

United Nations

Office on Drugs and Crime

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The Single Convention on Narcotic Drugs; Comments and Possibilities

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GENERAL

The Single Convention on Narcotic Drugs; Comments and Possibilities

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Mr. Herbert L. May is probably the best known personality in international narcotics control, of which he is generally regarded as the leading elder statesman. A retired business man and lawyer by profession, he has given over a quarter of a century of public service in various capacities. In the field of narcotics control, he has been associated with the work of the Opium Advisory Committee of the League of Nations, and subsequently of the Commission on Narcotic Drugs of the United Nations, throughout their existence. He has taken part in many international conferences, including the Limitation Conference of 1931 at Geneva, the Bangkok Conference of the same year, and the United Nations Opium Conference in, New York in 1953. He has been a member both of the Permanent Central Opium Board and of the Drug Supervisory Body since they were established, and he presided for many years over both bodies. The editors have great pleasure in presenting his comments on the Single Convention, as seen at this stage of its development, from what is a unique vantage point. Mr. May has written this article in his individual and not in a representative capacity.

INTRODUCTION

The Commission on Narcotic Drugs¹ has now been working on the Draft Single Convention² for more than four years. It has settled a number of important questions, and taken many decisions which would lead to a considerable simplification and strengthening of international narcotics control. In doing so, the Commission has had to pay attention to a great number of details, many

of them highly technical, and it has been unavoidable that in some cases argument on particular questions has obscured to some extent the broad objects of the operation. It therefore appears appropriate now, when the Commission is within hailing distance of finishing its first reading of the Draft Single Convention, to make a selective review of the situation in the light of the broad objects of international narcotics control in general and of the work on the Draft Single Convention in particular. Most attention is therefore given in this article to those questions on which a fresh approach may be helpful, matters of general agreement being referred to only briefly.

1

Subsequently referred to as Commission. This abbreviated term is also used to denote the "International Narcotics Commission". It was decided to give this name to the Commission under the provisions of the new Convention: E/2219, Annex C, p. 21.

2

"Draft Single Convention" denotes here and elsewhere the Draft of the Single Convention (International Drug Convention) (E/CN.7/AC.3/3) which is scheduled to replace all existing multilateral narcotics treaties.

GENERAL OBJECTS OF THE SINGLE CONVENTION

The Commission has undertaken the task of replacing the existing multilateral treaties by a single treaty, not only to simplify the existing international law and administrative machinery concerned with the control of narcotic drugs, but also to make the system of control more flexible and to strengthen it. These objects do not represent exclusive conceptions, but all of them should be kept in mind in proper proportion when individual problems are considered.

Simplification

It is the classic object of consolidation of legal texts to simplify the text and make its use easier. This is particularly necessary in the field of international narcotics law, developed in nine treaties concluded over a period of more than forty years, at different stages of the evolution of the international society, and under very different economic and social conditions in the States concerned; in these years the various elements of present narcotics control were achieved step by step. It is unavoidable that as a result some provisions are inconsistent, obscure, duplicated and even obsolete. The whole makes for unnecessary complexity, as regards both national and international administrations. As far as the administrative machinery is concerned, the existing treaties provide for three bodies wholly concerned with international narcotics control. A fourth body of this nature has been established by the World Health Organization³ to obtain the technical advice necessary to discharge its functions under the narcotics treaties. Three other organs having more general jurisdiction are regularly concerned with narcotics problems, while more deal with them intermittently. The aim of administrative simplification must primarily be concentrated on the number and organization of the exclusive narcotics bodies, since the others mostly devote a comparatively small proportion of their time to narcotics, and their role is

primarily to provide for a system of political and technical checks, indispensable under present conditions of international administration. The problem of simplification is, however, not merely a problem of organs. Definitions are sometimes not carried through the treaties, and some provisions are not wholly consistent with one another, so that the business of legislation and administration within the Governments, and of reporting to the international organs, is sometimes unnecessarily complicated. It is this which makes consolidation alone not worth while, and even to some extent not feasible. However, all this is not to say that the treaties have not worked well: when it is considered that they represent pioneer international legislation, the response of Governments has been remarkable. But enough experience has accumulated by now to select the essential elements in this legislation and to arrange them in a consistent whole.

Greater flexibility

Need for increased flexibility of international narcotics control arises on at least two main counts. Discoveries in modern chemistry and pharmacology, great increases in speed and volume of communications all over the world, more sensitive and rapid mechanisms of economic response call for almost continual adjustment of control: at the same time, pressures on the national resources available for international purposes have vastly increased. Whereas narcotics control in the period of the League of Nations was one of relatively few topics in the economic and social fields that were the subject of intensive international action, and received some of the attention of a pilot project, a very wide range of economic and social matters are now dealt with on the international plane, and the relative share of available attention has diminished. Therefore what is available must be made to do more work; it is, for example, now obviously wrong to go to the trouble and expense of a large international conference to bring about adaptations in the system which fall short of major changes. The need for greater flexibility must particularly be kept in mind in connexion with those provisions of the new convention which provide for regulatory powers of international organs and for revision of the convention itself.

3

Subsequently referred to as WHO

Strengthening of control

The general effect of present social and economic trends in the world is on the whole to increase the knowledge of narcotics, and, regrettably, to increase the incentives and the opportunities for abuse of them; the new convention must aim at closing the loopholes in the present machinery, and at making the whole more effective, without impeding medical use or research. It has been shown on some other occasions, when an attempt was made to codify a field of international law, that certain principles which were generally accepted until then, but on which a few countries had reservations, were placed in doubt. This danger may be particularly great in the field of narcotic drugs, where so many different aspects are involved, and where nearly universal participation is required.

Occasions may arise where one Government obtains the support of others to its particular opposition to an existing rule of narcotics control by making concessions on other questions. Such procedure is not uncommon at international conferences, but under some circumstances

this may result in a "lowest common denominator" treaty. If it should appear that there is a real danger of such a weakening of existing control, it would be better to postpone the work on the new comprehensive convention until the international climate is better, and, whenever necessary to meet new problems, to resort to limited instruments, notwithstanding all their drawbacks and difficulties. A convention which would aim at consolidating the present multilateral narcotics treaties, but which would not aim at the "highest common denominator" and incorporate essential improvements, would not be worth the effort.

A vital factor is the number of parties which will adhere to the new convention. The near approach to universality has always been a striking feature of international narcotics control. About eighty States are parties to at least one narcotics treaty and a great number of States to more than one treaty. Seventy-two States are parties to the 1931 Convention.⁴ An ideal new convention may be much less satisfactory than the present one if countries, the co-operation of which is essential, fail to participate in the new undertaking. This factor may operate in opposition to the desire of strengthening the present control system. It will be a test of statesmanship to assess the potential gain and loss as between strictness of control and degree of general acceptance.

BASIC AIMS OF CONTROL

Eliminating or at least reducing the misuse of dangerous drugs constitutes the object of international narcotics control. To achieve this aim the international society of States has developed a number of rules and administrative measures on the national and international plane, as well as national and international governmental organs.

4

" 1931 Convention" denotes here and subsequently the Convention for *Limiting* the Manufacture and Regulating the Distribution of Narcotic Drugs signed at Geneva on 13 July 1931 and where references to specific provisions are made, this Convention as amended by the Protocol of 11 December 1946.

LIMITATION OF PURPOSES

Limitation of the use of dangerous drugs to medical and scientific needs is the guiding rule of the present system of international control. However, opium (other than medicinal opium), coca leaves, and cannabis⁵ (Indian hemp) as well as the resin of *Cannabis sativa* L. (Indian hemp plant), although subject to some measures of international control, are not subject to this basic rule. This represents a serious gap which the Commission set out to close when it undertook to elaborate the Draft Single Convention. The Commission, therefore, did not allow for any exceptions to this rule when deciding to include it among the permanent rules on the Draft Single Convention.⁶ But serious difficulties arise in some countries or territories where it has been impracticable to suppress immediately such undesirable practices as opium eating and smoking, coca leaf chewing and the non-medical use of cannabis and cannabis resin. The Commission will face this problem when it considers the section of the Draft Single Convention dealing with permissible reservations.⁷ It is proposed that parties to the new convention may permit the undesirable practices in question on a temporary basis. The reservations in question should not

permit the extension of the practices beyond a definite, not too remote date, nor to territories in which the practices did not exist on a considerable scale or were not permitted at the time of concluding the new convention. The parties making the reservations should be held to report periodically on the measures taken for the suppression of the practices; if they fail to do so, the reservations should cease to be effective. If the Commission were to adopt this approach it would follow the example set by the 1953 Protocol⁸ which, subject to similar reservations, limits the use of opium to medical and scientific purposes.⁹

Rules limiting to medical and scientific purposes the manufacturer of, internal and external trade in, and possession of drugs under international control supplement the rule limiting the use. They do not, under the existing conventions, apply to raw and prepared opium, coca leaves, cannabis and cannabis resin. When the Commission decided to incorporate these rules among the permanent provisions of the new convention, it did not provide for exceptions.¹⁰ It is, however, proposed that reservations be permitted on the lines indicated above.

⁵

The terms "cannabis", "*Cannabis sativa* L." and cannabis resin are used subsequently for "Indian hemp", "Indian hemp plant" and resin of the "Indian hemp plant" respectively.

⁶

E/CN.7/AC.3/3, paragraph 258; E/2606, paragraphs 72-77, Annex D, p. 40.

⁷

E/CN.7/AC.3/3, paragraphs 332-335; see also the same document, footnote 12 on p. 15; footnote 16 on p. 16, and footnote 19 on p. 17.

⁸

"1953 Protocol" denotes here and elsewhere 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.

⁹

Articles 2 and 19.

The limitation of the production of raw opium, coca leaves, cannabis and cannabis resin (i.e., of the raw material from which the "natural" narcotics are obtained) to medical and scientific purposes is not yet required under the terms of the multilateral narcotics treaties in force. The Opium Protocol of 1953 likewise does not provide expressly for the prohibition of opium production for other than medical and scientific purposes. It follows,¹¹ however, from its terms that, with the temporary exception of amounts needed for eating or smoking, opium could not be produced legally for purposes other than medical and scientific ones.¹²

The Commission has already decided to provide in the new convention for the limitation of the production of opium, coca leaves, cannabis and cannabis resin to medical and scientific purposes.¹³ The Commission will have another occasion of dealing more specifically with this question when it considers the section of the Draft Single Convention dealing with the production of these substances.¹⁴ Reservations such as those mentioned in connexion with the limitation of the use of narcotics to medical and scientific purposes will probably be permitted.

LIMITATION OF SUPPLIES¹⁵

The present system of international narcotics control is based on economic planning by which the supplies of narcotics drugs should be limited to the amounts needed for medical and scientific purposes. This applies only to manufactured narcotics and not to opium, coca leaves, cannabis and cannabis resin. It has been shown in the past that such a limitation actually led to a reduction of the amounts of narcotic drugs available for illegitimate purposes and for their misuse. Doubts have been raised whether the same relationship between oversupply and misuse of narcotics still exists in drug manufacturing countries which have established either a state monopoly of the manufacture of narcotics or a de facto private monopoly situation by permitting only a few firms to manufacture narcotics. However that may be, there is still a number of countries in which over-supply of narcotics may stimulate diversion into illicit channels. Limitation of narcotics supplies on a world wide basis seems therefore still advisable. Moreover agricultural producers who cannot sell opium, coca leaves, cannabis or cannabis resin for medical and scientific purposes, can easily be tempted by illicit traffickers. In fact, the 1953 Protocol would extend the principle of limited supplies to opium. The economic planning under the provisions of the Single Convention would also be based on the same principle which, however, would be extended not only to opium, but also to coca leaves, cannabis and cannabis resin.¹⁶ As regards manufactured narcotics, the Commission has already adopted the idea of limited supplies for the Single Convention. ¹⁷ Its decisions on this point imply also the extension of the principle to opium, ¹⁸ coca leaves, cannabis and cannabis resin. The Commission will again face the question of this extension when it considers the provisions of the Single Convention concerning the production of these substances. ¹⁹

¹⁰

E/CN.7/AC.3/3, paragraphs 46A-49, 226, 233 and 258; E/2219, Annex C, p. 21; E/2423, Annex C, pp. 25-26; E/2606, Annex D, p. 40.

¹¹

See E/CN.7/275/Add.1, p. 39.

¹²

Article 19 of the Protocol.

¹³

E/CN.7/AC.3/3, paragraphs 46A and 49; E/2219, Annex C, p 21.

14

E/CN.7/AC.3/3, sections 30 and 32-34; see in particular paragraphs 176, 192, 207 and 208.

15

See, e.g., Preamble of the 1931 Convention.

COMPUTATION OF, AND CHECK ON THE SUPPLY LIMIT (ESTIMATES AND STATISTICS)

The 1931 Convention provides for two principal methods of limiting the supplies of manufactured narcotic drugs, i.e., by establishing manufacturing and import maxima. 20 The 1953 Protocol extends the idea of an import maximum to opium. In view of the impossibility of forecasting exactly agricultural yields, no production maximum is expressly established under the terms of the Protocol, although other means are used to achieve indirectly a limitation of such production. No production and import maxima exist at present for coca leaves, cannabis and cannabis resin. Under the terms of the Draft Single Convention, import, manufacturing and production maxima could be established for all substances under international control including the raw materials of the "natural" narcotics, i.e., opium, coca leaves, cannabis and cannabis resin. It seems that the decisions taken in connexion with the Draft Single Convention by the Commission on the subject of estimates would not affect this situation. 21 The same applies to a proposed draft concerning estimates and submitted to the Board for its views. 22 All these production, manufacturing and import maxima are computed on the basis of annual estimates which under the existing control regime are essentially estimates of drug requirements. A system of statistical information collected by national administrations and furnished to the Board serves, *inter alia*, to check upon the success of the planned limitation of narcotic supplies.

16

E/CN.7/AC3/3, e.g., paragraphs 121, 180, 184, 194, 198 207, 210 and 211.

17

E/2423, Annex C, pp. 24, 26 and 27.

18

See also E/2006, paragraph 63.

19

Sections 30, 32, 33 and 34.

20

Articles 6 and 12, paragraph 1.

21

E/2423, paragraphs 125, 126 and 129; Annex C, pp. 23 and 24.

22

Ibid Annex C, pp. 26 and 27. The term "Board" denotes here and subsequently the Permanent Central (Opium) Board, established under Chapter VI of the International Opium Convention, signed at Geneva on 19 February 1925.

Under the present conditions of the world's drug industry and of the agriculture yielding the raw materials for "natural" narcotics, it may be assumed that there is some relationship between limiting legal drug supplies and the amount of drugs available for illegal purposes. If, however, the existence of such a relationship were denied, the principal premise of the existing estimate system would disappear, and serious thought would have to be given to eliminating this system from the scheme of international narcotics control. It may be noted in this connexion that the provisions of the 1925 Convention were not in operation long enough before the adoption of the 1931 Convention for their effectiveness to be evaluated independently of the estimate system superimposed by the latter.

The value of the present estimate system may also be examined from another angle. The Supervisory Body stated, 23 in respect of the world's estimates between 1949 and 1953, that estimates of drug requirements exceeded actual manufacture, in the case of morphine by 20 to 39 per cent, of codeine by 20 to 43 per cent and of cocaine by 55 to 72 per cent. Estimates of pethidine were too high by 49 per cent in 1952 and 1953. 24 In the light of these figures it may be tempting to assume that there is no definite relationship between estimates and actual manufacture, and that as a result the estimates do not accomplish the tasks for which they were established. It may be mentioned, however, that excepting pethidine, the excess was reduced in each of the years to which the figures relate and that the lowest percentage figures are those of the last year, i.e., of 1953. No definite trend can be established for pethidine since sufficiently comprehensive figures are available in this case only for two years. It may, however, be noted that in the years 1934-1937 over-estimation of narcotics was reduced each year and sank from 53 per cent to 12 per cent in this period. 25 After the close of the war the Supervisory Body stated also that the "quality of the estimates has steadily improved". 26 It may therefore be assumed that the estimate system is not inherently incapable of fulfilling some of the functions for which it was created. Some of its weaknesses after the Second World War are probably due to the particular conditions of the war period. 27 It seems also that a number of Governments does not follow the methods suggested by the Supervisory Body for establishing the estimates. 28 It may, however, be concluded from the figures for the period before the Second World War as well as from those of recent years that the patient efforts of the Supervisory Body may have the result of a more realistic preparation of the estimates by national officials and that the officials will not use them merely as a means of avoiding difficulties with the Board and particularly of avoiding the "automatic" embargo. Such an attitude invites overestimates.

23

"Supervisory Body" denotes the (Drug) Supervisory Body constituted under article 5 of the 1931 Convention.

24

E/DSB/12, pp. 8 and 9.

25

C.488.M.331.1938.XI, p. 7.

26

E/DSB/4, p. 9.

27

Ibid

28

C.521 M 362.1937.XI.

As soon as the estimates will be established on the basis of actual inquiries into drug requirements-as suggested by the Supervisory Body-they will become reasonably exact. A study of the practices of some important drug manufacturing countries would show that their Governments limit the manufacture of narcotic drugs by allocating annually to individual firms shares of their requirements estimated annually. Governments also have frequently followed suggestions of the Supervisory Body to reduce excessive estimates. This would indicate that the estimate system has some value within the framework of national and international control.

A study of the statistics published by the Board would show that over a number of years the manufacture of such drugs as morphine and codeine approximates actual consumption for medical and scientific purposes. Before the Commission takes a definite stand on the question of the value of the estimate system, it may perhaps be advisable to consult the Governments of the principal drug manufacturing countries as regards the methods which they employ in establishing the estimates, and the role which the estimates play in planning their manufacture of narcotics.

Provided always that the principle of limiting supplies of narcotics is accepted, excesses of estimates over actual manufacture do not necessarily prove that the estimate system is without value, as long as it can be shown that the manufacturing figures are in fact reduced as a result of the procedures involved in this system. The balancing of estimates and manufacturing statistics serves the aim of limiting supplies and, however desirable this balancing is in itself, it is not the primary object of the estimate system, i.e., limiting the manufacture and import of narcotics supplies.

Although one may concede the influence which the estimate system has on the limitation of narcotics supplies, one may still raise the question whether the same results cannot be obtained

equally well and more simply by using past statistics. One could, for example, propose computing the supply limits for each year on the basis of the statistics of a preceding year, increased by a definite percentage, e.g., 5 or 10 per cent, unless the Government concerned requested a different figure. By such a procedure, however, Governments would not necessarily be required to examine annually their prospective narcotics requirements for the forthcoming year. Their plans concerning the manufacture of narcotics would also not be subject to review by an international organ prior to actual production. The tendency to justify actual manufacture by addressing to the international organ post factum the data required under the international provisions might be encouraged considerably. A stronger case may perhaps be made for using past statistics rather than advance estimates in a scheme of limiting the production of opium, coca leaves, cannabis and cannabis resins, i.e., of the agricultural crops.

Although the estimates in connexion with the statistical returns required by the narcotics treaties should serve primarily the purpose of limiting narcotics supplies, they may give also some indication as to the extent to which the legal narcotics supplies are used exclusively for medical and scientific purposes. The statistical returns play, however, a much more important part in this connexion, and it is suggested that estimates could be dispensed with for this purpose.

Although it might be held for the present that the balance of arguments favours the retention of the estimate system, this may be different under the agricultural and industrial conditions which may develop for the production of narcotic substances in the future. It may perhaps be advisable to provide for such a contingency by a simplified amendment procedure applicable to the provisions on estimates. It would not be justified to retain these provisions and the governmental burdens connected therewith should they cease to serve any useful purpose.

If it is decided to retain the present estimate system the question may be raised whether the present system of computing manufacturing and import limits on the basis of estimates of narcotics requirements could not be replaced by binding estimates of manufacture and imports, i.e., by a system of direct rather than indirect computation of the limits. It may be that the fears of interested business men to reveal trade secrets, fears which may have been in the way of adopting such a direct system in 1931, have lost their force. It seems that trade information which could be obtained from estimates of manufacture and imports, could be gained nearly equally well under present arrangements from the various figures concerning international trade in and requirements of narcotics, accumulated during the period of international narcotics control.

The Commission has not yet decided expressly whether it wishes to substitute the direct computation of the manufacturing and import limits-as suggested in the Draft Single Convention²⁹ for the present system of indirect computation.³⁰ It has, however, submitted to the Board for comments a draft containing provisions limiting manufacture and imports by the indirect system of computation.³¹

The items on which Governments are bound to supply estimates and statistics are enumerated exhaustively in the existing narcotics treaties. No provision is made for changes. The Commission considered that the development of scientific, technical and other conditions may make it necessary to modify the list of items on which estimates would be required³² under the

terms of the future convention, and decided that, subject to review by the Council,³³ such modifications should be within the jurisdiction of the Commission which would act on recommendation of the International Narcotics Control Board.³⁴ The Commission also gave consideration to the possible need for modifying, by a simplified procedure, the list of items on which the Draft Single Convention would require Governments to furnish statistical returns,³⁵ It has not yet taken a decision on this question. It is suggested that the simplified amendment procedure adopted for estimates apply also to statistics.

²⁹

Section 23, paragraph 1

³⁰

E/2423, Annex C, p. 23.

³¹

Ibid, Annex C, p. 27.

³²

E/2423, paragraph 126.

³³

"Council" denotes here and subsequently the Economic and Social Council.

The dates by which estimates and statistics must be furnished are determined in the text of the treaties at present in force.³⁶ The Commission decided that the date of the estimates should be determined by the International Narcotics Control Board rather than fixed in advance in the text of the convention itself, while the dates of the statistical returns should be determined by the Commission.³⁷ It submitted, however, to the Board for comments a draft on statistical provisions³⁸ under which the dates of statistical returns would be fixed in the treaty text itself. It is suggested that the jurisdiction be the same in the case of estimates and statistics, i.e., that the International Narcotics Control Board be authorized to fix the dates in both cases.

The institution of the so-called "automatic embargo" would also require some reconsideration.³⁹ Under this system the Board must notify the parties if the quantity exported or authorized to be exported to any country or territory exceeds its total of estimates with the addition of the amounts shown to have been exported. Parties may not authorize new exports to such a country during the remainder of the year. The Board does not make this notification in case of negligible excesses, since this would not serve any useful purpose. It is true that the Board may justify this technical violation of the 1931 Convention on the grounds of the general legal principle "*de minimis non curat praetor*". It is, however, suggested that, if an embargo is to be retained in the case of excessive imports, the embargo should be within the discretion of the international organ; i.e., deprived of its "automatic" character.

Furthermore, most import excesses may be expected to occur in the second part of the calendar year. Since the notification of the Board imposing the "automatic" embargo must be based on the quarterly import and export statistics furnished to it under the terms of the 1925 Convention,⁴⁰ and the returns for the third quarter do not reach the Board before November at the earliest and those for the fourth quarter not until after the end of the year, most import excesses cannot be affected by the embargo which expires and cannot be imposed after the end of the year. Moreover, a Government subject to the embargo can lift it by the simple device of furnishing supplementary estimates. It might be advisable to leave the duration of the embargo to the discretion of the Board.

³⁴

E/CN.7/AC.3/6, paragraph reference number 40. "International Narcotics Control Board denotes here and subsequently the international administrative organ which under the terms of the Draft Single Convention is scheduled to replace the present Board as well as the Supervisory Body.

³⁵

E/2219, paragraph 101.

³⁶

As regards estimates see, however, article 8, paragraph 4 (b) of the 1953 Protocol.

³⁷

E/2423, paragraph 127 and E/2219, Annex C, p. 22; see also E/CN.7/AC 3/6, paragraph reference number 83.

³⁸

E/2423, Annex C, p. 27.

³⁹

Article 14, paragraph 2 of the 1931 Convention.

⁴⁰

"1925 Convention" denotes here and subsequently the International Opium Convention signed in Geneva on 19 February 1925 and as amended by the Protocol of 11 December 1946; see article 22, paragraph 2.

This exposition does not exhaust all difficulties based on the text of the present provisions concerning the automatic embargo. More generally the question may be raised whether the considerable burdens imposed by this institution on national and international organs are justified by its potential value.

The Board and Supervisory Body are at present engaged in a review of the operation of the existing estimates system, and it is not desired in this article to anticipate the results of their examination. The various operational and technical points which arise are therefore not considered. Whether it is decided that the present system should be retained with simplifications and improvements, or that the case for retaining it is not sufficiently strong, the Commission will be able to draw upon the advice and experience of the Board and Supervisory Body and their Joint Secretariat.

ADMINISTRATIVE CONTROL MEASURES

In order to achieve the limitation of the use of narcotics, and of the transactions involved, to medical and scientific purposes, and to obtain the desired reduction of narcotics supplies. Governments are required to carry out a number of administrative control measures such as selection and approval of the persons to be entrusted with transactions in the field of narcotics, control of premises, production and trade processes, possession and use by individuals. A system of licensing, recording, reporting and other means of supervision serves this end. Although it is not expressly stated in the narcotics treaties in force, it may be said that a system of national inspection is one of the measures of control required under these provisions.⁴¹ Moreover, measures must be taken to fight the illicit traffic and to organize the campaign against the drug addiction.

It would be wrong to assume that all of these traditional measures have an unchanging value under the changing industrial and agricultural conditions in the field of narcotic drugs. The position of a licensing system is not necessarily the same in private and government-owned industry.

The Commission, in general, has decided to retain the existing system of national control, but has made some minor adjustments to take into consideration the developments since the adoption of the 1925 Convention, in particular the nationalization of the drug industry in a number of countries.⁴² In the light of these considerations it may be advisable to provide in the future convention for a not-too-difficult procedure by which the rules governing national control could be adjusted to changing conditions.

⁴¹

See also section 39, paragraph 2 of the Single Convention.

Under the existing system, differing regimes have historically developed for different drugs or groups of drugs, for example, raw opium, prepared opium, medicinal opium, coca leaves, drugs of groups I and II of the 1931 Convention and of the 1948 Protocol, diacetylmorphine, galenical preparations of cannabis, cannabis and the ordinary preparations of which the resin forms the base, and certain opium preparations (tincture of opium, Sydenham laudanum and Dover powder). Some of the reasons for these differences have disappeared. It should therefore be possible to introduce some simplification in this connexion.

In view of the fact that imports and exports of all drugs would be limited to medical and scientific purposes, it should no longer be necessary to provide for special import certificates for Indian hemp,⁴³ since the general import certificate and export authorization system would be sufficient.

The Commission has decided⁴⁴ that the stringent provisions relating to the international trade in diacetylmorphine and its preparations⁴⁵ should be incorporated in the new convention. The question may be raised whether this would be necessary or whether the more general provisions concerning the prohibition of drugs in connexion with those relating to the import certificate and export authorization system, which would apply to the small amounts if any shipped for scientific purposes, would not be sufficient.

The exemption from this system of exports to countries which do not apply the system,⁴⁶ need not be taken over by the new convention. The requirement of notifying exports of particularly dangerous narcotics, i.e., of drugs of group I of the 1931 Convention to countries or territories not subject to the system of narcotics control established by the 1925 and 1931 Conventions, seems also to be obsolete and need not be taken over. The same applies to the requirement of prior approval, by the Permanent Central Opium Board, of exports equalling or exceeding five kilogrammes to such countries.

NATIONAL CONTROL ORGANS

The problem of narcotic drugs involves administrative (including police), economic, health and social aspects of a special nature. It is in the international interest that all these phases should be treated from the special viewpoint of the narcotics treaties and that the responsibilities in this field should therefore be handled by special narcotics organs rather than by a number of offices having general responsibility in the field of health, economics, crime suppression, etc. It is also desirable that the responsibilities in the field of narcotic drugs be centralized on the national level, or, where this does not appear feasible, co-ordinated by special central organs.

Governments should be able to approach, on all or at least most aspects of international co-operation in the field of narcotics control, specific agencies in foreign countries rather than a number of different ones, some of which may even have only local jurisdiction, depending on the substantive nature of the problem involved. Direct relations between the technical organs of different Governments are also important. Moreover the work of international organs is furthered by provisions of these two kinds relating to national administration. As a result, a particular structure of national control organs is either recommended internationally or prescribed by provisions of the existing narcotics treaties.⁴⁷

⁴²

Sections 34 to 39 of the Single Convention; E/2423, Annex C, pp. 25 and 26; E/2606, Annex D, pp. 40 and 41.

⁴³

Article 11 of the 1925 Convention.

44

E/2219, Annex C, p. 20.

45

Article 10 of the 1931 Convention.

46

Article 18 of the 1925 Convention.

The Commission decided to incorporate in the Draft Single Convention the existing provisions on the organization and direct contact of national control organs.⁴⁸ These provisions are sufficiently flexible to meet the differing national conditions of constitutional law and systems of public administration.

Mr. Charles Vaille of France, the present Chairman of the Commission on Narcotic Drugs, has pointed out that the Single Convention, while giving sufficient attention to the legal trade in narcotics, does not appear to offer sufficient means for international co-operation in the suppression of the illicit traffic. These remarks would apply equally to the existing narcotics treaties. Mr. Vaille mentioned at the fifth session of the Commission in 1950 that there was "practically no liaison between national bodies dealing with repression of the illicit traffic and no effective co-ordination on the international level".⁴⁹ This situation should be taken into consideration when the Commission elaborates its revised text of the Draft Single Convention in order to "make it possible to take direct and effective international action against illicit traffic".⁵⁰

National penal laws

The fight against the international illicit traffic in narcotics is impeded by the fact that the penal sanctions are not effective in some countries or territories, i.e., not adequate to have the desirable deterrent effect, and that the rules of criminal jurisdiction are different in different countries or in different groups of countries, so that some traffickers are able to escape prosecution or punishment because of lack of local jurisdiction. The Commission has, in this respect, adopted provisions governing penal sanctions and criminal jurisdiction to be incorporated in the Draft Single Convention. These rules are partially based on the provisions of the 1936 Convention⁵¹ and will, it is hoped, meet some of the objections which prevented this convention from becoming more generally accepted. ⁵² It is admitted that in this difficult field of international regulation the provisions must be flexible enough to leave room for wide national differences and thus to become generally accepted. There is, however, a danger that in this process they will become too vague to be useful for the purpose for which they were drafted. If it is shown that provisions sufficiently definite to prevent international illicit traffickers from escaping prosecution or punishment would not be generally acceptable, it would be preferable to give up for the present the idea of general acceptance, and to develop rules which will at least improve the situation in countries willing to accept them, and to wait for the power of public opinion to induce the other countries to change their attitude on this point, and to permit in the field of narcotic drugs deviations from their traditional system of criminal jurisdiction, which practically

all of them permit in other fields considered important by them. It may facilitate agreement to such deviations if the penal rules to be incorporated in the Draft Single Convention do not try to cover minor offences unimportant for the fight against the illicit traffic, but limit themselves to the more important international crimes. If it is concluded that it would be necessary to incorporate in the Draft Single Convention penal clauses which might not be generally acceptable, it is suggested to permit a reservation on these provisions so as not to prevent countries unwilling to accept the provisions from accepting the new convention as a whole.

47

Article 15 of the 1931 Convention (Special administration); articles 11 and 12 of the 1936 Convention (Central office); Recommendation I of the 1931 Limitation Conference (Single authority); Model Administrative Code to the International Opium Convention of 1925, C 774.M.365.1932.XI, p 19 (Single authority); see also article 3 of the 1953 Protocol.

48

E/2423, paragraph 153.

49

E/CN.7/SR.112, p. 14.

50

E/CN.7/AC.3/5, paragraph 82.

Treatment of drug addicts

The Commission last year adopted a section of the Draft Single Convention to the following effect: "The Parties are cognizant of the importance of creating means for the medical treatment, care and rehabilitation of drug addicts and undertake to use their best endeavours towards this effort, on a planned and compulsory basis, in properly conducted and duly authorized institutions in those States where the seriousness of the problem of drug addiction and their economic resources warrant such measures." 53 This section, while in very flexible form, reflects the view widely held by members of the Commission and others concerned that to be effective, at any rate in many of the types of cases of addicts most widely met with, treatment must be compulsory and in closed institutions. There are already in existence in a few countries in the world a small number of specialized institutions for the treatment of addicts, of which the best known is the U. S. Federal Hospital at Lexington. There are also arrangements for treatment in institutions dealing primarily with other types of cases in a number of other countries. It is clear that in countries in which a policy on these lines is indicated and is adopted it will, for administrative and budgetary reasons, be practicable to provide *ad hoc* institutions in only a small minority of instances. The policy therefore would have to be implemented by using or by adapting accommodation in existing institutions. In practice, the normal type of closed institutions available are mental hospitals and prisons: on the other hand, it is difficult to provide effective closed accommodation in an institution of the general or mixed hospital type. It is evident that

the working out of satisfactory arrangements for the proper treatment of addicts according to the needs of different types of cases and different environment will be a difficult and sometimes delicate one.

51

"1936 Convention" denotes here and subsequently the Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs as amended by the Protocol of 11 December 1946.

52

E/2606, paragraphs 83-87; Annex D, p. 41. There are 72 parties to the 1931 Convention and only 19 parties to the 1936 Convention.

53

E/2606, paragraph 88, Annex D, p. 41.

In such circumstances, it seems best that the legislation in the new convention should not go beyond the statement of general principles, leaving the implementation of the policy to be dealt with by the Governments and international bodies concerned in the ordinary course of their activities.

INTERNATIONAL CONTROL ORGANS

There seems to be wide agreement that the present Board and Supervisory Body should, in the new convention, be replaced by one independent organ with administrative and "semi-judicial" responsibilities, while the present Commission should remain the legislative and policy-making body in the field of international control of narcotic drugs. The Commission has already taken decisions to this effect. 54 If it is decided to abandon the estimate system as obsolete, these decisions may call for some further consideration.

The maintenance of a separate policy-making and administrative organ is justified on the ground that there are certain functions of international narcotics control in the administration of which political considerations should not enter, and which should therefore be within the jurisdiction of an independent organ, i.e., an organ not composed of government representatives, but of technical experts, while other functions, i.e., the functions of the Commission, require a political body. It may be considered whether a radically different set-up would not meet these requirements, e.g., instead of having two completely separate bodies, the present Commission might be supplemented by a small number, say three, of independent experts, who could take part in the deliberations of the Commission but without vote. They should perhaps be elected by the General Assembly rather than by the Economic and Social Council, to obtain a wider representative character, and should be charged with certain functions which require action by a non-political body. They would meet annually together with the Commission and act on the basis of information obtained in the deliberations of the Commission or from the Secretariat. For

individual cases involving semi-judicial decisions, this body of three experts would meet separately from the Commission.

54

E/2219, paragraphs 83-85; Annex C, p. 21; E/2423, paragraph 98.

Another way of achieving radical simplification might be attempted on the following lines, if the embargo and estimate system should both be abandoned. An independent control organ consisting of a smaller number of members than the present Board would be feasible; and indeed, if such an organ should include persons with a knowledge, respectively, of production of raw materials, drug manufacture, medicine and pharmaceuticals, international and national administration of narcotic drug regulations, it might, in addition to the remaining administrative and semi-judicial functions of the present Board, be charged with some functions in the preparation of legislation, i.e.. with the right of recommending or reporting on regulations of a kind to be authorized under the new convention. Safeguards for Governments such as approval by widely representative United Nations organs,⁵⁵ right of Parties to reject the new regulations, special majority conditions would be required; they are discussed further below in the section entitled "Regulatory powers".

These are not definite proposals but it is considered that more thought should be given to further economies in and simplification of the international control machinery if this can be done without sacrificing basic requirements of narcotics control.

INTERNATIONAL ENFORCEMENT OF TREATY OBLIGATIONS

The twin pillars on which the enforcement of the system of international narcotics control rests are the good faith of Governments and the weight of public opinion.

Broadly speaking, Governments have made great efforts to live up to their treaty obligations. In the future as in the past, this will be the prime condition of progress. It should be a function of the new convention in this respect to make the international administrative arrangements as simple as possible--and that means simpler than they are at present--in order to keep the work load in government departments to the minimum possible and to ensure that the available quantum of effort is spent in the most fruitful way.

Public opinion has played a classic role in the movement to control the use of narcotics. Most often, the international and the national authorities will be working in the same direction to secure understanding of their actions and support for their programmes. The existing treaties, however, contain certain provisions looking to a different and special situation: namely, where a Government appears to be lagging in its obligations and public opinion both in the community of nations and in the country itself should be informed of the situation with a view to influencing action in the right direction. In this respect public discussion in the Commission, and the inclusion, or the possibility of inclusion, in reports of the Commission, the Board and Supervisory Body, of critical information regarding the situation in particular countries has been a potent enforcement procedure.

For instance, the Council or General Assembly perhaps acting through a special committee.

The Commission emphasized the importance of public opinion when it approved provisions of the Draft Single Convention according to which parties would undertake to permit the unrestricted distribution of reports of the "International Narcotics Control Board" within the territories under their control.⁵⁶

The Board has also been granted expressly the specific right under article 24, paragraph 1, of the 1925 Convention to ask for explanations from Governments "if the information at its disposal leads it to conclude that excessive quantities of any substance covered by the present convention are accumulating in any country, or that there is a danger of that country becoming a center of illicit traffic".

The 1931 Convention extended the enforcement procedure (of which the right to request explanations forms a part) to situations in which a comparison of estimates and statistical returns indicates that a party has or may have failed to carry out its treaty obligations.⁵⁷ The Supervisory Body has also been expressly authorized to ask for explanations of estimates furnished under this convention. The Board or Supervisory Body--as the case may be--is authorized to publish explanations and its comments.⁵⁸ The 1953 Protocol⁵⁹ has more specifically spelled out various steps which the Board may take to obtain information on an unsatisfactory situation in a given country or territory. The Board has, in particular, in this Protocol been authorized to carry out local inquiries with the consent of the Government concerned and to propose remedial measures. The Commission has decided that the new convention should provide for the extension of the embargo system approximately on the lines of the 1953 Protocol, such a system to include also the mandatory embargo subject to appeal and to apply to imports as well as exports.⁶⁰

As regards legal production and trade, and, in particular, questions of production or the piling up of excessive quantities of drugs, under the present conventions the responsibility of administering the narcotics treaties falls primarily on the Board. As regards the illicit trade the function is performed generally speaking by the Commission, which examines many detailed cases in the course of its general surveillance of measures to combat the illicit traffic. The Board as well as the Commission reports to the Council which in turn reports to the General Assembly; in major cases of noncompliance, these world forums would be available to back the actions of the Board or the Commission.

⁵⁶

Section 25, paragraph 2: section 26, paragraph 3, of the Single Convention; E/2423, pp. 24 and 25; see also E/CONF 14/15, paragraph 9.

⁵⁷

Article 14, paragraph 3.

Article 24, paragraph 5, of the 1925 Convention; article 5, paragraph 7, and article 14, paragraph 3, of the 1931 Convention.

Article 11.

E/2423, paragraphs 131-151, Annex C, pp. 24 and 25; E/ CONF.14/15 and Add. 1; see also E/2606, paragraph 63.

There are, however, two particular functions which fall to the Board in connexion with the international illicit traffic. The first concerns article 22, paragraph 1 (e), of the 1925 Convention under which Governments have to account for all drugs confiscated in the international illicit traffic, and drugs transferred from illicit into licit channels. This is a part of the statistical system and should naturally be incorporated in the new convention and extended to the domestic illicit traffic. ⁶¹ Secondly, the Board has the power, if no explanation is given by a Government within a reasonable time "to call the attention of the Governments of all the Contracting Parties and of the Economic and Social Council of the United Nations to the matter, and to recommend that no further exports of the substances covered by the present convention or any of them shall be made to the country concerned until the Board reports that it is satisfied as to the situation in that country in regard to the said substances"⁶²

This is the so-called "embargo".⁶³ Some fundamental questions ought to be discussed regarding the desirability of including this sanction at all.

This "embargo" introduced by the 1925 Convention ⁶⁴ and extended by the 1931 Convention to other situations ⁶⁵ is a power of *recommendation*; corresponding to this, there is no specific right of *appeal* against it in the convention on the part of Governments.

The Opium Protocol of 1953 also provides for the recommendation of an embargo.⁶⁶ However, in addition it authorizes the Board to impose a mandatory embargo.⁶⁷ i.e., an embargo which would be legally binding upon parties; and it has widened both types of embargoes to include imports and/or exports while--as should be noted-- the recommendatory embargo under the 1925 and 1931 Conventions applies only to imports. An appeal is provided for (against the decision of the Board to impose the mandatory embargo) to a judicial body to be appointed by the President of the International Court of Justice.

It seems to be open to serious doubt whether it would be wise to include such a mandatory embargo in the Single Convention, and whether it might not in sum reduce rather than increase the power of the Board to secure compliance with its decisions.

See also article 9, paragraph 1 (a) (iv), of the 1953 Protocol.

62

Article 24, paragraph 2.

63

This is the embargo proper. As regards the so-called "automatic embargo" dealt with above, see section on "Computation of, and check on the supply limit".

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Article 24.

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Article 14, paragraph 3.

66

Article 12, paragraph 2.

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Article 12, paragraph 3.

In the first place it is to be noted that the present milder power, i.e., the recommendatory embargo without appeal, has in fact not once been imposed in the twenty-six years of existence by the Board. This is not necessarily to say that it has been valueless; there have been occasions on which the fact of its existence and potential use have played a part, the weight of which obviously cannot be precisely established. However, it is clearly not a measure which is convenient for an international organ to apply.

By comparison, the new power would be even less convenient. The complications of an appeal, and the length of time necessary to carry it through would be bound to make the Board even less inclined to embark on such a sanction. This procedure would be particularly slow in operation, since under the terms of the new convention, as formulated by the Commission, the Board could impose the mandatory embargo only if lesser measures have failed to or were unlikely to achieve the desired results. 68 The possible weakening of its authority in the event that an appeal was upheld could give the Board further pause.

Then there are weaknesses in *any* sanctions of this kind, both in the present and proposed forms. It is hardly conceivable that the Board would impose a prohibition which would have the effect of cutting off necessary medical supplies from a country. Again it is a matter of chance whether the economic situation as regards drugs in a country is such that an embargo of this kind would be a matter of consequence or not; to many countries it would be a matter of indifference from

the economic point of view. No avoidable risks should be taken of prejudicing the smooth operation of the Board's normal operations by the application of what may be controversial procedures to special situations of this kind. The inclusion of such a power in the new convention would appear to lay too much emphasis on theoretical rather than on practical considerations, and to over-emphasize the semi-judicial nature of certain of the Board's proceedings as against their normal administrative and supervisory character.

The difficulties, and they are very serious ones, all relate to the general situation that the main reliance by the Board, as by other international organs on compliance, must rest on the good faith of Governments and the power of public opinion, and this proposed provision sticks out as something of a very different type.

The question arises also whether the changes which, as a result of the 1925 and 1931 Conventions, took place in the international control of narcotic drugs have not affected the value of the embargo. At the time at which the provision for recommending (import) 69 embargoes was incorporated in the 1925 Convention, the import certificate and export authorization system was not yet generally applied, although a number of countries had resorted to it in response to recommendations of the Opium Advisory Committee of the League of Nations. Furthermore, many countries had no effective domestic control which could prevent diversion of legal narcotics supplies into the international illicit traffic. There was therefore the probability if not certainty that in a country without an adequate control system, in which country excessive quantities of narcotics accumulated or which was threatening to become a centre of illicit traffic, legal imports would directly feed such traffic. The recommendation of the embargo was therefore thought of primarily as a direct blow to the illicit traffic and not only as a means of influencing the Government concerned. This explains why the embargo applies only to imports--and this makes it discriminatory, at least in theory, against those countries which have to rely on imports for their narcotics supplies. There seems to have been no intention of exerting economic pressure or, of course, of cutting off necessary medical supplies. 70

68

See also article 12, paragraph 3 (a) (ii) of the Opium

Protocol of 1953

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The terms "import" and "export" embargo are used from the viewpoint of the country subject to the embargo

In view of the import certificate and export authorization system which is now nearly universally applied and of the general adoption of a regime of domestic control based on the 1925 and 1931 Conventions, there is at present little danger that considerable amounts of legal imports would be diverted into the international illicit traffic. An embargo on legal imports would therefore not hit the traffickers, but might endanger the availability of medical supplies.

Consequently the import embargo has lost its original purpose. The continuing value of such a sanction is not based on its particular character of embargo, but on the fact that, as any sanction, it implies criticism of the behaviour of the Government in question. It may therefore be considered whether the same effect cannot be better obtained from direct public criticism and whether the embargo should not be omitted from the new convention. If it is considered advisable to invest an international organ with powers of economic pressure, it may be pointed out that the export embargo would 71 be more suitable for such purposes since the import embargo could in general have this effect only by preventing countries manufacturing narcotics from obtaining raw materials such as opium. In view of the availability of substitute raw materials (e.g., poppy straw) and the development of synthetic chemistry, this effect being inconclusive even at present, would tend to become increasingly so.

Moreover the Commission decided that under the new convention the Commission as well as the International Narcotics Control Board should have the general power of making recommendations. 72 Such a power could be used to make appropriate recommendations whenever in extreme and highly improbable cases it should appear advisable to resort to economic pressure.

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See in this respect article 14, paragraph 2, of the 1931 Convention.

71

At least as regards countries which have significant exports of narcotics

To sum up, the generalization in the new convention of the form of mandatory embargo as applied to opium in the 1953 Protocol would be likely to reduce rather than strengthen the Board's real power, by investing it with an authority which it is unlikely to be able to use effectively. It may well be that the best course would be to drop the "embargo" power altogether, and this would incidentally produce a very great simplification of the new convention. If, however, it is felt that the power should be retained in some form, it would seem far better *(a)* that it would be retained only in the recommendatory form, making the appeal measure unnecessary (this in turn would considerably simplify the convention); *(b)* and that the uncertainty of the sanction, and the danger of its reacting adversely on the Board's normal work, should be reduced by provisions which would give the Board the discretion to act only where the situation was related to its normal functions.

International inspection

The Commission has decided that under the terms of the new convention the International Narcotics Control Board should have the right to order a "local inquiry" with the consent of the Government concerned. 73 The 1953 Protocol contains a similar provision. 74 Such a provision would constitute some kind of compromise between those who favour a full-fledged system of international inspection and those who oppose it.

There is little doubt that international inspection would at present not be generally acceptable in the field of narcotic drugs. It would, however, be wrong to assume that in this field it would be the only, or perhaps even the principal, purpose of international inspection to discover facts which a Government wished to conceal, and thus to appeal to public opinion. International inspection would also be instrumental in strengthening Governments against internal resistance to effective control, in advising on possible improvements, and more generally in giving technical assistance. Better international understanding for some of the difficulties Governments have to contend with might also result, and pave the way for assistance when necessary to remove basic causes for an unsatisfactory narcotics situation.

The great value which a system of international inspection would have in the field of narcotics control would perhaps justify the Commission giving further consideration to the matter. If a system of international inspection is adopted, it would be necessary to permit a reservation on the relevant provisions of the new convention for the benefit of those countries which reject international inspection or consider they must do so under their national constitutions.

72

E/CN.7/AC.3/3, paragraph 92; E/2219, Annex C, p. 22; E/2423, paragraph 123.

73

E/CN.7/AC.3/3, paragraph 137; E/2423, paragraph 141.

74

Article 11, paragraph 1 (d).

REGULATORY POWERS

There is general agreement that there must be some international authority to place new drugs under narcotics control.

It is very difficult indeed to frame a single definition of narcotic or addiction-producing drugs which is sufficiently accurate both scientifically and for legislative purposes. Control was in fact applied empirically in the past to a number of dangerous drugs whose effects were known, and which it was both desirable and feasible to control. It is only natural that a compliance with reasons of this kind does not correspond exactly to any unitary scientific conception. In the circumstances, the most practical way of defining the scope of substances subject to control has appeared to be to enumerate in the new convention those which are already under control and to provide for the list to be added to by the international control authority. A practical formula to limit this power was developed in the existing narcotics treaties which restrict the substances in view to those having similar effects to those at present under control. To these have been added drugs which are convertible into such drugs. The further elements of desirability and feasibility which should be satisfied before a drug is the subject of international legislation cannot appropriately be defined; they must be left to be expressed in decisions of the control body which will be governed by technical, administrative and other considerations. Its field of decision will,

however, extend only to drugs as so defined and perhaps to drugs convertible into them. As in the past, it would not be necessary to give a scientific definition of the term "drug addiction" in the new convention, or even to use this term, in connexion with circumscribing the category of drugs which may be put under international control.

The 1912 Convention supplements the list of drugs which are expressly placed under international control by defining in accordance with the practical formula referred to above the future drugs which should be placed under control, but leaving it to the national authorities to decide whether a given new drug falls under the definition.⁷⁵ The 1925 Convention introduced an international authority for placing new drugs under control.⁷⁶ A decision adopted under this authority is, however, binding only on such Governments as accept it expressly. There is no limitation to certain chemical groups. The 1931 Convention made international decisions binding upon Governments. No acceptance or other form of consent is required. The decisions are, however, limited to closely defined chemical groups, i.e., to products obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf. The 1948 Protocol has abandoned this limitation, thus facilitating international decisions placing under control dangerous drugs no matter what their chemical structure may be. No consent of Governments is required.

⁷⁵

Article 14 (d).

⁷⁶

Article 10.

The Commission decided to incorporate in the new convention a procedure which is based principally on the provisions of the 1948 Protocol. It rejected the idea that, in view of the wide variety of chemical structures of new drugs which might be placed under control, each party to the new convention should have the right to reject a decision extending control and thus to avoid being bound thereby. ⁷⁷

The Commission emphasized, however, the administrative factors involved in placing new drugs under control by providing that the Commission rather than the WHO should have jurisdiction, subject to review by the Council. Adequate consideration of the technical factors is assured by the requirement that the Commission would have to act "on the advice and recommendation of the World Health Organization". The same procedure would apply to exemption from control.

The Commission also followed the terms of the 1948 Protocol,⁷⁸ by providing that it should have the power to place drugs under provisional narcotics control. The interval between the development of a new addiction-producing drug, whose dangerous qualities may often not be discovered for a considerable time, and the decision of placing the drug under control, constitutes a particularly critical period, because many persons may in the meantime become addicted to the uncontrolled drug. Some kind of provisional control of potentially dangerous drugs seems therefore to be advisable. As far as opium and coca leaf drugs are concerned the 1931 Convention provided for provisional control of products obtained from the phenanthrene and

ecgonine alkaloids in question. The development of a great number of synthetic narcotics of a great variety of chemical structures renders the problem of provisional control much more difficult. It is obviously not, or at least not yet, possible to circumscribe in advance all chemical groups which would be sufficiently suspect of addiction-producing qualities to justify their being placed under provisional control. It would therefore seem indicated that each case should require a specific international decision as is required under the 1948 Protocol and as would be required under the new convention in accordance with the decision of the Commission.⁷⁷

Consideration may also be given to the possibility of defining in very general terms drugs which might be suspect of addiction-producing qualities, requiring Governments to control them provisionally, but leaving it to each individual Government to determine whether the definition applies to a given case. Since Governments would naturally act in good faith, a considerable degree of protection could be obtained by such a procedure.⁸⁰ Such a definition may, for example, include all such products obtained from the phenanthrene alkaloids of opium and the ecgonine alkaloids of the coca leaf, as well as all the drugs which because of their chemical structure, their strongly analgesic effects or for other reasons the Government concerned considers to be likely to be addiction-producing.

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E/2219, paragraph 90; Annex C, pp. 20-21.

⁷⁸

Article 2.

⁷⁹

The Commission arrived also at the "provisional" conclusion that once a notification has been made to initiate the international procedure for placing a new drug under control, Governments should apply provisionally narcotics control to the drug in question. See E/2606, paragraph 134.

Another problem arises in connexion with the development of synthetic narcotics, i.e., whether, as in the case of natural drugs, it is always practicable to place under narcotics control substances convertible into addiction-producing drugs. If this question is answered in the negative, some thought may still be given to the possibility of exercising some degree of supervision over such convertible substances and other intermediary products.⁸¹

The Commission has recognized the need for international regulatory power not only for placing new drugs under control but also for other purposes: for modification of the items on which Governments should be required to furnish estimates and for determining the dates by which estimates and statistics should be furnished. It should be considered whether it would not be advisable to give wider scope to international regulation if the aim of greater flexibility and more simplification is to be achieved.

As regards the rules to be applied to the various drugs or groups of drugs, there can be distinguished at present, taking account of the position reached by piling one treaty on top of another, some ten regimes. ⁸² It does not seem that the facts justify such complexity. National regimes provide in general for a smaller number of such variations. The best provision for the convention would appear to be one of the type in which the elements of the control regimes are set out, and it is left to an international regulatory authority to decide, *within this limit*, which of them are to be applicable to which drugs. (It is of course always open to a national Government to impose more severe restrictions in any particular respect than the international minima.) If that seems too radical-and while it does not seem very radical to those concerned with the control of narcotics, the cautious approach of certain national legislators, mindful of precedents that may be understood to apply in other fields, must be appreciated-there are several ways of putting further safeguards around the power and still leaving it sufficiently flexible for effective operation. The initial particular rules applying specifically to different kinds of drugs could be set out in the schedule to the convention, and it could be stipulated that more rigid provisions than those set out as maximum in the convention itself could not be required and that all or certain additional restrictions could only come into effect when a specified number of States had agreed to them; and/or that they did not become effective in a country if the Government gave notice within a certain time that it would not agree to apply them. Qualified majorities (i.e., a greater than a simple majority), for adoption, by the Commission as regulatory body, of all or some of the additional restrictions could be required. Requirement of approval by the Council and even by the General Assembly could offer additional safeguards. It is not asserted that all these measures would be necessary: they are only mentioned to indicate the wide range of possible safeguards for Governments.

⁸⁰

See E/CN.7/L.85, paragraph 39.

⁸¹

See also Council resolution 548 H I (XVIII).

⁸²

See above under "Administrative control measures".

From the viewpoint of legislative technique it might be considered whether the provisions subject to a particular simplified amendment procedure could not be listed in a separate schedule or annex; e.g., a schedule listing drugs falling under different regimes, a schedule enumerating items on which Governments would be required to furnish estimates or statistics. The principal provisions which could be amended only at a diplomatic conference or by the General Assembly, subject in both cases to processes of ratification, would form the main body of the convention.

SUGGESTIONS REGARDING, IN PARTICULAR, OPIUM PRODUCTION

Several important questions suggest themselves regarding the 1953 Protocol, other than those such as the embargo already considered in the general context. Should a decision be made at this

time to include all the provisions of the 1953 Protocol in the Draft Single Convention ? ⁸³ If there is some doubt about the practical value of the estimates system as applied to manufactured drugs, how much greater must be that doubt if the estimates are to be of an agricultural product so dependent upon weather conditions? Furthermore, would the members of the International Narcotics Control Board have the necessary qualifications to pass upon agricultural estimates? Even more important, should not the provisions of article 5 providing for limitation of stocks be given further consideration ? An easy mathematical computation from the published statistics of the Board would show that, if all the opium-producing countries which, under the terms of the 1953 Protocol may export their products ⁸⁴ availed themselves fully of the provisions of this article, the total stocks of these countries would vastly exceed the highest levels of recent years. ⁸⁵ Accordingly there would be a large margin for opium-producing countries to expand, rather than to reduce, opium production. Would it not be better and simpler to omit the provisions of this article and leave the Board with similar powers to those it already has under the 1925 Convention; namely, to act in cases where it considers stocks excessive ? In the twenty-six years of the existence of the Board, this power has never been abused.

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E/2606, paragraph 63.

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Article 6, paragraph 2 (a).

CONCLUSION

In conclusion the author of this article wishes, with some temerity, to come back in general terms to an idea which already has been referred to in this article particularly in relation to specific points and which, if given wide application, may be considered a rather radical suggestion. The time will soon come when the Commission will wish to arrange in proper order all the provisions of the Draft Single Convention decided upon. At this stage would it not be well to consider the possibility of making this convention "a convention to end conventions" on narcotic drugs, and to obviate the necessity of frequent international conferences?

There has been for many years a trend in national legislation to separate basic principles and regulatory provisions; indeed this practice has extended to international legislation, e.g., in the field of health regulations and whaling. The idea involved is that only basic agreements, not likely to be changed, should be included in the convention proper, and all other matter should be placed under "regulations", with provision for amending the regulations not dependent upon international conferences. Such a proposal in connexion with international legislation on narcotic drugs would seem to be worthy of particular consideration.

⁸⁵

The Board stated in 1954 (E/OB/10, p. 11), on the subject of raw opium stocks: "The seriousness of the position can be gauged from the fact that the opium stocks held by the opium producing countries and the morphine

manufacturing countries at the end of 1953 already amounted to 1,700 tons; this quantity alone would meet the world's licit requirements for two and a half years. The Board would be failing in its duty if it did not draw the attention of the Governments of the opium-producing countries to these facts and urge them to limit their production so as to avoid an excessive accumulation of stocks."

A liberal approach towards the idea of regulatory powers could facilitate the completion and adoption of the new convention at a date before all problems have been solved. Some questions on which no agreement could be achieved or for which a solution has not yet been found could be left to the regulatory process. It might apply, for instance, to such problems as control of the production of coca leaves and Indian hemp. The degree of simplification and flexibility to be achieved under the new convention will also largely depend on the extent to which Governments will be willing to contemplate such a system of regulations.

A courageous approach towards reorganization of the international control machinery will constitute a second important factor. Tentative suggestions towards this aim have been made above in the section on "International Control Organs", i.e., concentration of the functions of an administrative and legislative nature in a political body composed of Governments meeting jointly with a few independent experts who would be charged separately with such functions as require an unpolitical approach; or, alternatively, concentration of the functions of an administrative and semi-judicial character in a body of experts, which would also assist in the preparation of legislation of the regulatory type, legislative functions being exercised by one of the general purpose organs of the United Nations.

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United Nations Office on Drugs and Crime