customs house through which the importation is to pass. This is in fact the practice of a number of countries.

12. As regards the indication in the import certificate (import authorization) and in the export authorization of an export to a bonded warehouse, see below, article 31, paragraph 9.

13. For earlier treaty provisions regarding the contents of the export authorization and of the import authorization ("import certificate"), see article 12 and article 13, paragraphs 1, 3 and 7 of the 1925 Convention.

¹⁰ Part II, chapter III, para. 11. The import certificate and export authorization system of the 1925 Convention is substantially the same as that laid down in article 31, paras. 4-15 of the Single Convention.

¹¹ E.g. whether a "State enterprise".

¹² Model Code, part II, chapter III, para. 12.

¹³ See Model Form of Import Certificate approved by the Commission on Narcotic Drugs, pursuant to article 31, para. 5, item 1 (*d*); document E/NR.FORM/Rev.2, annex III.

¹⁴ See above, comments on para. 4, subparas. (*a*) and (*d*).

Paragraph 5

5. Before issuing an export authorization the Parties shall require an import certificate, issued by the competent authorities of the importing country or territory and certifying that the importation of the drug or drugs referred to therein, is approved and such certificate shall be produced by the person or establishment applying for the export authorization. The Parties shall follow as closely as may be practicable the form of import certificate approved by the Commission.

Commentary

1. Paragraph 5 contains two different provisions, one—in the first sentence—to ensure that only such exports are authorized as are approved by the importing country or territory¹ involved, and another—in the second sentence—to ensure that the authorities of the exporting country or territory learn from the authorities of the importing country the data which are required for their decision on applications for the authorization of exports of drugs.

2. It is essential for the effective functioning of a national narcotics régime that it should not be impeded by lack of control or defective control in other countries, or by actions of those countries which would interfere with its arrangements. It is because of this basic requirement of international narcotics control that paragraph 5 authorizes only such exports of drugs as are approved by the importing countries or territories involved.² The exporter applying for an export authorization must therefore produce to the competent department of his Government an “import certificate” issued by the authorities of the importing country or territory, which certifies that the import of the drug or drugs referred to in that document has been approved. The authorities of an exporting country or territory must not authorize any export of drugs unless such a certificate is produced to them. The exporter must receive from the importer this certificate, or a duplicate of the import authorization which may be used as an “import certificate” for the purpose of paragraph 5.³ The importer must therefore obtain from his authorities not only an “import authorization”, but also an “import certificate”, or in its place an additional copy of the import authorization which can be used by the exporter as “import certificate” in the sense of this term in paragraph 5.³ The word “person”, as employed in the paragraph under consideration, refers to individuals such as individual businessmen or scientists who may wish to export drugs, and the term “establishment” refers to state enterprises, divisions of State enterprises, corporate bodies including co-operatives, or partnerships.⁴

¹ For the meaning of “country or territory” see above comments on article 1, para. 1, subpara. (y).

² See also article 31, para. 1.

³ As regards the use of an authenticated copy of the import authorization as “import certificate” for the purposes of para. 5, see above, comments on article 31, para. 4, subparas. (a) and (d).

⁴ See also comments on article 31, para. 3, subpara. (a) and para. 4, subparas. (a) and (d).

3. It will be noted that article 31, paragraph 9 also employs the term “import certificate”.⁵

4. The “import certificate” as approved by the Commission on Narcotic Drugs at the time of this writing is reproduced in United Nations document E/NR.FORM/Rev. 2.⁶ The use of the form ensures that the Government of the exporter will obtain the essential data which it needs for its consideration of an application for an export authorization. The form, as in force at present, requires an indication of the name, address and business of the importer and of the name and address of the firm in the exporting country from which the drugs are to be obtained, an exact description and an indication of the amounts of the drugs to be imported, including their international non-proprietary names if any, an indication of special conditions whose observation may be required by the authorities of the importing country or territory, an indication of the purposes other than medical or scientific purposes for which the importation is to be made, an indication of the duration of validity of the document and a certification by the competent authority that the importation has been approved. In the case of poppy straw⁷ to be imported for other than medical or scientific purposes, the authorities of the importing country or territory are required by the terms of the form to confirm that the importation is to be made “for legitimate purposes”.⁸

5. The English words “shall follow as closely as may be practicable the form” are unfortunately rendered in the French and Spanish texts by words which have a somewhat different meaning, namely in French by “*se conformeront autant que faire se pourra au modèle*” and in Spanish by “*se ajustarán en la medida de lo posible al modelo*”. This difference may however in practice be of very little importance. There may be, in the matter of using the form of import certificate approved by the Commission, very little difference between what is not possible and what is only not practicable.⁹

6. See also above, comments on article 31, paragraph 1, subparagraph (a). For an earlier provision corresponding to article 31, paragraph 5, see article 13, paragraph 2 of the 1925 Convention; see also article 13, paragraph 7 of and the Annex to that Convention.

⁵ See below, comments on that paragraph.

⁶ As annex III; the form is also reproduced in annex I to United Nations document E/CN.7/484/Rev.1. Document E/NR.FORM/Rev.2 also containing the Form of Annual Reports, the Form of Reports on Illicit Narcotics Transactions and Seizures, and a Questionnaire on the Manufacture of Narcotic Drugs is at the time of this writing annually communicated to Governments by the Secretary-General of the United Nations; a “Model Form of Import Certificate” is also annexed to the 1925 Convention.

⁷ Article 25, para. 2.

⁸ A “Model of Export Authorization” has also been drafted and approved by the Commission on Narcotic Drugs; see annex II of document E/CN.7/484/Rev.1. This form provides, however, for a possible authorization of an export in two or more consignments, contrary to the provisions of the Single Convention (and of the 1925 Convention).

⁹ The first line of the Spanish text of para. 5 also uses somewhat inconsistently the words “*un permiso*” for “*una autorización*”; see para. 4.

Paragraph 6

6. 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 territory.

Paragraph 7, subparagraph (c)

(c) If a lesser quantity than that specified in the export authorization is actually exported, the quantity actually exported shall be stated by the competent authorities on the export authorization and on any official copy thereof.

Commentary

1. These provisions reproduce in substance those of article 13, paragraphs 4 and 6 of the 1925 Convention. They are intended to guard against diversion of international shipments of drugs into illicit channels. The accompanying export authorization should enable the control officers concerned (customs officers and others) to ascertain the legitimacy of the shipment, and to give particular attention to protecting the shipment against pilferage during its transportation. The Single Convention does not prescribe the particular mode in which the copy of the export authorization should accompany the consignment. The Plenipotentiary Conference which adopted the 1925 Convention containing the same provision appears to have understood that "the usual procedure would be, in the case of consignments sent by sea, that the copy should be handed to the captain or other responsible officer of the ship, and in the case of goods sent overland by train, to the responsible railway official in charge of the goods."¹ If this strict view were followed, the copy of the export authorization would have to be handed to the pilot in the case of shipments by air. It is, however, submitted that it might often be difficult in practice to carry out these ideas of the Conference of 1925. It will be sufficient under paragraph 6 to enclose in or attach to the consignment the copy of the export authorization in the same way as other documents required for customs clearance.

2. The copy of the export authorization, which must be sent by the Government of the exporter to the Government of the importer, enables the latter Government to verify whether the total quantities of drugs included in the consignment involved have arrived at the authorized address. Since under the Single Convention and under corresponding national legislations the quantities of drugs actually exported must never be larger, but may be smaller, than those permitted by the export authorization concerned, paragraph 7, subparagraph (c) requires the authorities of the exporting country or territory to state on the export authorization, and on all official copies of the authorization, the amounts actually exported if lesser quantities than those authorized are in fact exported. If the Government of the exporter has

¹ Report of Sub-Committee E of the Second Opium Conference held in Geneva November 17, 1924 to February 19, 1925, records of the Conference, vol. I, p. 484, League of Nations, document C.760.M.260.1924.XI. It has also been suggested that if consignments are sent by post, the postal authorities should place the papers accompanying the shipments (including the copy of the export authorization) at the disposal of the customs office of export; Model Code, part II, chapter III, para. 16.

already sent to the Government of the importer a copy of the authorization which does not indicate the reduced quantities, it must without undue delay dispatch to the latter Government a revised copy stating the quantities actually exported.

3. The competent authorities of the exporting country or territory should send the copy of the export authorization direct to those of the importing country or territory. They should if possible avoid diplomatic channels for this purpose, so as to speed up the receipt of the copy by the technical officials directly concerned, and thus to make easier any required investigation of an eventual loss or diversion of the consignment or of parts of its contents. While paragraph 6 requires only that "a copy of the export authorization shall accompany" an international consignment of drugs, a number of Governments require that two copies should be attached to the shipment. One copy is in such cases retained by the customs office of the place of exit, which records on this document relevant information such as the fact that the export has actually taken place, or that a smaller quantity than that permitted by the export authorization was included in the shipment. The customs office returns this copy to its national authorities concerned with the control of the international trade in narcotic drugs, while the other copy continues to accompany the shipment as required by paragraph 6. It is suggested that a third copy accompanying the shipment could in such a case be retained by the customs office of the place of entry into the importing country or territory, used for recording the fact of importation, the quantities of drugs contained in the shipment and other relevant data, and then transmitted to its competent supervisory authorities.

4. As has been mentioned elsewhere,² some Governments send in advance a duplicate of the export authorization to the customs office of the place of exit, which may use this document for recording the relevant data and send it back to its narcotics control office.

5. In accordance with practices such as those just mentioned or under other procedures, the customs bureau of the place of export will have a record of the essential circumstances of the exit of drugs, and in particular also will have a record showing cases when a lesser quantity than that permitted by the export authorization involved has left its country or territory, and will accordingly inform the supervisory office concerned. The Government of the exporter will thus in any event be in a position to carry out its obligation under paragraph 7, subparagraph (c). But if the Government learns only from its customs authorities that lesser amounts than those authorized have in fact been exported, it may quite often obtain this information rather late in the procedure. It may at this time actually already have sent to the Government of the importer a copy of the export authorization without a statement of the reduced export. As stated above, it would in such a case have to send another copy of the export authorization revised to include the required statement. It would therefore be helpful if the exporter is obligated to inform his competent supervisory authorities without delay of the fact that he has despatched smaller quantities than he was permitted to do, and to have those

² See above, comments on article 31, para. 4, subparas. (b) and (c).

authorities enter on his export authorization and on all official copies, if any, of the authorization in his possession the amounts actually exported.

6. As regards compliance of exporters with the law of an importing country or territory requiring that international shipments of drugs should also be accompanied by copies of the import certificates (import authorizations),³ see above, comments on article 31, paragraph 1, subparagraph (a).

7. For other references to the requirement that international consignments of narcotic drugs should be accompanied by a copy of the export authorization, see below, article 31, paragraphs 10 and 11.⁴

³ See above, comments on article 31, para. 4, subparas. (a) and (d).

⁴ The use of the word "*permiso*" for the word "*autorización*" in the Spanish text of para. 6 and para. 7, subpara. (c) may be noted; see also para. 4 ("*autorización*") and para. 5, para. 7, subpara. (a) and paras. 8, 9, 10, 11 and 12 ("*permiso*").

Paragraph 7, subparagraphs (a)¹ and (b)

(a) The Government of the importing country or territory, when the importation has been effected or when the period fixed for the importation has expired, shall return the export authorization with an endorsement to that effect, to the Government of the exporting country or territory.

(b) The endorsement shall specify the amount actually imported.

Commentary

1. The two subparagraphs under consideration reproduce the provisions of article 13, paragraph 5 of the 1925 Convention. They require the authorities of the importing country or territory to verify whether the consignment has arrived, to determine the quantities which have actually been imported and to state the results of this examination in an endorsement of the copy of the export authorization which they have received from the authorities of the exporting country or territory pursuant to paragraph 6, and which, with such endorsement, they must return to those authorities. They must also in the same way inform the Government of the exporter that the period fixed for the importation has expired without arrival of the consignment involved. It is submitted that the Government of the importer should not only comply with these express provisions of subparagraphs (a) and (b), but also more generally verify whether the shipment was carried out in accordance with the terms of the documents authorizing it. It has been mentioned above that the terms of the export authorization must not be incompatible with those of the import certificate (import authorization)² although the former may contain conditions in addition to those imposed by the document authorizing the importation.³

¹ As regards the Russian text of subpara. (a) see United Nations, *Treaty Series*, vol. 557, p. 280, corrigendum.

² See above, comments on article 31, para. 4, subparas. (a) and (d).

³ See comments on article 31, para. 4, subparas. (b) and (c).

2. It is suggested that the endorsed copy of the export authorization should without any undue delay be returned to the Government of the exporting country. It should be sent by the competent authorities of the importer direct to those of the exporter. If possible, diplomatic channels should not be used for this transmission.⁴ Quick information of the authorities of the exporting country or territory under the terms of the two subparagraphs under consideration is important, because *inter alia* it facilitates their co-operation in the investigation of possible illicit diversion of all or part of the international consignment concerned.

3. The Convention does not indicate the manner in which the Government should obtain the information which it requires for its endorsement of the export authorization. The practice of Governments differs on this point. They can and do obtain the required data from the customs bureaux of the places of entry. The implementation of the import certificate and export authorization system, particularly the requirement of an accompanying copy of the export authorization, enables the customs offices concerned to verify in each case whether an entry or exit of a consignment is in accord with the conditions under which it has been authorized. The task of a customs office is made easier if—as is the practice in a number of countries—it receives information of forthcoming shipments from copies of the export authorizations and import certificates (import authorizations) sent to it in advance by its central supervisory authorities. A customs bureau which receives in advance a copy of the import certificate (or import authorization) will also easily be able to inform its central supervisory authorities that a particular shipment has not arrived within the period fixed for its importation.⁵ It may also be mentioned in this connexion that it is the practice of a number of Governments to retain imported narcotic drugs in their customs offices until they are claimed by the importers, who are informed of the arrival of their goods. The importers must in such cases produce their import authorizations, and confirm in writing the receipt of the drugs. It is submitted that it would in any event be essential for purposes of control to require the importer to confirm in writing to the customs bureau concerned, or to the competent supervisory authorities, the receipt of the imported drugs with an indication of their quantities and a description of them. This may be done on a copy of the import authorization on which the importer certifies that he has received the drugs as described in this document.⁶

4. As regards the use of the words “country or territory”, see above, comments on article 1, paragraph 1, subparagraph (v).

⁴ See above, comments on article 31, paras. 6 and 7, subpara. (c); the endorsed copies of the export authorizations should also not be sent through the intermediary of the Secretary-General of the United Nations or through that of the Board, as some Governments have occasionally done.

⁵ The Model Code states in part II, chapter III, para. 14 that “On the arrival of the consignment, the Customs must inspect it to see that it corresponds to the particulars given in the import permit and that the address shown is actually the address of the consignee”.

⁶ As regards the use of a third copy of the export authorization by the customs office of entry for purposes of recording and informing the competent narcotics authorities, see above, comments on article 31, para. 6 and para. 7, subpara. (c).

Paragraph 8

8. Exports of consignments to a post office box, or to a bank to the account of a party other than the party named in the export authorization, shall be prohibited.

Commentary

1. It will be noted that all international consignments to a post office box are prohibited, while as regards those addressed to a bank, only consignments to the account of a party other than the party named in the export authorization are forbidden. The narcotics régime preceding the Single Convention did not contain a corresponding provision; but the League of Nations Model Code recommends¹ the same prohibitions as those laid down at present in article 31, paragraph 8 of the Single Convention. The conditions under which goods can be sent to and withdrawn from post office boxes are not such as to offer satisfactory safeguards against diversion of drugs into illicit channels. The same applies to a considerable degree to banks. The relevant rules governing the receipt, custody and delivery of goods through post office boxes or banks can hardly be modified in regard to drugs so as to create the required safeguards without unfavourably affecting their usefulness for numerous other functions.

2. In fact, the consignment of narcotic drugs to post office boxes and banks cannot easily be reconciled with some of the basic ideas of the Single Convention. That treaty contains provisions intended to ensure that drugs held for trade or distribution are stored only in places which are equipped with the necessary protective arrangements to prevent loss or theft. Establishments and premises in which the manufacture of narcotic drugs or their preparations takes place,² or which serve as places of trade in, or of distribution of narcotic drugs,³ must therefore be controlled under licence. The supervisory authorities can refuse the required licences to those establishments and premises which do not have the needed equipment for protection.

3. It would hardly be feasible, however, to subject to the licensing provision of the narcotics laws, rooms in which post office boxes containing narcotic drugs are located, or premises in which banks may store narcotic drugs. Moreover, receiving and releasing drugs are activities at least very similar to those referred to by the Single Convention as “distribution”, which under the terms of that treaty can be carried on only by chosen State enterprises or by enterprises or persons licensed for that purpose.⁴

4. It has been asserted that the possibility of consignments to post office boxes may aid trade in narcotic drugs.⁵ There can be no doubt that the procedure of sending international shipments to banks facilitates inter-

¹ Part II, chapter III, para. 21, second subparagraph. The recommendation of the Model Code also appears to apply only to international shipments; but its language is not quite clear on this point.

² Article 29, para. 2, subpara. (b).

³ Article 30, para. 1, subpara. (b), clause (ii); this provision need not apply to preparations.

⁴ See above, comments on article 30, para. 1, subpara. (a).

⁵ Records, vol. II, p. 144.

national commerce. As regards consignments to post office boxes, this argument did not persuade the Plenipotentiary Conference, but commercial considerations led the Conference to permit international shipments to banks, subject, however, to the precaution that shipments to banks are permitted only if sent to the account of the party named in the export authorization, who is of course identical with the importer indicated in the corresponding import authorization (or import certificate).⁶

5. It may be noted that the restrictions of paragraph 8 apply only to international and not to domestic consignments. It is, however, suggested that it might be desirable to prohibit all shipments of drugs to post offices or banks, no matter whether domestic or international.

6. Attention may be drawn in this connexion to those provisions of the Universal Postal Convention, of the Agreement concerning Insured Letters and Boxes and of the Agreement concerning Postal Parcels—as they are revised from time to time—which impose restrictions on international shipments of narcotic drugs by mail. Under these provisions the forwarding of narcotic drugs by letter post is prohibited. Items so sent must not be returned to the sender nor forwarded to the addressee; the postal administration of origin must, however, be informed of the way in which these drugs have been dealt with.⁷ International shipments of narcotic drugs by insured letters or insured boxes are also forbidden; an exemption from this prohibition is, however, granted to narcotic drugs sent in insured boxes for medical and scientific purposes to countries which admit them for such purposes.⁸ Similarly, consignments of narcotic drugs by postal parcels are permitted only for medical and scientific purposes to those countries which admit them on this condition.⁹

7. As can be seen, international shipment of narcotic drugs by mail is not favoured by the family of nations. The present form of import certificate approved by the Commission on Narcotic Drugs in accordance with article 31, paragraph 5 of the Single Convention mentions, as an example of the special conditions which the Government of the importing country or territory may impose on the exporter, the requirement that the drugs should not be imported through the post.¹⁰

⁶ See above, comments on article 31, para. 4, subparas. (b) and (c); as regards the term “import certificate” see above, comments on article 31, para. 4, subparas. (a) and (d).

⁷ See e.g. Universal Postal Convention, signed at Vienna on 10 July 1964, article 28, para. 1, subpara. (c) and para. 3; see also article 52; United Nations, *Treaty Series*, vol. 611, pp. 251, 252 and 261; article 29, para. 1, subpara. (c), para. 3 and para. 4 of the Universal Postal Convention, done at Tokyo on 14 November 1969, Universal Postal Union, *Documents of the 1969 Tokyo Congress*, London, 1971, vol. III, pp. 100-101.

⁸ See e.g. Agreement concerning Insured Letters and Boxes, signed at Vienna on 10 July 1964, article 5, para. 1, subpara. (b), United Nations, *Treaty Series*, vol. 611, p. 422; see also Insured Letters and Boxes Agreement, signed at Tokyo on 14 November 1969, article 5, para. 1, subpara. (b), Universal Postal Union, *Documents of the 1969 Tokyo Congress*, London, 1971, vol. III, p. 279.

⁹ See e.g. Agreement concerning Postal Parcels, signed at Vienna on 10 July 1964, article 24, para. (a) United Nations, *Treaty Series*, vol. 612, p. 127; see also Postal Parcels Agreement signed at Tokyo on 14 November 1969, article 19, para. (a), subpara. (ii), Universal Postal Union, *Documents of the 1969 Tokyo Congress*, London 1971, vol. III, p. 300.

¹⁰ Document E/NR.FORM/Rev. 2.

8. It may finally be mentioned that the Single Convention does not contain any provision exempting postal consignments of drugs from its rules governing transit through a third country¹¹ or territory.

¹¹ See article 31, paras. 11-15 of the Single Convention and article 15, para. 5 of the 1925 Convention; see also article 17 of the 1925 Convention (corresponding to paragraph 13 of article 31 of the Single Convention) from which postal consignments are not exempted under the earlier treaty.

Paragraph 9

9. Exports of consignments to a bonded warehouse are prohibited unless the Government of the importing country certifies on the import certificate, produced by the person or establishment applying for the export authorization, that it has approved the importation for the purpose of being placed in a bonded warehouse. In such case the export authorization shall specify that the consignment is exported for such purpose. Each withdrawal from the bonded warehouse shall require a permit from the authorities having jurisdiction over the warehouse and, in the case of a foreign destination shall be treated as if it were a new export within the meaning of this Convention.

Commentary

1. "Bonded warehouses" are storage facilities established or authorized by law in which an importer may, under the control of the customs authorities, deposit imported goods. The importer must pay a storage fee, but is not required to pay the customs duties until the goods are finally removed from the warehouse for domestic sale or consumption. The importer has also the right to withdraw his goods from storage for the purpose of re-exportation without paying duties. The removal from the warehouse is supervised by customs officers. The receipt¹ issued by the warehouse is evidence of title to the deposited goods. By endorsement of this receipt, the title can in a number of countries be transferred to another person. These arrangements, and particularly the right to delay the payment of often considerable customs duties, are very helpful to importers, particularly to those of commodities such as tobacco, which are subject to heavy customs duties.² They may also be of some value to enterprises engaged in the international trade in narcotic drugs.

2. Commercial considerations of this nature obviously moved the Plenipotentiary Conference to permit international consignments of narcotics to bonded warehouses under stated conditions.

3. The control arrangements adopted for bonded warehouses are of course primarily made for the purpose of preventing the evasion of customs duties. They may very often be less than perfect for purposes of narcotics

¹ Called "warehouse receipt" or "warehouse warrant".

² H. C. Black, *Black's Law Dictionary*, revised fourth edition, St. Paul, Minnesota, West Publishing Company, 1968, pp. 1,755-1,756; J. L. Hanson, *A Dictionary of Economics and Commerce*, third edition, London, Macdonald & Evans, Ltd, 1969, p. 49.

control. In fact, consignment of narcotic drugs to bonded warehouses may be inconsistent with basic ideas of the provisions of the Single Convention which relate to the control of premises in which narcotic drugs or their preparations are manufactured,³ or in which narcotic drugs are held for trade or distribution.⁴ Parties are required to “control under licence” establishments and premises in which such manufacture, trade or distribution takes place. They must refuse such a licence to establishments or premises which are not equipped with the required special safeguards to prevent theft or loss of narcotic drugs. Bonded warehouses are of course not subject to the licensing system of the narcotics régime.⁵ Storing narcotic drugs may also generally not be a sufficiently extensive business to justify financially the installation of those safeguards in a part of the warehouse to be used for the storage of narcotic drugs; it may also be mentioned that receiving and removing narcotic drugs are activities which closely resemble those which are called “distribution” by the Single Convention, and which are permitted only to chosen State enterprises or private enterprises or persons furnished with the required narcotics licence.⁶

4. Nevertheless, bonded warehouses may have special rooms which are equipped with all safeguards required to prevent the diversion of stored narcotic drugs. The paragraph under consideration allows an export of a narcotics consignment to a bonded warehouse if the Government of the importing country confirms on the import certificate⁷ that it has approved the importation of the drugs involved for the purpose of being placed in a bonded warehouse. This warehouse must be named in the certificate. The exporter must produce this document to the governmental unit in charge of issuing export authorizations.⁸ An authorization to export drugs to a bonded warehouse may be granted only to an exporter who produces such a certificate. The export authorization must name the same bonded warehouse as the import certificate on the basis of which it has been granted.

5. It may of course be assumed that the Government of an importing country will not approve an import of drugs to a bonded warehouse which is not equipped with proper safeguards to prevent diversion.

6. The requirement of a permit for each withdrawal of drugs from the bonded warehouse enables the authorities concerned to ensure that the removed goods do not come into the hands of persons not authorized under the narcotics régime to acquire them. When called upon to grant the permit, the authorities may also be in a position to determine whether drugs have been diverted, replaced by other substances or subjected to any process which has changed their nature. They may on this occasion also establish whether the packing has been altered without their permission.⁹

³ Article 29, para. 2, subpara. (b).

⁴ Article 30, para. 1, subpara. (b), clause (ii); this provision need not apply to preparations.

⁵ See also above, comments on article 31, para. 8.

⁶ Article 30, para. 1, subpara. (a).

⁷ Or on the copy of the import authorization used as “import certificate”; see above, comments on article 31, para. 4, subparas. (a) and (d).

⁸ See also article 31, para. 5.

⁹ See below, article 31, para. 13 and comments thereto.

7. A person or enterprise applying for an authorization to export drugs, stored in a bonded warehouse must comply with all the requirements of the import certificate and export authorization system laid down in article 31, paragraphs 4-6. The exporter should, however, also indicate in his application for the authorization that the drugs to be exported are stored in a bonded warehouse, which he should name. The authorities may either include in their export authorization the permit to withdraw from the warehouse the drugs concerned, or may issue two separate documents, the one being the export authorization and the other being the permit for the withdrawal of the drugs in question.¹⁰

8. Bonded warehouses may be "public", i.e. Government-owned or "private", i.e. a private enterprise licensed by the Government for this purpose. There is no provision in the Single Convention which would exclude exports to such licensed private warehouses if undertaken under the conditions of paragraph 9. The view has, however, been expressed that export of drugs to private bonded warehouses should not be permitted. The League of Nations Model Code states that "in general, narcotics may not be placed in a private warehouse" (i.e. in a private bonded warehouse).¹¹ It is submitted that paragraph 9 applies not only to exports from one State to another State, but also to consignments from one territory to another territory¹² of the same State.¹³

9. It is suggested that because of the risks of diversion involved, exports to bonded warehouses should be permitted, if at all, only in exceptional cases. It is also advisable that the transfer of title to drugs which are stored in a bonded warehouse simply by endorsement of the warehouse receipt (warehouse warrant), which may be evidence of title to the deposited goods, should not be permitted. Such a method of transfer could hardly be reconciled with the rules of the narcotics régime governing trade in drugs.

10. It will be noted that the English words "the export authorization shall specify that the consignment is *exported* for such purpose" are rendered in the Spanish text by the words "*el permiso*¹⁴ *de exportación deberá especificar que la importación se hace con ese destino*". The word "*exportación*" should have been used in the place of "*importación*", but this incongruity does not change the meaning of the provision.¹⁵ For provisions in the 1925 Convention corresponding to article 31, paragraph 9 of the Single Convention, see article 13, paragraph 7 and article 16 of the 1925 Convention.

¹⁰ The Government of the exporter and that of the importer must of course make the communications required by article 31, paras. 6 and 7.

¹¹ Part II, chapter III, para. 20, League of Nations, document C.774.M.365. 1932.XI.

¹² Article 1, para. 1, subpara. (y).

¹³ Article 1, para. 1, subpara. (m); the phrase "unless the Government of the importing country certifies" could better include the words "or territory" after the word "country".

¹⁴ As regards the use of the word "*permiso*" in the Spanish text, see foot-note 4 to the comments on para. 6 and para. 7, subpara. (c).

¹⁵ The French text uses the words "*l'envoi*" which covers "importation" as well as "exportation".

Paragraph 10

10. Consignments of drugs entering or leaving the territory of a Party not accompanied by an export authorization shall be detained by the competent authorities.

Commentary

1. Paragraph 10 must be read together with paragraph 6, which prescribes that a copy of the export authorization should accompany each international consignment of drugs. Parties must “detain” shipments which, when entering or leaving their territory, are not accompanied by such copy, no matter what may be the reason for the lack of the document. They will generally not be able to determine whether the absence of the copy is due to a violation of the provision of paragraph 6, or to loss of the document during the transportation of the consignment. In a few cases the authorities may, however, be in a position to establish from other accompanying papers—for example, from an accompanying copy of the import certificate,¹ which may refer to the fact that the shipment has been properly accompanied by a copy of the export authorization—that the required paper has in fact been lost in the course of transportation; but even in such cases the Parties are not released from their obligation to detain the consignment.

2. Paragraph 10 refers only to consignments entering or leaving the territory of the Party. This restriction can be explained by two considerations. First, international² shipments are normally checked only at the place of entry and at the place of exit. Secondly, domestic³ consignments need not be accompanied by a copy of the export authorization. It is, however, suggested that international shipments⁴ found by control officers in the interior of a country or territory⁵ without an accompanying copy of the export authorization should also be detained.

3. The Plenipotentiary Conference substituted the words “shall be detained” for the words “shall be seized” in the corresponding provision of article 42, paragraph 10 of the Third Draft of the Single Convention,⁶ which it used as working document. The Conference wanted to make it quite clear that the measure which it wished Governments to take was only a provisional one⁷ pending the outcome of the inquiry as regards the legitimacy of the shipment, and pending the eventual arrival of a copy of the export authorization in question. If such an investigation leads to the conclusion that the shipment is illegitimate, i.e. has been “used in” or has been “intended for the commission

¹ Or a copy of the import authorization; see above, comments on para. 4, subparas. (a) and (d).

² Or shipments between two “territories” of the same State; article 1, para. 1, subparas. (m) and (y).

³ Consignments sent from one “territory” to another “territory” of the same State are, however, not “domestic” in the sense in which this word is used here.

⁴ I.e. shipments sent from one State to another State or from one territory to another territory of the same State; article 1, para. 1, subpara. (m).

⁵ Article 1, para. 1, subpara. (y); see also article 31, para. 11.

⁶ *Records*, vol. II, p. 16.

⁷ *Records*, vol. II, p. 142 and vol. I, p. 72.

of any of the offences, referred to in article 36", the Party, pursuant to article 37, is bound to seize and confiscate the detained drugs. Otherwise the Convention does not state what should be done with the detained drugs. It is suggested that if the Government of the country or territory of origin confirms the legitimacy of the consignment and furnishes the required copy of the export authorization, the detained drugs should be forwarded to the addressee indicated in that document. It would be advisable that the detaining Party should insist in any event that the Government of the exporter should furnish a copy of the original export authorization. The Party should do this even if it is requested to return the drugs to the exporter, to hand them over to one of its own drug firms or to send them to another consignee than the one to whom the drugs have originally been addressed. The provisions of paragraph 12 concerning diversion of international shipments of drugs must of course in such cases be observed.

4. If the origin of the shipment cannot be determined—for example, as a result of damage caused to the package—it is suggested that the Party should wait an appropriate time before it makes a final decision on the disposal of the detained drugs. The owner of the consignment should have an opportunity to claim the drugs, to prove the legitimacy of the shipment and to furnish the required copy of the export authorization.

5. Drugs which are only "detained" pursuant to paragraph 10 should not be taken into account in computing the statistical figures pursuant to article 20, paragraph 1, subparagraph (e).

6. The term "the territory" appears to mean "area". The text of paragraph 10 does not make it clear whether it applies only to shipments from one State to another State, or also to those sent from one "territory" to another "territory" of the same State. It is, however, submitted that the paragraph under consideration governs both kinds of imports and exports. A Party must therefore detain also those consignments which are sent from one to another of its territories and which are not accompanied by a copy of the export authorization involved. It must also detain shipments sent from one of its territories to another State which, upon entering or leaving another of its territories which they cross in transit, are not accompanied by the required document.

7. It is submitted that the term "international trade" as used in the heading of article 31 covers "imports" and "exports" as defined in article 1, paragraph 1, subparagraph (m), and therefore includes shipments from one territory to another territory of the same State. Paragraph 10 is one of the special provisions relating to "international trade" to which the heading of article 31 refers.⁸

8. The narcotics régime preceding the Single Convention did not contain a provision corresponding to paragraph 10. The League of Nations Model Code, however, contains a provision which reads: "Consignments of narcotics unaccompanied by an import or export permit will be seized by the Customs office and placed at the disposal of the supervisory authority";⁹ see also article 15, paragraph 1 of the 1925 Convention.

⁸ Article 1, para. 1, subparas. (m) and (y) and comments on those subparas.

⁹ Part II, chapter III, para. 22.

Paragraph 11

11. A Party shall not permit any drugs consigned to another country to pass through its territory, whether or not the consignment is removed from the conveyance in which it is carried, unless a copy of the export authorization for such consignment is produced to the competent authorities of such Party.

Commentary

1. Paragraph 11 must be read together with paragraphs 6 and 10. Paragraph 10, which requires the detention of consignments not accompanied by a copy of the export authorization as required by paragraph 6, indicates a measure which a Party must also take in implementing paragraph 11.

2. Paragraph 11 corresponds to article 15, paragraph 1 of the 1925 Convention, and reproduces a part of its text. The words of paragraph 1 “is produced to the competent authorities” are literally taken from the earlier treaty. It will, however, be recalled that the authors of the 1925 Convention considered that “the usual procedure would be, in the case of consignments sent by sea, that the copy [of the export authorization] should be handed to the captain or other responsible officer of the ship, and in the case of goods sent overland by train, to the responsible railway official in charge of the goods”.¹ If this procedure had been followed, there would be a person who could “produce” to the competent authorities the copy of the export authorization; but the practice of Governments, under the 1925 Convention as well as under Single Convention, has been different. It is considered sufficient if a copy of the export authorization is enclosed in or attached to the consignment, like other commercial papers required for customs clearance.¹ Consequently there is normally no person available who could “produce” to the authorities the copy of the export authorization when the consignment enters, crosses or leaves a country or territory. As far as the Secretariat of the United Nations is aware, no Party to the 1925 or to the Single Convention has objected to this practice of Governments. It may be assumed that there is a general understanding that a Party may permit drugs consigned to another country to pass through its territory if they are accompanied by a copy of the export authorization, and need not require that this copy be “produced” to its competent authorities, although this practice may not be fully in accord with the text of article 15, paragraph 1 of the 1925 Convention or of article 31, paragraph 11 of the Single Convention.

3. When including the words “whether or not the consignment is removed from the conveyance in which it is carried”, the authors of the Single Convention were also obviously guided by the text of article 15, paragraph 1 of the 1925 Convention, which—as has been submitted—is based on quite different assumptions.² While it may have been useful in 1925 to point out that pro-

¹ See above comments on article 31, para. 6 and para. 7, subpara. (c).

² Article 15, para. 1 of the 1925 Convention reads as follows:

“1. No consignment of any of the substances covered by the present Convention which is exported from one country to another country shall be permitted to pass through a third country, whether or not it is removed from the ship or conveyance in which it is being conveyed, unless a copy of the export authori-

duction of the copy of the export authorization is required even if the goods are not trans-shipped at the border, such a reminder appears to have lost its value under the conditions of the present practice.

4. The phrase “its territory” obviously means “its area” in this context.³

5. It is submitted that paragraph 11 must also be applied not only to consignments from one State to another State, but also to those sent from one territory to another territory of the same State. This view follows from the title of article 31, in which the term “international trade” covers “exports” and “imports” as those words are defined in article 1.⁴ Paragraph 11 should be applied as if the words “or from one to another of its territories” followed the words “another country”.

6. Detention of the drugs in question—as provided in paragraph 10—appears to be the principal means of implementing paragraph 11.

7. There is some discrepancy between the English and French texts on one hand and the Spanish text on the other. The English words “whether or not the consignment is removed from the conveyance in which it is carried” and the equivalent French words “*que cet envoi soit ou non déchargé du véhicule qui le transporte*” are rendered in Spanish by “*aunque sean descargados del vehículo que los⁵ transporta*”; but despite this difference the meaning of paragraph 11 is the same in the three languages. Moreover, as has been pointed out above, the words in question are, in the light of the practice of Governments under paragraph 11 and the consequential interpretation of this provision, not needed in either of these three language versions.

zation (or the diversion certificate, if such a certificate has been issued in pursuance of the following paragraph) which accompanies the consignment is produced to the competent authorities of that country.”

³ See above, comments on article 1, para. 1, subpara. (y).

⁴ Article 1, para. 1, subparas. (m) and (y); see above comments on para. 10.

⁵ I.e. “*los estupefacientes*”.

Paragraph 12

12. The competent authorities of any country or territory through which a consignment of drugs is permitted to pass shall take all due measures to prevent the diversion of the consignment to a destination other than that named in the accompanying copy of the export authorization unless the Government of that country or territory through which the consignment is passing authorizes the diversion. The Government of the country or territory of transit shall treat any requested diversion as if the diversion were an export from the country or territory of transit to the country or territory of new destination. If the diversion is authorized, the provisions of paragraph 7 (a) and (b) shall also apply between the country or territory of transit and the country or territory which originally exported the consignment.

Commentary

1. The narcotics régime imposes upon the country or territory of origin and on that of destination of an international or interterritorial¹ consignment of narcotic drugs several obligations intended to prevent the diversion of the drugs into the illicit traffic. The authorities of such a country or territory are informed in advance of such a shipment and are in a position to notify in advance the consignment to the customs authorities of the border towns through which the drugs will pass.² A country or territory of transit, however, will have no such advance information of a narcotics shipment. It will normally learn of the passing of a narcotics consignment through its area only from the accompanying copy of the export authorization.³ The risk of diversion into illicit channels is particularly great in the course of the transportation of the drugs through a country or territory of transit. Several provisions of article 31 therefore deal with this problem of drug consignments in transit. Paragraph 10 requires the detention of drugs not accompanied by a copy of the export authorization; paragraph 11 obligates Parties not to permit the transit of drugs not accompanied by such a copy; paragraph 13 prohibits the subjection of drugs in transit to any process which would change their nature;⁴ and paragraph 12 more generally stipulates that a country or territory through which drugs pass in transit shall take all "due"^{4a} measures to prevent their diversion to a destination other than that named in the accompanying copy of the export authorization unless its own competent authorities authorize the diversion. This paragraph reproduces the similar provision of article 15, paragraph 2 of the 1925 Convention.

2. The authorities of the country or territory of transit must take action under this provision if, for example, the address on the package differs from that given in the export authorization as that of the consignee. The same obligation applies if the route by which the consignment is shipped is on the one hand obviously very uneconomical and gives on the other hand justified reasons for suspecting that it was chosen with the aim of transporting the drugs through areas which are not under effective narcotics control. Governments through whose area the drugs pass are bound to take only all "due" measures, that is, those which under the circumstances can in practice be expected from them. In the light of the conditions prevailing at the time of this writing, it may be said that there is at present normally no need for changes in the practice of Governments in their control of the transit of narcotics consignments. What they have generally been doing in this connexion since 1928, i.e. since the 1925 Convention entered into force, may be considered to be satisfactory, since the diversion of legal international or interterritorial consignments of drugs contributes at present only to a very insignificant degree to supplying the illicit traffic.

¹ See above, comments on article 31, paras. 10 and 11.

² See above, comments on article 31, para. 4, subparas. (b) and (c), para. 6 and para. 7, subpara. (c).

³ Para. 6.

⁴ See below, comments on that paragraph.

^{4a} The word "due" is rendered in the French version by "*necessaires*" and in the Spanish version by "*necesarias*".

3. It may be emphasized that only the competent authorities of the country or territory through which the drugs pass in transit may authorize their diversion under paragraph 12. The Convention does not, however, indicate who may apply for authorization of the diversion. The applicant must of course under civil law be entitled to dispose of the drugs. Otherwise he cannot be permitted to divert them. Very often the exporter named in the export authorization may have retained the right of disposing of the goods in transit. Sometimes, however, the importer indicated in the authorization, or even a third person or establishment, may have acquired this right. Who has the title to the drugs and the right of disposing of them under civil law will depend on the mode of transportation chosen, on the type and contents of the commercial papers employed in the transaction and on the particular municipal law to be applied. It would be beyond the scope of a commentary to the Single Convention on Narcotic Drugs to deal with this problem of civil law in the field of the international transportation of goods.

4. It must, however, be kept in mind that the person or enterprise having title under civil law to the drugs must in addition also be authorized, under the administrative rules governing narcotics control, to engage in the transaction in question. It is suggested that it would be incompatible with these rules to consider a request for diversion made by a person or establishment which has acquired a title to the drugs but is not the individual or enterprise named as importer or exporter in the copy of the export authorization accompanying the drugs in transit. The importer would not have obtained the import authorization and been able to obtain the import certificate⁵ which he must have sent to the exporter,⁶ unless he was entitled to receive the drugs under the rules of his domestic narcotics régime. The exporter would not have been granted his export authorization unless he had produced to his competent authorities the import certificate confirming that the import had been approved⁵ and unless he was entitled under his national narcotics law to engage in the export. The authorities of the country or territory of transit are entitled to assume that the national narcotics régimes in question are in accordance with the requirements of the Single Convention, and that consequently the importer and exporter named in the copy of the export authorization are—as far as narcotics control is concerned—entitled to dispose of the drugs. They could normally not have the same assurance about any person and enterprise not named as importer or exporter in the copy of the export document. Such person or enterprise would, under the rules of paragraph 12 concerning diversion, have to obtain the character of an “importer” in order to get the control of the drugs, even though he had already acquired title to the goods in transit under national law.

5. Perhaps in most cases it will be the exporter who is entitled to request the diversion of the drugs. It is suggested that the exporter or importer named in the copy of the export authorization who applies for diversion would have to produce to the competent authorities of the country or territory of transit the relevant transportation document proving his right to dispose of the goods

⁵ As regards the use of a copy of the import authorization as “import certificate”, see comments on para. 4, subparas. (a) and (d).

⁶ Para. 5.

in transit, the exporter in order to show that he has retained this right, or the importer in order to produce evidence that he has acquired this right even before the arrival of the drugs at the place of destination.

6. Paragraph 12 requires that the Government of the country or territory of transit should treat a requested diversion as if it were an export from its country or territory to the country or territory of new destination. It must therefore apply to the diversion the rules of paragraphs 4 to 9 relating to the import certificate and export authorization system. It must not authorize the export of the drugs in question to the country or territory of the new address unless it is shown by the applicant for the diversion an import certificate⁵ of the authorities of that country or territory indicating that they have approved the import. It must send to those authorities a copy of the export authorization which it has granted to the applicant for diversion. Another copy must accompany the shipment to the new address.⁷ The Government granting the diversion is required to exchange with the Government of the country or territory of the new destination the communications provided for in paragraphs 6 and 7 of article 31.

7. Moreover paragraphs 7 (a) and (b) must also be applied between the country or territory which originally exported the consignment and that of transit which authorized the diversion; that is, the shipment from the country or territory of origin to that of diversion must for the purposes of these paragraphs be considered as if it were a completed export from the former to the latter.

8. In computing the statistical figures under article 20, paragraph 1, subparagraph (d), the drugs involved must be considered as "exports" by the country or territory which originally exported them and by that of transit which diverted them, and as "imports" by the country or territory of diversion as well as by that of the new destination.

9. The question arises how a requested diversion to an address in the country or territory of transit itself should be treated. It appears rather difficult to assume that such a diversion should be treated as if it were an "export" from the country or territory of transit to the country or territory of new destination, i.e. to itself, as a literal interpretation of paragraph 12 might suggest. This paragraph requires that "any requested diversion" should be treated as such an export; it does not exclude diversions to destinations in the country or territory of transit itself. It is, however, suggested that it would not be very meaningful—as such an interpretation would require—to obligate the authorities of the country or territory of transit to issue an import certificate to a person or enterprise established in their own area,⁵ to require the production of this certificate, and on the basis of this document to grant an export authorization to such person or enterprise in order to authorize him or it to receive the diverted drugs. It is submitted that in this case

⁷ The copy of the original export authorization which accompanies the drugs to be diverted should be retained by the authorities of the country or territory of transit and sent to the Government of the original exporter, endorsed as required by para. 7, subparas. (a) and (b). See also article 15, para. 2, second subparagraph of the 1925 Convention. It is moreover suggested that the authorities of the diverting country or territory should also inform of the diversion those of the country or territory of original destination of the consignment involved.

such a complex procedure would not make sense and cannot possibly have been intended by the authors of the Single Convention. A single document authorizing the diversion appears to be sufficient in a situation of this kind. The Government authorizing the diversion would, however, have to take into account all the elements which it has to consider in examining an application for an import authorization.⁸ It might also in some cases be advisable to consult the Government of the country or territory which originally exported the drugs, to ascertain whether it knows any reasons why the requested diversion should not be authorized.

10. As the text clearly shows, paragraph 12 applies not only to shipments from one State to another State, but also to consignments from one "territory" to another "territory" of the same State.⁹

⁸ See article 21, paras. 1 to 3, article 30, para. 1 and para. 2, subpara. (a) and article 31, para. 3.

⁹ See also above comments on paras. 10 and 11.

Paragraph 13

13. No consignment of drugs while in transit, or whilst being stored in a bonded warehouse, may be subjected to any process which would change the nature of the drugs in question. The packing may not be altered without the permission of the competent authorities.

Commentary

1. The difficulties of exercising adequate control over narcotic drugs in bonded warehouses have been indicated in the above comments on paragraph 9; some of those relating to the control of drugs passing in transit through a country or territory from the place from which they are exported to the country or territory to which they are consigned have been referred to in the comments on paragraphs 10 and 11, and particularly in those on paragraph 12. Paragraph 13 represents another provision intended to cope with the risk of diversion of drugs placed in a bonded warehouse or of international or inter-territorial¹ consignments in transit. It may be mentioned in this context that not only drugs placed in a bonded warehouse or in transit, but any drugs in the course of being transported from a seller to a buyer, are normally not in the hands of persons or an enterprise, whether manufacturers of drugs or traders in drugs, whose activities are subject to the rules of the strict narcotics régime, and are therefore in particular danger of escaping control.

2. Sub-Committee E of the Second Geneva Opium Conference, which adopted the 1925 Convention, article 17 of which contains the substance of the paragraph under consideration, accordingly stated: "Any interference with the drugs while in transit may make it easy for illicit traffickers to evade control. Many cases have come to light in which the drugs have been abstracted from the package while in transit and replaced by other goods."²

¹ See above, comments on paras. 10, 11 and 12.

² League of Nations. *Records of the Second Opium Conference, held at Geneva, 17 November 1924 to 19 February 1925*, vol. I, p. 485, League of Nations, document C.700.M.200.1924.XI.

3. The question arises whether “while in transit” means “while in the condition of transportation from the exporter to the importer”, or rather “while in a country or territory which is located between the country or territory of exportation and that of importation and through which the drugs involved pass in order to arrive at their destination”. It is submitted that in this context “while in transit” must be understood to have the second of those two meanings. This interpretation is also corroborated by the text of article 17 of the 1925 Convention, the substance of which article 31, paragraph 13, reproduces.³

4. It is submitted that transformation of drugs into other drugs, into substances not covered by the Single Convention, into their salts or isomers or even into preparations, would constitute a process changing the nature of the drugs in question. In fact, it is suggested that any process by which products are obtained which cannot easily be identified as the drugs whose consignment has been authorized by the export and import authorization concerned, and which would thus render difficult the function of the supervisory authorities, is prohibited under the terms of paragraph 13.

5. Generally speaking, the “process” to which the paragraph under consideration refers would be very difficult to carry out in a bonded warehouse or in the course of the transportation of the drugs. It may also be noted that such a process could generally be carried out legally only by licensed manufacturers or State enterprises chosen for this purpose⁴ and in licensed premises or establishments,⁵ that is, generally not while the drugs are stored in the warehouse or in transit. Such a process would therefore be excluded by the provisions of the Single Convention even if paragraph 13 did not specifically prohibit it.

6. Changes in the packing may facilitate the theft of the drugs or their replacement by other goods. They may make it also possible to alter the address so as to effect the forwarding of the consignment to another destination than that indicated in the export authorization concerned. Such a diversion may be comparatively easy if the new destination is located in the country or territory in which the packing is altered, that is, if the consignment concerned does not have to cross a border at which the false address can be compared by the control authorities with that given in the export authorization. The authorities permitting a change in the packing must ensure that the new packing offers a satisfactory protection against the diversion of the contents, and that the address is not changed into one differing from the designation indicated in the accompanying export authorization. It is moreover suggested that an alteration of the packing of a consignment in transit should not be allowed except where damage to the wrapping requires this, or exceptionally

³ Article 17 reads as follows: “No consignment of the substances covered by the present Convention while passing in transit through the territories of any Contracting Party or whilst being stored there in a bonded warehouse may be subjected to any process which would alter the nature of the substances in question or, without the permission of the competent authorities, the packing”.

⁴ Article 29, para. 1 and comments thereon; see also article 1, para. 1, subpara. (n) and article 2, para. 3 and comments on those provisions.

⁵ Article 29, para. 2, subpara. (b).

if a consignment has to be divided into two or more parts to be diverted to different new destinations in accordance with paragraph 12.

7. It would also be advisable that any authorized change in the packing of drugs stored in a bonded warehouse should take place under the supervision of officers of the narcotics control service.

8. The “competent authorities” mentioned in the second sentence of paragraph 13 are those of the country or territory of transit in which the warehouse is located or through which the drugs are passing in transit.

9. It may be emphasized that paragraph 13 governs not only shipments from one State to another State, but also those from one territory to another territory of the same State.⁶

10. While paragraph 13 applies only to international or interterritorial consignments in transit in a country or territory through which they pass in their transportation from the place of export to that of destination, it is suggested that its provisions might usefully be applied to all international or interterritorial consignments in the course of transportation, including those sent to a neighbouring country or territory and even to “domestic” shipments, that is, to shipments which do not have to cross the border of a country or territory in order to reach the consignee. It would be advisable from the viewpoint of narcotics control if processes altering the nature of drugs while being transported to any destination are under all circumstances prohibited.⁷

⁶ See above, comments on paras. 10, 11 and 12.

⁷ As they would normally be under rules governing manufacture and use of premises and establishments for this purpose; see above, foot-notes 4 and 5.

Paragraph 14

14. The provisions of paragraphs 11 to 13 relating to the passage of drugs through the territory of a Party do not apply where the consignment in question is transported by aircraft which does not land in the country or territory of transit. If the aircraft lands in any such country or territory, those provisions shall be applied so far as circumstances require.

Commentary

1. Paragraph 14 is intended to reconcile the needs of air transport, which must be rapid and should therefore not be delayed by formalities which are not essential, with the requirements of narcotics control.¹ It would obviously seriously encumber international and interterritorial air navigation if Governments were required to force every aircraft which crosses their territory without any intention to land, to come down in order to be subjected to the controls provided in paragraphs 11 and 12. Such a requirement would also

¹ See comments of the International Civil Aviation Organization on article 42, para. 14 of the Third Draft which corresponds to the paragraph under consideration; document E/CONF.34/1, comments on para. 317 and foot-note 31 to those comments; see also *Records*, vol. II, p. 133.

hardly be of much value from the viewpoint of narcotics control, since the cargo of the airplane is controlled in the country or territory of its origin, in that of its destination and sometimes also in countries or territories of transit in which the airplane makes a landing. While airplanes are quite frequently used to drop narcotics in places in which the drugs can be picked up by members of international traffic gangs, an aircraft of a legitimate scheduled or unscheduled line is hardly a place where diversions of this kind can be carried out during the flight without discovery by a member of the crew. Diversion is a greater risk when the aircraft is on the ground, where outside persons often have access to the ship, passengers may disembark, cargo may be unloaded and passengers who continue the voyage may temporarily leave the airplane and be admitted to "transit" rooms. The controls prescribed by paragraphs 11 and 12 may in such a situation in some cases be usefully applied to drug consignments in transit which are carried by the airplane on the ground.

2. The authors of the Single Convention were guided in drafting paragraph 14 by the text of the similar provision of article 15, paragraph 3 of the 1925 Convention; but while that paragraph of the earlier convention does not apply to article 17 of that treaty, which is in substance identical with article 31, paragraph 13 of the Single Convention, the paragraph of the Single Convention under consideration also governs the measures provided in that paragraph 13. This gives rise to some questions: why should processes which would change the nature of drugs in transit normally be prohibited, but be authorized while the drugs are carried by an airplane crossing a country or territory without landing, and even remain permitted, so far as circumstances do not otherwise require, even if the aircraft makes a landing in the course of its voyage? Similarly, why, although it is normally forbidden to change the packing of drugs in transit without permission of the competent authorities, should such permission not be needed for the alteration of the packing while the drugs concerned are in an aircraft which crosses a country or territory without landing? Why should such an authorization also not be necessary, so far as the circumstances do not otherwise require, even if the airplane makes a landing? These incongruities can hardly have been the intention of the authors of the Single Convention; they must be based on an oversight.

3. Fortunately, however, processes changing the nature of the drugs in transit would normally not be permitted under other provisions of the Single Convention² whose application is not affected by article 31, paragraph 14. They would normally constitute "manufacture" of drugs or preparations, and could therefore be carried out only by State enterprises selected for that task or by licensed manufacturers, and only in places licensed for that purpose, in any event not in airplanes crossing in transit a country or territory without or with landing. It is also suggested that it would be in accordance with the aims of the Single Convention if Governments would outlaw changes in the packing of drugs carried in an airplane crossing a country or territory with or without landing, or at least exclude the last sentence of paragraph 13 from the

² Article 29, para. 1 and para. 2, subpara. (b) together with article 2, paras. 3 and 4 and comments on these provisions; see also the comments on article 31, para. 13. It may be mentioned that if it is assumed that airplanes are subject to the laws of the country or territory over which they fly or in which they land the State enterprises and required licences would have to be those of that country or territory.

application of paragraph 14. They are of course entitled to do so under article 39 which expressly authorizes stricter control measures than those required by the Single Convention.

4. It has been mentioned elsewhere³ that the 1925 Convention does not contain a provision corresponding to that of article 31, paragraph 10. Article 15, paragraph 3 of the earlier treaty, which—as has been stated above—is similar to article 31, paragraph 14, could therefore not exclude from its application a provision which it does not contain. It may be due to the fact that the authors of article 31, paragraph 14 of the Single Convention were guided by the text of article 15, paragraph 3 of the 1925 Convention that they may have overlooked the need to apply the exception in paragraph 14 of article 31 also to the requirement of paragraph 10 of that article. It is suggested that without seriously impeding air transportation, it would hardly be possible to apply paragraph 10 to consignments carried in airplanes crossing a country or territory without landing, and in many cases even if the passing aircraft makes a landing. It would really not be practical to force every airplane in transit to land in order to examine whether it carries drug consignments which are not accompanied by a copy of the export authorization, and should therefore be detained. Such an examination of the aircraft in transit which makes a landing would also often unnecessarily impede air traffic unless circumstances require such an action. It would also not be very meaningful to apply paragraph 14 to paragraph 11 without applying it also to paragraph 10.

5. In fact, it appears to be the general practice of Governments to apply the exception in paragraph 14 also to paragraph 10, and there has been no objection from any Party to such a course of action. It is suggested that there seems to be an understanding of the Parties to the Single Convention to apply paragraph 14 also to paragraph 10. This may hardly be in agreement with the letter of the law, but is undoubtedly in accordance with the aims of the provisions of article 31 governing drugs in transit carried by aircraft.

6. It has been mentioned above that the risk of diversion of drug consignments carried in transit by an airplane is much greater if the plane lands in the country or territory which it crosses than in the case in which it does not do so. The authors of paragraph 14 therefore provided that in some cases certain controls, which they did not require for drugs carried in transit by an airplane crossing a country or territory without landing, should be applied to such air consignments if the airplane makes a landing in the course of its crossing. The nature of the landing is in this connexion legally irrelevant. The last sentence of paragraph 14 applies to any landing, whether made for traffic purposes or not, whether scheduled or unscheduled, and even if forced by an emergency situation.

7. In accordance with what has been stated above, it is suggested that the provisions which should be applied under the conditions of the last sentence of paragraph 14 should include those of paragraph 10 and not those of paragraph 13. The Government of the country or territory of transit should in particular apply the controls⁴ involved if it has sufficient reasons for suspecting that a drug consignment carried by the aircraft is being shipped

³ See above, comments on para. 10.

⁴ I.e. those of paras. 10-12 of article 31 as suggested above.

in violation of the rules of the Single Convention governing the international and interterritorial trade in drugs, and particularly if it has good reasons to assume that its action might lead to the discovery of a case of illicit traffic in drugs. It is also submitted that the authorities must carry out the controls in question if the drugs in transit are transferred to another airplane or to another type of vehicle for their transportation to their final destination.

8. It may be noted that even if the suggestion to exclude paragraph 13 from the scope of paragraph 14 is not accepted, the authorities of the country or territory in which the airplane has landed would be in a position to authorize a change in the packing of the drugs in transit if the damaged state of the package requires the alteration.

9. It is also considered that a Government could very rarely, under the conditions of the last sentence of paragraph 14, permit a diversion of the drugs to a new destination, if for no other reason than that the procedure required by paragraph 12 for the authorization of a diversion could generally hardly be completed in time;⁵ but it is moreover suggested that it would normally be ill-advised to authorize a diversion in such a situation.

10. It may also be noted that some airports located in a border region are totally or partially under the control of another Government than that, which is the local sovereign.⁶ The authorities in actual control and not those of the State to which the territory of the airport or of the part of the airport belongs, are empowered to take action under the last sentence of paragraph 14.

11. Attention may also be called to the provision of article 29, paragraph (g) of the Chicago Convention of 1944⁷ on International Civil Aviation, which requires that aircraft engaged in international navigation should carry a manifest and detailed declaration of the cargo which it carries. These papers will indicate the presence of narcotics consignments in the airplane's freight.

12. It will be noted that paragraph 14 applies not only to consignments carried from one State to another State through a third State, but also to those which are shipped from one territory to another territory of the same State and cross a third territory of that State.

13. The word "territory" in the phrase "through the territory of a Party" means "area", while the same word used subsequently twice in paragraph 14 in the phrase "country or territory" is employed in the sense of its definition in article 1, paragraph 1, subparagraph (y).⁸

⁵ It is of course possible that the applicant for the diversion has obtained from the Government of the place of new destination the required import certificate, and from the authorities of the country or territory of transit the new export authorization before the aircraft lands; but an application for diversion to the Government which has jurisdiction over the consignment only during the short time in which the airplane remains on the ground would generally be suspect.

⁶ *Records*, vol. II, p. 143.

⁷ United Nations, *Treaty Series*, vol. 15, p. 316.

⁸ See above, comments on that subparagraph.

Paragraph 15

15. The provisions of this article are without prejudice to the provisions of any international agreements which limit the control which may be exercised by any of the Parties over drugs in transit.

Commentary

1. Paragraph 15 reproduces the substance of article 15, paragraph 4 of the 1925 Convention. It frees the Parties from those obligations under article 31 concerning the control of the transit of international drug consignments through their territory which are incompatible with their obligations under other treaties which limit their rights of control over goods, including drugs, in transit. Provisions whose application by transit States may be affected by paragraph 15 are: paragraph 10, requiring the detention of consignments which enter or leave the territory of the transit State without an accompanying copy of the export authorization; paragraph 11, requiring Parties not to permit the passage through their territories of shipments of drugs which are consigned to another country and which are not accompanied by a copy of the export authorization; the first sentence of paragraph 12, requiring Parties through whose territories a consignment of drugs is permitted to pass to take all due measures to prevent the diversion of the consignment to a destination other than that named in the accompanying copy of the export authorization; the right of the State of transit under paragraph 12 to authorize a diversion of the consignment to another destination; the second sentence of paragraph 13, authorizing the country of transit to permit changes in the packing of the consignment; and the second sentence of paragraph 14, requiring Parties to apply "so far as circumstances require" the controls provided by articles 10, 11 and 12¹ to consignments of drugs carried in transit by an aircraft which makes a landing in the course of its passage.

2. Paragraph 15 seems primarily intended to cover a situation in which by an inter-State agreement the transit traffic between a country and its enclave located in the border region of the territory of a neighbouring country is fully or partially exempted from the control of the authorities of the foreign country which it crosses.²

3. It has also been stated above that an enclave of a State that under the terms of an international arrangement has been placed within the customs boundaries of a foreign State surrounding it might for the purposes of the Single Convention have to be administered as part of the enviroing State or of one of its "territories".³

4. It is submitted that paragraph 15 applies only to shipments from one State traversing the territory of another State, and not to the transit of a consignment from one territory through another territory of the same State, whether it is travelling to a territory of the same State or to a foreign country.

¹ See above, comments on para. 14.

² *Records*, vol. II, pp. 133-134 and 143; see also vol. I, pp. 167 and 170.

³ Within the meaning of article 1, para. 1, subpara. (y); see above, comments on that subparagraph; such an enclave could theoretically also form "a territory" of the surrounding State.

Only limitations of control over goods in transit which are provided for in "international" agreements, i.e. in interstate agreements, may be taken into account for the purpose of paragraph 15.

5. Such international agreements may free Parties only from the application of those provisions of article 31 regarding the transit of shipments of drugs through their territory to the territory of other States which are incompatible with these agreements. The terms of paragraph 15 cannot authorize Parties to fail to carry out other provisions of the Single Convention which relate to drugs in transit, in particular those requiring them to prosecute and punish acts of the illicit traffic in accordance with articles 35 and 36. A Party whose control over drugs in transit is limited under article 31, paragraph 15 by an international agreement would nevertheless be bound, for example, under article 37 to seize and confiscate such drugs if it has evidence that they are intended for the illicit traffic, or more specifically for the commission of any of the offences referred to in article 36.

6. It is submitted that in applying paragraphs 10 to 12 of article 31 the Parties, in their capacity as coastal States, should not hamper the innocent passage of ships through their territorial waters, over which according to present international law they exercise the right of sovereignty.⁴ Ships exercising the right of innocent passage must, however, observe the rules of international law which—it is submitted—also include the rules of the Single Convention which govern the international trade in drugs and their transit through third countries, whose territorial waters are to be considered to be part of their national area. The responsible officers of the passing ships must therefore, *inter alia*, take all practical measures to prevent their vessels from carrying consignments of drugs which are not duly accompanied by a copy of the export authorization. More generally, they must take all steps which can reasonably be expected from them to make it as difficult as possible for their ships to be used by illicit traffickers for the transportation of contraband.⁵

7. It may in particular be noted that among the cases where the coastal State may exercise its criminal jurisdiction on board a foreign merchant ship

⁴ See also article 1 and article 15, para. 1 of the Convention on the Territorial Sea and the Contiguous Zone, done at Geneva on 29 April 1958; United Nations, *Treaty Series*, vol. 516 pp. 205 *et seq.*, in particular pp. 206, 207 and 214. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by *force majeure* or by distress; article 14, para. 3 of the Convention, *op. cit.*, p. 214.

See however article 17, third para. of the Statute annexed to the Convention on the International Régime of Maritime Ports, signed at Geneva on 9 December, 1923, League of Nations, *Treaty Series*, vol. 58, pp. 285 *et seq.* This paragraph reads in part as follows: "Nothing in this Statute shall affect the measures which one of the Contracting States is or may feel called upon to take in pursuance of general international conventions to which it is a party, or which may be concluded hereafter, particularly conventions concluded under the auspices of the League of Nations, relating to . . . the transit, export or import of particular kinds of articles such as opium or other dangerous drugs . . ."; see also *Records*, vol. II, pp. 133 and 137, referring to opposing practices of Governments on this matter; ports and harbours are, however, considered part of the "inland" ("interior", "national") waters which lie within the base line of the territorial waters; C. J. Colombos, *The International Law of the Sea*, 4th revised edition, London, Longmans, 1959, pp. 74 and 148.

⁵ Article 17 of the Convention referred to in foot-note 4; United Nations, *Treaty Series*, vol. 516, p. 216.

in the course of its innocent passage through its territorial sea in order to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, there is that in which such action is necessary to suppress the illicit traffic in narcotic drugs.⁶

⁶ Article 19, para. (d) of the Convention on the Territorial Sea and Contiguous Zone referred to in foot-note 4; United Nations, *Treaty Series*, vol. 516, pp. 216-218; as regards the exercise of civil jurisdiction see article 20 of that Convention, op. cit., p. 218.

Paragraph 16

16. Nothing in this article other than paragraphs 1 (a) and 2 need apply in the case of preparations in Schedule III.

Commentary

For the régime governing preparations in Schedule III, see above, comments on article 2, paragraph 4 and article 31, paragraph 3, subparagraph (a) and subparagraph (b). See also comments on article 19, paragraph 1, subparagraph (b), article 20, paragraph 1, subparagraph (b) and article 31, paragraph 1. Article 39 refers also to preparations in Schedule III.

Article 32

SPECIAL PROVISIONS CONCERNING THE CARRIAGE OF DRUGS IN FIRST-AID KITS OF SHIPS OR AIRCRAFT ENGAGED IN INTERNATIONAL TRAFFIC

Paragraph 1

1. The international carriage by ships or aircraft of such limited amounts of drugs as may be needed during their journey or voyage for first-aid purposes or emergency cases shall not be considered to be import, export or passage through a country within the meaning of this Convention.¹

Commentary

1. Even under the narcotics régime preceding the Single Convention it was already the general practice of Governments to exempt narcotic drugs carried for use in emergency cases in first-aid kits of ships engaged in international traffic, from the application of chapter V of the 1925 Convention containing rules concerning the import, export and transit of narcotic drugs, and in particular, from the requirement of a special Government authorization for each import and export of those drugs. This practice may perhaps not have been fully compatible with the letter of the treaty, but it was generally recognized that it would not have made much sense, and was also not necessary for purposes of narcotics control to require the countries of departure and destination of a vessel to issue separate authorizations for the carriage of those drugs for each voyage and for each return trip. The need for such documents for each voyage in either direction would seriously hamper maritime shipping. The difficulties would be much greater if the system of import and export authorizations (the so-called "import certificate and export authorization system")² had to be applied to the carriage of drugs in first-aid kits of aircraft engaged in international traffic. Such an airplane may on a single day make one or more flights from its country of origin to its country of destination and back, and may in the course of its voyages in both directions cross other countries, and even make landings in some of them.

2. Under the terms of the Chicago Convention on International Civil Aviation,³ the Council of the International Civil Aviation Organization provided prior to the entry into force of the Single Convention, and still provides in its "International Standards and Recommended Practices", that each airplane should be equipped with an accessible and adequate first-aid

¹ As regards the Russian text of para. 1, see United Nations, *Treaty Series*, vol. 570, p. 346. Procès-Verbal of Rectification, signed at United Nations Headquarters, New York, on 8 August 1966.

² See above, general comments on article 31.

³ Article 54, para. (1) and article 37; see also article 90; United Nations, *Treaty Series*, vol. 15, pp. 295 *et seq.*

kit including a narcotic drug.⁴ When the implementation of this recommended practice without application of the import certificate and export authorization system required by chapter V of the 1925 Convention created some difficulties in a few countries, the International Civil Aviation Organization approached the Economic and Social Council of the United Nations to clarify the matter of the applicability of this system to narcotic drugs carried in first-aid kits of aircraft engaged in international traffic.⁵ In the course of this procedure initiated by the Civil Aviation Organization the Office of Legal Affairs of the United Nations Secretariat ruled as follows:

"In formulating its views the Legal Office proceeded on the assumption that the problem of special interest to the Commission⁶ and the Council⁷ was whether the provisions of chapter V of the 1925 Convention, i.e. the provisions governing the import certificate and export authorization system, would be applicable to narcotic drugs carried under appropriate safeguards aboard aircraft engaged in international flight for the sole purpose of being readily available to be administered under suitable conditions to persons aboard aircraft. It was also assumed that such drugs would not be removed from the aircraft nor cross the customs stations at points of transit or destination of the aircraft, other than those in the country of registration of the aircraft concerned.

"It is the opinion of the Legal Office that the carriage of narcotic drugs in the conditions described above would not constitute international trade in narcotics as this expression is used in the 1925 Convention. The measures of control envisaged in chapter V of the Convention would not therefore be applicable to it and the States Parties to the Convention would not be required to submit narcotics so carried in airplanes to the import certificate and export authorization system established by this chapter".⁸

3. The Council, in its resolution 770 E (XXX) adopted on the recommendation of the Commission,⁹ called the attention of Governments to the opinion of the Legal Office, and recommended that they should accordingly not subject to the import certificate and export authorization system of chapter V of the 1925 Convention drugs carried in first-aid kits of aircraft engaged in international traffic, provided that the conditions of the legal opinion were complied with. The reference in the resolution to this opinion also stated that this exemption from the application of chapter V of the 1925 Convention would not be affected if the drugs were removed from the aircraft at stopovers for a short period, locked in bonded storage facilities of the operator concerned, and in any case remained under the control of the aircraft commander. The Council resolution also recorded the United Nations Secretariat's legal opinion that the drugs must in any event not cross the

⁴ International Civil Aviation Organization. *International Standards and Recommended Practices. Operation of Aircraft*. Annex 6 to the Convention on International Civil Aviation. Part I. International Commercial Air Transport, second edition of part I, September 1970; chapter 6. Airplane Instruments and Equipment, para. 6.2.2.; see also United Nations document E/CN.7/344, para. 4.

⁵ Document E/3054, pp. 1 and 2 and annex.

⁶ I.e. the Commission on Narcotic Drugs.

⁷ I.e. the Economic and Social Council.

⁸ Document E/CN.7/367, paras. 4 and 5.

⁹ Commission on Narcotic Drugs, report on the fifteenth session (1960), chapter XIV, draft resolution D; *Official Records of the Economic and Social Council, Thirtieth Session, Supplement No. 9* (E/3385).

customs lines at points of transit or destination other than those of the country of registration of the aircraft concerned,¹⁰ either because they were not removed from the aircraft or because they were removed only under the conditions just mentioned.¹¹

4. This practice of excluding from the application of chapter V of the 1925 Convention narcotic drugs carried in first-aid kits of ships and aircraft forms the background of article 32. The Commission, in preparing article 42 *bis* of the Third Draft of the Single Convention,¹² and the Plenipotentiary Conference, in adopting the corresponding article 32 of the Single Convention, wished to transform into an express provision of treaty law what had already been the practice of States without explicit authorization under the narcotics treaties prior to the Single Convention.¹³

5. But while the earlier practice exempted the international movements of drugs in first-aid kits of ships and aircraft engaged in international traffic only from the application of chapter V of the 1925 Convention, i.e. only from the "import certificate and export authorization system"² and from the rules of that chapter concerning transit, but left them subject to other provisions of the narcotics treaties preceding the Single Convention,¹⁴ paragraph 1 of article 32 of the Single Convention deprives these movements of the character of "import", "export" and "passage (transit) through a country" as those terms were understood in the treaty.¹⁵ It thus not only frees such movements from the provisions of article 31 requiring the import certificate and export authorization system and imposing certain rules governing transit—an exemption which corresponds in substance to chapter V of the 1925 Convention—but from all provisions of the Single Convention relating to "import", "export" or "transit".¹⁶ The authors of the Single Convention therefore found it necessary to provide for certain specific measures which are intended to prevent the improper use and diversion into illicit channels of drugs in the first-aid kits involved, and which are laid down in paragraphs 2 and 3 of article 32.

¹⁰ As required in the original opinion of the Legal Office cited above.

¹¹ Section I, para. (b), subpara. (i) and section II, para. 1 of the resolution of the Council.

¹² *Records*, vol. II, p. 16.

¹³ For the background, see Commission on Narcotic Drugs, report on the thirteenth session (1958), paras. 152-172; report on the fourteenth session (1959), paras. 358-371 and chapter XIV, section 1, draft resolution F; report on the fifteenth session (1960), paras. 251-255 and chapter XIV, draft resolution D; *Official Records of the Economic and Social Council, Twenty-sixth Session, Supplement No. 9*, (E/3133), *Fourteenth Session* (E/3254) and *Fifteenth Session* (E/3385); see also resolution 770 E (XXX) of the Economic and Social Council and documents E/3054, E/CN.7/344, E/CN.7/363 and E/CN.7/367; as regards the Plenipotentiary Conference, see *Records*, vol. I, pp. 35, 36, 72, 188 and 210 and vol. II, pp. 143-145, 269, 282 and 288; in fact one delegate at the Plenipotentiary Conference even addressed an inquiry to the Secretariat to make sure that the new provision of the Single Convention was in line with Council resolution 770 E (XXX); *Records*, vol. I, p. 35.

¹⁴ Document E/CN.7/367, para. 6.

¹⁵ See in particular article 1, para. 1, subpara. (m) and article 36, para. 1.

¹⁶ But not from other provisions such as those relating to trade, distribution, possession, records and use (article 4, para. (c), article 30, para. 1, subpara. (a) and subpara. (b), clause (ii), article 33 and article 34, para. (b)).

6. The exemptions granted by paragraph 1, like the related practices of shipping and air transportation engaged in international traffic prior to the coming into force of the Single Convention and also like Council resolution 770 E (XXX), were guided by the desire to ensure adequate narcotics control without unduly hampering international traffic by water or air.

7. The legal opinion to which the Council's resolution refers and which has been quoted above took into account both of these needs of the family of nations. It refers, however, only to first-aid kits of aircraft, and not to those of ships. Moreover, neither the Council nor the Commission has at the time of this writing yet expressed their views on the conditions under which the carriage of drugs in first-aid kits of ships should be exempted from the import certificate and export authorization system,² as was done in respect of the carriage by aircraft. It is nevertheless suggested that the conditions of exemption from measures of control of the 1925 Convention laid down in the legal opinion should in principle also apply to the delimitation of the meaning of "international carriage", which is exempted from controls pursuant to article 32, paragraph 1 of the Single Convention. It is therefore considered that such carriage should not be considered to be "import, export or passage through a country within the meaning of this Convention" only so long as the drugs concerned do not cross the customs lines at points of transit or destination other than those of the country of registration of the aircraft or ship concerned, either because they are not removed from the aircraft or ship, or, if so removed at stopovers for a short period, because they are locked in bonded storage facilities of the operator concerned and in any case remain under the control of the commander of the aircraft or ship.¹⁷ The prohibition of crossing the customs lines at points of transit or destination other than those of the country of registration is essential. The customs authorities concerned would otherwise find it extremely difficult, if not impossible, to distinguish the privileged drugs carried in first-aid kits of ships and airplanes from those subject to the import certificate and export authorization system. The home country of registration must, on the other hand, permit, under appropriate safeguards, the crossing of its customs lines, first when the ship or airplane is supplied from the operator's stores with the required drugs, and secondly when, to prevent theft, the drugs are removed from the vessel or aircraft to be placed in protected storage facilities of the operator. The country of registry is in a position, by applying the appropriate safeguards provided for under paragraph 2, including in particular the requirement of the maintenance of records by the operators of the ships or aircraft and by the ships and aircraft themselves as well as periodic inspections,¹⁸ to protect the drugs stored within their customs lines against theft and other illicit diversion. It is admitted that this suggested application of article 32, paragraph 1, may cause considerable difficulties in the case of ships which sail under a "flag of con-

¹⁷ Council resolution 770 E (XXX), section I, para. (b), subpara. (i); see also document E/CN.7/367, paras. 4 and 5.

¹⁸ See Council resolution 770 E (XXX), section II, para. 2, subparas. (e) and (g).

venience", i.e. which are registered in another country than the home country of its real operator.¹⁹

8. The conditions suggested above for the international carriage of drugs under article 32, paragraph 1 appear to be fully adequate for aircraft.²⁰ They may not always be fully applicable to different ships of different size and different character under the varying conditions of different ports; but it is in any event required for the purpose of this paragraph that the drugs carried by ships shall not cross the customs line of any country other than the country of their registry, and shall remain under the control of the ship's commander.

9. It may also be mentioned that movements of drugs from a ship or aircraft to a port of the country of its registration or vice versa, carried out within the confines of the port, do not constitute "import", or "export" within the literal meaning of article 1, paragraph 1, subparagraph (*m*), if they have not been brought on board the ship or aircraft from another country,²¹ or—as the case may be—are not intended to be transported to another country.²² Such movements might therefore be exempt from the import certificate and export authorization system even without reference to article 32, paragraph 1. Drugs, will, however, in such a case reasonably and legitimately be taken on board only if needed for the eventual treatment of passengers or members of the crew. Such drugs carried by a ship entering territorial or inland waters (including ports) of another country, or by an airplane landing in transit in a foreign country or arriving at its foreign destination, will, however, be subject to the import certificate and export authorization system unless their carriage takes place in accordance with the conditions of article 32, paragraph 1.

10. It is submitted that the term "international carriage" includes also "interterritorial carriage", the word "international" having in paragraph 1 the same meaning as in the heading of article 31, where the phrase "international trade" not only covers trade between two States, but also between two "territories"²³ of the same State. It cannot be assumed that the authors of the Single Convention did not wish to grant to the traffic between two territories of a Single State the same relief as to inter-State traffic.

11. It is considered that the wording of paragraph 1 does not limit its application to ships engaged in maritime traffic. Although inland waterway vessels may very often have no need for first-aid kits containing narcotic drugs, Governments do not appear to be precluded from applying this paragraph to the carriage of drugs by ships engaged in international and—for the reasons just given—interterritorial traffic on rivers, canals or lakes.

12. The actual size of "the limited amounts" needed "for first-aid purposes and emergency purposes" is to be determined by the country of registry under

¹⁹ Convention on the High Seas, done at Geneva on 29 April 1958, articles 5, 6 and 7; United Nations, *Treaty Series*, vol. 450, pp. 82 *et seq.*; in regard to this inconvenience the provision of article 5 of this Convention may be recalled according to which a genuine link must exist between the ship and the State whose flag it is entitled to fly; see also *Records*, vol. I, p. 36.

²⁰ *Records*, vol. II, p. 144, statement of the representative of the International Civil Aviation Organization.

²¹ Or "territory"; article 1, para. 1, subparas. (*y*) and (*m*).

²² Within the meaning of article 1, para. 1, subpara. (*y*); see also subpara. (*m*).

paragraph 3 of article 32. It may have to be determined in the light of such considerations as the number of passengers and crew members, and the length of the voyage. While the nature of the subject matter requires that considerable discretion be left to the Government concerned in making this decision, it cannot be excluded that the correctness of its determination may be questioned by another Party.²³

13. Paragraph 1 provides that drugs may be carried "for first-aid purposes or emergency cases". When this wording was proposed at the Plenipotentiary Conference in place of the phrase "for first-aid purposes [in emergency cases]" contained in the corresponding paragraph 1 of Article 42 *bis* of the Third Draft, it was pointed out that the revised provision would apply not only to first-aid cases, but also to cases in which regular medical treatment had to be given to a patient on a ship.²⁴ It seems, however, that the new wording cannot easily yield the meaning given to it by its proponent. But if sick passengers who currently need narcotics cannot possess them for their personal use during the voyage under the laws and regulations of the country which controls the situation on the ship or aircraft, or cannot acquire them for such use in the country in which they board the ship or aircraft, an "emergency case" as this term is used in paragraph 1 would undoubtedly exist. It follows that the drugs which may be carried under the terms of paragraph 1 may include those needed for passengers in such a situation, and may be administered to them in accordance with paragraph 3.

14. It may be noted that the French text does not cover transit as the English²⁵ and Spanish²⁶ versions do. In the light of the purpose of paragraph 1, it is submitted that preference should be given to the English and Spanish texts. If the control provisions of paragraphs 10-12 of article 31 governing transit had to be applied to first-aid kits carried by ships, the desired relief of international and interterritorial traffic from controls which are not essential under the circumstances would not be achieved. The omission in the French text appears to be an oversight.

15. It may be mentioned that it seems to be the view of some Governments that their consignment of narcotic drugs, for purposes of supply or replenishment of first-aid kits, to ships of their own nationality which are built in a foreign country or which are calling at a port of such a country, constitutes "transit" through, and not "export" to, that foreign country. These Governments seem to conclude that such a shipment does not require an import authorization of the foreign country, but may be accompanied by a copy of an export authorization to facilitate under article 31, paragraphs 10-12, the transit of the drugs through the foreign country to the ship in question. They consider that such an export authorization can be issued without requiring the supplier of the drugs to produce under article 31, paragraph 5 an import certificate of the foreign country in whose shipyard or port the vessel to be supplied is located.²⁷

²³ A dispute which may arise in this connexion may be settled in accordance with the provisions of article 48; for guidance regarding the narcotics to be carried by an aircraft, see second paragraph of the annex to Council resolution 770 E (XXX).

²⁴ *Records*, vol. II, p. 143; see also vol. I, p. 43.

²⁵ "Passage through a country".

²⁶ "*Tránsito por un país*".

²⁷ See also *Records*, vol. I, p. 35.

Paragraph 2

2. Appropriate safeguards shall be taken by the country of registry to prevent the improper use of the drugs referred to in paragraph 1 or their diversion for illicit purposes. The Commission, in consultation with the appropriate international organizations, shall recommend such safeguards.

Commentary

1. Under article 5 of the Convention on the High Seas,¹ a State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag, i.e. whose country of registry it is. Paragraph 2, requiring the country of registry to take appropriate safeguards to prevent the improper use of drugs carried by a ship under the conditions of article 32, paragraph 1 and their diversion for illicit purposes, accords therefore with this rule of the Convention on the High Seas.²

2. It appears still to be the generally held view that it is not the law of the State of registry which governs occurrences on board an aircraft, but rather the law of the country in whose territory the airplane happens to be, whether on the ground or in the airspace.³ If this principle were applied, different safeguards might have to be employed in the same airplane in different countries. The express assignment of the task of establishing the safeguards to the country of registry not only as regards ships but also as regards airplanes ensures that uniform standards can be applied in a plane wherever it may be. Otherwise, the possible need to change the standards whenever a plane entered a new country might make the exercise of effective controls very difficult, and indeed virtually impossible.

3. Five principal groups of safeguards which should be included among those to be taken by the country of registry may be mentioned, as follows:

(i) Measures applicable to the crew members responsible for the drugs, to ensure that they can be relied on to carry out their duty to guard the drugs

¹ Convention on the High Seas, done at Geneva on 29 April 1958, United Nations, *Treaty Series*, vol. 450, p. 82 *et seq.*

² The authority given by paragraphs 2 and 3 to the country of registry may however prevent some conflicts of law in the case of ships in foreign territorial or interior waters, including ports; see however above, comments on article 31, para. 15. Arrangements concerning first-aid kits made in accordance with the Commission's recommendation would also appear to be matters of internal order and discipline, affecting solely the ship and its occupants, in which it is the practice of a foreign coastal State not to interfere in its ports, internal bays or territorial waters as long as they have no adverse effect on that State and the inhabitants in its domain and do not disturb its peace and order; see also articles 19 and 20 of the Convention of 1958 on the Territorial Sea and Contiguous Zone and foot-note 4 to the comments on article 31, para. 15.

³ McNair, *The Law of the Air*, third edition, London, Stevens & Son, 1964, pp. 266 and 270; see however Convention on Offences and Certain Other Acts committed on board Aircraft, signed at Tokyo on 14 September 1963, article 3, which provides that the State of registration is competent to exercise jurisdiction over offences and acts committed on board American Society of International Law, *International Legal Materials*, vol. II, number 6 (November, 1963), Washington, D.C.; see also Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft, United States, Department of State, *The Department of State Bulletin*, vol. LXIV, No. 1646 (11 January 1971), pp. 53 *et seq.*

entrusted to them against theft, diversion and improper use, and also to ensure that on airplanes and on those vessels which do not have a physician on board, one or two of the crew members have some training to enable them to administer the drugs properly, providing always that they should consult a physician by radio whenever advisable and possible;

(ii) Measures applicable to the container holding the drugs, to ensure that the drugs are accessible only to the crew member responsible for them;

(iii) Measures regarding records which should be kept by the operator of the ship or aircraft, in addition to those which should be maintained by a designated member of the crew, on each individual administration of a drug, and on each addition to or removal of drugs from the first-aid kit;

(iv) Measures requiring that periodic reports be made by each ship or airplane to its operator on the use of the first-aid kit, and requiring that periodic reports be furnished by the operators to the authorities;

(v) Measures regarding inspection by Government officers.⁴

4. The term "improper use" is intended to cover not only "abuse",⁵ i.e. supply to an addict not based on sound medical grounds, but also any use not in accordance with the requirements of medical science or good medical practice, such as administration on the basis of a false diagnosis, by a wrong method or by a person not having at least such necessary skills as are acceptable under the conditions where the need for the drug arises in the special circumstances of the airplane or vessel involved.⁶

5. Among "the appropriate international organizations"⁷ which may be consulted by the Commission under paragraph 2 are the International Civil Aviation Organization, the Inter-Governmental Maritime Consultative Organization, the World Health Organization, the International Narcotics Control Board, the International Labour Organisation⁸ and the International Criminal Police Organization (INTERPOL).⁹ This list is not meant to be exhaustive. Not only intergovernmental organizations, but also non-governmental international organizations may be consulted.

6. What organization should be consulted will of course depend on the nature of the safeguard which the Commission may consider. It is left to the Commission to decide what international organizations it finds "appropriate" to consult on particular safeguards. It is, however, submitted that in making such decision the Commission must also observe the agreements and other rules governing the relations of the United Nations with the international organizations concerned.

7. Resolution 770 E (XXX)¹⁰ of the Economic and Social Council concerning safeguards to be taken in respect to the carriage of narcotic drugs in

⁴ Commission on Narcotic Drugs, report on the fourteenth session (1959) paras. 368-369 (cited in foot-note 13 to the comments on article 32, para. 1); see also Council resolution 770 E (XXX) and its annex.

⁵ *Records*, vol. I, p. 35 and vol. II, p. 143.

⁶ See above the suggestion of consultation of a physician by radio.

⁷ *Records*, vol. II, pp. 144-145.

⁸ *Records*, vol. I, p. 35 and vol. II, p. 143.

⁹ *Records*, vol. II, p. 144.

¹⁰ The text of this resolution is reproduced in the annex to this Commentary.

first-aid kits of aircraft engaged in international flights reproduces literally the recommendations of the Commission on the subject.¹¹ The Commission's recommendations were made in consultation with the International Civil Aviation Organization, the World Health Organization and the International Criminal Police Organization. Until the Commission decides otherwise, Council resolution 770 E (XXX) may therefore be considered to have the position of a recommendation made under paragraph 2 on appropriate safeguards to be taken by the countries of registry in respect of narcotic drugs carried by aircraft engaged in international traffic, for first-aid purposes or emergency cases in accordance with paragraph 1. As of the time of this writing the Commission has not yet made such a recommendation for ships engaged in international traffic.

8. It will be noted that the Commission's recommendations made under article 32, paragraph 2 are subject to review by the Economic and Social Council under article 7.

¹¹ Commission on Narcotic Drugs, Report of the fifteenth session (1960) (cited in foot-note 13 to the comments on article 32, para. 1). Chapter XIV, draft resolution D; see also para. 255.

Paragraph 3

3. Drugs carried by ships or aircraft in accordance with paragraph 1 shall be subject to the laws, regulations, permits and licences of the country of registry, without prejudice to any rights of the competent local authorities to carry out checks, inspections and other control measures on board ships or aircraft. The administration of such drugs in the case of emergency shall not be considered a violation of the requirements of article 30, paragraph 2 (b).

Commentary

1. As has been mentioned above in the comments on paragraph 1, the international carriage of drugs by ships or aircraft under the conditions of that paragraph is exempted only from those provisions of the Single Convention which govern "import", "export" or "passage through a country" (transit), but not from the other rules of that treaty. This carriage involves several activities which are controlled by such rules. The "carriage" is certainly "possession",¹ the purchase of the drugs for the first-aid kits is an act of "trade",² in any event if acquired for commercial aircraft and ships, and the administration of the drugs in the kits is trade or distribution.³ The supply of drugs to the first-aid kits in question constitutes "consumption",⁴ which must be reported by the operator to the Government to enable it to include such supplies in the statistics on consumption which it must furnish to the Board. It is also submitted that compartments of the aircrafts or ships in

¹ Article 4, para. (c) and article 33.

² Article 4, para. (c), article 30, article 34, para. (b).

³ Article 4, para. (c) and article 30.

⁴ Article 1, para. 2 and article 20, para. 1, subpara. (c).

which the first-aid kits are held in safe custody may also be considered to be “premises” within the meaning of article 30, paragraph 1, subparagraph (b), clause (ii). If this opinion is accepted, it follows that if first-aid kits not only contain preparations of narcotic drugs, but also basic narcotic drugs or their salts,⁵ the compartments containing the first-aid kits would have to be controlled “under licence”.

2. Paragraph 3 provides that the applicable laws and regulations,⁶ as well as the governmental authorizations (“permits and licences”) which implement these rules of the Single Convention and enforce the safeguards to be taken under paragraph 2, should be those of the country of registry. This provision is intended to prevent possible conflicts of law, particularly in the case of airplanes, and thus to ensure the application of the same laws and regulations and the validity of the same governmental authorizations relating to the carriage of the drugs involved, no matter under whose territorial jurisdiction the ship or aircraft may happen to be.⁷

3. The competence of the Government of the country of registry is not limited to documents which are called “permits” or “licences” or are referred to in the national legislation (or language) concerned by corresponding designations. The national legal names of the governmental authorizations in question are irrelevant.⁸ The competence of the country of registry under paragraph 3 covers all governmental authorizations which it issues pursuant to its laws and regulations in order to control, in accordance with the requirements of the Single Convention,⁹ drugs carried in the first-aid kits concerned, and to enforce the safeguards which it prescribes under paragraph 2 to prevent the improper use or diversion of the drugs.

4. It may be mentioned also in this connexion that a Government should have discretionary power to grant or refuse the authorizations concerned or to grant them under conditions, for the purpose of ensuring the implementation of the safeguards which it must require under paragraph 2. A Party has an obligation to respect the validity of the official acts of the Government of registry which are referred to in paragraph 3, on ships or aircraft which are within its territorial jurisdiction under international law; but this does not affect the other rights which it may have under its own laws and regulations, in accordance with international maritime or air law, over a ship which is within its territorial or internal waters (including its ports) or over an airplane in its territory, whether on the ground or in the air.¹⁰ It is consonant with this legal position that paragraph 3 expressly states that the validity of the official acts in question on ships or aircraft, wherever they may be, is “without prejudice to any rights

⁵ See resolution 770 E (XXX) of the Council, second paragraph of its annex; the salts are “drugs” and not “preparations” in the sense of the Single Convention; see comments on article 1, para. 1, subpara. (j).

⁶ Article 4, introductory paragraph.

⁷ See above, comments on article 32, para. 2.

⁸ See also above, comments on article 29, para. 1 and article 30, para. 1, subpara. (a).

⁹ See also article 39, which expressly authorizes Parties to adopt more strict or severe controls than those required by the Single Convention.

¹⁰ See comments on article 31, para. 15 and in particular foot-note 4 to those comments; and comments on article 32, para. 2.

of the competent authorities of the local sovereign to carry out checks, inspections and other control measures on board ships or aircraft". In making this express statement in paragraph 3, the authors of the Single Convention did not wish to create new rights for the local authorities, but only to make clear that their existing rights were not affected.¹¹

5. The local authorities may in particular verify whether the laws and regulations of the country of registry are being respected, whether the required permits and licences have been issued, and whether the safeguards prescribed by that country have been taken. They may of course take the control measures required by the Single Convention¹² in respect of those drugs carried by the ship or aircraft which do not have the privileged position provided in article 32, paragraph 1.

6. Article 30, paragraph 2, subparagraph (b), clause (i) requires a medical prescription for the supply or dispensation to individuals of drugs in Schedule I and their preparations, other than preparations in Schedule III.¹³ The requirement of a medical prescription, however, does not apply to drugs in Schedule II and their preparations or to preparations in Schedule III.¹⁴ Moreover it does not apply to such drugs (and their preparations) as individuals may dispense or administer in connexion with their duly authorized therapeutic functions. Paragraph 3 of article 32 expressly exempts from the prescription requirement the administration "in the case of emergency" of drugs carried by ships or aircraft in accordance with article 32, paragraph 1.

7. It was noted at the Plenipotentiary Conference that paragraph 1 of article 32 refers to drugs needed "for first-aid purposes or emergency cases", while the last sentence of paragraph 3 provides only for administration "in the case of emergency", and the suggestion was made to use equivalent phrases in both places. The Chairman of the Drafting Committee said that his committee had given careful consideration to the phrase in paragraph 3 and had "concluded that emergency measures automatically included first-aid".¹⁵

8. It has been suggested above that the term "emergency" would also cover the case of sick passengers who currently need narcotic drugs, but cannot possess them for their personal use during the voyage under the law of the country which controls the situation on the ship or aircraft or who would not be able to acquire them for this use in the country in which they board the ship or aircraft.¹⁶

¹¹ It is for this reason that the Plenipotentiary Conference replaced the words "to the right" in article 42*bis*, para. 3 of the Third Draft (which is substantively identical with article 32, para. 3 of the Single Convention) by the words "to any rights"; *Records*, vol. II, pp. 143 and 269. The French and Spanish texts do not reflect this change, but their identical meaning with the English text is thereby not affected.

¹² Article 31, paragraphs 10-14; articles 36 and 37; see also article 17, third paragraph of the Statute annexed to the Convention on the International Régime of Maritime Ports, signed at Geneva on 9 December 1923, League of Nations, *Treaty Series*, vol. LVIII, pp. 285 *et seq.*; and article 19, paragraph (d) of the Convention on the Territorial Sea and the Contiguous Zone, done at Geneva on 29 April 1958, United Nations, *Treaty Series*, vol. 516, pp. 216-218.

¹³ See above, comments on article 30, para. 2, subpara. (b), clauses (i) and (ii).

¹⁴ Article 30, para. 6 and article 2, paras. 2, 3 and 4.

¹⁵ *Records*, vol. I, p. 210.

¹⁶ See above, comments on article 32, para. 1.

9. It is finally submitted that crew members trained to administer drugs under paragraph 3 would do so “in connexion with their duly authorized therapeutic functions” and would therefore in any event be exempted from the prescription requirement under article 30, paragraph 2, subparagraph (b) clause (i). It has been suggested above¹⁷ that among the safeguards which must be taken by the country of registry under paragraph 2, provision should be made that on airplanes and on those vessels which do not have a doctor on board, drugs should under paragraph 3 be administered only by a crew member adequately trained for this task.¹⁸ The exemption from the prescription requirement, provided in the last sentence of paragraph 3, is therefore of very little if any practical importance.

¹⁷ See above, comments on article 32, para. 2.

¹⁸ See also resolution 770 E (XXX) of the Council, section II, para. 2, subpara. (c) and annex, fourth paragraph.

Article 33

POSSESSIONS OF DRUGS

The Parties shall not permit the possession of drugs except under legal authority.

Commentary

1. Article 33 must be read in connexion with article 4, paragraph (c) requiring Parties, subject to the exceptions expressly permitted by the Single Convention,¹ to limit exclusively to medical and scientific purposes the possession of drugs. It has therefore been stated in the comments on that paragraph that apart from these exceptions, Parties may not authorize the possession of drugs for other purposes.

2. It may be repeated here that some Governments consider that they are not required to punish the unauthorized possession of drugs by addicts for their personal use, because the word "possession" as used in article 36, paragraph 1, covers only possession for distribution, and is not meant to include possession for personal use; but even if this view is not accepted, there cannot be any doubt that Parties need not consider unauthorized possession of drugs for personal use to be a "serious" offence within the meaning of article 36, paragraph 1, liable to punishment by imprisonment or other penalties of deprivation of liberty. They may choose to impose minor penalties such as fines or even censure.²

3. Whatever the position the Parties may take on this question of penal sanctions, it does not affect their obligation under article 33 not to permit the unauthorized possession of drugs for personal consumption, like any other possession of drugs without legal authority. If they choose not to impose penalties on the unauthorized possession for personal use, they still must use their best endeavours to prevent this possession by all those administrative controls of production, manufacture, trade and distribution which are required by the Single Convention, and whose basic objective is the prevention of the abuse of drugs and therefore also to prevent the *unauthorized* possession by addicts. It is also submitted that Parties which do not consider such possession to be an offence under article 36, and therefore are not required to apply article 37 regarding the seizure and confiscation of drugs, are nevertheless bound to confiscate the drugs found in the unauthorized possession of persons

¹ Article 2, para. 9, article 27 and article 49.

² For a more extensive discussion of this legal question, see above comments on article 4, para. (c).

for personal consumption. This obligation appears to be implied in the provision of article 33.³

4. It will be noted that article 33 applies to all drugs and their preparations. Drugs in Schedule II and their preparations, as well as preparations in Schedule III, which it may be possible for individuals to acquire without medical prescriptions,⁴ are not excepted.⁵ Although free from the prescription requirement, they are not excluded from the scope of article 4, paragraph (c), requiring Parties to limit the possession and use of drugs to medical and scientific purposes, and they may be sold only by State enterprises or licensed traders or dispensed or administered by persons duly authorized to perform therapeutic functions.⁶

5. Parties may therefore not authorize the possession of drugs in Schedule II and their preparations as well as of preparations in Schedule III⁷ by individuals for the purpose of abusing them. They should therefore require their licensed retail traders not to sell these drugs and preparations to an individual who obviously intends to abuse them, and in any event not to sell excessive amounts of them to a single person.

6. They would also be bound to confiscate these drugs and preparations if found in the possession of a person who needs them not for medical purposes, but exclusively for the purpose of abusing them.

7. The Parties are, however, not bound to adopt measures which are not expressly or impliedly required by the Single Convention in order to enforce the limitation of the possession and use of drugs in Schedule II and their preparations, or of preparations in Schedule III, to medical and scientific purposes. It is moreover suggested that, unless more strict controls are required by national law than those prescribed by the Single Convention, the application of article 33 to the unauthorized possession by individuals of these drugs and preparations for the purpose of abusing them will generally be very difficult indeed, and in many cases not only impractical but also impossible.

8. It may be mentioned in this context that the leaves of the cannabis plant, when not accompanied by the tops, are not "drugs",⁸ and are therefore not subject to article 33.⁹

9. For a provision in an earlier treaty requiring Parties to take measures to prohibit the delivery to or possession by any unauthorized person of drugs,

³ See also above, comments on article 4, para. (c); the United Nations Secretariat is not aware of any constitutional provisions which would prevent such course of action. It is however suggested that where such an obstacle should exist, the same effect could be accomplished by making the unauthorized possession of drugs by addicts for personal consumption an offence, to be punished exclusively by the confiscation of the drugs.

⁴ Article 30, para. 6.

⁵ Article 2, paras. 2 to 4.

⁶ Article 30, para. 1, subpara. (a) and (c) in connexion with the references in foot-note 5.

⁷ Preparations in Schedule III will, however, generally hardly be liable to the kind of abuse which the Single Convention is intended to prevent; see article 3, para. 4.

⁸ Article 1, para. 1, subparas. (b) and (j), and Schedules I and II.

⁹ See article 28, para. 3 and comments thereon.

see article 7 of the 1925 Convention. This provision has, however, a more limited scope than article 33 of the Single Convention.¹⁰

¹⁰ Article 7 of the 1925 Convention does not apply to raw opium, prepared opium, coca leaves, cannabis and cannabis resin; to the possession for retail trade or personal consumption of drugs in Group II of the 1931 Convention (and of the 1948 Protocol) and to those preparations which either by express treaty provisions or by operation of article 8 of the 1925 Convention are exempted from the application of this Convention, i.e. to the so-called "preparations for the export of which export authorizations are not required" which are a group of preparations whose position corresponds to some extent to that of preparations in Schedule III of the Single Convention; see articles 8 and 4, para. (d) of the 1925 Convention, article 13, para. 1 and para. 2, subparas. (a) and (b) of the 1931 Convention; see also *Commentary* on the 1931 Convention, para. 135; article 7 of the 1925 Convention moreover applies only "as regards the internal trade" to the drugs which it covers. It may however be noted that all the drugs and their preparations covered by article 7 or excluded therefrom are subject under the narcotics régime preceding the Single Convention, to the import certificate and export authorization system of chapter V of the 1925 Convention, the only exception being "the preparations for the export of which export authorizations are not required".

Article 34

MEASURES OF SUPERVISION AND INSPECTION

Commentary

1. This title contains the words “and inspection” even though the body of the article does not include any provision regarding inspection. Article 46 of the Second Draft of the Single Convention,¹ which corresponds to article 34 of the Single Convention, provided in its second paragraph that Parties should maintain a system of inspection. This paragraph was deleted by the Commission on Narcotic Drugs at its thirteenth session because it considered such an express provision to be superfluous, since all Governments provide in any event for inspection. It was, however, overlooked on that occasion, as well as later when the Third Draft of the Single Convention² was adopted, that the title accordingly required correction. This correction was also omitted by the Plenipotentiary Conference.³

2. As regards the obligation of Parties under the introductory paragraph of article 4; under article 29, paragraph 2, subparagraph (a); under article 30, paragraph 1, subparagraph (b), clause (i) and under article 31, paragraph 3, subparagraph (b), to maintain a system of inspection of the various phases of the narcotics trade (agriculture, manufacture, wholesale and retail trade), see above, comments on those provisions.⁴

¹ Document E/CN.7/AC.3/7.

² *Records*, vol. II, p. 17 (article 43 of the Third Draft).

³ See foot-note 5 to the comments on article 4.

⁴ See also comments on article 23, para. 2, subparas. (b) and (c).

Paragraph (a) with introductory part

The Parties shall require:

(a) That all persons who obtain licences as provided in accordance with this Convention, or who have managerial or supervisory positions in a State enterprise established in accordance with this Convention, shall have adequate qualifications for the effective and faithful execution of the provisions of such laws and regulations as are enacted in pursuance thereof; and

Commentary

1. A question arises as to the meaning of the phrase “all persons who obtain licences”. Not only natural but also “legal” persons can obtain cultivation, manufacturing or trading licences in accordance with the Single

Convention.¹ Although the text of paragraph (a) may appear to apply the requirement of “adequate qualifications”, which it defines, only to natural persons, it is submitted that it cannot have been the intention of the authors of the Single Convention to subject private individuals and State enterprises, but not private corporate bodies (corporations or co-operatives), to conditions which are intended to ensure the “effective and faithful execution” of the laws and regulations enacted to implement the treaty. Corporate bodies as State enterprises can offer the assurance that they have the capacity and willingness to implement effectively and faithfully the rules of the narcotics régime only if their managerial or supervisory personnel has adequate qualifications for so doing. It appears to follow that the phrase “all persons who obtain licences” includes “legal persons”, who must therefore also have the required “adequate qualifications”, and may be considered to have such qualifications if their managerial or supervisory personnel has them. It can certainly be assumed that the authors of the Single Convention did not wish to subject private corporate bodies to a less strict régime than State enterprises.

2. The required “adequate qualifications” are meant to include moral as well as technical qualifications.² The Conference was well aware that this requirement was very vague. It found it impossible, however, to use more specific terms, since the differing conditions in various countries and the divergent activities involved (manufacture, trade, distribution, agricultural cultivation) required the application of different technical standards.³ The moral standards which must be required are of course everywhere the same, namely, a high moral character which gives assurance that the persons in question possessing it can be relied upon to carry out faithfully the laws and regulations concerned. This obviously excludes persons who have been convicted of intentional violations of the narcotics law, and beyond that, all persons who on account of their past behaviour cannot be fully trusted to be law-abiding.

3. The required technical standards can, in the case of manufacture, trade and distribution, be based on such factors as appropriate school degrees, a certain practical experience or the successful passing of specific examinations. While paragraph (a) does not apply to medical practitioners, it is nevertheless suggested that it would be in the spirit of this provision to require that these practitioners including veterinarians and dentists, who in fact participate in the “distribution”⁴ of drugs by dispensing and administering them, should have “adequate qualifications for the effective and faithful execution” of those rules of the narcotics laws and regulations which govern their professional activities. While the Single Convention does not prescribe the licensing of medical practitioners, some national laws stipulate that they must have special narcotics licences.

¹ Article 29, para. 1, article 30, para. 1, subpara. (a) and article 31, para. 3, subpara. (a); see also article 23, para. 2, subparas. (a) and (b), article 26, para. 1 and article 28, para. 1; article 34, para. (a) also applies to the licensed cultivators to which these provisions of articles 23, 26 and 28 relate.

² *Records*, vol. I, p. 36, vol. II, p. 283 (foot-note 14) and 288 (foot-note 45).

³ *Records*, vol. I, p. 36; vol. II, p. 145.

⁴ Article 30, para. 1, subpara. (a) subjects this distribution to the requirement of a licence, from which medical practitioners are however exempted pursuant to subpara. (c) of that paragraph; State enterprises need not have a licence.

4. As regards manufacture, trade and distribution, paragraph (a) appears to be in fact only a special application of the general rule of the Single Convention requiring Parties to control all persons and enterprises carrying on or engaged in the manufacture of, trade in, or distribution of drugs.⁵ It is moreover suggested that the obligation laid down in this paragraph is also implied in the requirement of the Single Convention that the manufacture of, trade in and distribution of drugs should be carried out by State enterprises or be licensed, and that the cultivation of the coca bush, of the opium poppy for the production of opium and of the cannabis plant for the production of cannabis and cannabis resin should also need a licence.¹ It is one of the objectives of this requirement that the persons and enterprises engaged in the activities in question should have the necessary qualities to ensure an effective and faithful implementation of those rules of the narcotics régime which concern them.

5. Paragraph (a) is not one of the provisions from whose application preparations in Schedule III are exempted.⁶

6. The narcotics régime preceding the Single Convention did not have an explicit provision corresponding to paragraph (a). Its licensing requirements⁷ and its general rule requiring control of all persons manufacturing, importing, selling, distributing or exporting the drugs concerned⁸ appears, however, to imply in respect of the drugs in question a similar obligation to that laid down in article 34, paragraph (a), of the Single Convention.

⁵ Article 29, para. 2, subpara. (a); article 30, para. 1, subpara. (b), clause (i) and article 31, para. 3, subpara. (b); see also comments on those provisions of articles 29 and 30.

⁶ Article 2, para. 4.

⁷ Article 6, second para., subpara. (c) of the 1925 Convention, article 10, second para., subpara. (b) of the 1912 Convention, article 13, para. 1, subpara. (a) and para. 2, subpara. (a) of the 1931 Convention and article 3, para. 3 of the 1953 Protocol.

⁸ Article 6, first para. of the 1925 Convention, article 10, first para. of the 1912 Convention and article 13, para. 1, subpara. (a) and para. 2, subpara. (a) of the 1931 Convention.

Paragraph (b)

(b) That governmental authorities, manufacturers, traders, scientists, scientific institutions and hospitals keep such records as will show the quantities of each drug manufactured and of each individual acquisition and disposal of drugs. Such records shall respectively be preserved for a period of not less than two years. Where counterfoil books [article 30, paragraph 2 (b)] of official prescriptions are used, such books including the counterfoils shall also be kept for a period of not less than two years.

Commentary

1. The term “governmental authorities” refers to State enterprises engaged in the manufacture of, and trade in drugs¹ and—it is submitted—to

¹ Article 29, para. 1; article 30, para. 1, subpara. (a) and article 31, para. 3, subpara. (a).

the national opium, coca leaf or cannabis agencies required to be maintained in countries authorizing respectively the cultivation of the opium poppy for the production of opium, the cultivation of the coca bush, or the cultivation of the cannabis plant for the production of cannabis or cannabis resin.² It cannot be assumed that the authors of the Single Convention intended to require other Government authorities to keep the detailed records required by paragraph (b).³ The competent Government authorities must of course keep the records that they need for the administration of the régime of different licences provided for in the Single Convention and of the import certificate and export authorization system, for furnishing their estimates of drug requirements and their statistical returns to the Board, and for keeping their narcotics supplies to be obtained by manufacture or import or both, within the limits prescribed by the Single Convention; but the obligation to keep these records is implied in the provisions of the Convention dealing with these functions, and it is not a subject regulated by paragraph (b).

2. The paragraph under consideration does not normally require medical practitioners (physicians, surgeons, veterinarians and dentists) to keep any records. They are not “traders” within the meaning of this provision.⁴ Some countries, however, require them to keep more or less detailed records of the kind to which paragraph (b) refers. Moreover, if a Party requires under article 30, paragraph 2, subparagraph (b), clause (ii) that prescriptions for drugs in Schedule I should be written on official forms taken from counterfoil books, article 34, paragraph (b) requires that such books, including the counterfoils, should be kept for a minimum period of two years by those who wrote the prescriptions, who are generally medical practitioners; but this is the only exception to the exemption of medical practitioners from the provisions of paragraph (b). It will furthermore be recalled that a Party is bound to require the use of such official prescription forms only if it deems such a measure “necessary or desirable”.⁵ Medical practitioners who have a hospital, or engage in scientific research for which they use narcotics, or engage in the sale of narcotic drugs to other persons than their own patients⁶ must, however, in these capacities keep the records which hospitals,⁷ scientists or pharmacists are bound to maintain. It will, however, sometimes be difficult to draw an exact borderline between the therapeutic and scientific use of drugs by medical practitioners.

3. “Scientists” within the meaning of paragraph (b) are individual research workers who do not perform their work as members of a scientific

² Article 23, article 26, para. 1 and article 28, para. 1.

³ The use of the term “governmental authorities” is in this context not very fortunate, nor the use of “*autorités administratives*” in the French version or the use of “*autoridades administrativas*” in the Spanish text.

⁴ *Records*, vol. I, p. 36 and vol. II, pp. 145-146; see also above, comments on article 2, para. 2.

⁵ It is, however, considered that if such prescriptions are written by medical practitioners in their capacity of staff members of a hospital, the counterfoil books concerned must be kept by the hospital and not by the writers of the prescriptions.

⁶ See above, comments on article 30, para. 2, subpara. (b).

⁷ It was said by representatives at the Plenipotentiary Conference in favour of requiring hospitals to maintain records that “it was well known that they were one of the main sources of supply for drug addicts”; *Records*, vol. II, pp. 145-146.

institution. If they do their research within the framework of such an institution or of a hospital, they need not keep records of the drugs which they use, in addition to those which the institution or the hospital must maintain.

4. It was the understanding of the Plenipotentiary Conference that the term "scientific institutions . . . covered the whole field, including research and education institutions, such as universities".⁸ Hospitals which engage in scientific research need not, however, be required to have separate records for the drugs to be employed for medical treatment and for those to be used for research. Normally hospital research will simultaneously be treatment. Research departments of drug manufacturers, whether private or State enterprises, might also appear to be scientific institutions for the purposes of paragraph (b). Their use of drugs for research would, however, be "disposal" as this word is employed in the paragraph under consideration, and drug manufacturers would therefore already be required in that capacity to record such use since they must keep records which show each individual disposal of drugs.

5. It has been submitted elsewhere that retail traders (pharmacists) need not be obligated to maintain records of their retail sales of drugs in Schedule II and their preparations. The same applies to all preparations in Schedule III, other than those which contain drugs in Schedule I, which the retail traders did not acquire in ready form from manufacturers. It appears to be necessary for purposes of control that the retail traders should keep a record of individual sales of preparations in Schedule III which contain drugs in Schedule I and which they compound themselves. They should also maintain records of all individual acquisitions of all drugs and their preparations, including drugs in Schedule II and their preparations as well as all preparations in Schedule III.⁹

6. The records required by paragraph (b) serve two principal purposes. First, they enable the keepers of the records to furnish to the supervisory government authorities the data which the latter need for the compilation of their estimates of drug requirements and for the periodic statistical returns which they must furnish to the Board.¹⁰ Secondly, they assist the supervisory authorities in the control of the activities of the persons, enterprises and institutions to which paragraph (b) refers with a view to discovering any diversions of drugs into illicit channels, or any illegal use of them. It is suggested that these two main purposes must guide the Governments in determining the contents of the records, that is, the data to be included in each entry regarding the manufacture of a quantity of drugs, an individual acquisition or individual disposal of drugs. The term "disposal" covers, in the case of manufacture, also use for the manufacture of other drugs,¹¹ of substances not covered by the Single Convention,¹² and of preparations, including preparations in Schedule III.¹³ Consequently not only manufacturers of basic drugs and their

⁸ *Records*, vol. II, p. 283, foot-note 15 and p. 288, foot-note 46.

⁹ See above, comments on article 2, paras. 2 and 4.

¹⁰ Some Governments base their import and export statistics on information furnished to them by their customs authorities.

¹¹ Including salts, isomers, esters and ethers; see above, comments on article 1, para. 1, subparas. (j) and (n).

¹² Article 1, para. 1, subpara. (n).

¹³ Article 2, paras. 3 and 4; see also comments on those provisions and on article 29, para. 1.

salts, but also traders who compound preparations, whether listed in Schedule III or not, should maintain records on manufacture. Retailers who compound preparations for individual sales should, however, for the purpose of paragraph (b) not be considered as manufacturing such preparations, but should record those preparations as sales of the basic drugs which they contain if the drugs concerned are listed in Schedule I. As mentioned above, a record need not be made by the retailer if the drug involved is listed in Schedule II.

7. It will be noted that paragraph (b) does not require the keeping of records on production, because the cultivators who “produce”—that is, separate the opium, coca leaf, cannabis or cannabis resin from the plants from which they are obtained¹⁴—are quite often unable to keep such records, and may even sometimes be illiterate. The national opium, coca leaf or cannabis agency concerned, however, would have to write down the amounts of these drugs which they purchase from the cultivators, in consequence of their obligation to record “each individual acquisition” of drugs. If these agencies and the cultivators proceed in accordance with the requirements of the Single Convention¹⁵—i.e. if the latter do not divert a part of their product into illicit channels—the total acquisitions of opium, coca leaves or cannabis recorded by the national agency concerned should be equal to the production of the drug involved in the country in question.

8. Since different conditions govern the manufacture of different drugs, preparations and substances not covered by the Single Convention, and also since somewhat different practices have proved their value in different countries,¹⁶ it would be hardly practical to prescribe in a treaty or to describe in a commentary in exhaustive detail the data which an entry on manufacture *should* contain. It may, however, be stated as a general principle that each entry on manufacture should include such information as would make it possible to compare the drugs or poppy straw used as raw material with the product (drugs, salts, preparations or substances not covered by the Single Convention) which was obtained, in order to make it possible to determine whether the quantity of the raw material in question corresponds in fact to the quantity of the product obtained, and whether a part of the raw material was used for unrecorded purposes or a part of the product was not entered. This presupposes in any event that the quantity of the raw material (drug or poppy straw) used in the manufacture of a product will be indicated, as well as that the quantity of the product obtained from this amount of the raw material will be entered. The requirement of stating the quantity of a drug used as raw material for another product follows from paragraph (b) itself, since as stated before, such use is undoubtedly “disposal” within the meaning of this term in this provision.¹⁷ The entry of the quantity of poppy straw

¹⁴ Article 1, para. 1, subpara. (t).

¹⁵ Article 23, para. 2, subpara. (d); article 26, para. 1 and article 28, para. 1.

¹⁶ No significant diversion from legal manufacture into illicit channels is known to take place at the time of this writing.

¹⁷ It follows also from article 20, para. 1, subpara. (b) as regards the use of drugs for the manufacture of other drugs, preparations in Schedule III and substances not covered by the Single Convention and as regards the use of poppy straw for the manufacture of drugs.

used for the manufacture of a given quantity of "concentrate of poppy straw" or of morphine obtained from that straw appears to be required under other provisions of the Single Convention.¹⁸

9. It does not seem that the Convention requires the recording of chemicals which are available in trade for various processes of chemical synthesis and which were used for the manufacture of "synthetic" drugs.¹⁹ Some Governments may, however, find it useful for particular reasons to require such a record in the case of some or all "synthetic" drugs.

10. Whenever manufactured drugs are used as raw material, their pure drug content should be given. If the products which are obtained are drugs, their salts or preparations (including preparations in Schedule III), their pure drug content should also be entered. It is suggested that it would be useful for purposes of control if the quantities of substances not covered by the Single Convention which were made from drugs are also recorded.

11. It may often not be practical, but it would be useful where possible, to require a recording of the approximate content of cocaine and other ecgonine alkaloids in coca leaves used in the manufacture of ecgonine or cocaine. The same appears to be the case with poppy straw used in the manufacture of "concentrate of poppy straw" or of morphine. It is, however, suggested that the average morphine content of opium used in the manufacture of morphine can, and therefore always should be, taken down in the records of the manufacturer.²⁰

12. Where the products are opium preparations (including "medicinal opium" and extracts and tinctures of opium) or coca leaf preparations (extracts and tinctures and other preparations of coca leaf), their content of morphine or cocaine should be given.²¹ In the case of extracts and tinctures of cannabis, it may be practical to enter only the quantity of cannabis and the amount of extract or tincture produced therefrom.²¹

13. It may be mentioned that the drug content need not be repeated in entries relating to products whose content is made clear by their designation, nor particularly where a description of the composition of the same product is given in an earlier entry. The manufacturing records should also indicate the losses which occur in the manufacturing process.

14. It is finally suggested that the form of the product (pill, tablet, ampoule, etc.)²² and the date²³ at which the manufacturing operation in res-

¹⁸ This requirement is implied in the provisions of article 20, para. 1, subpara. (b) and article 25, para. 1, subpara. (b).

¹⁹ Article 1, para. 1, subpara. (j). However a record of the amount of acetic anhydride used in the manufacture of heroin may also sometimes be useful.

²⁰ This could be done in giving the percentage of morphine contained in the opium in an anhydrous state.

²¹ It is suggested that this would also enable the manufacturers, wholesalers and international traders to furnish to their Governments the data which the latter need for sending to the Board the required statistics on these preparations in accordance with that organ's instructions. See instruction 4 of forms A/S (5th edition, November 1969) and C/S (4th edition, November 1969) of the Board.

²² Model Code, part II, chapter IV, para. 23; see also document E/CN.7/484/Rev.1, para. 157.

²³ The Model Code, part II, chapter II, para. 4 recommends that all entries of the manufacturer should be made "from day to day" as the operations in question (includ-

pect of a particular lot of the product has been completed should also be taken down.

15. The entry of a sale or acquisition should clearly identify the buyer or seller and the goods, indicate their quantity and give the date of the transaction. The record of an import or export should also refer to the import or export authorization concerned by data, e.g. the number and date of the document, which clearly identify the permit in question.

16. What has been said above about entering the drug content and describing the form of the manufactured products should also be applied to the recording of acquisitions and sales. Traders need therefore not be required to record the pure drug content of those products whose composition is indicated by their designation, and described on labels on the wrapping or in the accompanying literature. This applies in particular to pharmacists who generally trade in such ready-made and standardized products.²⁴

17. It is suggested that it would be advisable to require manufacturers to record each individual sale of substances which were made from drugs and which are not covered by the Single Convention, giving the quantity, the identity of the buyer and the date of the transaction. It would also be useful if the person or enterprise which buys such substances from the manufacturer were required to note in his records his purchase, indicating the manufacturer, the quantity and the date of his acquisition. There appears to be no need for recording further movements of these substances, i.e. sales by other than those who manufactured them.

18. The fact that the authorities are able to compare the entries in the records of both parties to a transaction has proved in practice to be most effective in preventing fraud.

19. There are many other kinds of "disposal" than those mentioned in the preceding comments on paragraph (b). There is in particular a great variety of uses by which scientists and scientific institutions "dispose" of drugs.²⁵ It would hardly be possible to refer to all forms of possible legitimate disposal of drugs; but it may be emphasized that the entry of each individual disposal of drugs, no matter what its kind, should contain all data which would be required to enable the supervisory authorities to determine the legitimacy of the action in question.

20. Periodical inventories should be made and the amounts of drugs and preparations in stock should be recorded. This should be done at least once a year. It is, however, admitted that only manufacturers, wholesale traders (including State enterprises) and opium, coca leaf and cannabis national agencies, and not retail traders, scientists, scientific institutions or hospitals, must under the terms of the Single Convention be required to record at least annually their stocks of drugs, whether in the form of pure drugs, their salts

ing the acquisition of raw materials to be recorded, the disposal (use) of these raw materials and the sale of the manufactured products) take place; see also document E/CN.7/484/Rev. 1, para. 150.

²⁴ Pharmacists will, however, have to record the pure content of a drug in Schedule I in medicines which they make up themselves; see above comments.

²⁵ For example, some scientists make animals and also humans inhale the fumes of cannabis, which they burn in order to observe the effect of such fumes.

or preparations.²⁶ This obligation does not include preparations in Schedule III.²⁷ It may, however, be advisable under the conditions of a particular country to require those who by definition cannot have “stocks”,²⁸ i.e. retail distributors, medical practitioners, hospitals, scientists and scientific institutions, to record periodically and at least annually the quantities of drugs and preparations (other than preparations in Schedule III) in their possession and to report these figures to the supervisory authorities; and some Governments do so require.

21. Loss by fire or theft can hardly be understood to be “disposal” as this word is used in the paragraph under consideration. It is, however, suggested that it is within the spirit of this provision to require the governmental authorities, enterprises and persons to which it applies to record the details of such events, and also to report them immediately to the supervisory authorities. It may also be advisable to impose this obligation on medical practitioners, especially if significant quantities of drugs, and particularly of those in Schedule I, are involved.

22. Paragraph (b) does not state the form in which the records should be kept. It is left to each Government to prescribe a particular form if it wishes to do so. As far as the Single Convention is concerned, any usual form of recording business information in an orderly fashion would be permitted, not only in books, but also in card files. Retail traders may maintain a record of their sales by keeping a file of the medical prescriptions or of exact copies of them.²⁹ Where—as noted above—the use of official prescription forms to be taken from counterfoil books is required, the preservation of these books including the counterfoils is obligatory.

23. Paragraph (b) stipulates that the records with which it deals should be kept for a minimum period of two years. It is submitted that this period must be counted from the date of the last entry in the case of a record kept in the form of a bound book. A counterfoil book must therefore be kept two years from the date of the latest counterfoil which it contains. In the case of a card file, cards containing only information which is older than two years may be discarded, but not those which in addition to such older entries include even a single newer item. Where a file of prescriptions is kept, each individual prescription should be preserved for a minimum period of two years from the date at which it was last filled.³⁰

²⁶ This obligation is implied in the provisions of article 20, para. 1, subpara. (f) and article 1, para. 1, subpara. (x) and para. 2; it is however assumed that it does not follow from article 29, para. 3 and article 30, para. 2, subpara. (a) that the obligation to make periodical inventories of stocks applies also to poppy straw and that retail traders, scientists, scientific institutions, hospitals and medical practitioners have to make such inventories of the quantities of drugs in their possession; see above, comments on article 30, para. 2, subpara. (a).

²⁷ Article 2, para. 4.

²⁸ Article 1, para. 1, subpara. (x); see also Form C/S (4th edition, November 1969) foot-notes (a) and (b) to table II, p. 9.

²⁹ See also article 6, second para., subpara. (c).

³⁰ As regards the question of refilling prescriptions see above, comments on article 30, para. 2, subpara. (b), clause (i) and (ii).

24. It may be mentioned that the period of two years is considered to be too short by some Governments, who consider that the records should be preserved for a longer time, e.g. five years.³¹

25. For provisions in narcotics treaties preceding the Single Convention which required the keeping of records, see article 6, second paragraph, subparagraph (c) of the 1925 Convention; see also article 10, second paragraph, subparagraph (c) of the 1912 Convention;³² and articles 13 and 17 of the 1931 Convention.

³¹ *Records*, vol. II, p. 145.

³² These provisions have, however, a much narrower scope than article 34, para. (b) of the Single Convention.

Article 35

ACTION AGAINST THE ILLICIT TRAFFIC

General comments

1. In the fight against the illicit traffic, the organs of sovereign nations, which are independent from each other and which often have police services composed of different units of limited local or substantive competence without being subject to the direction of a common central national organ, are frequently facing well-organized international rings of smugglers which have vast financial resources, dispose of rapid and effective means of communication and transportation, have no respect for national borders and are not hampered by legal problems of limited jurisdiction of a particular unit.¹ In order to cope effectively with their tasks, the various government units engaged in the campaign against the international illicit traffic must make arrangements for co-ordination of their activities on the national and international levels and for international co-operation in an expeditious manner. There is moreover need for expeditious international legal assistance in the prosecution of illicit traffickers.

2. The 1936 Convention attempted to provide for these basic conditions of a successful campaign against the illicit traffic by requiring each Party to set up, within the framework of its domestic law, a "central office" which would supervise and co-ordinate all operations necessary to prevent the illicit traffic, would ensure that steps were taken to prosecute the traffickers, and in particular would also be in close contact with other domestic official bodies concerned with narcotic drugs, would centralize all relevant information needed in the campaign against the drug traffic and would be in close contact and correspond directly with the "central offices" of other countries.² The Convention also indicated in some detail how the central offices should implement their tasks of international co-operation and mutual information,³ and how requests for international judicial assistance should be transmitted.⁴ Although this Convention permitted Parties which had a federal constitution or a decentralized form of government administration to implement these supervisory and co-ordinating tasks in conformity with their constitutional or administrative systems,⁵ a number of Governments were of the opinion that they could not accept these provisions because they could not be reconciled with their own constitutional, legal or administrative principles. This is one of the reasons why the 1936 Convention was accepted only by a relatively small number of countries.⁶

¹ *Records*, vol. I, p. 121.

² Article 11, paras. 2 and 3 of the 1936 Convention.

³ Article 12 of the 1936 Convention.

⁴ Article 13 of the 1936 Convention.

⁵ Article 11, para. 3.

⁶ There are several others, such as articles 7 and 8 concerning prosecution of crimes committed by nationals or foreigners abroad.

3. The authors of the Single Convention realized that the régime of the 1936 Convention was unacceptable to a good many countries, and that they had to devise a more flexible system of domestic and international co-ordination and of co-operation in the fight against the illicit traffic in order to ensure its general acceptance. They did not, however, wish to deprive the Parties to the 1936 Convention of the advantages which that treaty offered them. That Convention is therefore the only multilateral narcotics treaty preceding the conclusion of the Single Convention which—with the exception of its article 9—is not terminated by the Single Convention as between Parties thereto.⁷ The more flexible and general rules of article 35 represent an endeavour to make it possible for all States to accept treaty obligations which are intended to achieve the aims which the 1936 Convention sought to reach in regard to domestic and international co-ordination and co-operation of the governmental units entrusted with the fight against the illicit traffic.

⁷ Article 44, para. 1 and 2; even article 9 may be continued in force by such Parties as may make a notification to this effect to the Secretary-General of the United Nations.

Introductory paragraph

Having due regard to their constitutional, legal and administrative systems, the Parties shall:

Commentary

1. It will be noted that this provision is introduced by the words “having due regard to”, while similar limiting phrases at the beginning of paragraphs 1 and 2 of article 36 commence with the words “subject to”.¹ It is submitted that it must be concluded from the clear meaning of these different expressions that they have a different sense.² A Party does not have to carry out an obligation under article 36, paragraph 1 or 2 if it is precluded by its Constitution from doing so, and is moreover not bound to take an action required under article 36, paragraph 2 if such action is not compatible “with its legal system and domestic law”.³ It is, on the other hand, hardly imaginable that the implementation of any of the provisions of article 35, paragraphs (a) to (e), defined as they are in very general terms, could be incompatible with the constitutional, legal or administrative system of any State. Freeing Parties from carrying out those provisions of this article which would be inconsistent with such a system would therefore not

¹ See also the phrase “subject to the provisions of the criminal law” in article 36, para. 3.

² The Chairman of the Drafting Committee of the Plenipotentiary Conference asked in the Joint *Ad Hoc* Committee on articles 25 and 44 of the Third Draft (of the Single Convention) whether there was intended to be a difference of meaning between the two expressions. The Joint Committee referred the matter to the Drafting Committee, which did not have any records of its meetings (*Records*, vol II, p. 259). The Official Records of the Plenipotentiary Conference do not give any indication as to any reply which the Conference may have given to this query of the Chairman of the Drafting Committee.

³ See below, comments on the introductory part of article 36, para. 2.

serve any purpose, and the introductory paragraph of article 35 does not do this. What this paragraph is intended to indicate is the freedom of Parties to choose for the execution of the provisions of article 35 such administrative arrangements, procedures and methods as are in conformity with their constitutional, legal or administrative systems, i.e. "having due regard" to these systems. They are, however, in any event bound to carry out paragraphs (a) to (e).

Paragraph (a)

(a) Make arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination;

Commentary

1. The obligation of Parties to make arrangements on the national level for co-ordination of preventive and repressive action against the illicit traffic is in fact only a special application of their more general obligation under article 17 to maintain a special administration for the purpose of applying the provisions of the Single Convention. Article 15 of the 1931 Convention, whose substance article 17 of the Single Convention is intended to reproduce,¹ expressly assigned to the "special administration" the task of taking all useful steps to suppress the illicit traffic.² This close relationship between article 17 and article 35 was fully realized by the Plenipotentiary Conference, which attempted to combine those two provisions in a single article, but finally abandoned that idea.³

2. The police in a number of countries is not organized on a national level, but functions within the competence of subordinate local governmental entities (provinces, towns, etc.). Even where a national police force is established for the fight against the illicit traffic, local police services which are not subject to the authority of such a national force may have to deal with cases or parts of cases of illicit traffickers. Some arrangements for co-ordination of this police work on the national level is therefore indispensable in both instances, where a central national police force exists for suppression of the illicit traffic as well as where this is not the case. Since the

¹ See above, comments on article 17.

² Article 15, second paragraph, subpara. (c) of the 1931 Convention. Under article 11, paragraph 5 of the 1936 Convention the powers and functions of the "central office" may be delegated to the "special administration" provided for in article 15 of the 1931 Convention. The task provided for in article 35, para. (a) is under the 1936 Convention (article 11, para. 1 and para. 2, subpara. (a) and (b)) entrusted to the central office; see above general comments on article 35.

³ See *Records*, vol. I, p. 122; vol. II, p. 40 (United Kingdom amendment, document E/CONF.34/C.4/L.4 and Rev. 1), p. 41 (amendments to the United Kingdom amendment and French draft of a combined article, document E/CONF.34/C.13/L.1/Rev.1), pp. 249-252 and 253 (decision to separate the two provisions); article 17 of the Single Convention corresponds to article 25 of the Third Draft and article 35 of the Single Convention to article 44 of the Third Draft; *Records*, vol. II, pp. 10 and 17.

“special administration” required by article 17 is also concerned with co-ordinating the work of the various national agencies concerned with the functions of narcotics control, both on the national and international levels, the implementation of the co-ordination required by article 35, paragraph (a) may, but need not necessarily, be entrusted to the “special administration”.

3. Co-ordination on the national level is essential to co-ordination on the international level.⁴ Without it, communications of the international organizations concerned with functions in the field of the illicit traffic or of services of foreign Governments may not, or may only with great delay, reach the proper governmental unit whose assistance is requested or from which information is needed.

4. The arrangements at the national level, whether for co-ordination of all functions of narcotics control or only for that of “preventive and repressive action against the illicit traffic”, may take on different forms in different countries, depending on their constitutional, legal and administrative systems. As the “special administration” under article 17, they need not assume the shape of a single governmental authority. They may consist of some system of liaison among the various governmental units concerned, or of periodical joint meetings of the different departments of which the governmental units charged with functions in the field are parts. Permanent inter-ministerial committees may be entrusted with holding such meetings. This task of liaison and co-ordination is, however, performed in many countries by a special unit in one of the national ministries.⁵ Such a unit would be an “appropriate agency”,⁶ whose designation for this task of co-ordination is recommended by the paragraph under consideration. It is suggested that, where there is no objection to such a measure on constitutional, legal or administrative grounds, this appropriate agency might usefully be a “central office” such as that provided for in the 1936 Convention and responsible for the functions provided for it in that treaty.⁷

5. As regards the campaign against the illicit traffic, the required arrangements, whether of an administrative or of a regulatory nature, must ensure the continuous co-operation and exchange of information among the police units concerned in order to facilitate the effective handling of individual criminal cases.

6. All rules of the Single Convention providing for control of production, manufacture and trade are intended to prevent the diversion of drugs

⁴ *Records*, vol. II, p. 255.

⁵ See above, comments on article 17.

⁶ The Plenipotentiary Conference substituted the words “appropriate agency” for “enforcement agency” contained in the draft which it considered (document E/CONF.34/C.13/L.1/Rev.1, para. 3 (a), *Records*, vol. II, p. 41), because the agency may have other than enforcement functions; *Records*, vol. II, pp. 254 and 255. This may be the case where the agency is entrusted with other functions of co-ordination in the field of narcotics control than those relating to the illicit traffic. The word “service” in the French text and the term “servicio” in the Spanish text have in this context the same meanings as the English “agency”.

⁷ Articles 11 and 12 of the 1936 Convention; see also above general comments on article 35; see above, foot-note 2, regarding the possibility, under the 1936 Convention, of entrusting the “special administration” with the functions of the “central office”.

into illicit channels, and their implementation therefore represents “preventive” action against the illicit traffic. The treatment of addicts also constitutes “preventive action” in the broad sense of that phrase. The term “preventive action” as used in the paragraph under consideration appears, however, to have a narrower meaning, and to be limited to those measures which are directly concerned with the illicit traffic. Examples of “preventive action” in the sense of paragraph (a) would be the maintenance of lists of suspected traffickers, the communication of information regarding the methods used by traffickers to conceal and to transport drugs, the purchase of police equipment needed for the campaign against the illicit traffic, arrangements to facilitate the common use of such equipment by different police units and the training of enforcement officers.

Paragraphs (b), (c) and (d)

(b) Assist each other in the campaign against the illicit traffic in narcotic drugs;

(c) Co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;

(d) Ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner; and

Commentary

1. The provisions of paragraphs (b), (c) and (d) requiring Parties to assist each other and to co-operate closely with each other in the fight against the illicit traffic present special cases of the general rule laid down in paragraph (b) of article 4, which provides that Parties should “co-operate with other States in the execution of the provisions” of the Single Convention.¹

2. Paragraph (b) provides for mutual assistance of Parties, while paragraph (c) requires *inter alia* their co-operation. It is not easy to find in this context a difference of meaning between the expressions “assist each other” and “co-operate”.² Paragraph (b) formulates the general obligation of Parties to “assist each other”, i.e. to co-operate in the fight against the illicit traffic, while paragraph (c), in the part which deals with co-operation among Parties, applies this general obligation to a special facet of that fight, namely to the need of maintaining “a co-ordinated campaign against the illicit traffic”. As became evident under the régime of the earlier narcotics treaties, such a campaign needs a structure of permanent international organization. In order to enable them to wage a co-ordinated campaign, paragraph (c) requires

¹ See above, comments on article 4. It will be noted that the text of article 4, para. (b) covers also co-operation with non-parties, while that of article 35 refers only to Parties.

² It does not seem that the Plenipotentiary Conference intended such a difference. It is not true that the phrase “assist each other” covers unilateral as well as common actions, while the phrase “co-operate” refers only to common actions. Both expressions may be used to refer to unilateral as well as common actions taken in the course of mutual assistance or co-operation.

Parties not only to co-operate for this purpose closely with each other, but also with the competent international organizations of which they are members.

3. The term "international organizations" covers intergovernmental as well as non-governmental bodies. When using this term, the Plenipotentiary Conference had certainly in mind the International Criminal Police Organization (INTERPOL).³

4. It was clearly the intention of the Plenipotentiary Conference that Parties which are not Members of the United Nations should be bound to co-operate with this Organization, which is the principal competent international body in this field. Several representatives therefore expressed the opinion that the term "competent international organizations" as used in paragraph (c) did not refer to the United Nations, but only to "specialized agencies"⁴ and to non-governmental organizations and the International Criminal Police Organization. The Executive Secretary of the Conference pointed out, however, that in the context of this paragraph this term did include the United Nations.⁵

5. It is submitted that the opinion of the Executive Secretary is correct, since the United Nations is undoubtedly "a competent international organization" in the field of the international fight against the illicit traffic. It is, however, apparent that under article 5, by which the Parties recognize the competence of the United Nations with respect to the international control of drugs, all Parties, whether Members of the United Nations or not, are bound to co-operate with that Organization for all purposes of the Single Convention, including that of "maintaining a co-ordinated campaign against the illicit traffic" pursuant to article 35, paragraph (c). It follows that whatever may be the correct interpretation of the term "competent international organizations" in this paragraph, Parties may never refuse the co-operation provided for in this provision with the United Nations, but only with other "competent international organizations" of which they are not members.

6. The text of the paragraphs under consideration refers only to co-operation of Parties.⁶ In view of article 4, paragraph (b), requiring the Parties to co-operate with other "States", whether Parties or not, in the execution of the provisions of the Single Convention, it is, however, evident that Parties must be ready to give the assistance and co-operation mentioned in article 35, paragraphs (b), (c) and (d) not only to other Parties, but also to non-Parties.

7. As under article 4, paragraph (b), the question arises also under paragraphs (b) and (c), and in particular under paragraph (b) of article 35, whether granting technical aid to countries which need it in order to be able to participate effectively in the international campaign against the illicit traffic constitutes a legal obligation. Whatever the answer to this question may be,

³ *Records*, vol. II, p. 254; see also above, comments on article 32, para. 2; and Council resolution 1579 (L).

⁴ A "specialized agency" which may be "a competent international organization" within the meaning of para. (c) may include the Universal Postal Union; see above, comments on article 31, para. 8.

⁵ *Records*, vol. II, p. 254.

⁶ See also above foot-note 1.

there cannot be any doubt that rendering such technical assistance would be in the spirit of paragraphs (b) and (c) of article 35.⁷

8. It follows in particular from the obligation to assist each other and to co-operate in the fight against the illicit traffic that Parties are bound to make all efforts within their power to prevent their territory from becoming a base of operation of the illicit traffic in other countries, or a place of refuge of drug smugglers.⁷

9. The term “appropriate agencies” in paragraph (d) does not have the same meaning as the same expression used in the singular in paragraph (a). It cannot be assumed that the authors of the Single Convention intended to impose the obligation provided in paragraph (d) only on those Parties which have chosen to designate “an appropriate agency”, within the meaning of that term in paragraph (a),⁸ for co-ordinating on the national level preventive and repressive action against the illicit traffic. It will be recalled that such designation is not mandatory.⁸ It is therefore submitted that all Parties, whether or not they have made the designation pursuant to paragraph (a), are bound under paragraph (d) to ensure that international co-operation between their services in question—whatever may be their form—shall be conducted in an expeditious manner, and that the expression “appropriate agencies” as used in this paragraph covers not only the special Government unit designated for the purpose of domestic co-ordination pursuant to paragraph (a) but also any Government service which deals with the particular problem or case of illicit traffic which forms the object of the required international co-operation.

10. The expression “in an expeditious manner” used in paragraphs (d) and (e) is rendered in the French text by the phrase “*par des voies rapides*”;⁹ but what is required under paragraph (d) is not only the choice of an expeditious means of communication between the co-operating services of different countries, but also—whatever means of communications may be employed—that the question which requires international co-operation should be “expeditiously” handled, i.e. be given urgent attention by the Government services concerned. The method of communication which would have to be chosen by a Government as “expeditious” for the purposes of assistance and co-operation pursuant to paragraphs (b), (c) and (d) depends, in accordance with the introductory paragraph, on its constitutional, legal and administrative systems. It is, however, suggested that where such a course of action is compatible with these systems of the Parties concerned, direct correspondence between the enforcement services of the co-operating countries in a particular matter of the illicit traffic would very often be an “expeditious manner” of co-operation. In a country which has designated an “appropriate agency” in the sense of paragraph (a), this Government unit should be the agent of such correspondence. Personal contacts between officers of the co-operating

⁷ See above, comments on article 4.

⁸ See above, comments on article 35, para. (a).

⁹ In the Spanish text by the phrase “*en forma expedita*”.

services may also quite frequently serve the same purpose of expeditious action,¹⁰

11. Provision for direct correspondence and such personal contacts would contribute to making the co-operation "close" as required by paragraph (c).

12. Where the enforcement services are not familiar with the organizational structure of a foreign country whose co-operation they need, or have not had earlier contacts with the services of that country with which they have to communicate, requesting the International Criminal Police Organization to act as intermediary may sometimes be an "expeditious manner" of handling a case of illicit traffic. It is finally suggested that, wherever possible, diplomatic channels should be avoided for transmission to foreign enforcement services of communications concerning cases of illicit traffic.

¹⁰ See also article 11, para. 2, subpara. (c) of the 1936 Convention, which provides that the "central office" of a Party should be in close contact with, and be authorized to correspond directly with, the central offices of other countries; see also article 12 of that Convention.

Paragraph (e)

(e) Ensure that where legal papers are transmitted internationally for the purposes of a prosecution, the transmittal be effected in an expeditious manner to the bodies designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that legal papers be sent to it through the diplomatic channel.

Commentary

1. Paragraph (e) does not by itself establish a legal obligation for a Party to render international judicial assistance which may be requested in regard to a legal paper by another Party. It requires only that where legal papers relating to cases of illicit traffic are transmitted from one Party to another in accordance with the rules regulating their relations in matters of legal assistance, the transmission should be done in an expeditious manner. Such relations may be based on treaties, or on the law of the Parties giving each other judicial assistance in criminal cases. It is suggested that it would accord with the obligation of Parties to co-operate pursuant to paragraphs (b), (c) and (d) for them to make provision for such assistance in cases of the illicit traffic, either by conclusion of treaties, or by making where necessary the required revisions in existing treaties concerning international legal assistance, or by enacting the laws necessary for this purpose.

2. The term "legal papers" covers not only requests for judicial assistance,¹ but also documents in which the authorities of the country which has been asked for aid report on the results of the international judicial assistance which has been rendered, e.g. records of the requested evidence which has

¹ "*Lettres rogatoires*"; *commissions rogatoires*; "letters of request"; see article 13 of the 1936 Convention.

been taken. The term appears also to refer to requests for the arrest of a person whose extradition is demanded,² and to replies to such requests.

3. The expression “for the purposes of a prosecution” is to be understood in a broad sense, and as including any judicial action in matters of the illicit traffic, no matter whether such action has been initiated by a public prosecutor or a court.³ It also includes cases in which the illicit traffickers cannot be prosecuted,⁴ and in which the court is called upon to decide only on the seizure and confiscation of drugs or of other substances or equipment used in or intended for the commission of offences of the illicit traffic.⁵

4. The obligation to transmit legal papers “in an expeditious manner” requires Parties not only to choose an expeditious method of transmission, but also, whatever way of transmission is adopted, to act promptly. In providing for methods of transmission Parties may have due regard to their constitutional, legal and administrative systems, in accordance with the introductory paragraph of article 35.⁶ It may be mentioned in this connexion that the method of transmission may be regulated in treaties in force between the Parties concerned in regard to international legal assistance.⁷ It is suggested that it would be in accordance with paragraph (e) if Parties, in respect of legal papers regarding cases of illicit traffic, provide in such treaties for the most expeditious mode of transmission which is compatible with their respective constitutional, legal and administrative systems.

5. Parties must communicate to each other which “bodies” they have designated for the receipt of foreign legal papers. Knowledge of the foreign authority to which the documents should be addressed will also contribute to the speed of transmission.

6. Treaties on international legal assistance sometimes provide that the competent public prosecutors or courts of Parties may communicate directly with the competent prosecutors or courts of other Parties on matters of international legal assistance. Channelling the legal papers through “appropriate agencies” designated pursuant to paragraph (a) of article 35 may be another expeditious way of transmitting legal papers.⁸ It may also be useful in this connexion if the prosecutor or court concerned is authorized to correspond directly with the Minister of Justice of the country whose legal assistance is needed. Providing for direct communication between the Ministers of Justice of the two countries concerned may also quite frequently present a quicker way of transmitting legal papers than the use of diplomatic channels;⁹ but paragraph (e) expressly states that it does not affect the right

² See also article 36, para. 2, subpara. (b).

³ The French text renders this expression by the phrase “*pour la poursuite d’une action judiciaire*”, and the Spanish text by the phrase “*para una acción judicial*”; both the prosecutor and the court may of course also act on the basis of a motion of the defendant.

⁴ E.g. because they or their residence are not known or because they are not criminally responsible on grounds of insanity.

⁵ This procedure is sometimes called “objective procedure”; see also article 37.

⁶ See also above, comments on para. (d).

⁷ In regard to requests for extradition in extradition treaties.

⁸ See also article 13, para. 1, subpara. (a) of the 1936 Convention.

⁹ See also article 13, para. 1, subpara. (b) of the 1936 Convention.

of a Party to require that these documents be addressed to it through such channels.¹⁰

7. In view of the provision of article 4, paragraph (b) requiring Parties to co-operate also with non-parties in the implementation of the Single Convention, it is submitted that Parties should apply article 35, paragraph (e) also to the transmission of legal papers to non-parties.

8. For a provision in an earlier narcotics treaty dealing with the subject-matter of paragraph (e), though in much more detail and differently but for the same purpose of achieving as far as possible an expeditious transmission of legal papers, see article 13 of the 1936 Convention.

¹⁰ See also article 13, para. 2 of the 1936 Convention; see also para. 1, subpara. (c) and para. 3 of the same article; see also *Records*, vol. II, pp. 249-250.

Article 36

PENAL PROVISIONS

General comments

1. Widely different moral, religious and cultural traditions are reflected in the differences which distinguish the systems of substantive and procedural penal law of individual nations and of groups of culturally related nations. It is therefore extremely difficult, and in some respects even impossible, to establish universally acceptable international rules to be implemented in the national penal systems. Attempts to overcome these difficulties have been made by adopting international provisions which are broad enough to leave room for national differences and are therefore rather vague, and by admitting escape clauses for the benefit of those Governments to which even such vague norms would be unacceptable. This was done in the 1936 Convention as well as in article 36 of the Single Convention.¹ This article even contains a provision which is not obligatory, but has only the character of a recommendation.²

2. Some of the difficulties which arise in connexion with the establishment of general international rules concerning national penal laws may be mentioned. The definitions of crimes differ in different national penal systems. What is considered to be a punishable offence in one country may cover activities which are elsewhere the substance of two or more definitions of crimes, or may even include some behaviour which is not subject to penal sanction in other countries. The various forms of participation in crimes (instigation (incitement), organization, actual execution,³ counselling, abetting, etc.)⁴ are also included in different categories in different countries. Divergent views are also held in different countries as regards the stage at which the preparation or commencement of an uncompleted offence should generally become punishable. "Preparatory acts", "attempts" and "conspiracy" therefore assume a different position in different legal systems. Moreover, the degree of severity of penal sanctions required to achieve their socially desirable effect is also not the same in different national societies.

3. The grounds on which countries assume jurisdiction in penal matters are also not uniform. The principle of territoriality, according to which States assume jurisdiction over crimes committed on their territories, is universally applied. A great number of countries also prosecute all, or only major, crimes committed by their nationals abroad (principle of nationality). Nations attempt to protect some of their major interests by trying a

¹ This has also been done in other treaties dealing with penal law; document E/CN.7/AC.3/4/Rev.1, paras. C 415-C 417.

² Para. 2, subpara. (b).

³ *Records*, vol. II, p. 238, statement of the representative of the USSR.

⁴ Document E/CN.7/AC.3/3, para. 291.

few crimes (e.g. forgery of their currency) committed abroad by their nationals or by foreigners (principle of protection). All countries prosecute piracy wherever committed, without regard to the nationality of the pirates (principle of universality). A considerable number of States also assume jurisdiction over some crimes committed abroad by foreigners who are found on their territories and who cannot be extradited to a country having jurisdiction (subsidiary application of the principle of universality); but a number of States, as general principle, limit their jurisdiction to crimes committed on their own territories, and with very few exceptions do not prosecute offences perpetrated abroad, whether by their own nationals or by foreigners. They are guided in this by the consideration that the trial of crimes committed abroad would generally not be conducive to the best administration of justice, and might prevent the defendants, for financial or other reasons, from obtaining witnesses or other evidence needed for their exculpation.⁵ This divergence of views concerning the grounds on which criminal jurisdiction may be exercised in various countries has the result that offenders who happen to be in countries other than in those in which they carried out their misdeeds quite often escape prosecution and punishment.

4. It may finally be mentioned that some countries, i.e. those which generally limit their jurisdiction to crimes perpetrated on their territories, are willing to extradite on a reciprocal basis their own nationals to countries in which the offences in question were committed, while many others as a matter of strict principle, and often of their constitutional law, never extradite their own citizens.

5. Article 36 deals with the subject-matter covered in articles 2, 4, 5, 6, 7, 8, 9, 14 and 15 of the 1936 Convention.⁶ Since that Convention was accepted only by a relatively small number of countries, article 36 takes into account the divergent positions of different countries on matters of penal law to an even greater extent than the provisions of the earlier treaty. Its terms are therefore broader and more flexible, and their binding character even weaker.

6. As far as possible under the complex conditions of different national views on principles of criminal law and jurisdiction, article 36, like the above mentioned provisions of the 1936 Convention, tries to ensure that all activities of the illicit traffic and all forms of participation in such activities not only the principal offenders but also their accomplices, will be prosecuted, that activities of the illicit traffic will be subject to penal sanctions even if they have not been completed⁷ (preparatory acts, conspiracy and attempts), that criminals will not escape prosecution and punishment on the technical ground of lack of local jurisdiction in the country in which they are found, and that the penal sanctions will be adequate for the purpose for which they are imposed by society, i.e. in particular for a deterring effect.

⁵ *Records*, vol. I, p. 123.

⁶ As regards the continued application of the 1936 Convention between States which are simultaneously Parties to that Convention and to the Single Convention, see above, general comments on article 35 and article 44, para. 2.

⁷ "Uncompleted forms" of offences of the illicit traffic; see amendment proposed by the Netherlands to article 45 of the Third Draft, document E/CONF.34/L.5; *Records*, vol. II, p. 46.

7. Article 36 is not one of the provisions which do not apply to preparations in Schedule III. Illicit traffic in such preparations is therefore governed by the terms of this article.⁸ “Illicit traffic” in leaves of the cannabis plant when not accompanied by the tops is, however, not subject to article 36 because the leaves are not drugs.⁹

8. No provision of article 36 is self-executing in countries where constitutions provide for that effect of treaty provisions.¹⁰

⁸ Article 2, para. 4.

⁹ Article 1, para. 1, subpara. (b) and comments on article 28, para. 3.

¹⁰ Article 36, para. 4.

Paragraph 1

1. Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

Commentary

1. The enumeration in paragraph 1 of the activities which should be penalized very closely follows that of article 2, paragraph (a) of the 1936 Convention.¹ In order to make sure that all activities coming under the general heading “illicit traffic”² would be covered by paragraph 1 and that any gap which may exist in the list in that provision,³ not only the actions specifically mentioned but “any other action which in the opinion of ‘a Party’ may be contrary to the provisions” of the Single Convention must be treated by that Party as a punishable offence in accordance with the terms of article 36. While it is left to the judgement of each Party to determine what action not specifically mentioned in paragraph 1 is contrary to the provisions of the Single Conven-

¹ The list of 1936 does not include “cultivation” and “production”, which at the time of the conclusion of the 1936 Convention were not yet subject to a comprehensive régime of international control. See, however, article 5 of that Convention relating to Parties which have such a national régime; this list includes “conversion”, which in so far as it relates to the transformation of drugs into other drugs, is covered by the term “manufacture” as defined in article 1, para. 1, subpara. (n) of the Single Convention. See also above, comments on that provision.

² *Records*, vol. II, p. 236.

³ *Records*, vol. II, p. 238.

tion, it may be noted that this paragraph, like the other provisions of the Single Convention, must be implemented in good faith.⁴

2. Only those of the activities mentioned in paragraph 1 which are “committed intentionally” fall within the scope of this paragraph, and consequently within that of the other provisions of article 36. This limitation applies to the activities specifically listed in paragraph 1 as well as to those which are included by the general definition. Actions which are not taken wilfully or knowingly, but only as a result of “negligence”, are therefore not subject to the provisions of article 36.⁵ Governments will, however, find it necessary to punish unintentional violations of their narcotics laws and regulations if due to culpable negligence.

3. Some of the activities mentioned in paragraph 1 may not be considered to be those of “principal actors” as this term is understood in some penal codes, but only as forms of “participation” as defined in paragraph 2, subparagraph (a), clause (ii), and would therefore also be punishable under the terms of that clause.

4. The activities mentioned in paragraph 1 must also be made punishable offences if they deal with preparations including preparations in Schedule III.⁶

5. The term “manufacture” as used in the paragraph under consideration also covers activities referred to as “extraction”⁷ or “preparation”. The inclusion of all three of these terms is obviously due to the fact that the authors of paragraph 1 followed closely the text of article 2, paragraph (a) of the 1936 Convention.

6. The transformation of drugs into substances not covered by the Single Convention does not appear to be “manufacture” as this term is used in this context.⁸

7. It will be noted that paragraph 1 does not refer to “use”. As has been pointed out elsewhere,⁹ article 36 is intended to fight the illicit traffic, and unauthorized consumption of drugs by addicts does not constitute “illicit traffic”.¹⁰

8. As regards the view that the term “possession” in the context of paragraph 1 does not include possession for personal consumption, and that in any event Parties which do not share that view need not consider possession for personal consumption to be a “serious” offence punishable by imprisonment or other penalties of deprivation of liberty, see comments on article 4, paragraph (c).¹¹

⁴ See also above, comments on article 2, para. 5, article 22 and article 24, para. 1, subpara. (b).

⁵ *Records*, vol. II, p. 235.

⁶ Article 2, paras. 3 and 4. The terms “cultivation” and “production” of course cannot refer to preparations; article 1, para. 1, subparas. (i), (s) and (t).

⁷ The extraction of cannabis resin from the cannabis plant may, however, also be “production”; article 1, para. 1, subparas. (d) and (t).

⁸ Article 1, para. 1, subpara. (n) and comments on that subparagraph.

⁹ See above, comments on article 4, para. (c).

¹⁰ Article 1, para. 1, subpara. (l).

¹¹ See also comments on article 33.

9. Paragraph 1 requires “adequate” punishment of the offences which it covers if they are serious. The Plenipotentiary Conference did not accept by the required two-thirds majority a proposal to require “severe” punishment.¹² The opponents of the word “severe” invoked the considerations that the degree of severity of a penal sanction required in different countries to achieve its social purpose might differ widely; that what could be an adequate penalty in one State might not be considered to be severe in another State; and that the word “severe” carried overtones of “retribution”, which was one of the purposes of penal law which should not be emphasized.¹³ It is, however, submitted that in order to be “adequate” for the fight against serious offences of the illicit traffic, the penalties must be sufficiently severe to have the desired deterring effect under the special conditions of the country in which they are imposed. This idea is also embodied in the requirement that the “adequate punishment” should be meted out “particularly by imprisonment or other penalties of deprivation of liberty”. The imposition of fines alone would in no case constitute an “adequate” punishment for serious offences of the illicit traffic.

10. The term “imprisonment” in its broad sense covers all penalties of deprivation of liberty. By following the introductory paragraph of article 2 of the 1936 Convention in including the whole phrase “by imprisonment or other penalties of deprivation of liberty”, the Conference appears to have made it clearer that not only confinement in an institution which is technically a prison, but also that in other places such as labour or “re-education” camps, constitutes an “adequate” penalty as required by paragraph 1 of article 36.

11. It will be noted that the obligations of Parties under paragraph 1 are subject only to their “constitutional limitations”, while those under paragraph 2 are subject to their constitutional limitations, their legal system and domestic law.¹⁴

12. The question arises whether a federal State is relieved from obligations under paragraph 1 if it is unable to enact the required penal legislation on account of lack of authority under its federal constitution to do so. This question should be answered in the negative. A Party is in such a case bound to obtain the necessary action by the legislatures of its component states or provinces which have jurisdiction in matters of penal law.

13. The Secretariat of the United Nations is not aware of any constitutional limitations which would prevent a Party to the Single Convention from implementing article 36, paragraph 1, by national or local legislative actions.

14. For a corresponding provision in the narcotics régime preceding the Single Convention, see introductory paragraph and paragraph (a) of article 2 of the 1936 Convention.

¹² *Records*, vol. I, p. 147; see also vol. II, p. 239. The introductory paragraph of article 2 of the 1936 Convention requires “severely punishing”.

¹³ *Records*, vol. II, pp. 234-239; see also above general comments on article 36.

¹⁴ As regards this difference in the “escape clauses” of the two paragraphs, see *Records*, vol. II, pp. 236-237 (statement of the representative of Canada who was Chairman of the Drafting Committee of the Plenipotentiary Conference).

Paragraph 2, introductory subparagraph**2. Subject to the constitutional limitations of a Party, its legal system and domestic law,***Commentary*

1. The introductory subparagraph appears to apply to subparagraph (b) as well as to subparagraph (a). It is, however, suggested that its application to subparagraph (b) is hardly meaningful. This subparagraph is only a recommendation, and the treatment of the problem of extradition suggested in it would in any event be “desirable” whatever may be the constitutional limitations and the objections based on grounds of the “legal system” and the “domestic law” in question. The phrase “it is desirable that” was proposed in a text of paragraph 2 which already contained the introductory subparagraph in its present form, and the need to restrict the application of this subparagraph to subparagraph (a) was obviously overlooked.¹

2. As regards the meaning of the term “constitutional limitations”, see above comments on article 36, paragraph 1, in which it is submitted that lack of authority under a federal constitution would not free a Party from the obligation to adopt the required measures if the States or provinces composing the federal State in question have the necessary powers.

3. The term “domestic law” needs some consideration. It can obviously not have been the intention of the authors of the Single Convention to require the Parties to implement only those provisions of subparagraph (a) which are already provided for in their respective domestic laws. The Parties are not exempted from the obligation to take any legislative action by this subparagraph. What seems to have been the purpose of subjecting subparagraph (a) to the “domestic law” of each Party is that Parties need not change their legal notions of intentional participation, conspiracy, attempts or preparatory acts in implementing this subparagraph. A Party need not take into account foreign convictions for the purpose of establishing recidivism if its penal law does not provide for doing so in respect of other crimes. It also need not prosecute pursuant to subparagraph (a), clause (iv) actions of illicit traffic committed abroad if its law generally limits its criminal jurisdiction to offences committed in its own territory, although it may provide for some exceptions. Moreover, it is not required by subparagraph (a), clause (i) to consider offences enumerated in paragraph 1 as distinct crimes if committed in different countries to the extent that doing so would be incompatible with the prohibition of double jeopardy in its domestic law.²

4. It is admitted that if the subjection of the obligations of Parties under paragraph 2 to their “domestic law” is understood as here suggested, the term “domestic law” would in this context not have a very different meaning from the phrase “legal system”, which is a broader term³ which may be understood to refer to the basic principles governing the law of the Party concerned. It

¹ Document E/CONF.34/C.12/L.1/Rev. 1, *Records*, vol. II, pp. 48, 236, 242, 243 and 244.

² *Records*, vol. II, p. 240.

³ *Records*, vol. I, p. 146 (statement of the Legal Adviser).

may be assumed that by using both terms the authors of the Single Convention intended to grant the Parties a somewhat greater freedom of action than would be the case if the implementation of paragraph 2 were subjected only to the "legal system" of each Party concerned. It appears therefore that Parties need implement provisions of paragraph (a) only to the extent and in the manner that such implementation is compatible not only with their basic legal principles, but also with widely applied concepts of their domestic law. The exact dividing line between these two limitations of the obligations of Parties may, however, very often be difficult to draw.

5. The subjection to the domestic law of the Parties means of course also that the provisions of paragraph 2 need not be directly implemented, but only in accordance with the domestic laws and regulations enacted to carry them out.⁴ This is more specifically laid down in paragraph 4 of article 36.

⁴ Article 4, introductory paragraph.

Paragraph 2, subparagraph (a), clause (i)

(a) (i) Each of the offences enumerated in paragraph 1, if committed in different countries, shall be considered as a distinct offence;

Commentary

1. Two or more of the actions referred to in paragraph 1 as offences may be elements of a single crime as defined in the penal law of a Party; for example, purchase, possession, transportation and sale of narcotic drugs may constitute a single crime of illicit traffic in narcotic drugs. Dispatch of such drugs by another person than the buyer and seller of the drugs, or serving as middleman in such a transaction (brokerage), may be considered in national penal laws to be acts accessory to the principal crime of illicit trade in drugs. The jurisdiction in respect to accessory acts may, however, in some cases belong only to the court which is competent in regard to the principal act. If the above-mentioned acts are committed in different countries and are consequently considered as distinct offences, each of these countries would have jurisdiction, on the basis of the universally accepted principle of territoriality,¹ over those of the acts which were committed on their respective territories. The middleman who did not handle the drugs himself could be prosecuted and punished in the country in which he acted as broker, even though the drugs were neither purchased nor sold in that country nor transported through it. He could not escape prosecution by claiming that his action was accessory to the crime of purchase or sale of the drug, which was subject only to the jurisdiction of the countries in which these principal acts took place.

2. The purpose of clause (i) is not to ensure the cumulative punishment of offences mentioned in paragraph 1 which form elements of a single crime of illicit traffic and are committed by the same person in different countries. It is not intended to violate the principle *non bis in idem* (prohibition of double

¹ See above, general comments on article 36.

jeopardy),² or to interfere with the different rules existing in different countries on the subject of punishment of “ideal” or “real” cumulation or concurrence of crimes.³ Such an interpretation is excluded by the provision of the introductory subparagraph of paragraph 2, subjecting this paragraph to the “domestic law” of each Party. The purpose of clause (i) is to give the courts of a country the necessary territorial jurisdiction in cases where they might not otherwise possess it, and in particular to ensure that a country shall have territorial jurisdiction over accessory acts even though the principal acts were not committed in its territory and even though it in general assigns jurisdiction over accessory acts to the courts in whose districts the principal acts were committed.³

3. Clause (i) reproduces the subject matter and follows closely the text of article 4 of the 1936 Convention.

² See above, comments on article 36, para. 2, introductory paragraph. Some countries prosecute crimes which their nationals committed abroad and for which they already have been convicted by foreign courts. In meting out the punishment, such countries however take into account the prison terms actually served by those nationals in accordance with their foreign convictions.

³ *Records*, vol. II, p. 241.

Paragraph 2, subparagraph (a), clause (ii)

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

Commentary

1. The term “intentional participation” covers all kinds of complicity and accessory acts, which may in different countries be divided into different categories.¹

2. “Attempts” at crimes are generally recognized as constituting a punishable form of uncompleted crimes. A crime is very often considered to have been “attempted” only after its execution has actually commenced. Purchase of a gun with the intention of committing a murder would on this view not yet constitute “attempted murder”. Equally, inquiries about prices of drugs on the illicit market with the intention of buying them for illegal trade would not yet represent an “attempt” at illicit drug traffic. But some countries’ penal law makes a broader definition of “attempt”, and actions such as those just mentioned would there constitute an attempted crime.² Since the obligations under clause (ii) are subject to “domestic law”, Parties are not required to change their legal definition of “attempt” at crime in order to carry out their commitment under this provision.

¹ See also above, general comments on article 36.

² Many countries have adopted an “objective” theory of attempt and some a “subjective” theory.

3. In some legal systems not all attempts at offences are punishable, but only those at the more serious ones.³ Parties in this position would—it is submitted—have to treat as punishable crimes, attempts at all the serious offences which under paragraph 1 would be liable to “adequate punishment”.

4. “Preparatory acts” are steps which are taken for the purpose of committing a crime, but which do not yet constitute the commencement of the actual execution of the intended crime, and consequently are not “attempts” as defined in the penal law of many countries. They are generally not subject to penal sanctions. Some countries, however, punish preparatory acts undertaken with the intention of committing a few of the most serious crimes. It is suggested that the serious offences referred to in paragraph 1 should under present conditions be considered to be among the gravest crimes.

5. “Conspiracy” is in many countries not a general category of punishable behaviour,⁴ but is only considered to be a “preparatory act”, and is subject to penal sanctions only in the case of the few grave crimes of which the preparatory acts are punished;⁵ the penal laws of some of these countries while generally considering conspiracy to be a preparatory act, also specifically provide for the punishment of conspiracy if entered into to commit a few expressly indicated very serious offences.⁶

6. Parties whose “domestic law” provides in general for the punishment of “conspiracy” to commit crimes would also have to subject to penal sanctions a “conspiracy” i.e. a “combination or confederacy (or agreement) between two or more persons formed for the purpose of committing by their joint efforts” any of the offences referred to in paragraph 1.⁷

7. It is suggested that if their domestic law provides penalties for conspiracy either as a separate category of criminal behaviour or as a form of “preparatory act” only in respect of some serious crimes, Parties should also punish conspiracy to commit any of the offences mentioned in paragraph 1, if serious, since—as has been indicated above—such serious offences must at present be considered to be very grave crimes. It would, however, in such cases be within the discretion of Parties to subject to penal sanctions either expressly “conspiracy” or “preparatory acts” which would have to include what is meant by the technical term “conspiracy”.

8. “Financial operations in connexion with the offences referred to in this article” are punishable only if they are intentional,⁸ i.e. if the operators are aware of the relation of their actions to these offences. They constitute either intentional participation, conspiracy or preparatory acts, and would

³ *Records*, vol. I, p. 123.

⁴ It may be for this reason that the French text does not use the term “*conspiration*”, but the phrase “*l’association ou l’entente en vue de la commettre*” (i.e. “*l’une quelconque desdites infractions*”) and that the Spanish text does not employ the words “*conspiración*” or “*complot*” but the phrase “*la confabulación para cometer cualquiera de esos delitos*”.

⁵ “Conspiracy” may also be a *principal* criminal act if it is entered to commit an act which is innocent in itself, but which to conspire to do is unlawful.

⁶ *Records*, vol. I, p. 123.

⁷ *Black’s Law Dictionary*, Revised Fourth Edition, West Publishing Co, St. Paul, Minnesota, 1968, pp. 382-383.

⁸ *Records*, vol. II, p. 235.

under the conditions of the introductory subparagraph of paragraph 2 be punishable as such participation, conspiracy or preparatory acts even if they were not specifically mentioned in clause (ii).⁹ The express reference to “financial operations” serves, however, the useful purpose of calling the attention of the Parties to the fact that this kind of operation may constitute such forms of criminal behaviour.

9. All forms of criminal behaviour referred to in clause (ii), if they are punishable under the introductory subparagraph of paragraph 2 and if they relate to serious offences, must be made liable “to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty”.¹⁰

10. To sum up the contents of clause (ii), it may be said that it covers all kinds of instigation and incitement (incitation), accessory acts and forms of uncompleted crimes.

11. Clause (ii) covers the subject matter dealt with in article 2, paragraphs (b), (c) and (d) of the 1936 Convention.

⁹ *Records*, vol. II, p. 236.

¹⁰ Article 36, para. 1 and comments thereon; the Spanish text does not expressly state that the actions referred to in clause (ii) shall be “punishable” offences as do the English and French versions. It uses the phrase “*se consideran como delitos, tal como se dispone en el inciso 1*”. It follows, however, from the context that it has the same meaning as the two other language versions.

Paragraph 2, subparagraph (a), clause (iii)

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

Commentary

1. “Recidivism” is considered in national penal laws an aggravating circumstance, and quite often a condition for applying measures of social defence specifically provided for habitual criminals. Where the “domestic law”¹ does not permit the taking into account of foreign convictions in formally establishing “recidivism”, its provisions concerning aggravating circumstances would often be broad enough to cover such conviction.

2. See article 6 of the 1936 Convention for a corresponding provision of the narcotics régime preceding the Single Convention.

¹ Para. 2, introductory subparagraph.

Paragraph 2, subparagraph (a), clause (iv)

(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.

Commentary

1. In a number of countries whose penal law limits, as a matter of general principle, the jurisdiction of their courts to crimes committed within their national boundaries, there are particularly strong feelings against the prosecution of crimes committed abroad, no matter whether by foreigners or nationals.¹ These countries consider that the trial of such crimes is incompatible with sound principles of administration of justice because the accused may in such cases have considerable difficulties in defending themselves.² It was certainly the understanding of the Plenipotentiary Conference that countries whose domestic law places a strong emphasis on the value of the principle of territorial jurisdiction would in view of the introductory paragraph of paragraph 2 not be legally bound by clause (iv) to prosecute offences committed abroad.

2. But all countries which adhere strongly to the maxim that in general crimes committed abroad should not be tried by their courts make an exception in the case of piracy, which they prosecute no matter where the crime was committed. As far as the United Nations secretariat is aware, all of these countries also make an exception in certain other cases, and prosecute a few crimes which they consider particularly harmful to their national interest such as forgery of currency or public bonds,³ even if the offences in question were committed outside of their national boundaries.

3. It is suggested that, in view of the deterioration of the international drug situation since 1961 when the Single Convention was concluded, the Governments concerned may at present find the prosecution of serious offences of illicit traffic committed abroad much less objectionable on grounds of principle than they did then, and therefore may consider it justified to include these offences among their exceptions to the principle of territorial jurisdiction in criminal matters. The view may also no longer be generally accepted that the subjection of the application of clause (iv) to the "domestic law" pursuant to the introductory subparagraph of paragraph 2 still justifies a refusal to prosecute, under the conditions of clause (iv), serious offences of the illicit traffic committed abroad, since the domestic law of the countries involved—like that of all countries—permits the trial of particularly dangerous crimes committed abroad, and a serious offence of illicit traffic in narcotics must now be considered to be such a crime.

4. Clause (iv) gives some preference to the jurisdiction of the country in which the crime is committed, and also to that of the nationality of the offender if it is ready to prosecute crimes wherever committed by its nationals, since it provides that serious offences of illicit traffic committed abroad should be prosecuted "if extradition is not acceptable in conformity with the law of the Party to which application is made".⁴ The text does not appear to cover

¹ *Records*, vol. I, pp. 123 and 126.

² See above, general comments on article 36; the objections to prosecution of crimes committed abroad by nationals are less strong in some of these countries.

³ Jurisdiction based on the principle of "protection"; see above, general comments on article 36.

⁴ It will also be noted that clause (iv) refers first to the jurisdiction of the Party in whose territory the offence was committed, and only in the second place to that of the Party in whose territory the offender is found.

cases in which application is made to a non-Party, or in which the country to which application is made refuses to accept the extradition of the offender although extradition is acceptable in conformity with its law, or finally those cases in which the Party in whose territory the offender is found does not, for whatever reasons, offer other countries the extradition of the offender, e.g. because the offender is its national and it does not, on constitutional or other grounds, extradite its own citizens. It is, however, suggested that it would hardly be in accordance with the object and purpose of clause (iv) to exclude these cases from its scope. What seems to have been intended is to free a Party from an obligation to prosecute illicit traffickers under the conditions of the introductory subparagraph of paragraph 2 and of clause (iv) if it is able to hand them over to a country which is willing to receive them for prosecution and if it actually carries out the extradition.

5. The Party in whose territory the offender is found is also not required to prosecute him if he has already been prosecuted and judged (i.e. sentenced or acquitted) in another country.⁵ Clause (iv) so provides in order not to require Parties to violate their prohibition of double jeopardy (*non bis in idem*). It is, however, evident that it would hardly be in accordance with the spirit of clause (iv) if a Party gives refuge to a trafficker who has been convicted abroad but has not yet been punished, i.e. served his sentence.⁶ It is suggested that the Party involved, subject to the provision of the introductory subparagraph of paragraph 2, should in such a case either extradite the trafficker or try him.

6. More generally, it is also apparent that it would be incompatible with the spirit of clause (iv) if a Party allowed a trafficker to take refuge in its territory even though it could not extradite him or try him in its own courts. It has been stated elsewhere that it follows from the general obligation of Parties to co-operate with other States in the execution of the provisions of the Single Convention and to assist each other and to collaborate in the fight against the illicit traffic pursuant to article 4, paragraph (b), and article 35, paragraphs (b) and (c), that they are bound not to allow their territory to be used as a base of operation of the illicit traffic in other countries, or to become a place of refuge for international illicit traffickers. Where prosecution or extradition may not be possible, such measures may be required as expulsion or deportation of alien traffickers.⁷

7. For provisions corresponding to clause (iv) see articles 7 and 8 of the 1936 Convention.

⁵ The English phrase "judgement given", the French word "*jugé*" and the Spanish word "*sentenciado*" can refer to both conviction and acquittal.

⁶ This opinion may not be justified in cases in which the trafficker was pardoned.

⁷ See above, comments on article 4 and article 35, paras. (b), (c) and (d).

Paragraph 2, subparagraph (b)

(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 has 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.

Commentary

1. The implementation of subparagraph (b) is not a legal obligation. The introductory words “it is desirable that” make this provision a simple recommendation.¹

2. As regards the application of the introductory subparagraph of paragraph 2 to subparagraph (b), see above, comments on the introductory subparagraph.

3. It is recommended that the offences of illicit traffic referred to be

(a) Included as extradition crimes in extradition treaties which may already have been or may later be concluded between any of the Parties, i.e. in bilateral or multilateral extradition treaties between Parties; and

(b) Recognized as extradition crimes between any of the Parties which do not make extradition conditional on the existence of a treaty or on reciprocity.

4. The text of this recommendation does not cover the case of Parties which, although not requiring a treaty, make extradition conditional on the existence of reciprocity, nor does it appear to refer to the possible uni-lateral willingness of a Party which does not make extradition conditional on the existence of a treaty or of reciprocity, to grant extradition to other Parties which do not comply with the recommendation. This second lacuna is due to the fact that the subparagraph under consideration recommends that the offences of the illicit traffic be recognized as extradition crimes “as *between* any of the Parties”. The recommendation also does not cover the extradition to non-Parties. It is, however, suggested that it is desirable that all Parties (and non-Parties) should grant extradition to Parties and non-Parties alike in all cases in which this is required in order to make possible the prosecution or punishment² of major illicit traffickers.

5. The implementation of the recommendation to include the offences concerned in extradition treaties which have already been concluded requires special treaty amendments. Such revisions can also be carried out by exchange of notes to this effect. In the case of multilateral treaties, such an exchange would of course have effect only as between the Parties exchanging the notes. In the binding form which this provision would have had in its version in the Third Draft,³ the amendment would have been effected by the Single Convention itself as between Parties to the Convention, subject of course to their

¹ *Records*, vol. II, p. 242; see the criticism of these words by the representative of Mexico; see also vol. I, p. 146.

² I.e., of fugitive traffickers who were already convicted.

³ Article 45, para. 3 of the Third Draft, *Records*, vol. II, p. 17; see also document E/CONF.34/C.12/L.1/Rev.1, *Records*, vol. II, p. 48.

constitutional limitations, legal system and domestic law as provided for in the introductory subparagraph of paragraph 2.⁴ No additional action would have been required to include the offences of the illicit traffic in the extradition treaties of the past.⁵

6. The recommendation to include offences of the illicit traffic among extradition crimes is not limited only to serious cases. It is provided, however, that a Party should "have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities [i.e. its competent authorities] consider that the offence is not sufficiently serious". It is also provided that extradition should be granted "in conformity with the law of the Party to which application is made".

7. The words in the English text "the Parties which do not make extradition conditional . . . on reciprocity" is rendered in the Spanish version by the words "*las Partes que no subordinen la extradición a la existencia de un . . . acuerdo de reciprocidad*". Preference should be given to the English text, with which the French text agrees.⁶ The provision was originally drafted in English.⁷ The Spanish text presents in this case a somewhat inexact translation. The reciprocity need not be the result of an international agreement, but may be provided for unilaterally in the law of a State, as it is in fact in some countries.

8. Subparagraph (b) covers the subject-matter of article 9 of the 1936 Convention. It will be noted that this article is the only provision of the 1936 Convention which is terminated as between Parties to this Convention which become Parties to the Single Convention. The article continues, however, to be in force in respect of those of such Parties which notify the Secretary-General that they wish to continue to be bound by it. As regards Parties which do not make such notification, article 9 of the 1936 Convention is replaced by article 36, paragraph 2, subparagraph (b) of the Single Convention.⁸

⁴ The provision in question of the Third Draft (article 45, para. 3) made its binding character, subject to "domestic law" and "constitutional limitations".

⁵ Statement of the Legal Adviser to the Plenipotentiary Conference, *Records*, vol. II, p. 241.

⁶ The corresponding words of the French version are: "*les Parties qui ne subordonnent pas l'extradition . . . à la réciprocité*".

⁷ *Records*, vol. II, pp. 1, 17 and 48.

⁸ Article 44 of the Single Convention and comments on paragraph 2 of that article.

Paragraph 3

The provisions of this article shall be subject to the provisions of the criminal law of the Party concerned on questions of jurisdiction.

Commentary

1. The representative of Chile, who proposed a draft of paragraph 3¹

¹ The Chilean draft reads: "*Todas las disposiciones del presente artículo se entenderán limitadas por las disposiciones penales de cada uno de los Estados participantes, en materia de jurisdicción*"; document E/CONF.34/L.13; *Records* (Spanish), vol. II, p. 48.

in a form which was substantially the same as the text which was finally adopted, stated that "it would make it quite clear that the provisions of the criminal law of the Parties would prevail on points of jurisdiction".²

2. It is submitted that paragraph 3 does not mean that Parties are in no case required to change their law in order to carry out the rules of article 36³ regarding jurisdiction in criminal matters, nor that they have to implement these rules only to the extent to which provision has already been made for it in their existing criminal law. This would make entirely ineffective paragraph 2, subparagraph (a), clause (iv) regarding the prosecution of offences committed abroad, and this cannot have been the intention of the authors of the Single Convention.⁴ It is held that paragraph 3 limits the obligation of Parties to carry out this clause, requiring them to do so only in so far as would be compatible with the *principles* of their criminal law. Understood in this way, paragraph 3 merely emphasizes the limitation of the obligation of Parties to implement clause (iv), provided for in the introductory paragraph of paragraph 2, which subjects this implementation to the "domestic law" of each Party. It is therefore suggested that the above comments on the introductory subparagraph of paragraph 2 and on clause (iv) regarding the limitation of the obligation of Parties to carry out this clause apply also to paragraph 3.

3. Paragraph 3 also means that article 36 does not affect the attitude of a Party towards the question of limitation of national criminal jurisdiction in international law, as reflected in the provisions of its criminal law. This was expressly laid down in article 45, paragraph 4 of the Third Draft,⁵ which was replaced by the Chilean amendment adopted as paragraph 3 of article 36.⁶

² *Records*, vol. II, p. 244.

³ I.e., para. 2, subpara. (a), clause (iv).

⁴ As to the rule of "effectiveness" (*ut res magis valeat quam pereat*), see H. Lauterpacht, *The Development of International Law by the International Court*, London, Stevens and Sons, 1958, pp. 227-230; and McNair, *The Law of Treaties*, Oxford, at the Clarendon Press, 1961, pp. 384-385.

⁵ *Records*, vol. II, p. 17; see also article 14 of the 1936 Convention.

⁶ The Chilean representative when explaining his amendment did not oppose the substance of article 45, para. 4. He only declared that his text was "clearer and more precise", and "largely a matter of drafting". *Records*, vol. II, pp. 244 and 245; see also vol. I, p. 125; see also the statement of the Legal Adviser comparing the two texts; *Records*, vol. I, p. 211.

Paragraph 4

4. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.

Commentary

1. Attention may first be drawn to the fact that the French text of paragraph 4 is entirely different from the English and Spanish texts, which are in accord. In fact, the French text, although having a different wording, represents a repetition of the substance of paragraph 3. A French text of

paragraph 4 fully in accord with its English and Spanish texts was, however, adopted by the *Ad Hoc* Committee on articles 44-46 of the Third Draft¹ and by the Plenary.²

2. While the English and Spanish texts of paragraph 3, as adopted by the Plenary in its final reading³ and thus incorporated in the Convention, are fully identical with the text as adopted by the *Ad Hoc* Committee on articles 44-46⁴ and in the earlier reading by the Plenary,⁵ the French adopted in the final reading differs from that of the *Ad Hoc* Committee and from that approved earlier by the Plenary.⁶ It appears to be quite obvious that a mistake was made in the compilation of the French text adopted by the Plenary, which was prepared by the Drafting Committee for the Plenary's final reading.⁷ This compilation incorporated erroneously in slightly modified form the French text of the Chilean redraft of article 45, paragraph 4 of the Third Draft of the Single Convention,⁸ which corresponds to article 36, paragraph 3 of the final text of the Single Convention. It should instead have included the text adopted earlier by the Plenary for the provision which became article 36, paragraph 4 of the Single Convention, as the Drafting Committee's compilations of the English and Spanish texts correctly did. The Chilean amendment was intended to revise the provision which finally became article 36, paragraph 3 and actually became paragraph 3 with a somewhat modified wording. This explains why the French text of article 36, paragraph 4 repeats the substance of paragraph 3 of this article. The mistake in the Drafting Committee's compilation of the French texts adopted earlier by the Plenary was overlooked in the Conference's final reading.

3. It is therefore submitted that preference must be given to the concordant English and Spanish versions of article 36, paragraph 4. The inclusion of this paragraph ensures that no provision of article 36 is considered to be self-executing in a country whose constitution provides for the self-executing effect of international treaties. Provisions of article 36 must therefore be transformed into national law by appropriate legislative action of the Party involved in order to become effective under its domestic penal law.

¹ *Records* (French), vol. II, pp. 267 and 279, document E/CONF.34/C.12/L.1/Rev. 1, *Records* (French), vol. II, p. 56.

² *Records* (French), vol. I, pp. 150 and 154, document E/CONF.34/19 (Report of the *Ad Hoc* Committee on articles 44-46 of the Third Draft), *Records* (French), vol. II, p. 317.

³ Document E/CONF.34/21/Add.2 and Corr.1, *Records* (English), vol. II, p. 290; and *Records* (English), vol. I, pp. 207 and 210.

⁴ *Records* (English), vol. II, pp. 234 and 245; document E/CONF.34/C.12/L.1, *Records* (English), vol. II, p. 48.

⁵ *Records* (English), vol. I, pp. 145 and 148; document E/CONF.34/19, *Records* (English), vol. II, p. 278.

⁶ Document E/CONF.34/21/Add.2 and Corr.1, *Records* (French), vol. II, p. 333, and *Records* (French), vol. I, pp. 215 and 219.

⁷ Document E/CONF.34/21, Add. 2 and Corr. 1, *Records* (French), vol. II, p. 333.

⁸ The French text of the Chilean redraft reads: "4. *Toutes les dispositions du présent article seront considérées comme limitées, en matière de compétence, par la législation pénale de chacune des Parties*". Document E/CONF.34/L.13, *Records* (French), vol. II, p. 54; for the Spanish text, see foot-note 1 to the comments on article 36, para. 3.

4. See article 15 of the 1936 Convention for an earlier provision corresponding to that of article 36, paragraph 4.⁹

⁹ The Protocol of Signature of the 1936 Convention, section I, para. 2 reads:
“Article 15 is to be interpreted in the sense that the Convention does not in particular affect the liberty of the High Contracting Parties to regulate the principles under which mitigating circumstances may be taken into account”, League of Nations, document C.286 (I), M.174 (I).1936.XI, p. 25.

Article 37

SEIZURE AND CONFISCATION

Any drugs, substances and equipment used in or intended for the commission of any of the offences, referred to in article 36, shall be liable to seizure and confiscation.

Commentary

1. The question arises whether the words "shall be liable to seizure and confiscation" are meant to impose upon Parties an obligation to seize and confiscate, under the conditions of article 37, the drugs, substances and equipment involved, or whether those words only require the Parties to provide for legal power of their competent authorities and courts to do so. These words can be understood either in the sense of "shall be legally bound to be seized and confiscated" ("shall be subject to seizure and confiscation"), or in that of "shall be open to seizure and confiscation" ("shall be exposed to seizure and confiscation").¹ They could therefore be interpreted in both ways. In fact, some delegates² understood these words as not imposing a legal obligation to seize and confiscate the goods in question, while others³ stated that they meant to provide by this text for such an obligation. There was also some awareness of the possible ambiguity of this phrase.⁴ It appears, however, that the stronger view at the Conference favoured a definite obligation of Parties to seize and confiscate the drugs, substances and equipment concerned.⁵

2. The Legal Adviser of the Plenipotentiary Conference stated⁶ that in his opinion the purpose of the provision⁷ "was to compel a country which had no law authorizing seizure and confiscation to adopt such a law". He also stated that "at least according to the English text, the court *must* confiscate property which had been seized if it was established that it was intended for the

¹ *The Concise Oxford Dictionary of Current English*, Fifth Edition, Oxford, at the Clarendon Press, 1964, p. 697.

² The representatives of Denmark, the United Kingdom and in a somewhat different way the United States representative; *Records*, vol. II, p. 246.

³ The representatives of France, the Federal Republic of Germany, Mexico and Yugoslavia; *Records*, vol. I, p. 128 and vol. II, pp. 245 and 246.

⁴ Statement of the representative of the International Criminal Police Organization; *Records*, vol. II, pp. 246-247.

⁵ *Records*, vol. I, pp. 128-129 and vol. II, pp. 245-247.

⁶ *Records*, vol. II, p. 246.

⁷ He referred to article 46, para. 1 of the Third Draft which corresponds to article 37 of the Single Convention and which reads: "1. Any drugs, substances and equipment intended for the commission of any of the offences referred to in article 45, paragraph 1, shall be liable to seizure and confiscation;" article 45, para. 1 of the Third Draft corresponds to article 36, para. 1 and para. 2, subpara. (a), clause (ii) of the Single Convention.

commission of an offence". This opinion was not contested.⁸ It may also be noted that the Canadian representative, who was the chairman of the Drafting Committee of the Plenipotentiary Conference, was in favour of an obligation of Parties to carry out the seizures and confiscations in question, and that he obviously believed that the words "shall be liable to" imposed such an obligation.⁹ It may also be of interest in this context to note that the Canadian representative was also the chairman of the Drafting Committee at the thirteenth session of the Commission on Narcotic Drugs which adopted the language in question.¹⁰

3. It may also be remarked that the provision of article 37 would not be very meaningful if it did not provide for an obligation to make seizures and confiscations under its terms.

4. It is submitted that the opinion of the Legal Adviser to the effect that article 37, in using the phrase "shall be liable to", not only requires Parties to provide for legal authority of Government organs to make the seizures and confiscations but also imposes upon them an obligation to take these actions, represents the better view because it accords with the objectives and purposes of the Convention. This view is also corroborated by the provision of article 33 requiring Parties not to permit the possession of drugs except under legal authority, and by that of article 4, paragraph (c) which stipulates *inter alia* that Parties should limit the possession of drugs exclusively to medical and scientific purposes. Parties may—and generally do—give their judicial courts the power to decide on the seizures and confiscations.

5. It is, however, admitted that the French and Spanish versions do not easily lend themselves to the suggested interpretation.¹¹ It will on the other hand be noted that the *Ad Hoc* Committee of the Plenipotentiary Conference on articles 44-46 of the Third Draft decided to request the Drafting Committee to bring the French and Spanish texts in line with the English text.¹² The Drafting Committee and later the Plenipotentiary Conference appear, however, to have overlooked the need to bring about the required concordance of these three versions. It may finally be mentioned that the original text of the provision under consideration was English.¹³

⁸ The representative of the United States of America, speaking after the Legal Adviser, indicated that a Party would not be responsible for a court decision declining to decide to confiscate the substances concerned. He was also in favour of Parties undertaking an obligation to seize and confiscate; *Records*, vol. II, p. 246.

⁹ *Ibid.*

¹⁰ Commission on Narcotic Drugs, report on the thirteenth session (1958), paragraph 459 and annex V, article 47, paragraph 1; *Official Records of the Economic and Social Council, Twenty-sixth Session, Supplement No. 9* (E/3133).

¹¹ The French text renders the English phrase "shall be liable to seizure and confiscation" by the words "*pourront être saisis et confisqués*" and the Spanish text by the words "*podrán ser objeto de aprehensión y decomiso*".

¹² *Records*, vol. II, p. 247; see also pp. 245 and 248.

¹³ *Records*, vol. II, p. 1 and 18. In favour of the opinion that article 37 imposes an obligation to make the seizures and confiscations concerned, it may also be added that the words "shall be liable to adequate punishment . . ." in article 36, paragraph 1 are rendered in the French and Spanish versions by phrases which clearly provide an obligation of the Parties.

6. It will be recalled that poppy straw and the leaves of the cannabis plant (when not accompanied by the tops) are not “drugs”, and are therefore not as such within the scope of article 37.¹⁴ The straw may, however, have to be seized and confiscated as a “substance” if used or intended for the clandestine manufacture of morphine, though such manufacture appears to be highly improbable under present conditions.¹⁵ Parties may also find it necessary to seize and confiscate cannabis leaves in order to implement article 28, paragraph 3.

7. Article 37 applies to drugs in Schedule I and II and to all preparations, including preparations in Schedule III, because it is not one of the provisions from which drugs in Schedule II or any preparations are excluded.¹⁶

8. Different opinions were expressed at the Plenipotentiary Conference as to the meaning of the word “equipment”. One delegate expressed the opinion that this term covered also “vehicles”,¹⁷ while another was of the view that it did not refer to “vehicles”.¹⁸ It would, however, hardly be possible to understand the French text, which uses the word “*matériel*”, and the Spanish text, which employs the term “*utensilio*” for the English “equipment”, as including vehicles, and in any event as including large “vehicles” such as railroad cars, large boats or airplanes.

9. It is also suggested that only equipment used for the commission of the offences in question with the consent of its owner need be subject to confiscation under article 37. It is submitted that equipment so used should be “seized”, i.e. be made subject to a provisional measure, whenever it is not clear from the circumstances that it has been employed without the agreement of the owner, and that it should then be left to the courts to determine its position before they take a final decision on the “confiscation”.

10. It will be noted that the term “seizure” is used for the provisional act of taking possession pending the procedure on the final disposal of the seized drugs, substances or equipment, that is, pending the final decision on their “confiscation”.¹⁹

11. Large conveyances such as railroad cars, large boats and airplanes will hardly ever be used or intended to be used with the agreement of their owners for the commission of the offences to which article 37 refers. It follows that even if the term “equipment” covers vehicles and other conveyances, this article would in practice not apply to these large conveyances. Motor cars, small boats and small airplanes are, on the other hand, quite often the property of illicit traffickers, and intended and used by them for illicit traffic in narcotic

¹⁴ See above, comments on article 1, paragraph 1, subparas. (r) and (b).

¹⁵ See above, comments on article 25.

¹⁶ Article 2, paragraphs 2 to 4.

¹⁷ *Records*, vol. I, p. 128.

¹⁸ *Records*, vol. II, p. 246.

¹⁹ This final decision is generally left to judicial courts; the Single Convention, however, would not prevent a Party from giving this authority to an administrative organ. It may also be noted that this use of the term “seizure” is not consistent with the language employed in the English and French versions of article 20, para. 1, subpara. (e), article 21, para. 2 and article 24, para. 5, subpara. (b). The Spanish text of these provisions is, however, in this connexion in accord with its article 37 since they use respectively the words “*decomiso*”, “*decomisada*” and “*decomisen*”.

drugs. It would be desirable that Governments should seize and confiscate them whatever their view may be on the meaning of the term “equipment”.

12. It will be noted that the Single Convention did not take over the restrictions imposed by earlier narcotics treaties on the disposal of drugs confiscated from the illicit traffic.²⁰ The Parties are, however, authorized to export only to other Parties confiscated opium which because of the place in which it was “produced”²¹ should not be the object of legal international trade under the terms of article 24, paragraphs 2 to 4.²²

13. See also above comments on article 33. For an earlier provision corresponding to article 37 of the Single Convention, see article 10 of the 1936 Convention.

²⁰ Article 18 of the 1931 Convention and article 7 of the 1953 Protocol.

²¹ Article 1, para. 1, subpara. (i).

²² Article 24, para. 5, subpara. (b) and above comments on that paragraph.

Article 38

TREATMENT OF DRUG ADDICTS

1. The Parties shall give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts.

2. If a Party has a serious problem of drug addiction and its economic resources permit, it is desirable that it establish adequate facilities for the effective treatment of drug addicts.

Commentary

1. The earlier narcotics treaties did not contain any provision corresponding to that of article 38 of the Single Convention. This does not, however, mean that the need for treatment of addicts had not been generally recognized prior to the conclusion of the Single Convention. In fact, it has already for several decades been well understood that the administrative and penal measures adopted in accordance with the terms of the narcotics treaties to keep narcotic drugs from actual and potential victims of addiction needed to be supplemented by measures of treatment, after-care and rehabilitation of addicts.¹ Article 38 gives express recognition in the form of a treaty provision to this long held view.

2. The terms “drug addicts” and “drug addiction” as used in paragraphs 1 and 2 cover not only the abuse of narcotic drugs which cause physical dependence—i.e. of substances which are technically “addiction producing”—but also the habitual abuse of other substances subject to the Single Convention but not producing physical dependence, such as cocaine, cannabis and cannabis resin. They do not refer to the abuse of drugs outside the scope of the Single Convention.²

3. Paragraph 1 constitutes a legal obligation, although defined in rather vague terms, while paragraph 2 is only a recommendation.

4. The Drafting Committee of the Plenipotentiary Conference explained that the term “medical treatment” referred to “necessary therapeutic treatment”, and that the phrase “care and rehabilitation” was to be “understood in the broadest sense”.³ The term “treatment” as used in paragraph 2 includes what is called in paragraph 1 “medical treatment, care and rehabilitation”.

¹ See recommendation IX incorporated in the Final Act of the Conference of 1931 on the Suppression of Opium Smoking, urging upon Governments the importance of adequate provision being made for the treatment of opium smokers and of taking adequate steps to encourage smokers to seek the cure of their addiction and to promote, or encourage through voluntary efforts, the after-care of persons who have undergone a cure, with a view to safeguarding them against relapse; League of Nations, document C.70.M.36.1932.XI, p. 10.

² As regards the treatment of abusers of other drugs, see article 20 of the Convention on Psychotropic Drugs, done at Vienna on 21 February 1971; document E/CONF.58/6. At the time of this writing this Convention has not yet come into force.

³ *Records*, vol. II, p. 283, foot-note 19.

5. It may sometimes be difficult to draw a dividing line between measures which may be called "care" and those which may be referred to as "rehabilitation". It is suggested that the term "care" includes such psychiatric, psycho-analytical or psychological treatment of the addict as may be necessary after he has been withdrawn from the drugs which he abused. The word "rehabilitation" covers such measures as may be required to make the addicts physically, vocationally and otherwise fit for living a normal life as useful members of society (cure of diseases, physical rehabilitation of disabled addicts, vocational training, supervision, accompanied by advice and encouragement, of a perhaps gradual transition to a normal self-reliant life, etc.).

6. The phrase "adequate facilities for the effective treatment" in the recommendation of paragraph 2 was used to leave countries free to choose whatever methods their medical authorities may consider most suitable.⁴ It is also for this reason that the Plenipotentiary Conference did not accept a provision of the Third Draft⁵ which would have required Parties which have a serious problem of drug addiction to "use their best endeavours to establish facilities for the compulsory treatment of drug addicts in closed institutions" if their economic resources permitted such a course of action. The Conference did not act in this way because it wished to reject the idea of the usefulness of compulsory treatment and in particular of that in closed institutions, but because it considered that the differing causes of addiction and the divergent conditions in different countries, as well as the possibility of scientific progress in understanding of the problem and in the methods of treatment of addiction, made it advisable not to lay down in the treaty a particular method of treatment as being valid under all conditions, in all countries and for the whole period of the operation of the Convention.⁶ The Conference, however, adopted a resolution in which it declared that one of the most effective methods of treatment for addiction was treatment in a hospital institution having a drug-free atmosphere, and in which it urged Parties having a serious drug addiction problem and the economic means to do so, to provide such facilities.⁷ The representative of the World Health Organization expressed the view that a "drug-free environment" presupposed a "closed institution".⁸

7. A country which does not have sufficient economic resources for handling its various social problems does not act contrary to the recommendation of paragraph 2 if it does not establish "adequate facilities for the effective treatment of drug addicts" because it desires to use its limited means for tasks which it considers more urgent, even though it has a serious problem of addiction.

⁴ *Records*, vol. I, pp. 110 and 114.

⁵ Article 45, para. 2 of the Third Draft which by amendment became the recommendation of article 38, para. 2 of the Single Convention; *Records*, vol. II, p. 18 and vol. I, p. 114.

⁶ *Records*, vol. I, pp. 103-114.

⁷ Resolution II, *Records*, vol. II, p. 316.

⁸ *Records*, vol. I, p. 109. The representative of the World Health Organization also expressed the view that compulsory treatment was desirable, but that treatment need not always be provided in a closed institution.

8. It may finally be suggested that it would be desirable to provide for adequate facilities for the effective treatment of addicts even in countries which in fact do not have a "serious problem of addiction".⁹

⁹ The representative of New Zealand referred to "the view of the World Health Organization that all drug addiction, whatever its incidence, was always a serious problem"; *Records*, vol. I, p. 107.

Article 39
APPLICATION
OF STRICTER NATIONAL CONTROL MEASURES
THAN THOSE REQUIRED BY THIS CONVENTION

Article 39

Notwithstanding anything contained in this Convention, a Party shall not be, or be deemed to be, precluded from adopting measures of control more strict or severe than those provided by this Convention and in particular from requiring that preparations in Schedule III or drugs in Schedule II be subject to all or such of the measures of control applicable to drugs in Schedule I as in its opinion is necessary or desirable for the protection of the public health or welfare.

Commentary

1. Article 39 contains a rule which has also been applied under the earlier narcotics treaties, though they did not contain any such express provision.¹

2. Parties which apply “more strict or severe” control measures may do this by imposing controls *in addition* to those required by the Single Convention, or by *replacing* measures provided for in that treaty by “more strict or severe” ones. While the application of additional controls will hardly give rise to legal problems under the terms of the Convention, the replacement of a measure required by the treaty by another may occasionally lead to doubts whether the substitute control is really “more strict or severe” than the one which it replaces.² It is suggested that substitute measures should clearly be “more strict or severe” to prevent any such doubts. Permissible substitute controls would be, for example, the prohibition of manufacture of and trade in certain drugs instead of subjecting them to a system of licensing, or the imposition of the

¹ As regards the 1931 Convention, see on this point the declaration of the President of the Conference of 1931 for the Limitation of the Manufacture of Narcotic Drugs. He stated that nothing contained in this Convention would prevent a Party from adopting a more rigorous system of control than that provided in it. The Conference which adopted the 1931 Convention endorsed this declaration of its President; League of Nations document C.509.M.214.193.XI, p. 269; the representative of Canada who introduced the provision (*Records*, vol. I, p. 153 and document E/CONF.34/L.3 (proposed by Canada and the United States of America), *Records*, vol. II, p. 37) which became article 39, explained that it would make it clear to manufacturers who might seek lessening of national controls more strict than the rules of the Single Convention that acceptance of these rules should “not be construed as weakening national regulations”; *Records*, vol. I, p. 17.

² E.g. a provision which would authorize every farmer in a defined district to cultivate the opium poppy for the production of opium if he makes to this effect a declaration to the authorities, in substitution for the requirement of licensing cultivators under article 23, para. 2, subpara. (b).

death penalty in place of “imprisonment or other penalties of deprivation of liberty”.³

3. It will generally be difficult to distinguish between what would be “more strict” and what would be more “severe”. It appears that both of these words were used because the authors of the text of article 39 considered that in a few of the cases covered in this provision one or the other of these two words might be more appropriate.

4. The special reference to the imposition on drugs in Schedule II or preparations in Schedule III of some or all of the controls which must be applied to drugs in Schedule I, but from which drugs in Schedule II and those preparations are exempted by the Convention,⁴ appears to be due to the fact that the Conference wished to give some recognition to the position of those countries which consider that some or all of these exemptions are not justified on grounds of drug control.⁵ Parties may of course apply to drugs in Schedule II and to preparations in Schedule III an even more strict or severe régime than that governing drugs in Schedule I, e.g., measures of prohibition.⁶

5. It may be noted that the Spanish text uses for the English phrase “the public health and welfare” the words “*la salud pública*”, as it does in article 22, while in article 2, paragraph 5, subparagraph (b) it renders the same English phrase by the words “*la salud y el bienestar públicos*”. The French text uses in all three of these cases the words “*la santé publique*”. It is suggested that these divergencies are of no legal importance.

³ Article 36, para. 1. The reference to the “death penalty” is made in the light of the provisions of the Single Convention. It does not imply any position as to the admissibility of this penalty on moral or other legal grounds.

⁴ Article 2, paras. 2 and 4.

⁵ See also the statement of the representative of Canada referred to in footnote 1 above.

⁶ The régime applicable to drugs in Schedule IV would also be a more strict or severe régime; see article 2, para. 5.

Article 40

LANGUAGES OF THE CONVENTION AND PROCEDURE FOR SIGNATURE, RATIFICATION AND ACCESSION

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be open for signature until 1 August 1961 on behalf of any Member of the United Nations, of any non-member State which is a Party to the Statute of the International Court of Justice or member of a specialized agency of the United Nations, and also of any other State which the Council may invite to become a Party.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General.

3. This Convention shall be open after 1 August 1961 for accession by the States referred to in paragraph 1. The instruments of accession shall be deposited with the Secretary-General.

Article 41

ENTRY INTO FORCE

1. This Convention shall come into force on the thirtieth day following the date on which the fortieth instrument of ratification or accession is deposited in accordance with article 40.

2. In respect of any other State depositing an instrument of ratification or accession after the date of deposit of the said fortieth instrument, this Convention shall come into force on the thirtieth day after the deposit by that State of its instrument of ratification or accession.

Commentary

1. These two articles, regulating the procedure by which States may become Parties to the Single Convention and the conditions of its coming into force, are standard provisions very similar to those which can be found in a number of other treaties.¹

2. Attention may however be drawn to a discrepancy between the English and Spanish texts of paragraphs 1 and 2 of article 41 on the one hand, and their French versions on the other hand. The French text uses in these paragraphs the phrase "*a l'expiration du trentième jour*", while the English text employs in the corresponding places the words "on the thirtieth day" and the Spanish

¹ See document ST/LEG/SER.D/1, annex; for similar provisions in a recent treaty, see articles 81-85 of the Vienna Convention of 1969 on the Law of Treaties, document A/CONF.39/27; see also articles 25 and 26 of the Convention on Psychotropic Drugs, done at Vienna on 21 February 1971, document E/CONF.58/6.

text the words “*el trigésimo día*”. Under the French text the date of coming into force pursuant to paragraphs 1 and 2 would thus be one day later than under the English and Spanish versions. This difference is, however, of little practical importance since Parties are under article 4, introductory paragraph and paragraph (a), undoubtedly allowed a reasonable time for adopting the legislative and administrative measures to carry out the provisions of the Convention.²

3. It will also be noted that the French text of article 40, paragraph 1 uses the singular “*membre*” in the phrase “*membre d’une institution spécialisée*” instead of the plural “*membres*”.

4. It must be kept in mind that under article 40, paragraph 1 the Chinese, English, French, Russian and Spanish texts of the Single Convention are “equally authentic”. Such a provision is rather common in treaties concluded under the auspices of the United Nations.

² The Secretary-General based himself on the English and Spanish versions when determining 13 December 1964 as date of the coming into force of the Single Convention pursuant to article 41, para. 1; 13 December 1964 is the thirtieth day following 13 November 1964, on which Kenya deposited its instrument of accession as the fortieth of the States which deposited instruments of ratification or accession in accordance with article 40; document ST/LEG/SER./D/4, pp. 145-146.

Article 42

TERRITORIAL APPLICATION

This Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible, except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when that consent is obtained the Party shall notify the Secretary-General. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

Commentary

1. Article 42 of the Single Convention is in substance identical with article 20 of the 1953 Protocol. There are some minor drafting changes, which, it is submitted, do not affect the meaning of the provision. The principal difference is that article 42 of the Single Convention uses the phrase "all non-metropolitan territories"¹ for the longer phrase "all the non-self-governing, trust, colonial and other non-metropolitan territories" used in the article of the 1953 Protocol. This modification adopted by the Plenipotentiary Conference is due to the change in the international political climate which had taken place between 1953 and 1961.²

2. These provisions of the 1953 Protocol and the Single Convention differ from the "territorial" or "colonial" clauses in earlier narcotics treaties in that Parties have no discretion in regard to application to their dependent territories, as they had under the preceding treaties.³ Only those non-metropolitan territories whose consent is required can refuse to have the Protocol or the Single Convention applied to them.⁴

3. Article 42 requires that a Party

(a) Apply the Convention to all its non-metropolitan territories whose previous consent is not needed, and declare them to the Secretary-General of the United Nations at the time of its signature, ratification or accession;

¹ See the statements of the Legal Adviser of the Plenipotentiary Conference on "non-metropolitan territories", *Records*, vol. I, pp. 167 and 169.

² *Records*, vol. I, pp. 167-170, 211 and 216.

³ For the "territorial" or "colonial" clauses in the narcotics treaties preceding the 1953 Protocol see foot-note 4 to the comments on article 1, para. 1, subpara. (v).

⁴ See also article 46, para. 1.

(b) Endeavour to secure within the shortest period possible the agreement of those of its non-metropolitan territories whose consent is needed under the terms of the Constitution of the Party or of the territory in question or by custom; and

(c) Notify to the Secretary-General each consent so obtained.

4. It is submitted that the required consent may also be given spontaneously by a non-metropolitan country without its having been requested to do so by the Party which is responsible for its international relations. Such consent may also be given prior to the signature, ratification or accession by the Party. It is suggested that in such a case the Party should, if possible, send to the Secretary-General notice of the consent which it has obtained so as to reach him not later than the time of deposit of its instrument of ratification or accession.

5. Article 42 provides that the Convention shall apply to a non-metropolitan territory where agreement is required from the date of receipt by the Secretary-General of the notification of its consent. It need not, however, be applied to such a territory prior to the date of its coming into force in respect of the Party in question pursuant to article 41, if the notification is received by the Secretary-General before that date.

6. Substantive provisions of the Single Convention which apply to non-parties also apply to those non-metropolitan territories of Parties to which the Convention does not apply pursuant to articles 42 and 46.⁵

7. It may also be noted here that the Plenipotentiary Conference added a foot-note to paragraph 14 of its Final Act which reads as follows: "The Conference took note that the Convention was approved without prejudice to decisions or declarations in any relevant General Assembly resolution". In so doing the Conference had in mind article 42 of the Single Convention and the Declaration on the granting of independence to colonial countries and peoples, contained in resolution 1514 (XV) of the General Assembly of the United Nations.⁶

8. For additional comments having a bearing on article 42, see also comments on article 1, para. 1, subpara. (y).

⁵ See article 12, paras. 2 and 3, article 13, para. 2, article 14, paras. 1 and 2, article 21, para. 4, article 24, para. 5, subpara. (b), article 31, para. 1 and article 49, para. 2, subpara. (b).

⁶ *Records*, vol. I, pp. 211 and 216, and vol. II, p. 299.

Article 43
TERRITORIES FOR THE PURPOSES OF
ARTICLES 19, 20, 21 AND 31

1. Any Party may notify the Secretary-General that, for the purposes of articles 19, 20, 21 and 31, one of its territories is divided into two or more territories, or that two or more of its territories are consolidated into a single territory.

2. Two or more Parties may notify the Secretary-General that, as the result of the establishment of a customs union between them, those Parties constitute a single territory for the purposes of articles 19, 20, 21 and 31.

3. Any notification under paragraph 1 or 2 above shall take effect on 1 January of the year following the year in which the notification was made.

Commentary

For comments on article 43 and in particular for the mandatory character of the notifications mentioned in paragraphs 1 and 2 if the legal effects in question are to be obtained, see above, comments on article 1, paragraph 1, subparagraph (v).

Article 44 ¹

TERMINATION OF PREVIOUS INTERNATIONAL TREATIES

1. The provisions of this Convention, upon its coming into force, shall, as between Parties hereto, terminate and replace the provisions of the following treaties:

(a) International Opium Convention, signed at The Hague on 23 January 1912;

(b) Agreement concerning the Manufacture of, Internal Trade in and Use of Prepared Opium, signed at Geneva on 11 February 1925;

(c) International Opium Convention, signed at Geneva on 19 February 1925;

(d) Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931;

(e) Agreement for the Control of Opium Smoking in the Far East, signed at Bangkok on 27 November 1931;

(f) Protocol signed at Lake Success on 11 December 1946, amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, except as it affects the last-named Convention;

(g) The Conventions and Agreements referred to in subparagraphs (a) to (e) as amended by the Protocol of 1946 referred to in subparagraph (f);

(h) Protocol signed at Paris on 19 November 1948 Bringing under International Control Drugs outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success on 11 December 1946;

(i) Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, should that Protocol have come into force.

2. Upon the coming into force of this Convention, article 9 of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signed at Geneva on 26 June 1936, shall, between the Parties thereto which are also Parties to this Convention, be terminated, and shall be replaced by paragraph 2 (b) of article 36 of this Convention; provided that such a Party may by notification to the Secretary-General continue in force the said article 9.

¹ For the texts of the treaties referred to in this article see the references in the list of abbreviations used in this Commentary, p. vii; the titles given to these treaties

Commentary

1. Article 44 terminates and replaces, *as between Parties to the Single Convention*, the multilateral narcotics treaties preceding that Convention with the exception of all provisions of the 1936 Convention other than its article 9. It does not and could not affect the obligation of Parties to the Single Convention towards States which are Parties to one or another of these earlier treaties but not to the Single Convention, to continue to carry out the provisions of the treaty concerned. The earlier narcotics treaties, including their provisions regulating the trade relations between two States, were concluded in the interest of all Parties, and in fact of the family of nations as a whole.

2. A Party to the Single Convention therefore cannot, on the basis of article 44, refuse to carry out control provisions of an earlier treaty to which it is still a Party so long as this treaty is not terminated in accordance with its own terms, or as long as all Parties to this treaty have not accepted the Single Convention. Such a refusal would affect the enjoyment by Parties to the earlier treaty in question which have not become Parties to the Single Convention of their rights under that treaty.²

3. This situation will generally not cause any legal difficulties, because the implementation of the control provisions of the Single Convention is compatible with that of the earlier treaties, and because the Convention took over the substance of most of the rules of the earlier treaties, adding some new control provisions. There are, however, a few important earlier rules which were not taken over by the Single Convention, such as articles 6 and 7 of the 1953 Protocol. Under these provisions Parties to the Protocol may not import any other opium than that produced³ in one of seven named countries,⁴ may not import opium from non-Parties to the Protocol,⁵ and are restricted in their right to dispose of seized opium.⁶ It is submitted that, in accordance with what has been stated above, Parties to the Single Convention which are also Parties to the 1953 Protocol must apply also to their trade with other Parties to the Single Convention these provisions of the Protocol as long as the Protocol is in force in accordance with its own terms,⁷ or until all of its Parties have become Parties to the Single Convention. The implementation by a Party to the Single Convention of these provisions of the 1953 Protocol would not be incompatible with its obligations under the Convention.

in article 44 do not always agree with those heading them in the volumes of the League of Nations and United Nations Treaty Series; as regards the Russian text of article 44, para. 1, subpara. (f) see United Nations *Treaty Series*, vol. 570, p. 346, Procès-Verbal of Rectification, signed at the Headquarters of the United Nations, New York, on 8 August 1966.

² See also Vienna Convention of 23 May 1969 on the Law of Treaties, article 41, para. 1, subpara. (b); see also article 40, para. 4, article 30, para. 4, subpara. (b), article 54, para. (b) and article 58, para. 1, subpara. (b); document A/CONF.39/27.

³ Article 1 of the 1953 Protocol and article 1, para. 1, subpara. (r) of the Single Convention.

⁴ Protocol of 1953, article 6, para. 2, subpara. (a).

⁵ *Ibid.*, article 6, para. 2, subpara. (b).

⁶ *Ibid.*, article 7.

⁷ *Ibid.*, article 24.

4. A Party to the Single Convention and to the 1936 Convention which makes the notification mentioned in article 44, paragraph 2, continues to be bound by article 9 of the 1936 Convention only towards those of the Parties to both treaties which have made the same notification. Its obligation towards Parties to the 1936 Convention which have not accepted the Single Convention would not be affected by article 44.

Article 45

TRANSITIONAL PROVISIONS

1. The functions of the Board provided for in article 9 shall, as from the date of the coming into force of this Convention (article 41, paragraph 1), be provisionally carried out by the Permanent Central Board constituted under chapter VI of the Convention referred to in article 44 (c) as amended, and by the Supervisory Body constituted under chapter II of the Convention referred to in article 44 (d) as amended, as such functions may respectively require.

2. The Council shall fix the date on which the new Board referred to in article 9 shall enter upon its duties. As from that date that Board shall, with respect to the States Parties to the treaties enumerated in article 44 which are not Parties to this Convention, undertake the functions of the Permanent Central Board and of the Supervisory Body referred to in paragraph 1.

Commentary

1. The Economic and Social Council, by its resolution 1106 (XL) adopted on 4 March 1966, decided on 2 March 1968 as the date on which the new Board referred to in article 9, that is, the International Narcotics Control Board,¹ should enter upon its duties.

2. No State not a party to the Single Convention but Party to any of the earlier narcotics treaties² providing for functions of the Permanent Central Board and Drug Supervisory Body has objected to the International Narcotics Control Board's taking over the functions of the Permanent Central Board and Supervisory Body in accordance with article 45, paragraph 2.³

3. See also comments on article 1, paragraph 1, subparagraph (a) and on article 5.

4. The "Supervisory Body" established by chapter II (article 5, paragraph 6) of the 1931 Convention referred to itself as "Drug Supervisory Body", and was also generally called by this name to indicate the nature of its functions. The 1946 Protocol replaced the organs of the League of Nations, which appointed the members of the Permanent Central Board and Supervisory Body, by organs of the United Nations system.⁴

¹ Article 1, para. 1, subpara. (a).

² The 1925 and 1931 Conventions and the Protocols of 1946, 1948 and 1953.

³ The Legal Adviser of the Plenipotentiary Conference also pointed out that the authority of the International Narcotics Control Board to carry out in regard to non-parties to the Single Convention the functions of the Permanent Central Board and Drug Supervisory Body in accordance with article 45, para. 2, could probably also be based on the reasons of the advisory opinion given by the International Court of Justice on the International Status of South-West Africa (International Status of South-West Africa, Advisory Opinion: *ICJ Reports 1950*, p. 128); *Records*, vol. I, p. 174.

⁴ Parts 2 and 3 of the Annex to the 1946 Protocol.

Article 46

DENUNCIATION

1. After the expiry of two years from the date of the coming into force of this Convention (article 41, paragraph 1), any Party may, on its own behalf or on behalf of a territory for which it has international responsibility, and which has withdrawn its consent given in accordance with article 42, denounce this Convention by an instrument in writing deposited with the Secretary-General.

2. The denunciation, if received by the Secretary-General on or before the first day of July in any year, shall take effect on the first day of January in the succeeding year, and if received after the first day of July, shall take effect as if it had been received on or before the first day of July in the succeeding year.

3. This Convention shall be terminated if, as a result of denunciations made in accordance with paragraph 1, the conditions for its coming into force as laid down in article 41, paragraph 1, cease to exist.

Commentary

1. The two years from the date of the coming into force of the Single Convention ended on 12 December 1966, the Convention having entered into force on 13 December 1964.¹

2. It would be in accordance with the spirit of article 42 to assume that a Party is bound to denounce the Convention on behalf of a territory² for which it has international responsibility if that territory has withdrawn its consent given in accordance with article 42. A Party cannot separately denounce the Convention on behalf of a territory whose consent is not required under the Party's or territory's Constitution or by custom for the treaty's application to the territory. A Party denouncing the Convention on its own behalf cannot exclude from its denunciation any of its territories, including those whose agreement is needed for the application of the Convention to them, even if the latter have not withdrawn their consent given in accordance with article 42.

3. All denunciations take effect on the first day of a calendar year, a minimum period of a full six months being required between the date of their receipt by the Secretary-General and the day on which they become effective. All denunciations received on or before 1 July of a given calendar year thus take effect on 1 January of the immediately following year, and those received between 2 July and 31 December of the calendar year become effective on

¹ See above, foot-note 2 to comments on articles 40 and 41.

² Here as in the last sentence of article 1, para. 1, subpara. (y), the qualifying word "non-metropolitan" is omitted.

1 January of the second subsequent year. This provision is motivated by the considerations that Parties are bound to furnish estimates of their drug requirements³ and their statistical returns⁴ other than those relating to their international trade⁵ for each calendar year, and that the maximum amounts of drugs which they may acquire by manufacture or import or both are computed by the calendar year.⁶

4. Without the express provision of paragraph 3 the Convention would not cease to be in force under the conditions provided in this paragraph.⁷

³ Article 19.

⁴ Article 20, para. 1, subpara. (a-c), (e) and (f), and para. 2, subpara. (a).

⁵ Article 20, para. 1, subpara. (d) and para. 2, subpara. (b).

⁶ Article 21, paras. 1 to 3; see also article 32 of the 1931 Convention, article 9 of the 1948 Protocol and article 23 of the 1953 Protocol; see however article 24 of the 1936 Convention.

⁷ Article 55 of the Vienna Convention on the Law of Treaties, referred to in foot-note 2 to the comments on article 44.

Article 47

AMENDMENTS

General comments

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated to the Secretary-General who shall communicate them to the Parties and to the Council. The Council may decide either:

(a) That a conference shall be called in accordance with Article 62, paragraph 4, of the Charter of the United Nations to consider the proposed amendment; or

(b) That the Parties shall be asked whether they accept the proposed amendment and also asked to submit to the Council any comments on the proposal.

2. If a proposed amendment circulated under paragraph 1 (b) of this article has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If however a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

Commentary

1. The question arises whether the Single Convention can be amended by any other procedure than that outlined in article 47. It is submitted that the answer must be in the affirmative. The article does not mention that the Council may submit proposed amendments to the General Assembly of the United Nations for consideration and possible adoption in accordance with Article 62, paragraph 3 of the United Nations Charter. The Drafting Committee of the Plenipotentiary Conference pointed out that nothing in the amendment article was intended to or could possibly affect the power of the Council under that paragraph to submit draft conventions to the General Assembly,¹ it being understood that proposed amendments would be such "draft conventions". Not only could the procedure provided in Article 62, paragraph 3 of the Charter be applied, in addition to that provided for in article 47, but any other procedure by which multilateral treaties can be revised under international law, always provided that no amendment, however adopted, would be binding upon a Party not accepting it.² It may in particular be mentioned that the General Assembly may itself take the initiative in amend-

¹ *Records*, vol. II, p. 291, foot-note 60; this view was not disputed, *Records*, vol. I, p. 213.

² Or not rejecting it as provided in article 47, para. 2.

ing the Convention, either by itself adopting the revisions, or by calling a Plenipotentiary Conference for this purpose.³

2. It is also submitted that article 47 does not prevent the Council from taking, in accordance with its powers under the United Nations Charter, any of the possible actions on a proposed amendment, in addition to those provided for in this article. It may in particular also refuse to act on a proposal to revise the Convention.⁴

3. It was undoubtedly the understanding of the Plenipotentiary Conference that the Council would consult the Commission on Narcotic Drugs before taking a decision under article 47. It was therefore found not to be necessary to provide in the treaty expressly for such a consultation.⁵ The Council has, however, no legal obligation to obtain the views of the Commission before taking action under the terms of article 47, although this might generally be advisable. In fact, in its resolution 1577 (L) dated 20 May 1971, the Council decided under article 62, paragraph 4 of the Charter to call a Plenipotentiary Conference to consider amendments to the Single Convention, without first consulting the Commission. It requested the Commission, however, to study the amendments and to make appropriate comments to the Plenipotentiary Conference.⁶

4. For the rules prescribed by the General Assembly for the Council's calling international conferences of States on matters falling within the Council's competence, see General Assembly resolution 366 (IV) of 3 December 1949 in connexion with article 62, paragraph 4 of the Charter.

5. For the procedure to amend the Schedules of the Single Convention, see article 3 of the Convention. The Schedules can, however, also be revised by any other method by which the Single Convention can be modified, in particular also by the procedure pursuant to article 47, paragraph 1, subparagraph (b). The application of article 3 has, however, not only the advantage of possible greater speed, but also that of making revisions operative in respect of Parties which do not agree to the changes.

6. The period of eighteen months mentioned in paragraph 2 commences to run from the date on which the Secretary-General transmits to the Parties the Council's decision taken pursuant to paragraph 1, subparagraph (b). The Secretary-General should indicate in his notification of this decision the date of its dispatch, and the notifications to all Parties should be sent on the same day. A rejection may be mailed or handed over by messenger to the Secretary-General within this period. It would be conducive to the proper functioning of this procedure if Parties would transmit any rejections to the

³ See also above, comments on article 7; as regards the right of the General Assembly, implicit in the provisions of the Charter, to initiate conventions, see Goodrich and others, *op. cit.*, p. 416.

⁴ The Council's right to refuse further action on an amendment rejected by one or more Parties in the procedure pursuant to article 47, para. 1, subpara. (b) and para. 2 is definitely recognized in para. 2.

⁵ *Records*, vol. I, pp. 176 to 177; see also article 22, para. 2 of the 1953 Protocol.

⁶ The Council took this direct action on the initiative of the United States of America, which proposed amendments to the Single Convention; see documents E/4971 and Add. 1; see also document A/8403, paras. 601-607.

Secretary-General ⁷ through a member of their delegation to the United Nations. ⁸ Otherwise, the possibility of delay or even of loss in the mail may render it difficult to establish without a considerable delay on which day the amendment has entered into force, and even whether it has come into effect at all. It is suggested that Parties which nevertheless choose to send their rejections by the post should do so by registered air mail and request a return receipt.

⁷ Or to a member of the United Nations secretariat authorized to receive communications on behalf of the Secretary-General.

⁸ Including delegations to the Office of the United Nations in Geneva.

Article 48

DISPUTES

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed shall be referred to the International Court of Justice for decision.

Commentary

1. There seems to be some difficulty in determining the exact meaning of article 48, paragraph 2. The original text of this paragraph as proposed by the Union of Soviet Socialist Republics reads as follows:

“2. Any such dispute which cannot be settled in the manner prescribed shall, with the consent in each case of all parties to the dispute, be referred to the International Court of Justice for decision. However, failure to reach agreement on the referral of the dispute to the International Court of Justice shall not release the parties to the dispute from the obligation to continue efforts to settle it by any of the peaceful means prescribed in paragraph 1 of this article.”¹

2. This text was criticized because it did not provide for compulsory jurisdiction of the Court. The United States representative moved to delete the second sentence of this paragraph, as well as the words “with the consent in each case of all parties to the dispute” in its first sentence, in order to provide for compulsory jurisdiction of the World Court. The Plenipotentiary Conference made these deletions, which were understood by several delegates² as having the effect of conferring upon the Court compulsory jurisdiction in this matter.

3. Article 48 is one of the provisions on which Parties are free to make reservations pursuant to article 50, paragraph 2. It can, however, be seen from the reservations made by some Parties, whose opposition to the inclusion in treaties of provisions granting the International Court of Justice compulsory jurisdiction is well known, that they do not consider article 48, paragraph 2 as having this meaning, since they did not include this provision among those on which they made reservations.³ Reference may also be made to a statement

¹ Document E/CONF.34/L.21; *Records*, vol. II, pp. 50-51.

² See the statements made by the delegates of the United States of America, Poland, India and the Byelorussian Soviet Socialist Republic during the discussion of this provision in the Plenary Conference; *Records*, vol. I, pp. 177 to 178.

³ Document ST/LEG/SER.D/4, United Nations publication, Sales No. E.71.V.5, pp. 147-149; see also the reservations made at the time of signature as recorded in the certified true copies of the Single Convention.

which the Legal Adviser to the Plenipotentiary Conference for the Adoption of a Protocol on Psychotropic Substances ⁴ made on the meaning of article 48, paragraph 2 of the Single Convention at a plenary meeting of that Conference. He declared ⁵ that it was his personal view that there was an obligation on the Parties to a dispute to submit it to the International Court of Justice, but that an application which was not made by all parties to the dispute might not be successful in securing the jurisdiction of the Court. It followed therefore that in his view article 48, paragraph 2 did not confer compulsory jurisdiction on the Court. He mentioned that the Court would have to decide whether it has jurisdiction under this paragraph if asked to consider a dispute without the consent of all parties to it.

⁴ This Conference met in accordance with resolution 1474 (XLVIII) of the Council in Vienna from 11 January to 21 February 1971; see Final Act of the Conference document E/CONF.58/5. The treaty which the Conference adopted on 21 February 1971 is called *Convention on Psychotropic Substances*; document E/CONF.58/6. The Legal Adviser to this Conference was also the Legal Adviser to the Plenipotentiary Conference which adopted the Single Convention in 1961.

⁵ Document E/CONF.58/SR.24, p. 13.

Article 49

TRANSITIONAL RESERVATIONS

General comments

1. While article 49 regulates those reservations whose maximum duration of validity is determined by the terms of the treaty itself, article 50 deals with those which are not subject to such a time limit. The reservations provided for in article 49 are therefore referred to as “transitional”.¹

2. Reservations under article 49 may be made for shorter periods than those provided in the article. Several questions arise, however, namely whether by application of article 50, paragraph 3, Parties can reserve the right to permit:

(a) The non-medical uses to which article 49 refers for longer periods than those determined by article 49;

(b) Other non-medical uses than those mentioned in article 49; and

(c) Non-medical uses of other drugs than those with which this article deals.

3. It is submitted that such reservations would be “reservations other than those made in accordance with paragraph 2 of this article [i.e. article 50] or with article 49”² and could therefore be made if authorized by the procedure provided in article 50, paragraph 3.³

4. It may be pointed out that the only obligation from which a Party can free itself by the application of article 49, and subject to its conditions, is that of limiting pursuant to article 4, paragraph (c), exclusively to medical and scientific purposes the production, manufacture of, trade in, possession⁴ and use of the drugs to which article 49 relates. A Party making a reservation pursuant to this article must continue to apply the controls required by the Convention⁵ to production, manufacture and trade undertaken for the reserved purposes unless it obtains exemption from such controls in accordance with the procedure of article 50, paragraph 3. It need of course not require medical prescriptions under article 30, paragraph 2, subparagraph (b), clause (i).

5. For a provision in an earlier treaty which in respect of the quasi-medical use and smoking of opium is very similar to article 49, see article 19 of the 1953 Protocol.

¹ *Records*, vol. I, p. 178.

² Article 50, para. 3; see also the comments on article 50.

³ *Records*, vol. I, pp. 184 and 185. See, among others, statements by the representative of Australia and by the President in reply.

⁴ “Possession” is not expressly mentioned in para. 1 of article 49, but its inclusion in this exemption must be implied; possession for the reserved purposes may thus also be legally authorized under article 33.

⁵ In particular articles 29, 30 (excepting its para. 2, subpara. (b)), 31, 33, 34, 35, 36, 23, 24, 26 and 28, para. 1.

Paragraph 1

1. A Party may at the time of signature, ratification or accession reserve the right to permit temporarily in any one of its territories:

- (a) The quasi-medical use of opium;**
- (b) Opium smoking;**
- (c) Coca leaf chewing;**
- (d) The use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes; and**
- (e) The production and manufacture of and trade in the drugs referred to under (a) to (d) for the purposes mentioned therein.**

Commentary

1. The term “territories” as used in the introductory subparagraph covers not only parts of a State treated as separate entities for the application of the import certificate and export authorization system, but also whole States not divided for this purpose.¹ A reservation under article 49 need not be made in respect of a whole State, but may be limited to one or more such parts of the State concerned, i.e. to one or more of its “territories” in the sense of article 1, paragraph 1, subparagraph (y). If the reservation is to apply to a “territory” which is included in the area of a non-metropolitan territory whose consent is pursuant to article 42 required for the application of the Single Convention to it, the agreement of such non-metropolitan territory to the reservation should, in accordance with the spirit of articles 42 and 46, be obtained by the Party which is responsible for the non-metropolitan territory’s international relations.

2. A reservation concerning any of the non-medical uses mentioned in paragraph 1 would also cover such use of preparations of the drug concerned, even if its text did not expressly mention preparations.² It could, however, exclude by its terms some or all preparations.

3. If the definition of the phrase “use of opium for quasi-medical purposes” by the United Nations Opium Conference of 1953 is accepted, the “quasi-medical use of opium” referred to in subparagraph (a) denotes “the use of opium without medical aid for relief of pain other than that caused by addiction to opium or to other narcotic drugs”, but does not include the use of opium preparations included in Schedule III or opium smoking.³

4. As regards the “medical use” of drugs by addicts, see above, comments on article 4.

5. The term “trade” in subparagraph (e) covers also “distribution”, “export” and “import”. It is, however, submitted that a Party desiring to export or import drugs mentioned in paragraph 1 for the purposes referred to therein should indicate in its reservation the export or import in which it wishes to engage. Such reserved export or import would also on 1 January 1961

¹ See above, comments on article 1, para. 1, subpara. (y).

² Article 2, para. 3.

³ See resolution XI included in the Final Act of the United Nations Opium Conference, held at United Nations Headquarters, New York, from 11 May to 18 June 1953, United Nations, *Treaty Series*, vol. 456, p. 34.

have to have been traditional and permitted in the country or territory in respect of which the reservation is made.

6. "Possession" is not mentioned in subparagraphs (d) and (e); there can, however, be no doubt that these provisions imply that the Party concerned may authorize possession for the reserved use, production, manufacture or trade.

7. Of the drugs mentioned in paragraph 1 opium, coca leaves, cannabis and cannabis resin are "produced", while extracts and tinctures of cannabis are "manufactured".⁴ Parties reserving under this paragraph the "manufacture" of drugs are also authorized to permit the compounding of preparations whose making for use or export was on 1 January 1961⁵ traditional and permitted in the country or the territory to which the reservation applies, although such compounding is not "manufacture" as defined in article 1, paragraph 1, subparagraph (n).⁶

8. The phrase "non-medical purposes" in subparagraph (d) means "purposes other than medical and scientific ones".⁷

⁴ Article 1, para. 1, subparas. (n) and (t).

⁵ Article 49, para. 2, subpara. (a); see also the text of the reservation of India as reproduced on p. 148 of document ST/LEG/SER.D/4, United Nations publication, Sales No. E.71.V.5.

⁶ See above, comments on that subparagraph.

⁷ See article 49, para. 2, subpara. (f).

Paragraph 2

2. The reservations under paragraph 1 shall be subject to the following restrictions:

(a) The activities mentioned in paragraph 1 may be authorized only to the extent that they were traditional in the territories in respect of which the reservation is made, and were there permitted on 1 January 1961.

(b) No export of the drugs referred to in paragraph 1 for the purposes mentioned therein may be permitted to a non-party or to a territory to which this Convention does not apply under article 42.

(c) Only such persons may be permitted to smoke opium as were registered by the competent authorities to this effect on 1 January 1964.

(d) The quasi-medical use of opium must be abolished within 15 years from the coming into force of this Convention as provided in paragraph 1 of article 41.

(e) Coca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41.

(f) The use of cannabis for other than medical and scientific purposes must be discontinued as soon as possible but in any case within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41.

(g) The production and manufacture of and trade in the drugs referred to in paragraph 1 for any of the uses mentioned therein must be reduced and finally abolished simultaneously with the reduction and abolition of such uses.

Commentary

1. The reservations made pursuant to paragraph 1 are not only subject to the restriction provided for in paragraph 2, but also to those provided in paragraphs 3 and 4.

2. The term “territories” in subparagraph (a) covers not only parts of a State treated as separate entities for the purpose of application of the import certificate and export authorization system, but also whole States not divided for this purpose.¹

3. Activities for non-medical purposes which are referred to in paragraph 1 may be made the subject of a reservation pursuant to this paragraph only if they were traditional in the “territory” concerned *and* were permitted on 1 January 1961;² this means that they must have been practiced by a significant portion of the population for a considerable period of time. Traditional activities which were the subject of a legal prohibition for a short time before that date, or were prohibited afterwards, may be reserved under paragraph 1, always provided they were permitted on 1 January 1961. It is, however, suggested that legalization of the prohibited activities and a reservation made under paragraph 1 to make such legislation possible would be compatible with the object and purpose of article 49, as indeed with those of the Single Convention as a whole, only if the prohibition had proved to be ineffective (paragraph 2, subparagraph (a)).

4. A Party may not, on the basis of a reservation made under paragraph 1, export opium for non-medical purposes to its own non-metropolitan territory to which the Single Convention does not apply under article 42 (paragraph 2, subparagraph (b) of article 49). Without such a reservation, it may not do so pursuant to article 4, paragraph (c).

5. The date by which the quasi-medical use of opium must be abolished is 12 December 1979 (paragraph 2, subparagraph (d)),³ coca leaf chewing must be prohibited by 12 December 1989, and the non-medical use of cannabis, cannabis resin, extracts and tinctures of cannabis⁴ as soon as possible but in any case by that date (subparagraphs (e) and (f)).

6. The export of drugs to a country or territory for non-medical uses in accordance with a reservation pursuant to paragraph 1 permitting such export

¹ Article 1, para. 1, subpara. (y) and comments thereon; see also comments on article 49, para. 1.

² See also comments on article 49, para. 1.

³ The Single Convention came into force on 13 December 1964; see above, comments on articles 40 and 41.

⁴ The term “cannabis” in subpara. (f) includes also “cannabis resin” and “extracts and tinctures of cannabis”; it cannot be assumed that the authors of the Single Convention wished to provide for a time limit for the non-medical use of cannabis, but not for such use of cannabis resin and of extracts and tinctures of cannabis, particularly since cannabis resin is generally a more potent drug than cannabis.

must be reduced and abolished simultaneously with the reduction and abolition of the reserved non-medical uses in question in the importing country or territory. The export also must not anymore be authorized to such a country or territory if it continues to permit the non-medical use concerned after its right to do so has expired under the terms of its reservation made pursuant to paragraph 1 or under those of paragraph 2, subparagraphs (c) to (f). Such an export must in any event cease on the expiration of the validity of the reservation authorizing it.

7. The words “*quedará prohibida*” in the Spanish version of subparagraph (e) may be somewhat ambiguous. They must of course in this context be understood to mean “shall be prohibited” in accordance with the English text, which uses the phrase “must be abolished”, and with the French text, which uses the words “*devra être abolie*”.

Paragraph 3

3. A Party making a reservation under paragraph 1 shall:

(a) Include in the annual report to be furnished to the Secretary-General, in accordance with article 18, paragraph 1 (a), an account of the progress made in the preceding year towards the abolition of the use, production, manufacture or trade referred to under paragraph 1; and

(b) Furnish to the Board separate estimates (article 19) and statistical returns (article 20) in respect of the reserved activities in the manner and form prescribed by the Board.

Commentary

1. The Commission on Narcotic Drugs included, in the form which it prepared¹ for the annual reports which Parties must furnish on the working of the Single Convention,² a number of questions³ designed to facilitate the reporting by Parties pursuant to paragraph 3, subparagraph (a). It may be noted that the Commission, in accordance with article 18, paragraph 2, requests at present that these annual reports should *reach* the Secretary-General not later than 30 June of the year following the year to which they relate,⁴ while article 49, paragraph 4, subparagraph (a), clause (i) requires that the Parties concerned should *furnish* the information referred to in paragraph 3, subparagraph (a) within six months after the end of the year to which the in-

¹ Article 18, para. 2.

² Article 18, para. 1, subpara. (a).

³ The Form of Annual Reports to be communicated by Governments to the Secretary-General of the United Nations in accordance with article 21 of the 1931 Convention, article 16 of the 1936 Convention, both as amended by the 1946 Protocol, article 10 of the 1953 Protocol and article 18 of the 1961 Convention (i.e. of the Single Convention), which is used at the time of this writing, is reproduced in document E/NR.FORM/Rev.2 (dated 21 March 1966); the relevant questions are included in chapter X of the form and numbered 38 to 41. See also above, comments on art. 18, para. 1, subpara. (a) and para. 2.

⁴ Para. (b) of the “Note by the Secretary-General”, reproduced on p. 1 of the document referred to in the preceding foot-note.

formation relates, in order to avoid the need for the Secretary-General to send them notification of the delay under paragraph 4, subparagraph (a), clause (iii).

2. Form R/S⁵ is at the time of this writing prescribed by the Board for use in furnishing statistical returns according to article 49, paragraph 3, subparagraph (b). In accordance with this form, Parties are required to report to the Board the quantities of opium utilized, produced, imported and exported and held in stock for quasi-medical purposes. The same data must be furnished in regard to opium for smoking, coca leaves for chewing and cannabis resin and cannabis for all non-medical purposes. No information on the manufacture of extracts and tinctures of cannabis is required. In fact, no separate figures on these extracts and tinctures are requested; they are to be included in those relating to cannabis.⁶

3. The total of the imports and exports of each drug and separate figures on the imports from and exports to each country or territory must be given.

4. The Board's form does not indicate the date by which the statistical information under subparagraph (b) is due. Under article 20, paragraph 2 in connexion with article 49, paragraph 4, subparagraph (a), clause (iii), the export and import figures should be furnished by the Parties to the Board quarterly within one month after the end of the quarter to which they relate, and the other data annually not later than 30 June following the year which they concern.⁷ However, the Board requires in the form only annual data on all items including imports and exports.

5. The Board requires at present the use of form E/S⁸ for the estimates which must be furnished under paragraph 3, subparagraph (b). In this form, Parties are requested to give estimates of the quantities of each of the drugs mentioned in paragraph 1 to be consumed and of those to be held in stock on 31 December of the year to which the information relates, for the purposes referred to in this paragraph. The Board does not, however, require separate figures on extracts and tinctures of cannabis. It is provided in its form that these figures should be included in those concerning cannabis.⁹

6. The Board could, but for practical reasons does not, require estimates of the quantities of cannabis to be utilized for the manufacture of extracts and tinctures of cannabis.¹⁰

⁵ Form R/S of 1969.

⁶ It is provided in the form that the weight of the extracts should for this purpose be multiplied by seven, and that of the tinctures divided by 10; see foot-note (b) of form R/S.

⁷ See also above, comments on article 20, para. 2: statistical information to be furnished pursuant to article 27, para. 2, is provided for in the Board's form C/S (4th edition, November 1969); no provision has yet been made in the Board's forms for statistical data to be furnished pursuant to article 2, para. 9, subpara. (b), a provision which until now has had no practical importance.

⁸ Form E/S of 1970.

⁹ For the purpose of computing the Board requires that the weight of the extracts should be multiplied by seven, and the weight of the tinctures divided by ten, and that the figures so obtained should be included in the figures on cannabis; see foot-note (b) on form E/S; see also foot-note 6 above.

¹⁰ See article 19, para. 1, subpara. (b).

7. The Board requires in the form that the estimates furnished under paragraph 3, subparagraph (b) should reach the Board not later than 1 August of the year to which the information relates, that is, by the same date which it has fixed pursuant to article 12, paragraph 1 for the estimates under article 19, paragraph 1.¹¹

¹¹ See above, comments on article 12, para. 1 and article 19, para. 1, introductory subparagraph; see also the general comments on article 19.

Paragraph 4

4. (a) If a Party which makes a reservation under paragraph 1 fails to furnish:

- (i) The report referred to in paragraph 3 (a) within six months after the end of the year to which the information relates;
- (ii) The estimates referred to in paragraph 3 (b) within three months after the date fixed for that purpose by the Board in accordance with article 12, paragraph 1;
- (iii) The statistics referred to in paragraph 3 (b) within three months after the date on which they are due in accordance with article 20, paragraph 2,

the Board or the Secretary-General, as the case may be, shall send to the Party concerned a notification of the delay, and shall request such information within a period of three months after the receipt of that notification.

(b) If the Party fails to comply within this period with the request of the Board or the Secretary-General, the reservation in question made under paragraph 1 shall cease to be effective.

Commentary

1. It may be noted that in case of a failure of a Party to furnish any of the reports indicated in clauses (i), (ii) and (iii), the Board, or the Secretary-General, or both, as the case may be, are bound to send a notification of the delay. The notification must indicate which report is missing, and must request its transmission within three months after the receipt of the notification by the Party. It should also point out the possible consequence of a failure to comply with this request, namely that in such a case the reservation in question would cease to be effective pursuant to paragraph 4, subparagraph (b). The Secretary-General and the Board should send their notifications of delay by registered air mail with return receipt, in order to be able to determine with certainty for the purpose of this subparagraph whether and when the period for furnishing the missing document has expired.

2. The Secretary-General and the Board should of course not send notifications of delay in cases in which the information was furnished after the time defined in paragraph 4, subparagraph (a), clauses (i), (ii) or (iii), but nevertheless arrives before the dispatch of the notification in question.

3. In view of the importance of certainty of the relevant dates for the purpose of paragraph 4, it is suggested that Parties should send their reports by registered air mail with return receipt, or hand them over through a messenger to the Secretariat of the United Nations or of the Board, as the case may be, whether the reports are sent spontaneously or in compliance with a request contained in a notification of delay.

4. It is probably the better view, and it is certainly in conformity with the object and purpose of paragraphs 3 and 4 of article 49, that the procedure of paragraph 4 should also be applied to reports in which essential data to be furnished under paragraph 3 are missing. The Secretary-General or Board, as the case may be, must in such cases point out in their notifications of delay which essential data they consider missing. It might, however, sometimes be very difficult for the Board, and particularly for the Secretary-General, to determine, with the general approval of the Parties to the Single Convention, that the missing data are really so essential as to justify the application of the procedure of paragraph 4. Moreover bringing about the end of the validity of a reservation made by a Party which is not capable of implementing the controls to which the reservation applies would quite frequently serve no useful purpose.

5. The phrase "*quedará sin efecto*" in the Spanish text of subparagraph (b) may perhaps be considered to be somewhat ambiguous. It must of course in this context be understood to mean "shall lose its effect". The corresponding phrases in the English and French versions are "shall cease to be effective" and "*cessera d'avoir effet*".

Paragraph 5

5. A State which has made reservations may at any time by notification in writing withdraw all or part of its reservations.

Commentary

1. The notification mentioned in this paragraph must be addressed to the Secretary-General.

2. A reduction of the time limits stated in paragraph 2, or of the shorter limits stipulated in the reservation itself for the reserved activities for non-medical purposes mentioned in paragraph 1, could also be the subject of the withdrawal of a "part" of a reservation under paragraph 5.

Article 50

OTHER RESERVATIONS

1. No reservations other than those made in accordance with article 49 or with the following paragraphs shall be permitted.

2. Any State may at the time of signature, ratification or accession make reservations in respect of the following provisions of this Convention: article 12, paragraphs 2 and 3; article 13, paragraph 2; article 14, paragraphs 1 and 2; article 31, paragraph 1 (b), and article 48.

3. A State which desires to become a Party but wishes to be authorized to make reservations other than those made in accordance with paragraph 2 of this article or with article 49 may inform the Secretary-General of such intention. Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned, this reservation has been objected to by one third of the States that have ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood however that States which have objected to the reservation need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation.

4. A State which has made reservations may at any time by notification in writing withdraw all or part of its reservations.

Commentary

1. Paragraph 1 prohibits all reservations other than those specifically authorized by article 49 or article 50, paragraph 2, or those which may be authorized by the operation of the procedure of article 50, paragraph 3 in respect of any provision of the Single Convention whose nature renders it possible to make it the subject of a reservation. The reservations authorized by article 49 differ from those of article 50, paragraph 2 not only by the fact that they affect different provisions of the treaty, but also because a maximum time limit is prescribed for them by the Convention itself, and because they are also subject to particular restrictions,¹ while reservations pursuant to article 50, paragraph 2, are not subject to such a limitation and such restrictions under the terms of the treaty itself. The text of a reservation under article 50, paragraph 2, may, however, set a limit to its duration and may also subject it to other restrictions.

2. Of the provisions on which a reservation may be made pursuant to article 50, paragraph 2, article 48 deals with the settlement of disputes on the interpretation or application of the Convention, and in particular also with the jurisdiction of the International Court of Justice in the case of such dis-

¹ Article 49, paras. 3 and 4.

putes,² while the other provisions require their application to non-Parties by the Board or by Parties, as the case may be.

3. By operation of article 50, paragraph 3, a Party may reserve the right to permit the non-medical uses as provided in article 49, paragraph 1, of the drugs mentioned therein, but also non-medical uses of other drugs, without being subject to the time limits and restrictions provided for in article 49. Such reservations would be “reservations other than those made in accordance with paragraph 2 of this article or with article 49.”³

4. A State which has already become a Party by ratification or accession may not resort to the procedure of article 50, paragraph 3;⁴ a State which has only signed the Convention may do so.⁵

5. A State which desires to become a Party with a reservation which requires authorization by the procedure of paragraph 3 must inform the Secretary-General of this desire *in writing*.

6. The question arises whether the date after which the twelve-month period for making objections commences to run is the date of dispatch of the Secretary-General’s notification concerning the desired reservation, or the date indicated on the document as that on which it was signed or drawn up. The word “communication” may refer either to the act of transmitting the information, to what is communicated or imparted, or even to the letter or note containing the message.⁶ In order to avoid any difficulties which may result from this ambiguity, it is suggested that the Secretary-General should indicate the date of dispatch as the date of the document by which he communicates the information on the desired reservation, and that he should mail all documents referring to the same reservation on the same day.

7. Objections must be made in writing and addressed to the Secretary-General. An objection is made in time if it is either dispatched by the objecting State by mail or transmitted by messenger to the Secretary-General by the last day of the twelve-month period. If sent by mail, the communication containing the objection should be registered and a return receipt requested.

8. A reservation which has not been objected to by one third of the States which have ratified or acceded to the Convention before the end of the twelve-month period is not yet made, but only “deemed to be permitted”. It must be made at the time of ratification or accession.⁷ A State is not

² As regards the question whether article 48, para. 2, provides for compulsory jurisdiction of the International Court of Justice, see above, comments on article 48.

³ Or under the Spanish text “*reservas distintas de las mencionadas en el inciso 2 del presente artículo o en el artículo 49*”; see general comments on article 49 and *Records*, vol. I, pp. 184 and 185.

⁴ *Records*, vol. I, p. 183.

⁵ The period during which signing of the Convention was permitted ended, according to article 40, para. 1, on 1 August 1961.

⁶ *Webster’s New International Dictionary of the English Language*, Second Edition, Springfield, Massachusetts, G. & C. Merriam Company, Publishers, 1954, p. 541 and *Webster’s Third New International Dictionary of the English Language*, same place of publication, same publisher, 1961, p. 460.

⁷ Article 19, introductory paragraph of the Vienna Convention of 1969 on the Law of Treaties, document A/CONF.39/27. A reservation authorized by the procedure of article 50, para. 3 could also have been made at the time of signature, but the period for signing the Single Convention has expired, and no State resorted to the procedure of article 50, para. 3, before its signature; see foot-note 5 above.

required to make a reservation which it has been authorized to make by the procedure of article 50, paragraph 3. It may accept the treaty without such reservation.

9. The understanding mentioned in paragraph 3 of article 50 that States which have objected to the reservation “need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation” appears to be in accord with the provision of the Vienna Convention on the Law of Treaties, which determines the legal position of a State which has objected to a reservation, but has not opposed the entry into force of the treaty between itself and the reserving State, by stipulating that “the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.”⁸ Paragraph 3 of article 50 does not state whether the objecting State has the option of precluding the entry into force of the Single Convention as between itself and the reserving State.⁹

10. A State which has made a reservation may at any time partially withdraw it so as to increase its legal burden in implementing the Single Convention.¹⁰

⁸ Article 21, para. 3; see reference to the Vienna Convention in the preceding foot-note.

⁹ See article 20, para. 4, subpara. (b) of the Vienna Convention.

¹⁰ See also above, comments on article 49, para. 5.

Article 51

NOTIFICATIONS

The Secretary-General shall notify to all the States referred to in paragraph 1 of article 40:

(a) Signatures, ratifications and accessions in accordance with article 40;

(b) The date upon which this Convention enters into force in accordance with article 41;

(c) Denunciations in accordance with article 46; and

(d) Declarations and notifications under articles 42, 43, 47, 49 and 50.

Commentary

1. Article 51 deals only with those notifications which the Secretary-General has to make under the final clauses (articles 40 to 50) of the treaty. It does not refer to the communications which he has to make under the terms of the main body of the Convention, either on the basis of an express provision ¹ or by implication ² or on behalf of the Board ³ through the secretariat which he furnishes to that organ. ⁴

2. As regards the transmission of certified true copies, see below, the concluding paragraph of the Convention.

¹ Article 3.

² Article 18.

³ Articles 9, 12, 13, 14, 15, 21, 31, para. 1, subpara. (b).

⁴ Article 16.

Attestation clause and concluding paragraph

IN WITNESS THEREOF, the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments:

DONE at New York, this thirtieth day of March one thousand nine hundred and sixty one, in a single copy, which shall be deposited in the archives of the United Nations, and of which certified true copies shall be transmitted to all the Members of the United Nations and to the other States referred to in article 40, paragraph 1.

Commentary

As the Legal Adviser to the Plenipotentiary Conference stated at a plenary session, the attestation clause refers to governments, not to States, because that has been the practice in instruments prepared under the auspices of the United Nations.¹

¹ *Records*, vol. I, p. 186.

SCHEDULES

List of drugs included in Schedule I

ACETYLMETHADOL (3-acetoxy-6-dimethylamino-4,4-diphenylheptane)
ALLYLPRODINE (3-allyl-1-methyl-4-phenyl-4-propionoxypiperidine)
ALPHACETYLMETHADOL (alpha-3-acetoxy-6-dimethylamino-4,4-diphenylheptane)
ALPHAMEPRODINE (alpha-3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine)
ALPHAMETHADOL (alpha-6-dimethylamino-4,4-diphenyl-3-heptanol)
ALPHAPRODINE (alpha-1,3-dimethyl-4-phenyl-4-propionoxypiperidine)
ANILERIDINE (1-*para*-aminophenethyl-4-phenylpiperidine-4-carboxylic acid ethyl ester)
BENZETHIDINE (1-(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)
BENZYLMORPHINE (3-benzylmorphine)
BETACETYLMETHADOL (beta-3-acetoxy-6-dimethylamino-4,4-diphenylheptane)
BETAMEPRODINE (beta-3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine)
BETAMETHADOL (beta-6-dimethylamino-4,4-diphenyl-3-heptanol)
BETAPRODINE (beta-1,3-dimethyl-4-phenyl-4-propionoxypiperidine)
CANNABIS and CANNABIS RESIN and EXTRACTS and TINCTURES of CANNABIS
CLONITAZENE (2-*para*-chlorbenzyl-1-diethylaminoethyl-5-nitrobenzimidazole)
COCA LEAF
COCAINE (methyl ester of benzoylecgonine)
CONCENTRATE OF POPPY STRAW (the material arising when poppy straw has entered into a process for the concentration of its alkaloids, when such material is made available in trade)
DESOMORPHINE (dihydrodeoxymorphine)
DEXTROMORAMIDE ((+)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl) butyl] morpholine)
DIAMPROMIDE (N-[2-methylphenethylamino) propyl] propionanilide)
DIETHYLTHIAMBUTENE (3-diethylamino-1,1-di-(2'-thienyl)-1-butene)
DIHYDROMORPHINE
DIMENOXADOL (2-dimethylaminoethyl-1-ethoxy-1,1-diphenylacetate)
DIMEPHEPTANOL (6-dimethylamino-4,4-diphenyl-3-heptanol)
DIMETHYLTHIAMBUTENE (3-dimethylamino-1,1-di-(2'-thienyl)-1-butene)
DIOXAPHETYL BUTYRATE (ethyl 4-morpholino-2,2-diphenylbutyrate)
DIPHENOXYLATE(1-(3-cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)
DIPIPANONE (4,4-diphenyl-6-piperidine-3-heptanone)
ECGONINE, its esters and derivatives which are convertible to ecgonine and cocaine
ETHYLMETHYLTHIAMBUTENE (3-ethylmethylamino-1,1-di-(2'-thienyl)-1-butene)
ETONITAZENE (1-diethylaminoethyl-2-*para*-ethoxybenzyl-5-nitrobenzimidazole)
ETOXERIDINE (1-[2-(2-hydroxyethoxy) ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester)

FURETHIDINE (1-(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)
 HEROIN (diacetylmorphine)
 HYDROCODONE (dihydrocodeinone)
 HYDROMORPHINOL (14-hydroxydihydromorphine)
 HYDROMORPHONE (dihydromorphinone)
 HYDROXPETHIDINE (4-*meta*-hydroxyphenyl-1-methylpiperidine-4-carboxylic acid ethyl ester)
 ISOMETHADONE (6-dimethylamino-5-methyl-4,4-diphenyl-3-hexanone)
 KETOBEMIDONE (4-*meta*-hydroxyphenyl-1-methyl-4-propionylpiperidine)
 LEVOMETHORPHAN* ((—)-3-methoxy-N-methylmorphinan)
 LEVOMORAMIDE ((—)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl) butyl] morpholine)
 LEVOPHENACYLMORPHAN ((—)-3-hydroxy-N-phenacylmorphinan)
 LEVORPHANOL * ((—)-3-hydroxy-N-methylmorphinan)
 METAZOCINE (2'-hydroxy-2,5,9-trimethyl-6,7-benzomorphinan)
 METHADONE (6-dimethylamino-4,4-diphenyl-3-heptanone)
 METHYLDESORPHINE (6-methyl- δ 6-deoxymorphine)
 METHYLDIHYDROMORPHINE (6-methyldihydromorphine)
 1-Methyl-4-phenylpiperidine-4-carboxylic acid
 METOPON (5-methyldihydromorphinone)
 MORPHERIDINE (1-(2-morpholinoethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)
 MORPHINE
 MORPHINE METHOBROMIDE and other pentavalent nitrogen morphine derivatives
 MORPHINE-N-OXIDE
 MYORPHINE (myristylbenzylmorphine)
 NICOMORPHINE (3,6-dinicotinylmorphine)
 NORLEVORPHANOL ((—)-3-hydroxymorphinan)
 NORMETHADONE (6-dimethylamino-4,4-diphenyl-3-hexanone)
 NORMORPHINE (demethylmorphine)
 OPIUM
 OXYCODONE (14-hydroxydihydrocodeinone)
 OXYMORPHONE (14-hydroxydihydromorphinone)
 PETHIDINE (1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester)
 PHENADOXONE (6-morpholino-4,4-diphenyl-3-heptanone)
 PHENAMPROMIDE (N-(1-methyl-2-piperidinoethyl) propionanilide)
 PHENAZOCINE (2'-hydroxy-5,9-dimethyl-2-phenethyl-6,7-benzomorphinan)
 PHENOMORPHAN (3-hydrox-N-phenethylmorphinan)
 PHENOPERIDINE (1-(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)
 PIMINODINE (4-phenyl-1-(3-phenylaminopropyl) piperidine-4-carboxylic acid ethyl ester)
 PROHEPTAZINE (1,3-dimethyl-4-phenyl-4-propionoxyazacycloheptane)
 PROPERIDINE (1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester)
 RACEMETHORPHAN ((\pm)-3-methoxy-N-methylmorphinan)

* Dextromethorphan ((+)-3-methoxy-N-methylmorphinan) and dextrorphan ((+)-3-Hydroxy-N-methylmorphinan) are specifically excluded from this Schedule.

RACEMORAMIDE ((±)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl) butyl] morpholine)

RACEMORPHAN ((±)-3-hydroxy-N-methylmorphinan)

THEBACON (acetyldihydrocodeinone)

THEBAINE

TRIMEPERIDINE (1,2,5-trimethyl-4-phenyl-4-propionoxypiperidine); and

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation;

The esters and ethers, unless appearing in another Schedule, of the drugs in this Schedule whenever the existence of such esters or ethers is possible;

The salts of the drugs listed in this Schedule, including the salts of esters, ethers and isomers as provided above whenever the existence of such salts is possible.

Commentary

1. See comments on article 2, paragraph 1 and on article 3, paragraph 3, subparagraph (iii).

2. The entry "Concentrate of poppy straw" in the above list reproduces the text established by the Procès-Verbal of Rectification, dated 18 January 1961¹ and given in Schedule I of the Single Convention reproduced in United Nations, *Treaty Series*, vol. 520, p. 151. This rectification was made in all five language versions.

3. The following drugs have at the date of this writing been added to Schedule I:

ACETORPHINE²

BEZITRAMIDE³

CODOXIME⁴

ETORPHINE²

FENTANYL⁵

METHADONE-INTERMEDIATE⁵

MORAMIDE-INTERMEDIATE⁵

NORACYMETHADOL⁵

¹ See Circular Note of the Secretary-General C.N.131.1961. *Treaties-I*, dated 17 October 1961.

² Commission on Narcotic Drugs, report on the twenty-first session (1966), paragraph 61; *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 2*.

³ Commission on Narcotic Drugs, report on the twenty-third session (1969), paras. 35-36; *Official Records of the Economic and Social Council, Forty-sixth Session, document E/4606/Rev.1*.

⁴ Commission on Narcotic Drugs, report on the twenty-second session (1968), paras. 38-40, *Official Records of the Economic and Social Council, Forty-fourth Session, Supplement No. 2*.

⁵ Commission on Narcotic Drugs, report on the nineteenth session (1964), para. 157; *Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 9*.

NORPIPANONE ⁵

PETHIDINE-INTERMEDIATE A ⁵

PETHIDINE-INTERMEDIATE B ⁵

PETHIDINE-INTERMEDIATE C ⁵

PIRITRAMIDE ⁶

4. Further reports of the Commission on Narcotic Drugs, beginning with the report of the twenty-fifth session, may be consulted; see also future editions of *Multilingual List of Narcotic Drugs under International Control*, New York, 1968 (E/CN.7/513, United Nations publication, Sales No. 69.XI.1); and see communications of the Secretary-General pursuant to article 3, paragraph 7.

⁶ Commission on Narcotic Drugs, report on the twentieth session (1965), para. 54; *Official Records of the Economic and Social Council, Fortieth Session, Supplement No. 2*.

List of drugs included in Schedule II

ACETYLDIHYDROCODEINE

CODEINE (3-methylmorphine)

DEXTROPROPOXYPHENE ((+)-4-dimethylamino-3-methyl-1,2-diphenyl-2-propionoxybutane)

DIHYDROCODEINE

ETHYLMORPHINE (3-ethylmorphine)

NORCODEINE (N-demethylcodeine)

PHOLCODINE (morpholinylethylmorphine); and

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation;

The salts of the drugs listed in this Schedule, including the salts of the isomers as provided above whenever the existence of such salts is possible.

Commentary

1. See comments on article 2, paragraph 2 and on article 3, paragraph 3, subparagraph (iii).

2. The following drugs have at the date of this writing been added to Schedule II:

NICODINE ¹

PROPIRAM ²

3. The following drug was deleted from Schedule II:

DEXTROPROPOXYPHENE ¹

4. See also the documents referred to at the end of the comments on Schedule I.

¹ See foot-note 5 to Schedule I.

² Document E/CN.7/537, paras. 44-46; Commission on Narcotic Drugs, report on the twenty-fourth session, paras. 56-57; *Official Records of the Economic and Social Council, Fifty-second Session, Supplement No. 2*.

List of preparations included in Schedule III

1. Preparations of:
 Acetyldihydrocodeine,
 Codeine,
 Dextropropoxyphene,
 Dihydrocodeine,
 Ethylmorphine,
 Norcodeine, and
 Pholcodine

when

(a) Compounded with one or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse, and in such a way that the drug cannot be recovered by readily applicable means or in a yield which would constitute a risk to public health; and

(b) Containing not more than 100 milligrammes of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations.

2. Preparations of cocaine containing not more than 0.1 per cent of cocaine calculated as cocaine base and preparations of opium or morphine containing not more than 0.2 per cent of morphine calculated as anhydrous morphine base and compounded with one or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse, and in such a way that the drug cannot be recovered by readily applicable means or in a yield which would constitute a risk to public health.

3. Solid dose preparations of diphenoxylate containing not more than 2.5 milligrammes of diphenoxylate calculated as base and not less than 25 microgrammes of atropine sulphate per dosage unit.

4. *Pulvis ipecacuanhae et opii compositus*

10 per cent opium in powder

10 per cent ipecacuanha root, in powder
 well mixed with

80 per cent of any other powdered ingredient containing no drug.

5. Preparations conforming to any of the formulae listed in this Schedule and mixtures of such preparations with any material which contains no drug.

Commentary

1. See comments on article 2, paragraph 4 and on article 3, paragraph 4.
2. The following rectification of the Spanish text of Schedule III was made: ¹

Paragraph 2 of Schedule III should read as follows:

“Los preparados de cocaína que no contengan más de 0,1 % de cocaína calculado como base de cocaína y los preparados de opio o de morfina con un contenido de morfina no superior a 0,2 % calculado

¹ Procès-Verbal of Rectification, signed at Headquarters of the United Nations, New York on 10 February 1967, United Nations, *Treaty Series*, vol. 590, pp. 325-326.

como base anhidra y estén mezclados con uno o varios ingredientes más de tal modo que el preparado ofrezca muy poco o ningún peligro de abuso y de tal manera que el estupefaciente no pueda separarse por medios sencillos o en cantidades que ofrezcan peligro para la salud pública”.

3. The following amendments were made by the Commission on Narcotic Drugs to Schedule III in accordance with the procedure of article 3:

1. The word “dextropropoxyhene” in the list of drugs in section 1 is deleted.²

2. Section 1, subparagraphs (a) and (b) are deleted and replaced by the following text after the word “when”:

“compounded with one or more ingredients and containing not more than 100 milligrammes of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparation”.³

3. The words “in such a way that the preparation has no, or a negligible, risk of abuse, and” in section 2 are deleted.³

4. The words “solid dose” at the beginning of section 3 are deleted.³

4. See also the documents referred to at the end of the comments on Schedule I.

² Report of the Commission on Narcotic Drugs referred to in foot-note 5 to the comments on Schedule I, paragraph 157.

³ Report of the Commission on Narcotic Drugs referred to in foot-note 2 to the comments on Schedule I, paragraph 68.

List of drugs included in Schedule IV

CANNABIS and CANNABIS RESIN

DESOMORPHINE (dihydrodeoxymorphine)

HEROIN (diacetylmorphine)

KETOBEMIDONE (4-*meta*-hydroxyphenyl-1-methyl-4-propionylpiperidine); and

The salts of the drugs listed in this Schedule whenever the formation of such salts is possible.

Commentary

1. See comments on article 2, paragraph 5 and article 3, paragraph 5.

2. The following drugs have at the date of this writing been added to Schedule IV:

ACETORPHINE¹

ETORPHINE¹

3. See also the documents referred to at the end of the comments on Schedule I.

¹ Report of the Commission on Narcotic Drugs referred to in foot-note 4 to Schedule I, para. 43. It was the understanding of the Commission that placing these drugs in Schedule IV would not affect their distribution for veterinary purposes.

ANNEX

RESOLUTION 770 E (XXX) OF THE ECONOMIC AND SOCIAL COUNCIL

RECOMMENDATION FOR THE CARRIAGE OF NARCOTIC DRUGS IN FIRST-AID KITS OF AIRCRAFT ENGAGED IN INTERNATIONAL FLIGHT ^a

The Economic and Social Council,

Having consulted the International Civil Aviation Organization, the World Health Organization, the Commission on Narcotic Drugs and the International Criminal Police Organization,

Having noted their views,

I

Calls the attention of Governments to:

- (a) The opinion of the World Health Organization ^b that narcotic drugs are required for use in emergencies on board aircraft engaged in international flight;
- (b) The legal advice of the United Nations Secretariat:
 - (i) That the import certificate and export authorization system provided for in chapter V of the International Convention relating to narcotic drugs signed at Geneva on 19 February 1925 does not apply to narcotic drugs which, under appropriate safeguards, are carried in first-aid kits of aircraft engaged in international flight for the sole purpose of being readily available for administration in emergency cases to persons on board the aircraft as long as the drugs do not cross the customs lines at points of transit or destination other than those of the country of registration of the aircraft concerned, either because they are not removed from the aircraft, or if so removed at stopovers for a short period, are locked in bonded storage facilities of the operator concerned, and in any case remain under the control of the aircraft commander;
 - (ii) That such drugs carried in first-aid kits are not exempted from the other relevant provisions of the narcotic treaties;

II

Recommends that:

- 1. Governments should not subject such drugs so carried (section I above) to the import certificate and export authorization system of chapter V of the 1925 Convention;
- 2. Governments should take all necessary measures to ensure proper use and to prevent misuse and diversion to the illicit traffic of such drugs, and to this end the following principles should be observed:
 - (a) Only such small amounts of narcotic drugs should be carried as are required for emergency purposes;

^a The safeguards recommended in the resolution or suggested in its annex need be applied only to first-aid kits actually containing narcotic drugs.

^b World Health Organization, WHO/Av.Med./1 (transmitted to the Commission on Narcotic Drugs under symbol E/CN.7/L.208), pp. 10, 11 and 18; See also *World Health Organization: Technical Report Series No. 188*, section 5.

(b) The narcotic drugs should be used only in emergencies, e.g. in the event of a sudden serious illness or injury caused by a crash or otherwise;

(c) Only those crew members^c adequately qualified should be permitted to administer narcotic drugs, and wherever possible after seeking medical advice;^d

(d) The first-aid kits should be safeguarded against fraud, theft and other diversions for illicit purposes;

(e) The operator and each aircraft carrying narcotic drugs in first-aid kits on international flights should keep records in which each individual issue, receipt, expenditure and other movement of these drugs should be entered in such a way as to give a full account of them and to prevent fraud;

(f) Periodic reports should be made to government control officers by the operators concerned on the acquisition, use, other disposal and stock of narcotic drugs to be used in the first-aid kits and should include also in these reports all other data required to explain the balance in the stock;

(g) Inspections should be made periodically by operators' officials and government control officers to establish whether the provisions governing the carriage of narcotic drugs in first-aid kits are being fully implemented, but these inspections should not, however, be made by government officers in countries of transit except in special circumstances determined by the local authorities concerned (see annex 9 to the Convention on International Civil Aviation signed at Chicago on 7 December 1944, chapter 5, entitled "Traffic Passing Through the Territory of a Contracting State"), and if undertaken in a country of transit in such circumstances they should, in general, be limited to examining whether the seals of the first-aid kits are intact;

(h) The narcotic drugs needed for the first-aid kits should normally be acquired in the country of registry of the aircraft, and by arrangement with the local authorities concerned, the operator may maintain small stocks under proper safeguards (sub-paragraph (d) above) in bonded storage facilities at stopovers en route;

(i) Only operators which are capable of organizing the safeguards required by these rules should be permitted to carry narcotic drugs in the first-aid kits;

(j) The countries of transit and destination should recognize that it is the responsibility of the State of registry of the aircraft to enact the necessary laws and regulations and to issue appropriate permits and licences, and actual conditions prevailing in accordance with such laws, regulations, permits and licences, and actions taken in agreement therewith should be accepted as satisfactory by the local authorities;

(k) Governments should communicate to each other, through the Secretary-General of the United Nations, laws and regulations governing the carriage of narcotic drugs in the first-aid kits;^e

(l) The Secretary-General should transmit copies of each law and regulation so received to the International Civil Aviation Organization and to the World Health Organization, and also to the International Criminal Police Organization;^f

^c The term "crew members" as used in these rules also applies to unlicensed flight personnel.

^d In case of a crash, deviation from this and other rules might be justified under the relevant national legal principles relating to emergency situations.

^e Article 21 of the 1912 Convention; article 30 of the 1925 Convention; and article 21 of the 1931 Convention, all three as amended by the 1946 Protocol; the related article 16 of the 1936 Convention does not seem to be relevant in this connexion.

^f In accordance with para. 40 of the revised arrangements concerning consultations with non-governmental organizations contained in Council resolution 288 B (X) of 27 February 1950.

3. *Governments should take into account*, in implementing the above-mentioned recommendations, the suggestions contained in the annex to this resolution.

1129th plenary meeting,
25 July 1960.

Annex

It is suggested that in regulating the carriage of narcotic drugs in first-aid kits of aircraft engaged in international flight, the International Standards and Recommended Practices for the facilitation of international air transport as set forth in the International Civil Aviation Organization's annex 9 to the Convention on International Civil Aviation, the detailed proposals made in the document prepared by the World Health Organization on the "Carriage of Narcotics in First-aid Kits of Aircraft Engaged in International Flights"^g and the views of the International Criminal Police Organization^h might usefully be taken into consideration. In particular, the principles outlined in part II, paragraph 2 above, might be implemented by the following measures:

As regards clause (a):

For reasons of uniform practice, the drug chosen would preferably be a morphine salt and should never be diacetylmorphine. A supply of 200-400 milligrammes of a morphine salt would be sufficient, the actual amount to be carried within these limits to depend on the size of the aircraft. The best form would be that of auto-injectable ampoules each containing 10 mg of a morphine salt. It is advisable that a specific morphine antagonist—e.g., nalorphine—be available.

As regards clause (b):

If in need of narcotics during the flight, sick passengers, other than those mentioned in this clause, should provide themselves with the necessary supplies and the documents required under relevant national provisions relating to narcotic drugs in their possession.

As regards clause (c):

It would be advisable to train as many crew members as possible in a knowledge of first-aid—a knowledge at least equivalent to that required for the First-Aid Certificate of the Red Cross, Red Crescent, and similar societies. It would, moreover, be useful if the crew members had special instructions in the practical use of the auto-injectable type of ampoule, in the uses and dangers of narcotics and their specific antagonists, and in the rules regarding safe custody. Even crew members who are trained nurses should receive this special instruction. The narcotic drugs should be administered subcutaneously. Each administration should be authorized by the aircraft commander. If a physician is among the passengers he should be consulted before administration of the narcotic drug. In other cases, and wherever practicable, medical advice should be sought by radio.

As regards clause (d):

The aim of this clause might be accomplished by keeping the drugs in a special sealed section of the first-aid kit. It is advisable that the first-aid kit be kept in a locked compartment of the aircraft. It would be useful to divide the narcotic drugs in two equal quantities, one to be kept in a first-aid kit in the vicinity of the flight deck and the other in a first-aid kit near the tail of the aircraft, both secured as suggested above. On landing, the first-aid kits may be kept on the aircraft if a responsible

^g World Health Organization WHO/Av.Med./1.

^h E/CN.7/363.

member of the crew or ground staff remains on duty. Otherwise the aircraft should be locked. In any case the first-aid kits may on this occasion be removed from the aircraft and kept under lock and key in bonded storage facilities under the control of the operator. They should at all times be under the responsibility of the aircraft commander. Only persons authorized by him should have access to the first aid kits.

As regards clause (e):

1. The operator should keep in its office records indicating:

(a) For each acquisition of a narcotic drug to be used in first-aid kits, the date, name and quantity of the drug and the name and address of the supplier;

(b) In the case of each issue to and return from an aircraft, the date, name or other designation of the aircraft, name of the person issuing or returning the drug, as well as of the person receiving it, name and amount of the drug, and reference number of first-aid kit;

(c) In the case of disposals other than issue to the first-aid kits, the date, quantity, name and address of the recipient;

(d) All other data required to explain the balance.

2. Each aircraft should keep on board records indicating:

(a) For each receipt of a narcotic drug, the date, name of the person issuing the drug and of the person receiving it, reference number of the first-aid kit, name and quantity of the drug received;

(b) For each administration, the date, name of the aircraft commander authorizing the administration, of the person giving the injection, identity of the patient, the reason for the injection, name and dose of the drug used;

(c) For each return, the date, reference number of the first-aid kit, name of the person returning the narcotic drug and of the operator's official receiving it, name and quantity of the drug returned;

(d) The names and maximum quantities of narcotic drugs of which the transport is authorized by laws or regulations as well as the balance in the first-aid kit;

(e) All other data required to explain the balance.

3. It might be useful if the first-aid contained a check list giving the names and quantities of the narcotic drugs included.

As regards clause (g):

Subject to what has been stated in this clause, it would be useful to check records, locks and seals, and exceptionally in appropriate cases the contents of the first-aid kit, and all the other circumstances relevant to establishing whether the rules governing the carriage of the drugs are being fully implemented. It would also be useful to check the records and stocks of narcotic drugs held by the operator itself.

كيفية الحصول على منشورات الأمم المتحدة

يمكن الحصول على منشورات الأمم المتحدة من المكتبات ودور التوزيع في جميع أنحاء العالم. استعلم عنها من المكتبة التي تتعامل معها أو اكتب إلى: الأمم المتحدة، قسم البيع في نيويورك أو في جنيف.

如何购取联合国出版物

联合国出版物在全世界各地的书店和经售处均有发售。 请向书店询问或写信到纽约或日内瓦的联合国销售组。

HOW TO OBTAIN UNITED NATIONS PUBLICATIONS

United Nations publications may be obtained from bookstores and distributors throughout the world. Consult your bookstore or write to: United Nations, Sales Section, New York or Geneva.

COMMENT SE PROCURER LES PUBLICATIONS DES NATIONS UNIES

Les publications des Nations Unies sont en vente dans les librairies et les agences dépositaires du monde entier. Informez-vous auprès de votre libraire ou adressez-vous à: Nations Unies, Section des ventes, New York ou Genève.

КАК ПОЛУЧИТЬ ИЗДАНИЯ ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ

Издания Организации Объединенных Наций можно купить в книжных магазинах и агентствах во всех районах мира. Наводите справки об изданиях в вашем книжном магазине или пишите по адресу: Организация Объединенных Наций, Секция по продаже изданий, Нью-Йорк или Женева.

CÓMO CONSEGUIR PUBLICACIONES DE LAS NACIONES UNIDAS

Las publicaciones de las Naciones Unidas están en venta en librerías y casas distribuidoras en todas partes del mundo. Consulte a su librero o diríjase a: Naciones Unidas, Sección de Ventas, Nueva York o Ginebra.

