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COMMENTARY ON THE DRAFT SINGLE CONVENTION

Note by the Secretary-General

1. The Secretary-General has the honour to submit herewith the Commentary on the draft text of the Single Convention to which he referred in paragraph 2 (a) of his note of introduction to the "Draft of the Single Convention" (E/CN.7/AC.3/3).
2. The Commentary is intended to be read in conjunction with the draft text of the Convention published in that document, and attention is accordingly drawn to the following observations:
 - (a) The numbers given on the extreme LEFT-hand side of pages are the "paragraph reference numbers" which have been allotted to individual paragraphs and sub paragraphs of the text of the Convention.
 - (b) The numbers on the extreme RIGHT-hand side of pages are the "paragraph reference numbers" which have been allotted, for ease of reference, to the individual paragraphs and sub-paragraphs of the Commentary.
They run serially from the beginning to the end, and are preceded by the letter "C".
 - (c) The Commentary is divided into Sections, corresponding in every case to Sections of the Convention.
 - (d) The following abbreviations are used in the Commentary : *

* In certain cases, however, in the interest of style, these international instruments have been termed: "Convention of 1912", etc.

| | | |
|-------------------|-----|---|
| "1912 Convention" | for | International Opium Convention, signed at The Hague, 23.I.1912. |
| "1925 Convention" | " | International Opium Convention, signed at Geneva, 19.II.1925. |
| "1931 Convention" | " | International Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva, 13.VII.1931. |
| "1936 Convention" | " | The Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs. |
| "1925 Agreement" | " | Agreement concerning the Manufacture of, Internal Trade in, and use of Prepared Opium, signed at Geneva, 11.II.1925. |
| "1931 Agreement" | " | Agreement for the Control of Opium Smoking in the Far East, signed at Bangkok on 27.XI.1931. |
| "1946 Protocol" | " | Protocol of 1946 amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at The Hague on 23.I.1912; at Geneva on 11.II.1925; and 19.II.1925 and 13.VII.1931; at Bangkok on 27.XI.1931, and at Geneva on 26.VI.1936. |
| "1948 Protocol" | " | 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. |
| "Board" | " | International Drug Board. |

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INTRODUCTORY NOTES

The draft of a single convention submitted to the Members of the C.1
Commission on Narcotic Drugs (E/CN.7/AC.3/3) attempts to achieve the
following aims:

- (a) To incorporate the provisions of the following conventions, C.2
agreements and protocols, as well as existing practices,
into one legal instrument:

1912 Convention
1925 Convention
1931 Convention
1936 Convention
1925 Agreement
1931 Agreement
1946 Protocol
1948 Protocol

- (b) To simplify the existing international control machinery by C.3

- (i) replacing the existing three specific organs exclusively C.4
concerned with the control of drugs (Commission on

Narcotic Drugs, Permanent Central Board and Supervisory
Body) by two organs: The International Drug Commission
(a policy organ) and the International Drug Board (a semi-
judicial, administrative organ);

- (ii) by reducing the number of Secretariats from three to one. C.5

F.N. This simplification has already been partly
anticipated by the administrative fusion of the Secretariats
of the Permanent Central Board and of the Supervisory
Body.]

- (c) To extend and strengthen international control by C.6

- (i) prohibiting the non-medical use of opium, coca leaves C.7
which have not been "decocainized" and of Indian
hemp drugs. F.N. Reservations are permitted in regard
to temporary exceptions.]

/(ii) placing under

- (ii) placing under international control the cultivation C.8
of plants grown for the purpose of producing dangerous
drugs as well as the production of opium, coca
leaves, Indian hemp and of the resin of the Indian
hemp plant;
 - (iii) providing for total prohibition of very dangerous C.9
drugs which have no distinct medical value;
 - (iv) empowering the International Drug Board to confirm C.10
or amend the estimates;
 - (v) establishing an international clearing house for C.11
all international transactions in drugs.
- (d) To adjust the provisions for the international control C.12
of drugs to the economic and social changes of the last
decades and to the existing differences in the economic
and social structure as well as in the penal and
constitution systems of the countries of the world.
Provision for reservations also facilitates temporary
adaptation to particular difficulties in individual
countries.
- (e) To facilitate quick adjustment of international control C.13
to future changes.
- (i) by establishing a procedure for placing additional C.14
drugs under control, for exempting drugs from
control F.N. Similar procedures exist under the
present system and for modifying the control régime
applying to individual drugs;
 - (ii) by providing for faster procedures to amend the C.15
Convention itself.
- (f) To give more elasticity to the international control C.16
regime, regarding in particular,
- (i) the system of obtaining information necessary for the C.17
international control of drugs,
 - (ii) the organization of the estimates system, C.18
 - (iii) the differences in the control measures applying to C.19
individual drugs. F.N. The difference between drugs
of group I and group II is abolished. /(g) To realize

- (g) To realize economies by providing for co-ordination of C.20
the activities of various international organs
concerned with the control of drugs.

/P R E A M B L E

P R E A M B L E

1-2 Treaties usually begin with a preamble which refers C.21
to the treaty objects or purposes and which enumerates
the contracting parties, the names and titles of their
plenipotentiaries. In some cases this enumeration is not
included in the preamble, but placed at the end of the
treaty where the signatures are affixed. The enumeration
of contracting parties may be

- (a) an enumeration of heads of States, C.22
- (b) of the contracting countries, C.23
- (c) of the governments acting on behalf of their C.24
countries. Which of these methods of
referring to the contracting parties is
chosen, is, by itself, at present of no
importance from the viewpoint of inter-
national law and will depend on varying
circumstances particularly on the convenience,
from the viewpoint of their national
constitutions. of contracting countries.

The preamble usually also contains references to the C.25
full powers of the plenipotentiaries, to the examination,
communication, exchange or deposition of the full powers.

Some treaties do not have preambles, but all existing C.26
international instruments relating to the control of
narcotic drugs, use preambles F.N. Conventions of 1912,
1925, 1931, 1936, Agreements of 1925 and 1931 and Protocols
of 1946 and 1948.

If it is decided that the new single convention should C.27
have a preamble it might refer:

- (a) to the need of universal participation; C.28
- (b) to the social and humanitarian motivation of C.29
international co-operation in the field;
- (c) to the self-interest of the contracting C.30
countries in participation;

/ (d) to achievements

- (d) to achievements in the field since 1912; C.31
- (e) to the need for simplification of existing control machinery and legal provisions; C.32
- (f) to the need for improvement and for closing loopholes, particularly in view of scientific, technical and administrative progress; C.33
- (g) to the aim of the convention to ensure that the world medical and scientific requirements of the drugs covered by the convention are satisfied and that these drugs are not manufactured or used for any other purpose.

In view of the fact that the preamble is generally of limited legal importance and its drafting will hardly give rise to any great differences of opinion, it is suggested that the drafting should be left to a later period. C.35

3-22

Section 1

The definitions contained in this Section are not necessarily intended to be exhaustive

C.36

The following terms require explanations:

C. 37

9 Drug

10-11 Illicit traffic and illicit trafficker

12-15 Import, Export, International Trade.

(a) Drug:

C.38

The problems connected with defining the term "Drug" are discussed in the commentary notes on Section 3.

10-11

(b) Illicit traffic and illicit trafficker:

An alternative definition is offered for the term "illicit trafficker" which would exclude illicit traffickers who do not violate provisions of the Convention relating to the international or domestic control of the international trade in drugs. In this way Parties to the Convention would not be bound to apply the penal provisions relating to illicit traffickers (Section 40) to minor offenders who may have illegally obtained small amounts of drugs for personal use, i. e., governments would not be bound to prevent such offenders from escaping punishment because of territorial limits of criminal jurisdiction; e.g., if such a person committed the offence abroad, the country of refuge would not be compelled to prosecute, punish extradite or expel him.

This alternative definition is only applicable if the first version of the Penal Provisions of the Convention is adopted [Section 40, paragraph 1 (b)]

C. 40

12-15

(c) Import, Export, International Trade:

C. 41

The Convention is only incidentally concerned with the economic aspects of international trade. Export import and transit are looked upon as particularly dangerous occasions on which drugs may be diverted

/into illicit

into illicit channels. It is obvious that from this point of view, a consignment of drugs from one part of the territory to another not contiguous part of the territory of a State involves the same risks as a consignment from one country to another country. Although there may be no export in the economic sense in the former case, it would be desirable to submit both cases of consignment to the same measures of control i.e., to treat both of them as "exports" in the meaning of the convention.

In addition, several States are divided into separate entities for the purpose of international and domestic control of drugs. Movements of drugs from one such entity to another are therefore considered "exports" in the meaning of the Convention. C. 42

From the point of view of international control it would seem to be an ideal solution if the borders of such entities were to coincide with Customs lines no matter whether goods crossing such lines are subject to payment of duties or not. Any consignment with a destination beyond such Customs line would then be considered to be an "export" in the meaning of the Convention; e.g., a consignment from the United Kingdom to Kenya, from Metropolitan France to French Equatorial Africa or from West Pakistan to East Pakistan would be such export. C. 43

In view of the numerous varieties of the constitutional and administrative structure of States which have territories which are not contiguous, a solution on the lines proposed may meet considerable difficulties. The draft has therefore defined "export" to be a consignment to a destination beyond the border of a country or territory. At a later stage in the drafting of the new Convention when the opinions of the various governments will be available C. 44

it may be decided to adopt one or the other of the two following definitions:

(i) territory is any part of a country which is separated by Customs lines from other parts of that country (Customs lines are lines at which Customs inspection takes place); or

C. 45

(ii) territory is a part of a country which a State, in its discretion decides to treat as a separate entity for the purpose of the present Convention (estimates, export, import, special administration).

C. 46

In both cases (i) and (ii) "Country" would denote the whole area of the earth for which a State has international responsibility (or power to act under international law) in matters regulated by the Convention.

C. 47

In accordance with the definition chosen for the term "Territory" the terms "International Trade" or "foreign destination" as used by Section 35 paragraphs 14 and 15 would involve movement of drugs over a Customs line, or the borders of a country or territory as delimited by the State concerned

C. 48

The fact that a given movement of drugs between two territories of the same State would be considered an export or import in the meaning of the Convention, does not make such territories separate Parties to the Convention. It would be left to the central government to decide e.g., whether itself or the local authorities should submit the copies of applications for import or export authorizations, copies of the authorizations or copies of the records of the entry or exit of drugs etc., (Section 24) to the Board. The central government may reserve itself the exclusive right

C. 49

/of having contact

251,252

of having contact with the international control organs or with other States, of preparing estimates, reports etc., although such estimates and reports would be separate for the individual territories and the consignment of drugs from one territory to another of the same State would be considered to be "export".

24,26

Section 2 -- Substances under Control

It is suggested that Section 2 should enumerate all drugs, C.50 plants, parts of plants and substances, which it may be desirable to place under control at the time of concluding the new Convention. The substances which may be placed under control are divided into two groups:

- (a) drugs (Schedules A and C), C.51
(b) plants, parts of plants or substances (Schedule B). C.52

26,26

- (a) Drugs will be enumerated in Schedules A and C. C.53

If the chemical formulae are to be added to the enumerated drugs, constitutional (structural) formulae should be given rather than molecular formulae F.N. The molecular formula shows the number and kind of atoms in the molecule, but not their relation to each other. A constitutional or structural formula shows diagrammatically not only the number and kind of atoms in the molecule but also the relations of the atoms to each other in the molecule. The constitutional or structural formula takes up much more space but has the following advantages:

- (i) It is not ambiguous. (A given molecular formula, C.55 on the other hand, may apply to several entirely different substances.)
(ii) It gives information about the chemical relationship C.56 and properties of the compound depicted.

The 1925 and 1931 Conventions use molecular formulae. So C.57 does the 1912 Convention with regard to diacetylmorphine. Depending on the status of the work of the World Health Organization on the International Pharmacopoeia at the time of concluding the new Convention, references to this Pharmacopoeia may be substituted for chemical formulae.

In appropriate cases reference may be made in the C.58 enumeration to "salts", "alkaloids", "esters", "ethers", "derivatives" etc.

/Drugs are

- Drugs are divided into: C.59
- 24,350 (i) controlled drugs enumerated in Schedule A. The manufacture of and trade in these drugs is subject to all control measures provided for by the Convention except if otherwise expressly indicated; C.60
- 26,460 (ii) prohibited drugs enumerated in Schedule C. The manufacture of and trade in these drugs is prohibited except for small amounts for use in scientific experiments. C.61
- The prohibited drugs may be divided into two groups: C.62
- 26 (aa) Drugs which have no medical value other than obtainable from other less dangerous drugs, e.g., diacetylmorphine or Indian hemp drugs may belong to this category, if the opinion should prevail at the time of concluding the new Convention that either diacetylmorphine or Indian hemp drugs or both have no distinct medical value; C.63
- (bb) Drugs which shall not be in use at the time of concluding the new Convention and belong to definite chemical groups e.g., the (phenanthrene) alkaloids of opium or alkaloids of the coca leaf, or, if they shall not be found to belong to the category of drugs, mentioned under (aa) Indian hemp derivatives. Drugs belonging to such chemical groups may be considered to be "suspect" of such dangerous properties as justify their control or in some cases their prohibition.
- By limiting the prohibition provided for groups of drugs in paragraph 3 of Section 2 to drugs not in use on the day of concluding the Convention, the draft exempts from this prohibition: C.65
- (aaa) the drugs enumerated in Schedule A (Section 2, paragraph 1) which would be controlled but not prohibited and C.66

/(bbb) drugs

(bbb) drugs which, although already in use on the above-mentioned date are listed neither in Schedule A nor separately in Schedule C and would therefore be outside of the scope of international control, e.g. apomorphine.

Whenever a Party thinks that a prohibited drug has a distinct medical value, it would be in a position to initiate the procedure provided in Section 3; such procedure may lead either to the change of the status of the prohibited drug in question from that status to the status of a controlled drug (Schedule A) or to the total exemption from control of the drug concerned.

The wording of Section 2, paragraph 3, ensures that the prohibition does not impede scientific research in the drugs affected. This paragraph has no provision concerning the use of prohibited drugs. If such drugs should be found to have no medical value, their use for medical purposes would be prohibited by virtue of the clause of the draft limiting exclusively to medical and scientific purposes the use of all drugs within the scope of the Convention (Section 37, paragraph 1). If, on the other hand, the prohibited drug has medical value, although merely such a value as may be obtained from other less dangerous substances, the medical use of the drug concerned would be permitted. In this way the existing stocks of e.g. diacetylmorphine, might be consumed if it is found that diacetylmorphine has no distinct medical value and it is, therefore, decided to prohibit the manufacture of and trade in diacetylmorphine; but the distribution of diacetylmorphine for medical use would have to take place by other than trade channels.

It may be pointed out that by the procedure provided in Section 3, paragraph 1 (f) the sale of existing stocks of diacetylmorphine might be permitted.

/If, at

If, at the time of concluding the Convention, the opinion C.71 should be prevalent that the production of the resin and resin derivatives of the Indian hemp plant should be generally prohibited, special provisions would regulate this production for scientific purposes (Section 33, first version). Such special provisions, which would seem necessary in view of the connexion between the production of the resin and the cultivation of the plant, would prevail over the general provisions of Section 2 (paragraph 3).

In all cases in which the manufacture of and trade in C.72 "prohibited" drugs would take place (for use in scientific experiments) such manufacture and trade would be subject to the control measures provided for drugs included in Schedule A.

25,450

(b) Plants, parts of plants or substances are placed under C.73 control (Schedule 2) because without such control drugs which are obtained from them could not effectively be controlled.

The following plants are subject to differing control C.74 regimes, although these regimes are similar in some respects.

The opium poppy (Section 30) C.75

The coca bush (Section 32) C.76

The Indian hemp plant (Section 33) C.77

A special regime is also provided for the part of the opium C.78 poppy which is defined as "Poppy Chaff". It may be found in the future that certain limited control measures applicable to substances other than drugs are required for the effective control of drugs. The question of acetic anhydride F.N. U.N. Document E/1361 -- E/CN.7/186, p. 36/ indicates the kind of problem which may have to be faced.

Section 3 - Changes in the Scope of Control

27, 37 This Section provides for a procedure by which certain changes in the scope of control can be effected. The amendment procedure of Section 48 must be used when more far-reaching changes are intended. C.79

The following changes may be effected by the procedure C.80
mentioned in Section 3.

- | | | |
|----------|---|------|
| 28 | (a) Additional drugs may be controlled or prohibited (Additions to Schedules A or C) | C.81 |
| 29 | (b) Drugs which were already under control may be prohibited (Transfer from Schedule A to Schedule C) | C.82 |
| 31 | (c) Drugs which have the status of "prohibited" drugs may obtain the status of "controlled" drugs (Transfer from Schedule C to Schedule A) | C.83 |
| 32 | (d) Drugs may be exempted from all measures of control (Removal from Schedule A or C) | C.84 |
| 28,30,33 | (e) The control regime applying to individual drugs may be changed <ul style="list-style-type: none"> (i) either by adding control measures (ii) or by exempting from some control measures (iii) or by adapting the control measures to the particular conditions of the drug in question | C.85 |
| 30 | (a) Placing additional drugs under control or under a system of prohibition (Section 3, paragraph 1 (a)). | C.89 |
| 33 | | C.87 |
| 28,30 | | C.88 |

There are two main methods of placing drugs under control. Both are used at present on the national as well as on the international level

- (i) Enumeration. This method is applied in Section 2. C.91
 - (ii) Defining the drugs which it is desirable to place C.92
under control and conferring authority on national
(or international) organs to designate the substances
which fall under the definition.

It is suggested that it is very difficult, if not impossible, to evolve a definition suitable for the

purposes of the new International Convention. This is due to the fact that the drugs at present under international control do not have the same properties and that, on the other hand, certain substances having effects nearly identical with the effects of drugs under control are not wholly suited for the kind of control which is offered by the International Conventions relating to narcotic drugs.

From the viewpoint of their effects on human beings C.94 the drugs at present under control may be divided into three groups:

(aa) Drugs which in the case of withdrawal create C.95 in habitual users not only psychic craving (psychological dependence), but also a characteristic abstinence syndrome of organic origin which is manifested in distorted physiological processes (physiological dependence). Such drugs are entitled addiction-forming (addiction-producing). Morphine belongs to this group.

(bb) Drugs which create psychic dependence in their C.96 habitual users, but which do not create a physiological dependence as clearly demonstrable as it is in the case of withdrawal of morphine. Cocaine belongs to this group.

(cc) Drugs which create psychic dependence but no C.97 noticeable physiological dependence. Such drugs are entitled habit-forming. Marihuana belongs to this group.

Any general definition which limited itself to C.98 include only drugs which create both psychic and physiological dependence would omit drugs of group (bb) (e.g., cocaine) and certainly drugs of group (cc) (e.g., marihuana). Cocaine and marihuana are often considered even more dangerous than morphine.

Any definition which would include only C.99 addiction-forming drugs is therefore too narrow. On the other hand, it is also too wide because it would

include alcohol which may create psychic as well as physiological dependence and is often referred to in medical literature as an addiction-forming drug. It does not seem desirable to place alcohol or tobacco under the kind of international regime which was established for "narcotic" drugs. It is, of course, possible to declare that all harmful drugs which are addiction-forming, except alcohol, are placed under control; but such a definition would still exclude marihuana and, most probably, cocaine as well. F.N. This comment was made without the benefit of the opinion regarding definitions of the terms: "addiction-forming drugs", "habit-forming drugs" requested from the Expert Committee on Habit-Forming Drugs of the World Health Organization by the Commission on Narcotic Drugs. The comment may have to be modified in the light of the opinion of the Expert Committee. After the completion of this commentary the Report on the second session of the Expert Committee held in Geneva from 9 to 14 January 1950, (EB5/85, 17 January 1950) became available to the Secretary-General of the United Nations. The relevant terms were defined as follows: "Drug addiction is a state of periodic or chronic intoxication, detrimental to the individual and to society, produced by the repeated consumption of a drug (natural or synthetic). Its characteristics include:

- (1) an overpowering desire or need (compulsion) to continue taking the drug and to obtain it by any means;
 - (2) a tendency to increase the dose;
 - (3) a psychic (psychological) and sometimes a physical dependence on the effects of the drug.
- "An addiction-producing drug is one which produces /addiction as defined".

addiction as defined". The Committee suggested that the term "addiction-forming" should be replaced by the term "addiction-producing" and "that all available evidence at the present time indicates that any substance which will sustain an established addiction -- i.e. will adequately replace the drug which has produced the addiction -- must be considered as also capable of producing an addiction".

"A habit-forming drug is one which is or may be taken repeatedly without the production of all the characteristics outlined in the definition of addiction and not generally considered to be detrimental to the individual and to society".

Definition by reference to the "narcotic" C. 100 properties of the drugs would also be insufficient inasmuch as such a definition would include neither all drugs at present under international control nor some which it may be desirable to place under control in the future. "Narcotic" is defined as "having the effect of inducing stupor, sleep or insensibility". F.N. The Shorter Oxford English Dictionary (Third Edition)

There is no common chemical structure of the drugs C. 101 at present under international control or which it may be desirable to place under control in the future. Thus a definition based on reference to this structure and intended to define the substantive scope of control of the new Convention is also impossible.

The drugs placed at present under international C. 102 control have in common the following particulars:

- (aa) they are liable to create a psychic dependence of those using them "frequently"; C. 103
- (bb) / are harmful to habitual users, although the harmful effects of different drugs under control C. 104 are not all the same;
- (cc) they are suitable

(cc) they are suitable to international control C. 105
in general and for the control regime established
by the International Conventions relating to
narcotic drugs in particular;

(dd) the danger resulting from their misuse C. 106
is considered sufficiently great by governments
to outweigh, in their view, the administrative
burdens and other disadvantages connected with
control.

A definition based on these common features C. 107
would, however, have to be very wide, perhaps too
wide to assure the willingness of governments to
submit in advance to the decision of an international
control organ concerning the drugs which fall under
these categories.

The provisions of Article 10 of the 1925 Convention
and of Article 11 of the 1931 Convention, which C. 108
contain procedures for placing new drugs under
control, protect governments against the contingency
that they might be obligated, by a decision of an
international organ, to place under control drugs
which they think unsuited to such measure.

Article 1- of the 1925 Convention has a very wide
substantive scope. It requires, however, that to
be obligated by a recommendation to place an
additional drug under control any Contracting State
must first accept this recommendation. Article 11
of the 1931 Convention provides for decisions of
international organs to place new drugs under
control; these decisions are automatically
binding upon Contracting Countries. It limits
this authority, however, to closely defined
chemical groups. / F.N. The phenanthrene alkaloids
of opium and ecgonine alkaloids of the coca leaf. /

Contracting Parties did not, in this case, undertake any great risk of being bound to place under control a drug which they did not want to control.

The 1948 Protocol provides, on the other hand, C. 109 for decisions of the World Health Organization / F. N. And for provisional decisions of the Commission on Narcotic Drugs pending a decision of the World Health Organization / which may be concerned with drugs of an unlimited variety of chemical structures and which are automatically binding upon Contracting Countries, provided that the drug in question is liable to the same kind of abuse and productive of the same kind of harmful effects as the drugs enumerated in Article 1, paragraph 2 of the 1931 Convention. It may be observed, however, that the Protocol was an emergency measure. Some governments might well hesitate to accept, for the single Convention, the possibility of automatically binding decisions of international organs which could apply to drugs of such an unlimited variety of chemical structures.

The draft permits the control of drugs of an C. 110 unlimited variety of chemical structures, but provides for the following guarantees that such control would be limited to drugs generally recognized to be both dangerous and suited to the type of control offered by the Convention.

(aa) The decision to place a new drug under C. 111 control or under a system of prohibition is taken by the Commission on Narcotic Drugs, (referred to by the draft as International Drug Commission). Such a decision entails not only medical and pharmaceutical but also administrative problems. The Commission, being composed of government representatives, may be expected to have the practical approach necessary for the solution of / these problems.

these problems. The Commission is bound to consult the World Health Organization on the medical and pharmaceutical properties of the drug in question (Section 12, paragraph 2).

(bb) The decision of the Commission may be rescinded by the Economic and Social Council (Section 12, paragraph 1). C. 112

(cc) The decision is not binding upon any Party which rejects it (Section 3, paragraphs 3 and 4). C. 113

(dd) The Commission may control or prohibit only such drugs as are or may be liable to similar abuse and productive of similar ill-effects as the drugs enumerated in Schedules A and C (Section 1 (f)). It is conceded that this limitation may in the future lead to the exclusion of some drugs which it would be desirable to place under international control because they do not have ill-effects similar to those of the drugs of Schedules A and C. It cannot be excluded that such drugs will be developed in the future. If this should be the case, the drug in question can be added either to Schedule A or to Schedule C by the amendment procedures provided in Section 48.

The procedure for placing new drugs under control by virtue of Section 3 would extend to all drugs which are or may be liable to similar abuse and productive of similar ill-effects as the drug newly added to Schedules A or C.

While the draft declares certain substances to be drugs, it does not circumscribe the groups of substances which, in addition to these drugs must also be controlled, but merely

/circumscribes the group

circumscribes the group of substances from which substances may be selected for control by the procedure provided in Section 3. One may say that the draft has adopted the method of defining by procedure.

- 29 (b) Prohibition of drugs which are already under control (Transfer from Schedule A to Schedule C). C. 116

Such a decision would be taken only if the drug to be prohibited, has no medical value or no distinct medical value which cannot be obtained from other less dangerous drugs. The decision that the drug concerned has no medical value or no such distinct medical value would be based on generally accepted medical doctrines and not on controversial theories. This would be assured by the following procedural features which would apply to the prohibition of drugs:

- the decision of the Commission to prohibit a drug can be C. 118

- (i) rescinded by the Council; C. 119
(ii) rejected by any Party which does not want to be bound thereby. C. 120

- 31 (c) Transfer of a drug from the list of prohibited drugs (Schedule C) to the list of controlled drugs. C. 121

The Commission is authorized to effect such transfers. Such a decision not being onerous, i.e., not involving more burdensome obligations, is not subject to rejection by the Parties. The decision is not binding, however, but merely permissive. The decision to lift the prohibition of a drug may, however, be rescinded by the Council (Section 12, paragraph 1).

- 32 (d) Prohibited or controlled drugs may be exempted from all measures of control. C. 123

The authority of the Commission to free drugs from all control is wider than the authority of the World Health Organization to exempt preparations under Article 8 of the 1925 Convention. A decision of the Commission to exempt a drug from control C. 124

- (i) would require consulting the World Health Organization (Section 12, paragraph 2) C. 125
- (ii) may be rescinded by the Council (Section 12, paragraph 1); C. 126
- (iii) may not be rejected by the Parties, because it does not involve more burdensome obligations (Section 3, paragraph 5); C. 127
- (iv) is not binding, but merely permissive (Section 3, paragraph 5); C. 128
- (v) may, as all the other decisions taken under the provisions of Section 3, apply to the drug concerned in all its forms or only to designated mixtures or forms (Section 3, paragraph 2).

It may be necessary for the Commission to prepare, even before the Convention is concluded, a list of preparations which should be exempted under the new Convention. Such a decision of the Commission would be based on observations made by Governments on this point and might by transitional provisions, be declared to be a decision in the meaning of Section 3, paragraph 1 (e). C. 130

28,30,33 (e) Change of the control regime applying to individual drugs. C. 131

At present the various control regimes applying to different kinds of drugs cannot easily be adjusted to changing circumstances. Drugs placed under the regime applying to the drugs of Group II /F.N. co-deine and dionine⁷ of Article 1 (2) of the 1931 Convention by virtue of its Article 11 may be transferred to the regime applying to drugs of C. 132

Group I and vice versa. The same change of régime is possible for drugs placed under control by virtue of Article 1 of the Protocol of 1948 [F.N. Art. 3].

On the other hand, no change from one group to another is possible for drugs originally assigned to Group I or II by Article 1 of the 1931 Convention. No other modification of the conventional régime -- as distinguished from exemption from control -- is provided by the present Convention.

It may, in particular, be pointed out that the division into drugs of Group I and drugs of Group II is not taken over by the draft Convention. The control measures from which a given drug is to be exempted are not considered in terms of rigid régimes, but only on the individual merits of the drug involved. The draft also abolishes the difference between drugs which are dangerous because they are addiction-producing (habit-forming) by themselves [F.N. Drugs of Group I sub-group (a) of Article 1 (2) of the 1931 Convention. The term "addiction-producing" is used in connexion with this discussion of drugs of Group I and Group II in the sense in which it is used in Article 11 of the 1931 Convention, i.e., in the sense of having harmful effects equivalent to those of morphine and cocaine], and other drugs which are merely convertible into addiction-producing (habit-forming) drugs and considered dangerous for that reason. [F.N. Drugs of Group I, sub-group (b) and drugs of Group II of Article 1 (2) of the 1931 Convention]. This distinction, by itself, may be found insufficient to determine the rigidity of the control régime to which the drug concerned should be subjected. Even the present Convention places some drugs which were thought not to be addiction-producing but convertible into such drugs in Group I,

while other drugs of the same nature which are very widely used in medical practice are placed in Group II. In fact, slightly addiction-producing drugs may be less dangerous than drugs which are not addiction-producing by themselves but very easily convertible into drugs of great addiction-producing properties. Furthermore, it will be very difficult to place under control synthetic drugs which are not addiction-producing by themselves, but convertible into such drugs C.F.N. See statement of the United States representative at the fourth session of the Commission on Narcotic Drugs; U. N. document E/CN.7/SR.W.93 page 47. If the special treatment suggested in this draft for (phenanthrene) alkaloids of opium and alkaloids of the coca leaf (Section 2, paragraph 3, Schedule C) is adopted, it may be assumed that the elastic rules of the new Convention will generally result in the control of such alkaloids, which, although not addiction-producing in themselves, are convertible into addiction-producing drugs. Synthetic substances of the same nature, on the other hand, would only be controlled if the special circumstances of a given case justified such control. This might occur, e.g., whenever the synthetic substance concerned has no use outside the pharmaceutical industry.

In addition to the possibilities mentioned under C. 134
(b) and (c) C. 82 and C. 83. Section 3 facilitates the following modifications in the control regime applying to individual drugs:

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|--------|---|--------|
| 28,30 | (i) addition of control measures, | C. 135 |
| 33 | (ii) exemption from control measures, | C. 136 |
| 28, 30 | (iii) adaptation of control measures. | C. 137 |
| | (i) Control measures "within the framework of the present Convention" may be added to the regime applying to the drug concerned by virtue of Section 3. | C. 138 |

/Measures which

Measures which would not lie within that framework, might be added by the amendment procedure of Section 48.

Drugs having particularly dangerous properties which, however, do not justify total prohibition, may be placed under a more rigid regime than is generally required for drugs. Drugs exempted from some of the control measures of the present Convention, may, by virtue of Section 3, be subjected to all or some of the control measures from which they are exempted. Any addition of control measures may be rejected by any Party. C. 139

33 (ii) Section 3 offers the possibility of placing some drugs which may be considered less dangerous under a less rigid regime. Such drugs may in particular be exempted from control measures applying to the retail trade. Which drugs should be exempted from some control measures and what these control measures should be will depend on the observations of Governments on this point and on future results of medical research. A control measure from which a drug is thus exempted may be restored by a decision of the Commission; but such a decision would be subject to rejection by any Party in the same way as any addition of control measures. It may be necessary for the Commission to decide on the control measures from which designated drugs should be exempted even before the new Convention is concluded. Transitional provisions may stipulate that such a decision be considered to have been taken under Section 3, paragraph 1(f). C. 140

28,30 (iii) The Commission may "adapt" the control measures of the Convention to the particular circumstances of the drug in question. Such adaptation must not C. 141

adaptation must not, however, involve the imposition of a new control measure outside "the framework of the present Convention". Such imposition would require a resort to one of the amendment procedures provide by Section 48. It would not make any difference, however, if the adaptation amounted to the addition of control measures "within the framework of the present Convention", because such addition would be subject to the same procedure under Section 3 as the adaptation.

33

C. 142

The changes in control which may be brought about by virtue of Section 3 do not apply to plants, parts of plants or substances (Section 2, paragraph 2), except in so far as they may be exempted from some control measures applying to them. Other changes in their control may be brought about only by resort to one of the three amendment procedures of Section 48.

Each individual plant, part of plan or substance would, under the provisions of the new Convention, be subject to a specific regime. There would, furthermore, be serious objections to an extension of international control to additional plants by resorting to the procedure under Section 3.

C. 143

35,36,37,64-66

C. 144

Each decision of the Commission under this Section, including those placing additional drugs under control, may be rescinded by the Council and, if onerous, be rejected by each Party which desired not to be bound thereby. It is, thought, however, that this does not involve a step backwards in relation to the procedures of Article 11 of the 1931 Convention and of Article 1 of the 1948 Protocol. The phenanthrene alkaloids of opium and the ecgonine alkaloids of the coca leaves which may be placed under control under the provisions of Article 11 of the 1931 Convention would, under the new Convention, be under control because they would

/either be enumerated

either be enumerated in Schedule A, i.e., controlled, or included in Schedule C, i.e., prohibited (Section 2, paragraphs 1 and 3). In fact the solution offered by the draft would be much closer to the "May Proposal"

[F.N. League of Nations Document C.509.M.214.1931.XI., V.I, p. 301], than paragraph 1 of Article 11 of the 1931 Convention. The original "May Proposal" provided that all alkaloids and derivatives of opium, of the coca leaf and of all other substances mentioned in Article 4 of the 1925 Convention should be under control unless and until the competent international control organ (at that time the Health Committee of the League of Nations) decided that the drug in question "cannot give rise to the drug habit". Any phenanthrene alkaloid of opium or ecgonine alkaloid of the coca leaf which would be in use at the time of the conclusion of the new Convention and which it would be desirable not to place under control, would not be enumerated in Schedules A or C. It has been pointed out that the general reference in Schedule C, i.e., the schedule of prohibited drugs, to the phenanthrene alkaloids of opium and to the ecgonine alkaloids of the coca leaf, would exclude alkaloids already in use at the time of concluding the new Convention

[F.N. See Commentary Notes relating to Section 2, paragraph 3]. Such drugs as apomorphine would therefore be exempted.

If the procedure proposed in the draft for placing new drugs under control is compared with the procedure provided by the 1948 Protocol, it may be questioned whether the right of Governments to reject the decision of an international organ to control a new drug would in practice really affect the universal acceptance of such a decision. C. 145

The proposed procedure, taking into account the interests of the community of nations, attempts to establish between the rights of a single Party to the

new Convention and the powers of an international control organ, a balance which neither could disregard or disturb without exposing itself to serious criticism for impairing the functioning of the control and the effective application of the Treaty in general. A government would hardly take it upon itself to reject the decision of an international organ to submit a dangerous drug to control if it had to do so by positive action and not, as at present under the terms of Article 10 of the 1925 Convention, by mere inaction. On the other hand, it may be assumed that the right of a Party to reject a decision of an international organ to place new drugs under control would constitute a check on the powers of this organ and might result in enhancing the quality and also the prestige and the authority of its decisions. It may also be mentioned that the constitutional powers of international organs cannot always be established in accordance with abstract principles of perfection, but must take into account conditions existing at the time of preparing the draft Convention. As mentioned above, the machinery provided under the new Convention would provide a quick adaptation of the control system to changed conditions.

Decisions taken under Section 3, which would not be onerous, would have no obligatory character.

There is therefore no provision made for their rejection by the Contracting Parties.

C. 146

38-53

Sections 4 and 5

38 The existing international instruments have the same general aim; the purpose of international control under these instruments is described "to limit exclusively to medical and scientific (legitimate) purposes the manufacture, import, sale, distribution, export and use of the substances" under control F.N. Art. 5 of the 1925 Convention, Art. 9 of the 1912 Convention and Art. 6 of the 1931 Convention⁷. No equivalent phrase is used in connexion with raw opium. Governments are, however, required "to ensure the effective control of the production, distribution and export of raw opium" F.N. Art. 2 of the 1925 Convention, Art. 1 of the 1912 Convention; see also Art. 11 of the 1925 Convention for the duty to "exercise an effective control of such a nature as to prevent the illicit international traffic in Indian hemp and especially in the resin"⁷. The present draft, theoretically, leaves the door open for a limited control of certain substances which may also be used in technical processes other than the manufacture of drugs, whenever such control is deemed to be both necessary and reasonable for the control of dangerous drugs themselves. It would not be feasible to limit the manufacture and use of or trade in these substances to medical and scientific needs. Furthermore, the opium poppy, coca leaf and Indian hemp plant are also grown for other purposes than that of obtaining dangerous drugs. It is, naturally, not suggested to exclude the cultivation of these plants for, e.g. industrial and culinary purposes, i.e., for other than medical and scientific purposes.

It is therefore proposed that the general purpose of international control should be defined in terms of its final aims and not in terms of intermediary objectives. Consequently the Preamble will emphasize the positive aspect of any control of drugs, i.e., to ensure sufficient supplies for medical and scientific requirements. Section 4 stresses the negative aspect of preventing the misuse of drugs and of plants, parts of plants and substances from which drugs are obtained, to the detriment of human health. Wherever limitation of economic activities to medical and scientific needs is required to

/achieve

achieve this aim, the traditional formula: "to limit exclusively to medical and scientific purposes" is employed (Sections 30, 32, 33, 34, 35, 37; see also Section 23, paragraph 1).

It seems also desirable that the obligations of the Parties should be formulated in general terms to avoid dangerous loopholes which would be unavoidable in casuistic formulae. Although a general formula would perhaps not be particularly useful in national laws, it might be very helpful in international treaties; one must keep in mind that the treaty stipulations are directed at governments who are expected to carry out in good faith the obligations of their States.

C.149

Parties will have very wide discretion in carrying out their obligations under Sections 4 and 5. The required assistance to other States includes not only an obligation of police and other administrative co-operation, but also in general a duty to respect the laws and regulations of another State in so far as they relate to the control of dangerous drugs. Parties which refuse to control a drug suggested for control by the Policy-Making Body would still be obligated to permit exports of the drug involved to a country or territory which controls the drug only in accordance with the legal requirements of the importing country or territory (see Section 35, paragraph 2).

C.150

While Section 4 circumscribes the scope of the obligations of the Contracting Parties in general, Section 5 subdivides them into groups which are taken up separately in the draft or require special emphasis.

C.151

In view of the necessity of universal co-operation, States non-parties to the Convention are "requested" to carry out the provisions of the Convention. It is assumed that all States will become Parties. It was, however, considered necessary to anticipate that some States may temporarily not be Parties. Continuous political changes render such a situation unavoidable.

C.152

/Thought

Thought was also given to the possibility, inconsistent C.153 though it may be with the traditional conceptions of international law, that the Parties to the new Convention declare that the provisions of the Convention form universal world law binding upon Parties and non-parties alike. It may be contended that essential features of the new Convention, i.e., those which are taken over from the present international control system, reflect the general practice of States which is accepted as law, i.e., have become customary international law. It is not unusual that legal rules which have their origin in treaties, become customary law.

It was, however, thought that in the present circumstances C.154 it would be advisable to base the draft on traditional international law.

/Section 6

54-57

Section 6 - The International Control Organs

The draft maintains the present relationship between the international machinery for the control of drugs and the United Nations. The number of specific control organs is, however, reduced from three to two in accordance with the directives of the Commission on Narcotic Drugs and of the Economic and Social Council [F.N.] ECOSOC Resolution 159 (D); U.N. documents Nos. E/1065 p. 48; E/799 p. 267.

C.155

The number of Secretariats is reduced from three under the present Convention [F.N.] (1) Secretariat of the Commission, (2) Secretariat of the Permanent Control Board, (3) Secretariat of the Supervisory Body. This simplification has already been partly anticipated by the administrative fusion of the Secretariats of the Permanent Central Board and of the Supervisory Body [7] to one under the present draft.

C.156

The "International Drug Commission" is identical with the Commission on Narcotic Drugs of the Economic and Social Council. It has already been pointed out that the drugs at present under control are not all "narcotic" [F.N.] See Commentary Notes relating to Section 3[7].

C.157

The name "International Drug Commission" is therefore held to be more appropriate to the future functions of the Commission than the present name. If the Commission accepts this view it may recommend to the Council to change its name to "International Drug Commission". The international control organs enumerated in this section will be the only organs exclusively concerned with the control of drugs; but there will be other organs which will have certain functions in this field, e.g. the World Health Organization, (Section 12 paragraph 2, Section 14 paragraph 2); the General Assembly of the United Nations (Section 7, Section 12 paragraph 1, Section 48 paragraph 4 (b)); the Economic and Social Council (Section 12 paragraph 1, Section 14 paragraphs 2 and 4, Section 16). These and other organs may also have functions relating to the control of drugs which may be

C.158

based on the Charter of the United Nations or on other international compacts (e.g. the Universal Postal Convention).

58

Section 7 - Expenses of the International Control Organs

The General Assembly of the United Nations is the budget organ C.159 of the Convention [F.N. See also Article 17 (3) of the Charter of the United Nations].

59

Section 8 - Continuity of Function

It is generally accepted that the following organizational C.160 features of the Commission meet best the purposes for which it has been created:

- (a) the Commission on Narcotic Drugs is a separate, C.161 specialized commission of the Economic and Social Council;
- (b) the Commission is composed of government representatives C.163 of the countries primarily concerned.

In view of the fact that the Commission on Narcotic Drugs C.164 (International Drug Commission) is created under the provisions of the Charter, two alternatives were considered:

- (a) under the new Convention Contracting Parties who are C.165 also Members of the United Nations would undertake to exert their influence with a view to maintaining an International Commission in accordance with the organizational principles referred to above, or
- (b) at the Conference convened to conclude the new Single C.166 Convention would adopt a recommendation to the Economic and Social Council to the same effect.

The first alternative might have created a legal basis for C.167 block voting. The draft therefore, on the assumption that the International Conference called to conclude the Convention would adopt the recommendation suggested in the second alternative, did not provide for appointment and composition of the International Drug Commission.

In general it was considered unnecessary to include provisions C.168

/concerning rules

concerning rules of procedure, election of officials, tenure, frequency of meetings, location etc. It is believed that in the interest of greater flexibility the decisions on these questions by the Economic and Social Council or the General Assembly should in accordance with the present practice be left to the desirable elasticity. The Terms of Reference of the Commission may provide for the participation of a representative of the World Health Organization in the capacity of an assessor in the deliberations of the Commission.

In view of the necessity for a continuous functioning of the Commission and of its officers, provisions to assure this were included in the Convention itself. C.169

60

Section 9 - Privileges and Immunities

The provisions of the draft on privileges and immunities of government representatives serving on the Commission, their deputies, assistants and advisers, are justified on the ground that some Contracting Parties may not be Members of the United Nations. It was not held advisable to provide for immunities and privileges of the members of the Secretariat, in order to avoid creating for its staff a legal position different from that of other members of the Secretariat of the United Nations. C.170

The text of Section 9 is phrased in the same terminology as that of Article 105 (2) of the Charter of the United Nations / F.N. Article 105 (2) reads: "Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization".⁷ C.171

Careful consideration should be given, however, to the question whether it would not be more appropriate to make specific reference in the Convention to the privileges and immunities which both the government representatives serving on the Commission and the members of the International Drug Board should enjoy while exercising their functions under the present Convention. C.172

/In this connexion

In this connexion it will be observed that the Economic and Social Council by resolution 123 (VI) E of 2 March 1948 recommended "that Governments should extend to the members of the Permanent Central Opium 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". The relevant provisions of the Convention may be said to illustrate the principle set out in Article 105 of the Charter. C.173

The Part of this Convention most applicable to the government representatives serving on the Commission as well as to the members of the Board seems to be Article IV which provides for the immunities and privileges of representatives of Members of the United Nations. If the immunities and privileges granted by Article IV should specifically be accorded to the members of the Commission as well as to the members of the Board, these members would enjoy the following privileges and immunities while exercising their functions and during their official journeys: C.174

1. Immunity from personal arrest or detention and from seizure of their personal baggage; and in respect of words spoken or written and all acts done by them in the execution of their functions, immunity from legal process of every kind, which immunity shall continue to be accorded notwithstanding that the persons concerned have ceased to exercise their functions.
2. Inviolability for all papers and documents and the right to use codes and receive papers or correspondence by courier or in sealed bags.
3. The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions.
4. Exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the States where they are exercising their functions, or through which they are passing in the exercise of their functions.

5. The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.
6. Such other privileges, immunities and facilities not inconsistent with those specifically granted to them, as diplomatic envoys enjoy except that they shall have no right to claim exemption from custom duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales tax."

Provision would have to be made to ensure that, even in their C.175 home States members of the Board enjoy immunity for words spoken or written or acts done in their official capacity, and enjoy the privileges of the inviolability of their official papers, the right to use codes and receive correspondence by courier or in sealed bags and such other privileges mentioned in Article IV as are indispensable to the independent performance of their functions. The same would not apply to members of the Commission.

With regard to the exercise of the prerogative of waiver in C.176 connexion with the privileges and immunities of the members of the Commission and of the Board, it may be found opportune to grant this prerogative to the home States in so far as the members of the Commission are concerned in accordance with Section 14 of the Convention on Privileges and Immunities. In so far as members of the Board are concerned, this right of waiver may be granted to the Board itself.

If it is decided that the new Convention should make specific C.177 reference to the privileges and immunities to be accorded this may be done either:

- (a) by adopting a clause referring to Article IV of the C.178 Convention on Privileges and Immunities, with such modifications as may be desired; or
- (b) by specific enumeration of those privileges and immuni- C.179 ties enumerated in Article IV as should apply, with such modifications as appear desirable.

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Section 10 - Committees and Section 11 -

Voting on urgent matters

Delegation of powers to a committee as well as the possibility C.180
to vote by letter or other appropriate means of communication may
obviate the need for special sessions of the Commission and will
contribute to economy as well as efficiency in the international
control of drugs.

63-68

Section 12 - Decisions and Recommendations

The draft's procedural provisions relating to decisions or C.181
recommendations of the Commission ensure that:

(a) No decision or recommendation enters into force against C.182
the will of the Economic and Social Council of the United
Nations. In this respect the draft differs from the
existing Conventions in so far as the Commission is at
present independent in the performance of its functions
under the present Conventions, although in the perform-
ance of its Charter functions the Commission is, of course,
subject to the Council. It is held that the practical
value of a recommendation or decision of the Commission
such as provided under the draft Convention would be
seriously impaired if a majority of the Council members
were opposed to it.

(b) The agenda of the Economic and Social Council will C.183
often be relieved of matters pertaining to the control of
dangerous drugs if the Council so desires.

(c) The World Health Organization is consulted on technical C.184
or scientific problems within its competence.

(d) Whenever the Commission considers it desirable to C.185
obtain the express moral backing of the Economic and Social
Council and/or the General Assembly, it will be possible to
refer the problem in question to these organs.

It may be noted that the provisions of Section 12 apply also C.186
to decisions of the Commissions to amend the Convention in accord-
ance with Section 48(c).

69-94

Section 13 - Functions of the Commission and
Related Obligations of Parties

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| | The functions of the Commission under the draft Convention | C.187 |
| | may be summarized under the following headings: | |
| | (a) Collection of information | C.188 |
| | (b) Communication of information to Governments and publication of information | C.189 |
| | (c) Discussion and evaluation of the information at its disposal | C.190 |
| | (d) Legislative functions | C.191 |
| | (e) Powers of recommendation | C.192 |
| | (f) Participation in the enforcement procedure | C.193 |
| | (g) General clause | C.194 |
| 75-88 | (a) Collection of information (Section 13(b)) | C.195 |
| | The Commission is given general authority to require all information which might be necessary: | C.196 |
| | (i) for its own work; | C.197 |
| | (ii) for the work of the Board which is carried out in pursuance of the new Convention (Sections 14-26); | C.198 |
| | (iii) for the work of the competent organs of the United Nations (including, of course, the Commission), carried out under the terms of the Charter, which, although it does not expressly refer to the drug problem, includes this problem in its more general jurisdiction on social problems. | C.199 |
| 76-86 | The information may be obtained | C.200 |
| 87 | (i) from Governments (Section 13(b)(i)), or | C.201 |
| | (ii) in the cause of missions, which, however, cannot be undertaken without the consent of the Government concerned (Section 13(b)(iii)). | C.202 |
| 76 | (i) Governments may be approached for information: | C.203 |
| 88 | (aa) by a request of the Commission, | C.204 |
| | (bb) by a recommendation of the Commission which Governments are bound to consider favourably for compliance (Section 5). | C.205 |
| | /(aa) Without prejudice | |

(aa) Without prejudice to the generality of the right of C.206
the Commission to request information, Governments are in
particular bound to supply:

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|----|--|-------|
| 77 | (aaa) Annual Reports [F.N. See Art. 21 of the 1931 Convention.] | C.207 |
| 78 | (bbb) Laws and Regulations [F.N. See Art. 21 of the 1931 Convention and corresponding provisions in the other three Conventions.] | C.208 |
| 79 | (ccc) Reports on cases of illicit traffic [F.N. See Art. 23 of the 1931 Convention.] The draft gives the Commission the power to determine the kind of cases and their particulars which Contracting Parties should report. It is possible that such particu- lars might change with the changing circumstances of the international illicit traffic. | C.209 |
| 80 | (ddd) Statistical Information Under the present Conventions the Contracting Parties are bound to supply certain statistical information, partly on an annual and partly on a quarterly basis, no matter whether or not this information proved to be useful in the light of experience gained in the international control of drugs [F.N. Arts. 22 and 23 of the 1925 Convention; Arts. 13 (2) (c), 17 and Art. 22 of the 1931 Convention.] In addition, there exists the general obligation of the Parties to the 1912 Convention who did not become Parties to the 1925 Convention [F.N. Art. 31 of the 1925 Convention] to supply statistical information "with as many details and within a period as short as may be considered possible". [F.N. Art. 21 of the 1912 Convention] The draft Convention authorizes the Commission to request such C.213 statistical information for such periods as will be "necessary to enable the international control organs to fulfil their functions". What is "necessary" will depend on the status of the international control of drugs at the particular time in question. It is believed that this procedure will simplify the task of Governments and of the control organs. | C.211 |
- (ccc) Other trade

- 81-83 (eee) Other trade information. C.215
In this respect the draft adopts the existing provisions for the supply by Governments of information concerning the drugs which are manufactured or the manufacture of which has ceased, the names and addresses of the firms concerned etc. [F.N. Art. 20 of the 1931 Convention] Governments are also requested to furnish the names and addresses of authorized importers and exporters. It may be found helpful for police authorities to have complete up-to-date lists of all the legitimate importers and exporters and the Government monopolies concerned with international transactions in drugs [F.N. See also Art. 13(2) of the 1912 Convention]. C.216
- 84-85 (fff) Information on the administrative structure of national control. C.217
The draft confirms the existing practice. Exchange of information concerning the execution of treaty provisions relating to the establishment of a "special administration" was found to be very useful. Administrators are required to permit the export of drugs only to countries which have authorized their import. To this end, it is indispensable for them to know which officer or officials are entitled to authorize importation. If found useful, the Commission may, under the new draft, request the exchange of specimens of signatures of all national officials entitled to sign import or export authorizations. C.218
88. (bb) Information the supply of which cannot be requested but only recommended. C.219
It may be noted that the exchange of information of a scientific or technical nature cannot be "requested", but only "recommended". This course is suggested in view of the possibility that in exceptional cases very important national interests may render the communication of the C.220

information in question unfeasible.

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|-------|---|-------|
| 86 | The Commission may determine the time at which and the manner in which the information should be supplied. It may also request that Governments use the official forms distributed to them by the Secretariat (Section 13 (b) (ii), Section 28(f)). | C.221 |
| 93 | (b) Communication of information to Governments and publication. (Section 13(g)). | C.222 |
| | The Commission is in this respect entrusted with the power to make the necessary decisions. It should be remembered that these decisions of the Commission, as all the others, are subject to the final authority of the Economic and Social Council. (Section 12). | C.223 |
| 89 | (c) Discussion and evaluation. (Section 13(c)). | C.224 |
| | The Commission as the policy-making organ is, under the draft, authorized to discuss and evaluate the information at its disposal as well as any relevant problem. | |
| 70-74 | (d) "Legislative" functions. (Section 13(a)). | C.226 |
| | The Commission is, under the draft, also the "legislative" body of the International Control Machinery. It may | C.227 |
| | (i) extend control or prohibition to additional drugs or substances (Section 3, paragraph 1(a)(b)); | C.228 |
| | (ii) exempt drugs from control or prohibition (Section 3, paragraph 1 (d)(e)); | C.229 |
| | (iii) modify the control measures which apply to single drugs, groups of drugs (Section 3, paragraph 1(c)(f); Section 24, paragraph 6); | C.230 |
| | (iv) in general, amend the Convention (Section 48, paragraph 4(c)). | C.231 |
| | It is again emphasized that all these decisions of the Commission are subject to the superior authority of the Economic and Social Council (Section 12) and that all decisions which involve amendments of the Convention or | C.232 |

/ which are

which are of an onerous nature are subject to rejection by contracting countries. (Section 3, Section 48, paragraph 4(c)).

- 88,91,92 (e) Powers of Recommendation (Section 13(b)(iv);(e);(f)). C.233
The Commission is authorized to make such recommendations C.234
as it considers "useful for the execution of the present Convention (i.e. of the new single Convention) or of its aims". In addition to this general authority, the Commission is specifically authorized to make recommendations on
- (i) the exchange of information of a technical and C.235
scientific nature; (Section 13(b)(iv))
 - (ii) international research. (Section 13(e)) C.236
- 90 (f) Participation in the Enforcement Procedure C.237
(Section 13(d)).
- In principle, the Commission does not, under the draft, C.238
have any formal enforcement functions. If, in the view of the Commission, enforcement steps have to be considered, authority is expressly given to the Commission to refer the matter to the International Drug Board. Discussion of a matter by the Commission, a publication ordered or a recommendation made by the Commission will in many cases render any enforcement procedure unnecessary.
- 69-94 (g) General Clause. C.239
The Commission is authorized C.240
- 69 (i) to "consider all matters pertaining to the aims C.241
which this Convention seeks to achieve" (Section 13 first paragraph);
- 94 (ii) "perform such other functions under the Charter C.242
of the United Nations as the Council may direct"
(Section 13(h)). This clause is in substance identical with clause 2(e) of the present Terms of Reference of the Commission on Narcotic Drugs F.N. U.N.
Document E/C.S.7/47.

95-98

Section 14 - Composition

The semi-judicial and administrative body which is to replace C.243 both the Permanent Central Board and the Supervisory Body of the present control system, is called International Drug Board (Sections 1 and 6).

The provisions of the draft concerning the composition of the C.244 Board follow closely, and in part even literally, the existing stipulations of the 1925 Convention relating to the Permanent Central Board. F.N. Art. 19

The following changes are made:

- 95 (a) The number of the members of the Board is set at 9 instead of 8 as at present. C.245
- 97,98 (b) The draft maintains the requirement that the personal qualifications of the members of the Board should guarantee an impartial execution of their functions. Social and economic changes which have intervened since the adoption of the 1925 Convention were taken into consideration by the draft in its proposal that persons in government service be permitted to serve as members, provided that they do not hold any position which would endanger their impartiality. It is held that the draft adopts in this respect the existing practice as laid down by the interpretation given by the Economic and Social Council to paragraph 5 of Article 19 of the 1925 Convention, as amended. F.N. resolution 123 (VI) of the Economic and Social Council (Part D) adopted on 2 March 1948: U.N. Document E/750. But in another respect the draft goes further. It does not only exclude persons whose impartiality may be doubtful on account of the nature of the government positions they may hold, but also other persons who "engage in any activity which would be liable to impair their impartiality". C.246
- 96 (c) The draft took into account the interest of the World Health Organization in appointing technical members to the Board Documents E/1361; E/CN.7/161; it is suggested that this can be done by requiring that two members of the Board C.248

/should be chosen

should be chosen from a list of persons nominated by the World Health Organization.

Consideration was also given to the possibility of endowing C.249 the Board with a separate legal personality under the municipal law of the Contracting Parties and, perhaps, for some limited purposes also under international law. In this case the Board would be able to acquire separate property. It cannot be excluded that the Board may in the future be in a position to use such property to the definite advantage of the international control of drugs.

The legal character of the agreement relating to measures C.250 necessary to ensure technical independence would also be affected if the Board were to obtain a limited international personality.

The problem of endowing the Commission with a separate legal C.251 personality is similar.

Objections on grounds of principle may be raised to C.252 granting to organs of the United Nations a legal personality separate from that of the United Nations itself. It may be contended that in municipal as well as international law it is quite common for parts of a corporate body (State) to have a legal personality distinct from that of the body itself. If it should be found in the course of the discussions of the draft that the usefulness of the separate personality of the Board and/or the Commission justifies such procedure, it would not be impossible to override the objections of principle raised against such step.

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Section 15 - Terms of Office

The continuous functioning of the Administrative Body and of C.253 its officers seems particularly important in view of the increased responsibilities under the draft.

/Section 16

101

Section 16 - Dismissal of Members

The present Conventions do not provide for removal of unfit members of the Permanent Central Board or of the Supervisory Body. Fortunately, no case has arisen where a removal was necessary. In view of the fact that persons of great ability and highest character qualifications are needed for membership on these two bodies and will similarly be needed for membership on the proposed International Drug Board, it is held that lack of provisions for dismissal of an unfit member might cause serious inconvenience if and when the need for removal should arise. C.254

Thought was given to adopting the procedure provided by the Statute of the International Court of Justice for removal of a member of the Court who may be dismissed if, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions. [F.N. Article 18 of the Statute of the International Court of Justice]. It was found preferable, however, to give the power of removal to the Economic and Social Council. The following guarantees are given that no member should be removed for reasons other than those which would affect his technical competence or impartiality and particularly that he should not be removed for political reasons or to please special interests. C.255

(a) The Council cannot remove a member except on the recommendation of the Board itself, and C.256

(b) can take such measure only by a three-fourths majority. C.257

102,103

Section 17-Privileges, Immunities and Remuneration

See Comment on Section 9. C.258

102

The draft provides for an adequate remuneration of the members of the Board. The need for such remuneration is made much more urgent by the increased responsibilities which the Permanent Central Board undertook or will undertake under the terms of the 1948 Protocol and of the planned Interim Agreement on the Limitation of the Production of Raw Opium, and by those which the Board would have to undertake under the terms of the future Convention. It is

/believed that

believed that present practice notwithstanding there already exists under the terms of the 1925 Convention, a legal obligation on the part of the Contracting Parties to pay the members of the Permanent Central Board an adequate remuneration. It is essential that the selection of the members of the Board should not be restricted on account of the inability of a candidate to face financial losses or burdens due to the exercise of functions as a member of the Board. In other words, suitable persons without independent means of their own, should be enabled to serve as members on the Board F.N. See also resolution N 123 (IV), Part D: U.N. Document E/750/. The authors of the 1925 Convention were of the opinion that this remuneration should be at a high rate in order to attract men of the first class F.N. League of Nations Document, V.I. C.760.M.260.1924. XI.V.I.p.471; V.II.p.139/.

Section 18 - Rules of Procedure

(No Comment)

Section 19 - Delegation of Authority

106,107 and Section 20 - Voting on Urgent Matters

106,107 See Comment on Sections 10 and 11.

C.259

106 The International Drug Board may, in appropriate cases, delegate some of its powers to members of the Secretariat (Section 19). No provision is made for delegating powers of the Commission to members of the Secretariat (Section 10). Some of the functions of the Board relating to the Clearing House System (Section 24), e.g., the decisions whether a given export exceeds the estimates of the importing country may occasionally be of a routine nature and properly be left to the Secretariat. Such a decision may, in some cases however, involve legal problems and affect important economic interests. In such a case the authority of the Board itself should be enlisted. In the light of practical experience, the Board will be able to decide which of these decisions may properly be delegated to members of the Secretariat.

108

Section 21 - Decisions

Decisions of the Board in accordance with its semi-judicial character cannot be set aside as can decisions of the Commission (Section 12, paragraph 1). C.260

Section 22

(No Comment)

114-122

Section 23 - The Estimate System

The functions of both the present Permanent Central Board and of the Supervisory Body under the existing Estimate System are given to the International Drug Board. [F.N. The provisions of Article 21 of the 1925 Convention relating to non-binding estimates of imports for internal consumption were omitted as obsolete.] C.261

114

The Estimate System was extended to include raw materials and plants. In principle all economic phases relating to drugs or substances within the scope of the Convention were made subject to the Estimate System to the extent that both the particular phase falls under the control set up by the new Convention and the International Drug Board determines. This means that the Board cannot request estimates for economic phases or drugs which do not fall within the scope of the Convention, but may waive such estimates within the scope of the Convention if they are found unnecessary. C.262

The Convention of 1931 describes in detail the estimates which Contracting Parties undertook to supply. The draft leaves the decision on such details to the International Drug Board. It is held, however, that the present provisions also give considerable discretion to the Permanent Central Board which is authorized to draw up the form for the estimates. [F.N. Article 5(1) of the 1931 Convention] The inclusion of details in the text of the new Convention would entail the danger that items which should prove to be unnecessary in the light of experience could not be omitted. Parties are protected against undue burdens by the above-mentioned limitation of the discretion of the International Drug Board to such economic phases as are under the control set up by the new

/Convention

Convention and to the extent that they are under such control. For instance, the Board would not be entitled to ask for estimates of the area cultivated with opium poppy in countries which prohibit the production of raw opium. Under the draft, estimates of drugs to be manufactured, imported or exported may be requested, but it is believed that this does not entail an additional administrative burden. Any Government which limits its manufacture of drugs in accordance with the provisions of the 1931 Convention must estimate the amount to be obtained from manufacture and the amount to be obtained from imports for the satisfaction of its medical or scientific needs as well as the amount to be manufactured for exports. The starting point for these estimates of manufacture, export and import will be an estimate of the medical and scientific needs as under the present system.

The draft also leaves to the discretion of the International Drug Board the determination of the date on which the annual estimates must be furnished. The 1931 Convention established as that date 1 August of the year preceding that in respect of which the estimate was made. [F.N. Article 5(4)] Estimates under the new Convention would include not only manufactured drugs, but also the production of raw opium, coca leaves and Indian hemp. 1 August is not the most opportune date for the transmission of such estimates. The decision of the question as to whether different dates or one date should be set for different estimates is better left to the Board which might proceed in accordance with the circumstances prevailing at the time of the decision.

115

No changes are made in the existing application of the Estimate System to non-contracting parties. States which reject a decision of the Commission to place a drug under control (Section 3, paragraph 3) will have the position of non-parties in regard to that particular drug. [F.N. See, however, Section 35, paragraph 2]

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Supplementary estimates will be treated by the International Drug Board in the same way as are the original estimates. The Board may not only prescribe the form in which estimates have to be prepared and furnished, but may also request the use of official forms

to be distributed to Governments by the Secretariat in accordance with the directives of the Board. (Section 28(g)).

The difference in the margin allowed for drugs of Group I and those of Group II [F.N. Article 5(3) of the 1931 Convention] was eliminated as was the division of drugs into these two groups. If it should be found necessary that a larger margin be permitted for certain drugs, such a necessity may be taken care of in accordance with the provisions of Section 3 which permit the Commission to modify existing control measures, subject to rejection by Contracting Parties if the modification concerned is onerous.

120 While under the existing system the Supervisory Body may amend estimates only with the consent of the Government concerned [F.N. Article 5(6) of the 1931 Convention], the draft required that estimates (including supplementary estimates) be confirmed or, after consultation with the Government concerned, be amended by the International Drug Board. A limitation on this power of the Board is, however, established by the requirement that such amendment be made in accordance with any information or details obtained in the consultation. (Section 23, paragraph 7)

121 Estimates are binding, as they are under the provisions of the 1931 Convention. In this connexion, two alternatives are offered by the draft:

(a) "estimates, as confirmed or amended by the Board, shall be binding upon the Parties", or

(b) "estimates, as confirmed or amended by the Board, shall not be exceeded by the Parties".

(a) It is believed that in the case of the first alternative estimates would not merely be maximum amounts, which must not be exceeded by the Parties. Parties would in this case be bound to manufacture, import, etc., the amounts established by their estimates as duly established by the procedure under Section 23. It may be argued that planning on a world-wide basis would be facilitated if Governments were willing to adopt this view.

(b) In the case

(b) In the case of the second alternative, estimates would remain what they are under the present system: maximum amounts which must not be exceeded. In the case of both alternatives estimates would remain binding "unless or until they shall have been duly modified by supplementary estimates", i.e., by supplementary estimates confirmed or amended in accordance with the procedure provided for in Section 23.

C.273

122 The draft also gives greater discretion to the Board in the matter of publishing the estimates (Section 23, paragraph 9) than is at present given to the Supervisory Body [F.N. Article 5(7) of the 1931 Convention]. There is no obligatory requirement of issuing annually the "Estimated World Requirements of Narcotic Drugs" as must be done at present. The Board is required "to issue periodically at such times as it shall determine such information on the estimates as in its opinion will facilitate the execution by all States of the provisions of this Convention" (Section 23, paragraph 9). According to this provision the Board may continue to issue the traditional annual statement or may limit itself to publishing the import estimates of the importing countries or publish any other estimates. The Board needs discretionary power because some Governments may, for reasons of trade competition, object to the (early) publication of some estimates which were not furnished under the 1931 Convention.

C.274

The draft maintains, however, the annual comparison of the estimates with the statistical reports in order to ascertain failures of States to carry out their obligations under the Estimate System. [F.N. Compare Section 25 of the draft with Article 14, paragraph 3 of the 1931 Convention]

C.275

/Section 24

123-132

Section 24 - The International Clearing House

The draft provides:

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(a) for the requirement of approval by the Board of exports of drugs exceeding certain amounts (Section 24, paragraphs 4 and 5);

C.277

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(b) for a system of information by virtue of which an exporting Party may find out whether or not a given export exceeds the estimates of the importing country or territory concerned (Section 24, paragraphs 1-3, 7).

C.278

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(a) Exporting countries must not authorize an export of controlled drugs until and unless they are notified by the International Drug Board that the estimates of the importing country will not be exceeded by this export. Certain small exports are exempted from this requirement. Governments although not required to wait for the notification of the Board, would nevertheless not be permitted to authorize such small exports if they knew, or if, with the application of reasonable diligence, they could have known that the estimates of the importing country or territory in question would be exceeded. The International Drug Commission is authorized to modify the definition of exports which would be considered small exports, subject to rejection of onerous decisions by Contracting Parties (Section 24, paragraph 6; Section 3).

C.279

It is believed that delays in the execution of orders for dangerous drugs which may result from this system would not affect the expeditious drug supply of importing countries. The danger exists, however, that drugs may be imported in small amounts in order to evade the requirement of waiting for the notification of the Board. This may increase to some extent the administrative burden of international and national control and affect the usefulness of the new system.

C.280

123-127

(b) Governments are required to use three different types of forms which would be distributed by the Secretariat

C.281

under the direction of the Board:

- 124 (i) application for export or import authorizations; C.282
125 (ii) export or import authorizations; C.283
126 (iii) customs records of entry or exit of drug under control. (Section 24, paragraphs 1,2; C.284
Section 28 (f)).

Copies of each such application, authorization and C.285
customs record would be forwarded to the Secretariat for
use of the Board. It is in accordance with the actual
administrative practice of most countries that applications
for export or import authorizations be filed in several
copies and that the authorizations also be issued in several
copies. It is believed that no particular additional
burden will be imposed upon business men and national
authorities by the requirements listed under (i) and (ii).

Customs records of dangerous drugs crossing the border C.286
are maintained by some countries. It would be very helpful
in the fight against the illicit traffic if it could be
established which borders were crossed legally by a given
shipment of drugs.

The language problems resulting from the use of international forms C.287
are not considered to be very serious since effective customs control in any case requires some familiarity of customs officials with the languages used in international trade.

- 128,132 On the basis of these documents furnished by the Governments, C.288
the Board or the members of the Secretariat delegated by the Board
(Section 19) would be in a position to inform the government of an
exporting country or territory whether an intended or executed
export would exceed or exceeds the estimates of the importing
country or territory in question (Section 24, paragraphs 3 and 7).

If the clauses dealing with the Board's previous approval of exports C.289
are not accepted (Section 24, paragraphs 4, 5 and 6), the remaining clauses, which establish an International Clearing House

of export and import information (Section 24, paragraphs 1-3, 7) and are summarized under (b) C.278, C.281-7 would have the following effect. No difference would be made between large and small exports. Neither type of export would be permitted if the government of the exporting country knew or with the application of reasonable diligence could know that the estimates of the importing country in question would be exceeded. Application of reasonable diligence would require that, in cases which are not urgent and considerably doubtful, the Board should be asked whether the export under consideration would exceed the estimates of the importing country.

/Section 25

133-134

Section 25 - Report to the Council

In general, the provisions relating to the Annual C.290 Report of the Board follow the existing provisions F.N. Art. 27 of the 1925 Convention and Art. 14 (3) of the 1931 Convention. The annual analytical statement comparing estimates with statistics under Article 14 (3) of the 1931 Convention is, however, combined with the Annual Report to the Economic and Social Council which the Permanent Central Board has to make under Article 27 of the 1925 Convention. The requirement of an annual report to the Economic and Social Council is also in agreement with the position which the Council has as co-ordinating organ of all international economic or social activities F.N. Art. 64 of the Charter and Art. 63 (2).

The draft permits reports to the Council in addition to C.291 the annual report and Parties are bound to permit in their territories the unrestricted distribution of these reports.

135-146

Section 26 - Measures to Ensure the Execution of the Provisions of the Convention

The draft is guided by the same basic ideas as are the C.292 existing Conventions, i.e. that the main force behind the international control of drugs is the bona fides of the Parties to a treaty and the power of public opinion.

The measures which the Board may adopt to induce C.293 Parties to live up to their obligations under the new Convention and other States to respect the international control system set up by the new Convention may be divided into

136-143,

(a) measures intended to call certain facts to the C.294 attention of Governments and of the public,

146

(b) embargo measures.

(a) The measures intended to enlist the support of C.295 Governments, the Economic and Social Council and public opinion may be divided into two groups:

(i) Measures which

- 136-139, (i) Measures which do not necessarily imply a C.297
146 criticism of the Government concerned: request
for explanations; local inquiries which, however,
cannot be carried out if the Government concerned
objects, calling the attention of the Government
concerned to the matter either publicly or
confidentially; formal request for remedial measures.
- 140-143, (ii) Measures which imply censoring the Government C.298
146 concerned and should therefore be adopted only in
cases of some gravity. Such measures may only be
taken if the failure of a State to carry out
provisions of the Convention is seriously
impeding the control of other States or the
functioning of international organizations of
public law concerned with international
transactions in dangerous drugs, and if it can be
expected that the measure to be adopted will result
in improving the drug situation in the country or
territory concerned. The International Purchasing
and Sales Agency, which would be set up under the
planned Interim Agreement for the limitation of
the production of opium, would be such an inter-
national organization of public law.
Measures falling into this group are:
- 141 (aa) Calling the attention of the Parties and of C.299
the Economic and Social Council to the matter.
This can be done at present under § 24 (2) of the
1925 Convention in connexion with the recommend-
ation of an import embargo. Under the draft,
this measure may precede or even follow an embargo,
but is not connected with it. (Section 26,
paragraph 2 (a)).

/(bb) Formal Censure.

- 142 (bb) Formal Censure. (Public declaration). This C.300
is a measure of exceptional gravity and in some cases may be considered even more serious than the imposition of an embargo. (Section 26, paragraph 2 (b)).
- 143 (cc) Announcing the intention of imposing an import and/or export embargo. (Section 26, paragraph 2 (c)). The threat of the embargo will sometimes prove to be more effective than the embargo itself. In announcing the intention of imposing the embargo the Board may set a period within which remedial measures must be adopted if the embargo is to be avoided, either such measures as are found to be necessary by the Government concerned itself, or such measures as are specifically indicated by the Board. (Section 26, paragraph 2 (d)). C.301
- 144-145 (d) Embargo Measures. An embargo can be imposed only if the failure of a Government to live up to provisions of the Convention constitutes a danger to the population of other countries, is seriously impeding the control of drugs by other countries or by international organizations of public law concerned with the international transactions in dangerous drugs and if the embargo can be expected to be instrumental in improving the situation. C.302
- While the present Convention provides for import embargoes only F.N. Art. 24 of the 1925 Convention, Art. 14 of the 1931 Convention, the draft also permits export embargoes. In this way a much criticized discrimination against importing countries is eliminated. The close connexion which exists between statistical returns (quarterly and annual) and the imposition of an embargo under the provisions of Article 14 (2) (3) of the 1931 Convention is abandoned, as well as the limitation of the imposed embargo to the "currency of the year in question" which /also met C.303

also met much justified criticism. F.N. Article 14 (2) of the 1931 Convention

The institution of the so-called automatic embargo C.304
F.N. Section 14 (2) of the 1931 Convention was also not formally taken over because the substance of this embargo is preserved by the general obligation to avoid exports which would exceed the estimates of the importing country (Section 35, paragraph 2) and by the establishment of an International Clearing House (Section 24).

The effects of an import or export embargo may also be obtained if, as the draft permits (Section 26, paragraph 2, sub-paragraph (d) (ii)), the Board discontinues the distribution to the country concerned of forms of export and/or import authorizations. The draft provides that Parties undertake to permit the free distribution of publications which the Board may find necessary to issue in connexion with measures adopted under Section 26. This provision is also based on the belief that the strength of public opinion is one of the decisive factors in the effectiveness of international control of dangerous drugs. (Section 26, paragraph 3).

147-149

Section 27 - Single Secretariat

See Comment on Section 6

C.306

147-148

It is proposed that the Secretariat should be an integral part of the Secretariat of the United Nations, under technical and administrative control of the Secretary-General of the United Nations, i.e. subject to his orders and supervision.

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The Convention of 1925, as amended, provides F.N. Art. 20 C.307 that the staff of the Permanent Central Board shall be appointed by the Secretary-General of the United Nations on the nominations of the Board and subject to the approval of the Council. The draft does not impose such limitations on the power of appointment of the Secretary-General. This change is justified by the fusion of the Secretariats of the two control bodies. There have also been no limitations on the power of the

/Secretary-General

Secretary-General to designate the members of the Secretariat of the Supervisory Body. [F.N. Article 5, paragraph 6 of the 1931 Convention.] The staff members of the Secretariat will be required to have particular qualifications in order to enable them to efficiently discharge their duties in the highly specialized and technical field of the international control of dangerous drugs.

The agreement between the Secretary-General and the Board, C.308 intended to ensure its technical independence, may therefore provide for consultation of the Board in regard to the appointment and removal of members of the Secretariat.

It may be pointed out that in Chapter VIII - General Provisions-the draft refers to the Secretary-General and not to the "Secretariat" when assigning the ministerial functions relating to the signing, acceptance, denunciation and amendment of the Convention. These functions will be entrusted to the Department of the Secretariat of the United Nations which is in charge of such ministerial functions in general and need not be performed by a specialized division concerned with the international control of drugs.

C.309

150-167A

Section 28 - Functions of the Secretariat

The functions of the Secretariat may be divided into

C.310

150,153-
167A

(a) Secretarial functions necessary for the execution of the Convention. In this respect the Secretariat will be the Secretariat of the Commission and of the Board. (Section 28, paragraph 1, paragraph 2, (b) - (g)).

C.311

154

The resolution of the Economic and Social Council of 6 July 1949 (246 (IX)) authorized the Secretary-General of the United Nations to request Governments to furnish explanations and information necessary to enable the Commission on Narcotic Drugs to discharge its functions. The draft follows the idea expressed by this resolution when it establishes the right of the Secretariat to ask Governments to furnish explanations of,

C.312

/ or additional

or additional information regarding communications furnished by them under the provisions of the Convention (Section 28, paragraph 2 (c)).

156-166 Under the present system the Secretary-General is bound to C.313 communicate to Governments the texts of laws and regulations and annual reports as well as the particulars of each case of illicit traffic forwarded to him. [F.N. Arts. 21 and 23 of the 1931 Convention.] In the interest of greater simplicity and economy it was thought the Convention should authorize the Commission to direct the Secretariat to communicate to Governments summarized information rather than the full texts of all communications received. It would be simpler and cheaper, for instance, to inform the Parties that a given annual report contains in most or all sections the remark "nothing to report" than to reproduce such report in full (Section 28, paragraph 2 (e)).

(b) Secretarial functions necessary for the performance C.314 of functions relating to dangerous drugs under the Charter of the United Nations. In this respect the Secretariat plays the part of an ordinary division of the Secretariat of the United Nations.

152 (c) The task of facilitating the co-ordination of the C.315 activities of all international organs and specialized agencies which might have a bearing on the control of dangerous drugs. Decisions of such organs as the Trusteeship Council or activities of such organizations as the Universal Postal Union may be of this nature. (Section 28, paragraph 2 (a)).

The Secretariat is also the only organ which by its daily C.316 functioning can facilitate the co-ordination of the work relating to drugs which may be performed by various organs of the United Nations or by other public international organizations. This function of co-ordination is, however, of a secretarial and not of a policy-making nature. The policy side of this function would fall within the jurisdiction of the Commission.

The 1931 Convention had already entrusted the Secretary-General of the League of Nations with functions of co-ordination by providing that he should ensure close collaboration between the Permanent Central Board and the Supervisory Body.

C.317

F.N. Article 5, paragraph 6/

168-175

Section 29

The draft attempts to combine the provisions of the 1931 Convention ("special administration"), of the 1936 Convention ("central office"), of Recommendation I of the Final Act of the Limitation Conference of 1931 and of the proposal made in the Model Code by the former Advisory Committee on the Traffic in Opium and other Dangerous Drugs ("Single Authority").

C.318

F.N. Article 15 of the 1931 Convention; Articles 11 and 12 of the 1936 Convention; Section 1 of the Model Administrative Code to the International Opium Convention of 1925: League of Nations Document C.774.M.365.1932.XI., p. 19/

It is obvious that divided responsibility in regard to the fight against the illicit traffic in a given country may not only seriously affect the control in this country, but may also create considerable inconveniences to the control authorities of other countries or even endanger the effectiveness of their work. Co-ordination and some centralization of the functions relating to the control of dangerous drugs as well as specialization of the authorities concerned is therefore very important. Constitutional differences and differing administrative traditions may offer serious obstacles to a uniform execution of the idea of centralization, co-ordination and specialization. In view of these difficulties it may be necessary in the immediate future for some countries to base co-ordination of the various agencies traditionally concerned with different aspects of the fight against drug addiction on voluntary intra-office agreements which, in some cases may prove to be very effective. This does not mean that in such countries the aim of establishing one single, central and special

C.319

/administration for

administration for the control of narcotic drugs should be abandoned. This aim should be realized whenever possible. In view of these difficulties it is suggested that the draft should incorporate the existing stipulations and not in this respect aim at more far-reaching provisions. The provisions of the draft as well as the corresponding provisions of the 1931 and 1936 Conventions and those of Recommendation I of the Conference of 1931 for the Limitation of the Manufacture of Narcotic Drugs are sufficiently elastic to allow for the above-mentioned constitutional and administrative difficulties.

The draft shows no preference as to the type of governmental organ which should be entrusted with the control of dangerous drugs: Interior - Police; Finance - Customs; Health - Social; Agriculture (Cultivation) etc. C.320

Section 30 -- Limitation of the Production of Opium

(a) The Problem of Opium Smoking and Opium Eating. C.321

176

Cultivation of the opium poppy to produce opium for opium smoking and opium eating is not permitted under the terms of the draft. In so far as small amounts of opium may still be needed for the treatment of addicts to opium smoking at the time of concluding the new Convention, these amounts may perhaps be included in the amounts required for medical needs, provided that their use is justified by recognized standards of medical science and that it takes place on medical prescription and under medical supervision. It is suggested that no reservation is permitted in favour of opium smoking.

The case of the so-called semi-medical use of opium by eating is somewhat different. It is assumed that countries which, because of insufficient medical services feel compelled to permit this use, are engaged in a quick extension and improvement of their medical services. C.323

F.N. India has adopted a policy of abolishing the semi-medical use of opium within a period of 10 years, beginning in 1946: U.N. Document E/CN.7/SR.W.84, pp. 4-5. It may therefore be concluded that the quasi-medical use of opium represents a temporary exception which will soon be discontinued. It is consequently proposed

(i) on the one hand to prohibit the quasi-medical use C.324
of opium in the permanent provisions of the new
Convention and

(ii) on the other hand, in transitional provisions, to C.325
permit Contracting Parties to make reservations regarding
the quasi-medical use of opium provided

(aa) that they are made in accordance with C.326
paragraphs 1 and 2 of Section 50 of the draft and

(bb) that such reservations lose their force unless C.327
they are renewed by annual notifications which are made
to this effect and which are accompanied by a
description of the progress made in the preceding year

towards the aim of abolishing the quasi-medical use of opium as well as by an explanation of the continuing reasons for the temporary retention of this use. No reservation should be permitted regarding imported opium. F.N. The substance of these comments was reproduced in footnote 1 to page 26 of U.N. Document E/CN.7/AC.3/37

- (b) Regulation of Cultivation of Opium Poppy. C.328
- 177-180 The draft assumes that, in this respect, countries or territories fall into 3 categories: C.329
- 178 (i) Countries or territories which either by legislative or by administrative means (refusal to issue the required licences) prohibit the cultivation of the opium poppy for any purpose; C.330
- 179 (ii) Countries or territories which permit the cultivation of the opium poppy for industrial or culinary purposes but not for the purpose of producing opium; C.331
- 180 (iii) Countries or territories which permit the cultivation of the opium poppy for the production of opium. C.332
- 178 (i) Countries or territories which prohibit the cultivation of the opium poppy for any purpose will thereby, if the prohibition is enforced, have complied with the provisions of Section 30 of the Convention. The trade in opium will be subject to the provisions of the Convention relating to trade in drugs. C.333
- 179 (ii) Countries or territories which permit the cultivation of ^{the} opium poppy for industrial or culinary purposes, but which prohibit the production of opium are treated as the countries mentioned under (i). C.334
- 180 (iii) Countries or territories which permit the production of opium must: C.335

- 180,176 (aa) limit production to medical and scientific .336 requirements whether foreign or domestic;
- 181 (bb) establish a state monopoly involving: C.337
- 182,184 (aaa) licensing cultivators, areas of cultivation C.338 and allotting areas to cultivators of the poppy for the purpose of producing opium,
- 183 (bbb) designating state farms for this purpose, C.339
- 185,186 (ccc) establishing a government monopoly of C.340 international trade and domestic wholesale trade in opium and of maintaining opium stocks (excepting necessary stocks of manufacturers of drugs, medical practitioners and retailers);
- 187 (cc) concentrate in so far as this is feasible, the C.341 cultivation of the opium poppy undertaken for the production of opium in a strictly limited number of districts.
- 188 It was also assumed that countries are only permitted C.342 to exercise their right to produce opium if they can do so without causing injury to the health and well-being of the population of other countries. The draft contains, therefore, a clause to the effect that a Party is bound to prohibit the cultivation of the opium poppy whenever, by virtue of the conditions prevailing in any of its territories, such a measure seems necessary and can reasonably be expected in the international interest. The interest of the Party concerned in producing opium in the territory involved would have to be weighed against the interest of other States in prohibiting this cultivation.
- 189 It is believed that an international monopoly of public law C.343 for trade in opium is the most appropriate measure for preventing the diversion of opium into illicit channels. It is difficult, however, to evolve a scheme by which prices and ^{of opium} quotas could be fairly established for a long

/period. It

period. It will most probably be necessary, therefore, to renegotiate such agreements periodically. The draft requires all exporting and importing countries to use their best endeavours to arrive at agreements for the regulation of the international trade in opium with a view to establishing an international monopoly. Transitional provisions may stipulate that the agreement which may issue from the efforts undertaken by the Ankara meeting of the Ad Hoc Committee of the Principal Opium-Producing Countries (21 November to 7 December 1949 inclusive) is an agreement in the meaning of Section 30, paragraph 6, of the draft.

F.N. U.N. Document E/CN.7/AC.1/I

190,191

Section 31 -- Poppy Chaff

190

(a) It is assumed that the use of poppy chaff for purposes other than the manufacture of opium alkaloids (cattle fodder, stable litter) is not very important. In particular, poppy chaff destined for cattle use is not an item of international trade justifying the exemption of such chaff from international control. C.344

191

(b) The application of control to domestic transactions is required only in countries which use the chaff for the manufacture of the alkaloids. As long as the poppy chaff is in the possession of the original cultivator or of owners or managers of poppy seed mills, it will be very difficult to enforce control measures. Such measures may also not always be considered very useful. The draft, therefore, exempts from control poppy chaff which is in the possession of cultivators, or of owners or managers of poppy seed mills. C.345

192-206

Section 32 -- Cultivation of the Coca Bush

At the time of drafting Section 32 of the report of the Commission of Enquiry on the Coca Leaf [F.N. Resolutions of the Economic and Social Council Nos. 202 (VIII) and 246 (IX)] was not yet available.

The draft proceeds from two assumptions which may prove to be erroneous and which may either be abandoned or modified in the light of the report of the Commission. These two assumptions were therefore adopted as provisional working hypotheses.

(a) The habit of chewing coca leaves is harmful to human health and should therefore be suppressed; C.348

(b) In view of difficult social and economic problems involved a gradual approach to the suppression of the chewing habit is advisable. C.349

Of the three present uses of coca leaves C.350

(a) manufacture of cocaine, C.351

(b) flavouring of beverages, and C.352

(c) chewing, C.353

the first two uses are therefore considered permanent uses, while the third use (for chewing) is considered to be temporary. It is consequently proposed that the draft provide for the use of coca leaves in the manufacture of cocaine and other ecgonine alkaloids and for their use in the extraction of flavouring substances. Parties which desire temporarily to permit the chewing of the coca leaf would be permitted to make a reservation to this effect, in accordance with paragraphs 1 and 2 of Section 50, provided that they adopt the recommendations of the above-mentioned Commission of Enquiry. Transitional provisions providing for the possibility of such a reservation may also stipulate that this reservation loses its effect unless (i) it is annually renewed (ii) the renewal of the reservation is accompanied by a report on the measures taken during the preceding year for the suppression of the chewing habit and on the progress made in this matter, and by explanations of

/the continued

the continued need for the reservation. [F.N. The substance of these comments was reproduced in footnote 1 to page 27 of U.N. Document E/CN.7/AC.3/3]

194-206 The provisions for the control of the cultivation of the coca C.354 leaf are to a large extent literally the same as those providing for the control of the production of opium. They involve the establishment of state monopolies, and, under the stated conditions, the duty of prohibiting the cultivation.

193 The reference to the uprooting of coca bushes is motivated by C.355 the importance which bushes which are grown illegally may have for the supply of the illicit traffic.

Section 33 -- Prohibition of the Production of
Indian Hemp, Control of the Production of
Indian Hemp

207-225 The draft reproduces in substance the definition of "Indian C.356 hemp" which was given by the 1925 Convention with one modification: the reference to pistillate, i.e., female, plants was omitted because the resin may also be obtained from male plants. (Section 1 (j)).

The use of the term "Indian hemp plant" is sometimes limited C.357 to certain varieties of the plant Cannabis sativa L. As used by the draft the term "Indian hemp plant" denotes all varieties of Cannabis sativa L. The use of the term "hemp plant" although it is sometimes applied to plants which do not belong to the species "Cannabis sativa L.", may therefore be considered to replace "Indian hemp plant".

The control of the production of Indian hemp and of the resin C.358 of the Indian hemp plant offers great difficulties because many varieties of the Indian hemp plant yielding different amounts of resin, are spread over most of the world. Varieties of Cannabis sativa L. which would yield comparatively little resin are grown in many regions in which cultivators and the native population are not interested in the resin and do not try to extract it. Control

/measures would

measures would not only be found to be superfluous, but might also arouse interest in the resin and perhaps give rise to the spread of the habit of using Indian hemp drugs. It is indeed possible, on the other hand, that illicit traffickers will try to obtain the resin from Indian hemp plants grown in these regions whenever they are effectively cut off from the supply from the regions in which Indian hemp plants yield ampler amounts of the resin.

Without attempting to prejudice the possible results of future studies it is also assumed that the pith, lower stalks and roots of the Indian hemp plants yield no resin at any time during the growth of the plant; after the fruits are mature, capacity to yield resin disappears in the upper stalks. F.N. Report of the Marihuana Investigation (Summer 1937) of the U.S. Bureau of Narcotics, pp. 9, 12/. The seeds are assumed not to contain any resin or any of the dangerous habit-forming ingredients of the resin which can be exploited in practice. It follows that:

(a) the control of the production of the resin is much C.360 more difficult than the control of the production of opium which must be collected while the poppies are still standing in the fields, and

(b) a prohibition of removal from the fields of any parts C.361 of the Indian hemp plant except the mature stalks and seeds would in principle be desirable if it can be enforced and if it does not render the harvesting process uneconomical.

It may be that in this respect the situation is different in C.362 different regions and it is proposed that studies of the harvesting process, including on-the-spot studies, would be useful for an effective solution of the control problems concerned.

The provisions of the draft must therefore be considered C.363 tentative and subject to revision in the light of the results of such studies.

The draft proceeds from two different working hypotheses: C.364

- 207,217-225 (a) Indian hemp drugs are of no medical value, i.e., the C.365 effects obtained from the Indian hemp drugs may be obtained

from other drugs which are either less dangerous or at least offer a less complicated control problem. The first version of Section 33 of the draft proceeds from this hypothesis;

(b) Indian hemp drugs have medical value. The second C.366 version of Section 33 of the draft is based on this assumption.

In view of the fact that the present status of the study of C.367 the problem does not permit definite classifications of the varieties of the hemp plant which should be controlled, all varieties of the Indian hemp plant (Cannabis sativa L.) are covered by the draft.

217-225 It is also not possible at present to define in detail under C.368 what conditions measures such as the following are useful and feasible in a given country or territory: licensing cultivators of all Indian hemp plants totally prohibiting all cultivation of the Indian hemp plant, uprooting Indian hemp plants which grow wild, destroying Indian hemp (i.e., of the tops of the plant) by cultivators, prohibiting removal from the field of any part of the plant except the mature stalks and the seeds, concentrating cultivation in a limited region. The provisions of the draft in this respect are therefore sufficiently general to cover the different situations in different countries. It is assumed that countries should also be required to make reasonable sacrifices in the international interest. The draft therefore formulates two conditions for the obligation of a country to adopt any of the measures mentioned before:

(a) Such a measure must be necessary for the prevention of C.369 the diversion of Indian hemp drugs into illicit channels.

(b) Its adoption may reasonably be expected from the C.370 country in question; i.e., the opposing interests of the country concerned and of the international society of States must be weighed to determine what can "reasonably" be expected. It may be mentioned that one or several of

these measures have already been adopted by various national legislations.

212 If the production of Indian hemp and of the resin of the C.371
216 plant is permitted for medical purposes, the draft proposes that the producing country establish a complete state monopoly with the exclusive right of cultivating the Indian hemp plant for the production of Indian hemp, the exclusive right of producing Indian hemp and the resin, and of wholesale trading, in Indian hemp and the resin. This monopoly would also apply to keeping stocks with the exceptions listed in the draft. Although licensed private cultivation is permitted for the production of opium, it is thought preferable not to permit it for the production of Indian hemp and the resin owing to the fact that the resin can be obtained during the greater part of the growth of the Indian hemp plant, while opium can be gathered only during a limited period. Furthermore, if the resin is produced exclusively for medical needs its economic value is much less important than is the value of opium or coca leaves for the countries which produce and export opium or the leaves. While, in a producing country the wholesale trade in the resin would fall within the exclusive right of the state monopoly established by that country, the trade in the resin in non-producing countries would be subject to the provisions of the draft applying to the trade in drugs. The trade in galenical preparations may, if desirable, in producing and non-producing countries alike merely be subject to the general regime for drugs provided by the draft. Galenical preparations (extracts and tinctures of Indian hemp) as distinguished from "ordinary preparations of which the resin forms the basis (such as hashish, esrar, chiras, djamba). F.N. Article 11 of the 1925 Convention/ and which would be included in the term "resin", would, therefore, in this case be listed as a separate item in Section 1 (a) of the draft.

207 The first version of the draft -- i.e., the case in which the C.372
 medical use of Indian hemp drugs would be excluded -- permits the production of Indian hemp and of the resin under state supervision,

by a licensed scientific institute which needs the resin for scientific research. This privilege is based on the assumption that minimum amounts would be involved which, for reasons of economy, may not justify the establishment of a state monopoly.

It is proposed that whichever of the two versions is adopted, C.373
parties should be permitted to make a reservation in accordance
with paragraphs 1 and 2 of Section 50 regarding the temporary non-
medical use of domestic Indian hemp drugs, provided that the
reservation is renewed annually and that the annual notification
made to this effect is accompanied by a report on the progress made
towards abolition of such non-medical use in the preceding year and
by an explanation of the continuing reasons for the temporary
retention of such use. F.N. The substance of these comments
was reproduced in footnote 3 to page 34 of Document E/CN.7/AC.3/3/

Section 34

- 226-232 The draft attempts: C.374

227 (a) To take into consideration the changes which have C.375
taken place in the property structure of the pharmaceutical
industries in certain countries. In this connexion
attention may also be called to the recommendation of the
Conference of 1931 for the Limitation of the Manufacture of
Narcotic Drugs, that "Governments should consider the
desirability of establishing a State monopoly over the
trade in, and, if necessary, over the manufacture of, the
drugs covered by the (1931) Convention". F.N. Recommendation
No. IV of the Final Act]

227-231 (b) For countries where such changes have not occurred, to C.376
consolidate these provisions relating to the manufacture of
dangerous drugs which are contained in the 1912, 1925 and
1931 Conventions.

The provisions of the present Conventions regarding the duty C.377
of manufacturers to keep records F.N. Article 10 of the 1912
Convention, Article 6 of the 1925 Convention/ and to make
periodical reports F.N. Article 17 of the 1931 Convention/ are

/substantially taken

substantially taken over in the subsequent Section which will deal with domestic supervision (Section 39).

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| 231 | The draft also includes the existing provision <u>F.N.</u> | C.378 |
| | Article 16 of the 1931 Convention/ which intends to limit the size of the stocks of raw materials which may be held by manufacturers. A modification, however, is proposed for consideration. The limitation of the stocks shall apply only to such raw materials as are within the scope of the draft Convention. Such a change would be motivated by the fact that synthetic drugs may be manufactured from a wide variety of raw materials which by themselves would not be dangerous drugs and which it would not be practicable to place under control. | |
| | On the other hand, it is thought that some accounting control of these raw materials held by manufacturers of dangerous drugs in their quality as such manufacturers would sometimes be useful. | C.379 |
| | <u>F.N.</u> See comment on Section 2, paragraph 2/. | |
| | In two respects the draft goes beyond the existing Conventions, although not beyond the existing national practice of many countries: | C.380 |
| 230 | (a) by requiring periodical permits for the kind and amounts of drugs a manufacturer may make; | C.381 |
| 232 | (b) by requiring, if feasible, uniform standards for the composition and qualities of the drugs, for wrappings and for inscriptions; | C.382 |
| 230 | (a) Periodical permits: Such permits, on an annual, quarterly or even monthly basis, are required by many countries. They offer an effective means of keeping manufacture within the limits required by the present Convention; | C.383 |
| 232 | (b) Uniform standards: The draft offers for the consideration of Governments the suggestion that they should require manufacturers to make their drugs in accordance with national and international standards, and to use wrappings, labels and inscriptions in accordance with such standards. The 1931 Convention provides that the labels under which | C.384 |

/the drugs

the drugs are offered for sale should show the percentage of the drugs and should indicate the name of the drugs as provided for in the national legislation. F.N. Article 19; see also Article 8 (d) of the 1912 Convention. Opinion was sometimes expressed that such indication invites theft, if given on the exterior wrapping of drugs which are being shipped. It is therefore possible that standards may be set on international and national levels with consideration of these dangers.

Sections 35 and 36

- 233-257 These sections deal with the control exercised by national authorities over the international trade; the control exercised by international organs is the subject of Section 24 dealing with the International Clearing House System. F.N. See also Section 26/ C.385
- The existing import certificate and export authorization systems were taken over. The following modifications are adopted by the draft: C.386
- 246 (a) The distinction between an import "authorization" and an import "certificate" has been dropped. A copy of the import authorization serves the aims which were obtained by the import certificate. (Section 35, paragraph 9); C.387
- 256 (b) The draft does not provide for a diversion certificate. It is replaced by the export authorization to be issued by the diverting country. Diversions are -- as under the 1925 Convention -- treated as if they were exports from the country of transit to the country of new destination (Section 36, paragraph 3). C.388
- 247 (c) Consignments must be accompanied by an export authorization. A suggested alternative version provides that a copy of the import authorization must also be attached. The alternative version, if adopted, would take into account a proposal made by a member of the Commission on Narcotic Drugs at its fourth session F.N. E/1361, page 43/ (Section 35, paragraph 10). C.389

/(d) The use

- 245,248 (d) The use of international forms is prescribed for C.390 applications for import or export authorizations, for the authorizations themselves and for records to be made by all customs authorities of any entry or exit of drugs.
(Section 24, paragraphs 1 and 2; Section 35, paragraphs 8 and 11).
- 236 (e) Exclusive towns and ports of exit and entry are C.391 provided for all drugs and not merely for raw opium and coca leaves (Section 35, paragraph 4). F.N. Article 2, 8 (a) of the 1912 Convention, Article 3 of the 1925 Convention⁷.
- 252 (f) Under the draft, aircraft and ships will not be C.392 permitted to carry drugs with a foreign destination unless such shipments are accompanied by a copy of the export (and import) certificate F.N. E/1361, p. 43⁷ (Section 35, paragraph 15).
- (g) It is thought that provisions relating to the shipment C.393 of drugs by mail are better included in the Universal Postal Convention and Agreements supplementing the Convention. The existing clause F.N. Article 15 (5) of the 1925 Convention⁷ exempting transport of drugs by post from the provisions relating to transit of drugs need not be taken over.
- 253,250 (h) Provisions which were included in the Model C.394 Administrative Code to the International Opium Convention F.N. League of Nations Document C.774.M.365.1932.XI, p. 22⁷ were incorporated in the draft: seizure of consignments not accompanied by a copy of the export authorization; (Section 35, paragraph 16) prohibition of sending export shipments to a post office box or to a bank to the account of a third party. (Section 35, paragraph 13)
- 239 (i) The development of State trade in drugs which has taken C.395 place since 1925 was also taken into consideration by the draft. (Section 35, paragraph 6 (a))

/(j) The 1925

(j) The 1925 Convention frees countries from applying the provisions relating to transit of drugs in so far as such provisions are inconsistent with international agreements limiting the control which countries may exercise over goods in transit [F.N. Article 15 (4)]. It is proposed to include such a provision, if at all, in the transitional clauses rather than in the main part of the new Convention. Such transitional provision may read: "The provisions of the present Convention relating to the transit of drugs are without prejudice to the provisions of any international agreement which was concluded before [19 February 1925] [Date of signing the unified Convention] and which limits the control which may be exercised by countries over drugs, parts of plants or substances (Section 2) when in direct transit".

234

(k) The principle of respect for the control of foreign countries which is at the root of many provisions of the existing Conventions [F.N. Article 3, 8 (b, c) 13 of the 1912 Convention, Article 11, 12-18 of the 1925 Convention, Articles 6, 7, 8, 9 of the 1936 Convention] is generalized. (Section 35, paragraph 2).

In agreement with this principle a Party which shall have rejected a decision to place an additional drug under control (Section 3) will be bound in regard to such drug to comply with the International Clearing House System (Section 24), the Export and Import Certificate System (Section 35) and to respect the estimates of the importing country when exporting the drug concerned:

- (i) either to a Party which did not reject the decision to place the additional drug under control; or
- (ii) to any State whether Party or not which has supplied estimates of the drug concerned.

Section 37

- 258-267 The draft takes into consideration that since 1925 several C.401
260,263 state monopolies were established for the domestic trade in drugs.
- In regard to the private trade in drugs the draft adopts the C.402
existing provisions and
- 265 (a) limits the stocks which may be held by private traders, C.403
thus supplementing the provisions limiting the stock of raw
materials and drugs which may be held by manufacturers
(Section 34, paragraph 2 (d)). F.N. Article 16 of the
1931 Convention⁷
- 266 (b) formulates the provisions relating to wrappings, C.404
labels and inscriptions in more general terms than in the
existing Conventions (Section 37, paragraph 4 (b)).
F.N. Articles 4, 8 (d) of the 1912 Convention, Article 19
of the 1931 Convention⁷
- The draft provides that standards for wrappings, labels and C.405
inscriptions should be set by the Commission for international
transactions (Section 35, paragraph 3). The World Health Organization
is designated to set such standards for domestic transactions
(Section 34, paragraph 2 (e), Section 37, paragraph 4 (b)). This
jurisdictional distinction is motivated by the difference in emphasis
on the two main considerations which will determine the standards:
(i) protection of health, (ii) prevention of diversion into the
illicit traffic. The Commission, while setting the standards for
international transactions, will take into account the standards
prescribed by the World Health Organization (Section 35, paragraph 3).
- 267 (c) Expressly establishes the requirement of medical C.406
prescriptions (Section 37, paragraph 4 (c)).

Section 38 -- Possession of Drugs

- 268 The draft follows the principles adopted by the existing C.407
Conventions F.N. Article 7 of the 1925 Convention; see also
Article 11 of the 1912 Convention⁷. The groups of persons
authorized to possess drugs are defined.

Section 39

- 269-273 The measures of supervision listed in this section are C.408
 common to all economic phases which form the subject of control
 under the terms of the draft:
- 270 (a) Ensuring proper technical and character C.409
 qualifications of persons who desire to obtain or have
 obtained a licence required under the terms of the
 draft or who have managerial or supervisory functions
 in state monopolies;
- 271 (b) Requiring the maintenance of records: each C.410
 individual transaction would be recorded separately by
 the two parties to the transaction in question. The
 entry of one party could be checked by comparing it
 with the corresponding entry of the other party. This,
 of course, would not apply to entries of a medical
 practitioner which refer to dispensations to his own
 patients. Such entries may, if necessary, be checked
 by questioning the patients.
- It may be stated that this version adopts the actual C.411
 practice in many countries.
- Private producers of raw opium and of the coca C.412
 leaf may sometimes not be in a position to maintain
 records or make reports because they are illiterate.
 The draft, therefore, does not require private producers
 to maintain records or to submit reports (Section 39,
 paragraph 1(b)(c)). Such producers must surrender
 their opium and coca leaf crops exclusively to government
 agencies (Section 30, paragraph 3 and Section 32, para-
 graph 4).
- 272 (c) Requiring reports: The draft provides in a C.413
 general way that governments should require persons
 who are engaged in economic and medical activities
 concerning drugs to submit reports containing information
 necessary for domestic and international control. In
 this respect no substantive change is made from the present
 /situation.

situation. It is thought that the present Conventions imply such a general obligation of the Contracting Parties. In addition, the 1931 Convention provides F.N. Art. 17 that manufacturers should submit quarterly reports and that wholesalers report annually on the drug contents of preparations which were exported or imported without export or import authorization.

273

(d) Providing for inspection.

C.414

Section 40

274-301

The widely differing moral, religious and cultural traditions of the various national communities manifest themselves with great force in the differences which separate the systems of penal law, substantive and procedural, of the various nations. Hence the great difficulties, which assume the character of almost unsurmountable obstacles, of establishing universally applicable rules of penal laws.

C.415

Attempts to overcome these difficulties have been made on the one hand by providing rules which are broad enough to leave room for wide national differences, and which are therefore somewhat vague, and on the other hand by providing various escape clauses, to satisfy governments to which even these vague rules seem unacceptable. It is therefore not surprising that the Convention of 1936 fell subject to severe criticism and was ratified only by a relatively small number of countries F.N. As of 15 November 1949 there are 13 Parties to the 1936 Convention: U.N. Document 1949, V.97

In respect of the vagueness of its clauses, however, and of the various escape possibilities, which are to some degree unavoidable, the Convention of 1936 is not unique. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, has more recently incorporated some of the vague clauses and escape provisions which were criticized in the 1936 Convention.

C.416

The opinion may be held, however, that the 1936 Convention suffers from another weakness. If a given government does not desire /to apply

C.417

to apply any of the provisions mentioned in the Convention and serving the aims of the Convention (extradition, punishment of offences committed abroad either by nationals or foreigners, etc.), it is not bound, under the 1936 Convention, to apply other measures which would perhaps be consistent with its traditional legal principles, e.g., expulsion of the offender and his consequent compulsion to enter a territory in which his offence would be prosecuted.

Two versions of Section 40 are offered:

C.418

274-288 It is thought that the first version would eliminate this C.419

particular weakness. The first version requires that Parties should adopt such legislative and administrative measures as will ensure that illicit traffickers do not escape punishment because of lack of territorial jurisdiction (Section 40 (first alternative) paragraph 1(b)). It is left to the various Parties to choose the means to this end within the framework of their varying constitutional and penal systems. These means may be one, several or all of the measures suggested by the 1936 Convention and also referred to in this version, or may be still other measures. A Party which is, e.g., for reasons grounded on its traditional legal conceptions, unwilling to prosecute alien traffickers who have committed their offences abroad, would be faithful to its obligations under the first version of Section 40, if, by other measures not inconsistent with its legal traditions, e.g., by expulsion or deportation, it prevented such traffickers from finding refuge in its territory. [F.N. See Comment on Section 1(g)(h) Definition of the terms "Illicit Traffic" and "Illicit Traffickers"]

289-301 The second version of Section 40 incorporates the provisions C.420 of the 1936 Convention with such modifications as were considered opportune in the light of recent attitudes taken by governments towards similar problems. Formulations used by the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others were therefore taken into consideration. [F.N. U.N. Document A/C.6/L.102]

/Attempts

- Attempts were also made to achieve some simplification C.421
- 289-291 (a) The enumeration of offences falling within the scope of the Convention omits certain actions enumerated by the 1936 Convention such as "offering for sale", "brokerage", because they seem to be covered by the terms "accessory acts" to and "intentional participation" in the offences covered by the Convention. Such accessory acts and participation are generally declared to be punishable (Second Alternative of Section 40, paragraphs 1, 2(a)) [F.N. Article 2 of the 1936 Convention]. References to "conversion", "extradition", "preparation" are also omitted because such activities would be included in the term "manufacture" (Second Version of Section 40, paragraph 1; Section 1(m)). On the other hand such activities as "production" and "cultivation" were added to the enumeration in view of the extension of international control to the cultivation of certain plants and to the "production" (Section 1(q)) of certain raw materials (Second Version of Section 40, paragraph 1). [F.N. Article 2 of the 1936 Convention]
- 297 (b) The 1936 Convention contains two different articles providing for prosecution of offences: C.423
- (i) committed by nationals abroad [F.N. Article 7] C.424
- (ii) committed by foreigners abroad [F.N. Article 8] C.425
- The second version of Section 40 combines both provisions in one clause (paragraph 2(e)); if the part of this clause placed in square brackets should be omitted, offences committed abroad by foreigners would be excluded from the scope of the new Convention. Such a step is not suggested. This part of the clause has, however, been placed in brackets because of the deletion, by the General Assembly, of a clause which provided for the punishment of offences committed by foreigners abroad and which was included in the draft as submitted by the Economic and Social Council of the United Nations [F.N. U.N. Document A/C.6/L.102, p.8. Compare Annex to /resolution

resolution 243 (IX) of the Economic and Social Council (see Article 10) with the Convention as adopted by the General Assembly of the United Nations: U.N. Document A/11647.

The statement has been made that "a large majority of States recognizes only the principle of territorial jurisdiction or of jurisdiction based on the nationality of the offender" F.N. A/C.6/L88/Add.1 and A/C.6/L102, p. 8₇. At close scrutiny it may however be found that most States which generally base their criminal jurisdiction on these principles allow for exceptions in cases which they consider serious:

With but a few exceptions, national penal codes contain provisions which are based upon the conception that States are competent to legislate for the protection of their security and credit against injurious acts even though such acts are committed by aliens upon foreign territory. The basis of such jurisdiction is the nature of the interest injured rather than the place of the act or the nationality of the offender.

F.N. Harvard Draft Convention on Jurisdiction with Respect to Crime. American Journal of International Law, 1935 Supplement, p. 543₇

It may be contended, and not without reason, that the protection of the health of its citizens is an interest of such a nature as to justify a State to extend its jurisdiction to serious offences affecting this interest which were committed by foreigners abroad. Any objections which, on the basis of alleged principles of international law, foreign States may have to such an extension of jurisdiction to their citizens, would be eliminated by their consent to a convention permitting this extension. Since it is hoped that the new Convention will be universally accepted, it may be stated that no principle

/of international

of international law can be involved, at least not between the Contracting Parties. It is conceded, however, that strong resistance based on national legal traditions might be met. The draft therefore makes allowance for such traditional conceptions, but this is a concession motivated by practical rather than by purely legal considerations. In any case, the draft provides that Parties shall apply the measures enumerated in this section "within the framework of their different constitutional and legal systems". Parties which, for reasons of principle, do not want to prosecute foreigners who have committed offences abroad, need not therefore object to the clause providing for punishment of such foreigners.

(c) The provisions regarding the procedure of transmitting letters of request /F.N. Article 13 of the 1936 Convention⁷ were not taken over by the draft. It is admitted that direct communication between the competent authorities offers many advantages. It is thought that such a possibility is already to some extent covered by paragraph 2(b) of Section 29 providing for direct correspondence between the special administrations (central offices). It may be mentioned in this respect that the 1936 Convention provides that its procedure regarding the transmission of letters of request should not "be construed as an undertaking on the part of the High Contracting Parties ... to execute letters of request otherwise than within the limits of their laws".

/F.N. Article 13⁷

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/Section 41

Section 41 - Cure of the Drug Habit

The problem of treating the drug habit is highly controversial. The draft, therefore, in general does not deal with the persons who are victims of the drug habit. It cannot be excluded that studies at present in progress will facilitate a more comprehensive approach at the time of concluding the new convention.

The only problem the draft takes up in this respect is the question of the advisability of limiting the use of drugs in the cure of the drug habit to treatment in closed institutions. Section 41 is based on the assumption that some countries, although recognizing the need for treatment in closed institutions, do not yet dispose of the necessary institutional facilities.

Section 42

Conventions concluded under the auspices of the League of Nations, as were the Conventions of 1925, 1931 and 1936 on narcotic drugs, generally stated that the Convention in question was open for signature subject to ratification, signature being usually required within a certain time-limit, and that as from an appointed date the Convention was open to accession by States which had not signed it.

Under this procedure ratification of the Convention by the signatory States had to be effected by the deposit of formal instruments signed by the Head of the State. Accession had also to be effected by the deposit of an instrument signed by the same supreme authority. This procedure inevitably involved delays. For that reason, the League of Nations Assembly, in its resolution of 3 October 1930 relating to means of increasing the number of signatures or ratifications of or accessions to international Conventions concluded under the auspices of the League of Nations, contained a request to the Council to investigate to what extent it would be possible, in view of the constitutional law and practices of different States, to adopt

/the procedure

the procedure of signing instruments in the form of governmental agreements which are not subject to ratification and to follow that procedure whenever possible.

In this respect the United Nations, in the case of several Conventions and Agreements concluded under its auspices, including the Protocols on narcotic drugs of 11 December 1946 and 19 November 1948, adopted a simplified procedure and terminology. In these it is provided that a State may become party to an agreement, either by signature without reservation as to subsequent approval or acceptance, or by acceptance after having signed it subject to subsequent acceptance, or, lastly, by acceptance without first having to sign it.* As this procedure was found expeditious both in the case of the Protocol of 11 December 1946 and the Protocol of 19 November 1948, the Secretariat thought fit to suggest it for the present draft convention also.

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* This is the procedure followed by the United Nations in the case of eleven Conventions or Protocols concluded under its auspices. The classic procedure of signature followed by ratification and, after a certain date, by accession, was adopted in six other cases.

/Section 43

Section 43

- 9-310 The terms of Section 43, paragraph 1, reproduce those of Article 30 of the 1931 Convention and Article 6 of the Paris Protocol of 19 November 1948. It is intended to offer a double guarantee to Contracting States by both making the entry into force of the Convention dependent upon participation by a large number of countries, in this case twenty-five, and also stipulating that these countries shall include a certain number of States which are referred to by name and comprise the main producers and consumers. A similar clause in the Paris Protocol did not unduly delay the entry into force of the instrument, for this occurred on 1 December 1949, approximately one year after signature.

11 Section 43, paragraph 2, covers both the case of States which have signed or accepted the Convention without reservation as to acceptance after its entry into force or which do so within the thirty days between the date by which twenty-five States, including the five referred to by name, have signed it without reservation as to acceptance or have accepted it, and the date of its entry into force.

Section 44

- 312-313 The Commission is not unaware of the discussions which have C.438
repeatedly taken place in the United Nations concerning clauses similar to that contained in the first paragraph of this article. The Secretariat felt bound to include this provision so that it might be considered by the Commission, in view of the fact that the 1925, 1931 and 1936 Conventions and the 1948 Protocol contain similar clauses. The object of paragraph 2 of this Section is to cover the possibility of the administration of a territory being entrusted to the United Nations.

Section 45

314

Article 31 of the 1925 Convention stipulates that that instrument replaces, as between the Contracting Parties, the provisions of Chapters I, III and V of the 1912 Convention. Article 24 of the 1931 Convention stipulates that that instrument supplements the 1912 Convention and the 1925 Convention in the relations between its Parties bound by at least one of these latter Conventions. In fact, the 1925 Convention was superimposed upon the 1912 Convention and the 1931 Convention was superimposed upon those of 1912 and 1925. The position is slightly different as regards the new single Convention as it will replace the earlier Conventions and Protocols and not be superimposed upon them.

C.439

Over the years, ideas have changed concerning the conditions which have to be fulfilled before international treaties can be amended. Whereas in the past the opinion used to be that multilateral conventions could not be amended except with the unanimous consent of all the original Contracting Parties, the point has now been reached where the possibility of amending multilateral agreements with the concurrence of a more or less large number of the original Parties is admitted. Thus, in the case of the Protocols approved by the United Nations General Assembly, transferring to the United Nations functions previously exercised either by the League of Nations or by a particular Government, States which had not taken part in the conference of plenipotentiaries that drew up the original Convention, participated in the revision of the Convention. The Protocol of 11 December 1946 is an example of this procedure and it may therefore be concluded that in this respect the evolution has been sufficient to allow a conference of plenipotentiaries to amend a convention, when not all the original Parties to it are represented at the conference.

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Apart from the possibility of taking steps to revise a convention there is the question of the binding power of the amendments introduced vis-à-vis the original Parties. A similar development to that described above has occurred regarding the

C.441

/force of

force of amendments introduced, a development parallel to that of the possibility of revision. In the past, authority to revise was conditional upon the unanimous consent of the original Parties and then the entry into force of the amendments depended upon unanimous concurrence on the part of the old Parties. This rule has changed in the course of time and the modern view is that, even if the possibility of amendments coming into force as the result of a decision by a certain majority of the original Contracting Parties was not contemplated in the initial Convention -- and that was the case of the present international instruments on narcotic drugs -- that fact did not prevent these amendments from coming into force. But in this instance one firm principle has emerged, which is, that States which remain Parties to earlier instruments are bound by the texts of those instruments, without ipso facto being bound by the amendments.

Hence it is clear that, for a time at least, it will be C.442 impossible to avoid the parallel existence of the single Convention and the Conventions and Protocols which it is intended to replace. But it is also no less clear that the Parties to the Conventions and Protocols to be replaced by the single Convention which do not become Parties to the latter, will continue to be bound by the provisions of the earlier instruments. As this contractual position seemed obvious, it was thought unnecessary to include in this section a provision giving it formal expression.

Section 46

316

The aim of paragraph 1 of this Section is, firstly, to C.443 prevent any interruption in the international control of narcotic drugs immediately after the entry into force of the single Convention, and, secondly, to give the Council ample time to elect the International Drug Board as provided in Section 14 of the draft.

317

The object of paragraph 2 of this Section is to solve a C.444 major difficulty due to the fact that, at least for a fairly long period, the new single Convention and the earlier international instruments on narcotic drugs will exist side by side. This is

/inevitable

inevitable, as explained in the comments on Section 45. The 1925 and 1931 Conventions set up control organs -- the Permanent Central Board and the Supervisory Body -- appointed by special procedure. To maintain the supervisory bodies as established by these Conventions for the intermediary period and for so long as the new Convention has not been ratified by all the original Parties to the 1925 and 1931 Conventions, would lead to inextricable complications, for it would mean that in addition to the organs established by these Conventions there would be the new organs set up by the new Convention. Accordingly it is provided in Section 46, paragraph 2, that, on a date to be fixed by the Economic and Social Council, the new organ shall take the place of those established by the former Conventions and shall perform the functions prescribed by these Conventions with respect to States remaining Parties to them. In other words, this new organ will have a dual function: it will operate not only with respect to the Parties to the new Convention but also with respect to States which remain Parties to the earlier Conventions. The Protocol of 11 December 1946 provides a precedent for this procedure. This Protocol did not hesitate to amend the composition of the Supervisory Body as established by the 1931 Convention, and the Supervisory Body in its modified form has nevertheless exercised its functions since then with respect to States which have not acceded to the Protocol of 11 December 1946 and which are Parties to non-amended Conventions. This is justified not only on practical grounds but also in view of the universality of the Conventions on narcotic drugs (Article 26 of the 1925 Convention; Article 2, paragraph 3, of the 1931 Convention; Section 23 of the single draft Convention).

Section 47

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The Hague Convention (Article 25) and the 1925 Convention (Article 38) both provided that they could be denounced without prior notice and that such denunciation would come into effect one year after notification. The 1936 Convention set a time-limit of five years before the expiry of which it could not be denounced and a period of one year before denunciation became effective.¹¹ In Section 47 the system of the 1931 Convention and the Protocol of 19 November 1948 has been followed. Still, as it is proposed to make the procedure for amendment more flexible, in the present single draft Convention, it was thought that on the other hand the period of time which should elapse before the Convention could be denounced should be reduced from five to two years.

Section 48

The 1925 Convention does not contain provisions concerning revision. The 1931 Convention (Article 33) and the 1936 Convention (Article 25) provide that these Conventions may be revised as follows: any Party to the Convention may address a request for revision to the Secretary-General of the United Nations which the latter communicates to the other Contracting Parties, and if it is endorsed by not less than one third of them, the Contracting Parties agree to meet for the purpose of revising the Convention.

C.446

In fact this procedure has never been applied. The amendments necessitated by the transfer to the United Nations of powers exercised by the League of Nations under the international Agreements, Conventions and Protocols on narcotic drugs were made by the Protocol of 11 December 1946, following a resolution adopted by the United Nations General Assembly. The Protocol of 19 November 1948 used the same procedure to make the additions to the 1931 Convention.

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On the basis of the above precedents and the developments which have occurred in the technique for the amendment of international Conventions (see, for example, the relevant provisions in the Convention on Road Traffic) it was felt that the procedure for amendment could be made more flexible.

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320-330 The provisions contained in Sections 3 and 24 of the present draft were proposed with this end in view. These provisions, however, deal only with purely technical amendments to the Convention. For more fundamental revisions it seemed necessary to offer a choice of several possible procedures the use of which would depend on the scope or urgency of the amendments to be made. It was thought that the International Drug Commission would be the best judge in this matter. The members of the Commission and the Contracting Parties would have the initiative in the matter of amendments. When a proposal for amendment was placed

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/before it

placed before it, the Commission would first have to decide whether the proposed amendment came within the scope of the procedure described in Sections 3 or 24 of the draft Convention. If the Commission considered that it did not, three possible procedures were open to it: that proposed in Section 48, paragraph 4 (a) which is the classic procedure similar to that of Article 33 of the 1931 Convention and Article 25 of the 1936 Convention; that proposed in Section 48, paragraph (b), based on the precedents of the Protocols of 11 December 1946 and 19 November 1948; or, lastly, a new procedure under paragraph 4 (c), based on the recent developments in the technique for the amendment of international Conventions.

In the course of drafting this section, the Secretariat had contemplated an alternative text to that proposed in paragraph 4 (c). This alternative text provided that the International Drug Commission, by a majority of two thirds of its members present and voting, could adopt the amendment in the form proposed or in a modified form and decide to communicate it direct to the Contracting States; the amendment would enter into force with respect to all the Contracting States 180 days thereafter, unless twenty-five of the States notified the Secretary-General that they objected to it. If this procedure were found preferable a provision would have to be introduced in Section 12 of the draft to make Section 12 inapplicable to decisions taken by the Commission under Section 48, paragraph 4 (c).

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Section 49

331

Clauses similar to Section 49 appear in almost all the plurilateral Conventions concluded under the auspices of the United Nations, as in those concluded under that of the League of Nations. The expression "by negotiation or by another mode of settlement" covers inter alia the settlement of disputes concerning interpretation or application through the diplomatic channel and also through special agreements between the Parties concerning the settlement of disputes between them.

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The possibility was contemplated of introducing in this Section a provision under which questions of interpretation might be referred to, the International Drug Commission and the International Drug Board sitting jointly, the decision to be taken by a specified majority.

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Section 50

332-335

See comments on Sections 30, 32 and 33.

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Section 51

336-349

Similar clauses to those contained in this Section appear in most plurilateral Conventions concluded under the auspices of the United Nations.

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