PSYCHOTROPIC SUBSTANCES ACT OF 1973

REPORT

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

on

S. 1688

TO AMEND THE CONTROLLED SUBSTANCES ACT TO ESTABLISH A NATIONAL PROGRAM TO COLLECT AND DISSEMINATE INFORMATION CONCERNING PSYCHOTROPIC SUBSTANCES

MARCH 29, 1973

Printed for the use of the Committee on the Judiciary

PSYCHOTROPIC SUBSTANCES ACT OF 1973

HEARING

BEFORE THE

SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

Pursuant to S. Res. 56, Section 12

INVESTIGATION OF JUVENILE DELINQUENCY IN THE UNITED STATES

LEGISLATIVE HEARING ON MEASURES TO CONTROL INTERNATIONAL PSYCHOTROPIC DRUG TRAFFIC—S. 2544 AND S. 1646

FEBRUARY 25, 1974

Printed for the use of the Committee on the Judiciary

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PSYCHOTROPIC SUBSTANCES ACT OF 1973

MONDAY, FEBRUARY 25, 1974

U.S. SENATE,
SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee [composed of Senators Bayh, Hart, Kennedy, Burdick, Cook, Hruska, Fong, and Mathias] met, pursuant to notice, at 10:20 a.m., in room 2228, Dirksen Senate Office Building, Senator Birch Bayh (chairman of the subcommittee) presiding.

Present: Senators Bayh and Hruska.

Also present: John M. Rector, staff director and chief counsel; Mary K. Jolly, editorial director and chief clerk; Nancy L. Smith, research director; Catherine van de Velde, secretary; Alice B. Popkin, special counsel; Charles Kern, legislative assistant to Senator Fong; Betty Webb, minority clerk; and Chuck Bruce, legislative assistant to Senator Hruska.

Senator BAYH. We will convene our juvenile delinquency hearing this morning relative to the measures which are before the Subcommittee, S. 2544 and S. 1646 dealing with control of international psychotropic drug traffic. The hearing today is designed to give the committee and the Senate the background information necessary to move forward on the Convention on Psychotropic Substances and to ratify the Convention relative to psychotropic drug traffic.

I would like to insert in the record the text of the subcommittee's enabling resolution, S. Res. 56, section 12; the text of Public Law 91-513, the Comprehensive Drug Abuse Prevention and Control Act of 1970, dated October 27, 1970; the text of the legislation before us today, together with the Congressional Record statements made on the introduction of the legislation. S. 1646, the Psychotropic Substances Act of 1973, dated April 18, 1973 and S. 2544, the Psychotropic Substances Act of 1973, dated October 8, 1973; the text of Executive G, the Convention on Psychotropic Substances, dated June 29, 1971; and the text of S. 3118, the Psychotropic Substances Act of 1972, dated February 3, 1972.

[The documents were marked "Exhibit No's. 1 through 6" respectively and follow the opening statement.]

I will ask unanimous consent to put in the record an analysis of the problems which I intended to give as introductory remarks, but I think in light of the fact we have four high powered witnesses here, there is no need to keep them waiting.

[Senator Bayh's prepared statement is as follows:]

OPENING STATEMENT OF SENATOR BIRCH BAYH AT HEARINGS ON MEASURES TO CONTROL PSYCHOTROPIC DRUG TRAFFIC (S. 2544 AND S. 1646)

We meet today to consider legislation to permit the United States to comply with the provisions of the Convention on Psychotropic Substances, which is pending before the Senate Foreign Relations Committee. The aim of the Convention is to limit the manufacture, distribution and use of psychotropic drugs to legitimate medical and scientific purposes, and thereby curb unlawful diversion and illegal international traffic. These mind-altering drugs, including LSD, mescaline, amphetamines, barbiturates and tranquilizers, are not subject to international control under any of the existing multilateral opium and other drug treaties.

The structure of the Convention is similar to that of the Comprehensive Drug Abuse Prevention and Control Act of 1970, over which this Subcommittee exercises jurisdiction. It lists substances in four schedules depending on the extent of their abuse, their potential for abuse and the severity of dependence associated with their abuse. As under our domestic law, the Convention provides gradations of controls and a procedure for adding, shifting and deleting substances. The specific control measures which the Convention requires each Party to implement are largely satisfied by our present statutes. New legislation such as that we meet to discuss today, however, will be required to satisfy all commitments under the Convention.

In the 92d Congress legislation, S. 3118, was introduced, on behalf of the Administration, to accomplish similar purposes. That measure, however, was the subject of considerable debate. Some individuals, including my distinguished colleague from Iowa—Senator Hughes, expressed concern that the legislation did not adequately protect the confidentiality of patient records or the rights of drug researchers, but more importantly, that the health and scientific professionals were denied an affirmative role regarding control decisions. To meet these concerns and to ensure a more significant role for the Secretary of the Department of Health, Education and Welfare in the decision-making process, last April, I introduced S. 1646, the International Psychotropic Substances Act. In October, I joined Senator Hruska and other distinguished colleagues on the Judiciary Committee, in co-sponsoring a similar bill, S. 2544, introduced on behalf of the Administration. I am pleased that their legislation, now, also reflects a more balanced approach regarding the appropriate role of the medical and scientific communities in the control decision-making process. These are the two measures that we have under consideration today.

During my more than 3 years as Chairman of the Subcommittee, I have conducted an intensive investigation into the diversion and abuse of legitimately produced narcotic and non-narcotic drugs. We have been able to obtain a drastic, but necessary, reduction in the production of amphetamines. We secured more appropriate controls over the production and distribution of methaqualone—"sopors" or "quaaludes"—as well as most, but not all, of the widely abused barbiturates. These are important steps in curbing the diversion of legitimately manufactured drugs to illicit purposes.

Additionally, I have introduced legislation to require capsule and tablet identification (S. 984) and the incorporation of inert tracers in domestically produced bulk stimulants and depressants (S. 985). These measures are designed to assist law enforcement officers to identify and curb the diversion of domestic drugs. They will not, however, assist agents in their efforts to curb traffic in foreign made products such as the "Mexican reds"—containing European secobarbital—brought to the Subcommittee's attention in 1972 by John Ingersoll, former Director of BNDD, or the legitimately produced foreign methaqualone which according to testimony last March, was also being illegally imported into the United States for sale in the illicit market.

Thus, regardless of the success of our efforts to impose more adequate domestic controls on these and other psychotropic substances, the absence of international controls could defeat our main objective: to curb the illicit traffic and abuse of legitimately produced dangerous drugs.

The diversion of these drugs into channels other than legitimate medical, scientific, and industrial ones should be a primary concern for all our citizens. Even if the war on heroin addiction had in fact been won, the epidemic of drug abuse which plagues American society would not be vanquished; for the source of supply for growing legions of addicts and abusers—polydrug abusers who outnumber heroin addicts 17 to 1—is at its origin a legitimate one. These are not drugs illicitly grown in Turkey and refined in France, nor are they drugs illicitly grown and refined in Asia's Golden Triangle, but legitimately produced products, which when abused often results in tragedy.

The measures we consider today are not panaceas. It is hoped, however, that this legislation and the Convention will facilitate proper domestic drug control and be of assistance to other nations, whose legitimate production, when diverted to illicit markets, can reap havoc in their countries as well as our own.

I look forward to a productive session this morning and expect that the undercover Drug Enforcement Administration agent's testimony regarding international traffic will be particularly informative.

EXHIBIT No. 1

93D CONGRESS
1ST SESSION

S. RES. 56

[Report No. 93-46]

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 1973

Mr. EASTLAND, from the Committee on the Judiciary, reported the following resolution; which was referred to the Committee on Rules and Administration

FEBRUARY 22, 1973

Reported by Mr. CANNON, with amendments

FEBRUARY 27, 1973

Considered, amended, and agreed to

RESOLUTION

Authorizing additional expenditures by the Committee on the Judiciary for inquiries and investigations.

Resolved, That in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate so far as applicable, the Committee on the Judiciary, or any subcommittee thereof, is authorized from March 1, 1973, through February 28, 1974, for the purposes stated and within the limitations imposed by the following sections, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with

the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services or personnel of any such department or agency.

SEC. 2. The Committee on the Judiciary, or any subcommittee thereof, is authorized from March 1, 1973, through February 28, 1974, to expend not to exceed $3,946,800 to examine, investigate, and make a complete study of any and all matters pertaining to each of the subjects set forth below in succeeding sections of this resolution, said funds to be allocated to the respective specific inquiries and to the procurement of the services of individual consultants or organizations thereof (as authorized by section 202 (i) of the Legislative Reorganization Act of 1946, as amended) in accordance with succeeding sections of this resolution.

SEC. 3. Not to exceed $377,800 shall be available for a study or investigation of administrative practice and procedure, of which amount not to exceed $3,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 4. Not to exceed $767,000 shall be available for a study or investigation of antitrust and monopoly, of which amount not to exceed $10,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 5. Not to exceed $239,700 shall be available for a study or investigation of constitutional amendments, of which amount not to exceed $12,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 6. Not to exceed $299,900 shall be available for a study or investigation of constitutional rights, of which amount not to exceed $10,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 7. Not to exceed $210,200 shall be available for a study or investigation of criminal laws and procedures.

SEC. 8. Not to exceed $14,500 shall be available for a study or investigation of Federal charters, holidays, and celebrations.

SEC. 9. Not to exceed $240,000 shall be available for a study or investigation of immigration and naturalization.

SEC. 10. Not to exceed $223,000 shall be available for a study or investigation of improvements in judicial machinery.

SEC. 11. Not to exceed $532,500 shall be available for a complete and continuing study and investigation of (1) the administration, operation, and enforcement of the Internal Security Act of 1950, as amended, (2) the administration, operation, and enforcement of other laws relating to espionage, sabotage, and the protection of the internal security of the United States, and (3) the extent, nature,

and effect of subversive activities in the United States, its territories and possessions, including, but not limited to, espionage, sabotage, and infiltration by persons who are or may be under the domination of the foreign government or organization controlling the world Communist movement or any other movement seeking to overthrow the Government of the United States by force and violence or otherwise threatening the internal security of the United States. Of such $532,500, not to exceed $3,785 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 12. Not to exceed $335,400 shall be available for a study or investigation of juvenile delinquency, of which amount not to exceed $14,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 13. Not to exceed $143,000 shall be available for a study or investigation of patents, trademarks, and copyrights.

SEC. 14. Not to exceed $79,000 shall be available for a study or investigation of national penitentiaries, of which amount not to exceed $1,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 15. Not to exceed $172,500 shall be available for a study or investigation of refugees and escapees, of which

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amount not to exceed $2,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 16. Not to exceed $62,300 shall be available for a study or investigation of revision and codification.

SEC. 17. Not to exceed $250,000 shall be available for a study or investigation of separation of powers between the executive, judicial, and legislative branches of Government, of which amount not to exceed $10,000 may be expended for the procurement of individual consultants or organizations thereof.

SEC. 18. The committee shall report its findings, together with such recommendations for legislation as it deems advisable with respect to each study or investigation for which expenditure is authorized by this resolution, to the Senate at the earliest practicable date, but not later than February 28, 1974.

SEC. 19. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

EXHIBIT NO. 2

Public Law 91-513
91st Congress, H. R. 18583
October 27, 1970

An Act

84 STAT. 1236

To amend the Public Health Service Act and other laws to provide increased research into, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug dependent persons; and to strengthen existing law enforcement authority in the field of drug abuse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Drug Abuse Prevention and Control Act of 1970". Comprehensive Drug Abuse Prevention and Control Act of 1970.

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TITLE I—REHABILITATION PROGRAMS RELATING TO DRUG ABUSE

PROGRAMS UNDER COMMUNITY MENTAL HEALTH CENTERS ACT RELATING TO DRUG ABUSE

SECTION 1. (a) Part D of the Community Mental Health Centers Act is amended as follows:

(1) Sections 251, 252, and 253 of such part (42 U.S.C. 2688k, 2688l, and 2688m) are each amended by inserting "and other persons with drug abuse and drug dependence problems" immediately after "narcotic addicts" each place those words appear in those sections. 82 Stat. 1009.

(2) Clauses (A) and (C) of section 252 of such part are each amended by inserting ", drug abuse, and drug dependence" immediately after "narcotic addiction".

(3) The heading for such part is amended to read as follows:

"PART D—NARCOTIC ADDICTION, DRUG ABUSE, AND DRUG DEPENDENCE PREVENTION AND REHABILITATION".

(b) Part E of such Act is amended as follows:

(1) Section 261(a) of such part (42 U.S.C. 2688o) is amended by striking out "$30,000,000 for the fiscal year ending June 30, 1971, $35,000,000 for the fiscal year ending June 30, 1972, and $40,000,000 for the fiscal year ending June 30, 1973" and inserting in lieu thereof "$40,000,000 for the fiscal year ending June 30, 1971, $60,000,000 for the fiscal year ending June 30, 1972, and $80,000,000 for the fiscal year ending June 30, 1973". 82 Stat. 1010; Ante, p. 57.

(2) Section 261(a) of such part is further amended by inserting ", drug abuse, and drug dependence" immediately after "narcotic addiction".

(3) Sections 261(c) and 264 are each amended by inserting "and other persons with drug abuse and drug dependence problems" immediately after "narcotic addicts". Ante, pp. 58, 61.

(4) The section headings for sections 261 and 263 are each amended by striking out "AND NARCOTIC ADDICTS" and inserting in lieu thereof ", NARCOTIC ADDICTS, AND OTHER PERSONS WITH DRUG ABUSE AND DRUG DEPENDENCE PROBLEMS".

(c) Part D of such Act is further amended by redesignating sections 253 and 254 as sections 254 and 255, respectively, and by adding after section 252 the following new section: 42 USC 2688n.

"DRUG ABUSE EDUCATION

"SEC. 253. (a) The Secretary is authorized to make grants to States and political subdivisions thereof and to public or nonprofit private agencies and organizations, and to enter into contracts with other private agencies and organizations, for— Grants. Contract authority.

"(1) the collection, preparation, and dissemination of educational materials dealing with the use and abuse of drugs and the prevention of drug abuse, and

"(2) the development and evaluation of programs of drug abuse education directed at the general public, school-age children, and special high-risk groups.

"(b) The Secretary, acting through the National Institute of Mental Health, shall (1) serve as a focal point for the collection and dissemination of information related to drug abuse; (2) collect, prepare, and disseminate materials (including films and other educational devices) dealing with the abuse of drugs and the prevention of drug

abuse; (3) provide for the preparation, production, and conduct of programs of public education (including those using films and other educational devices); (4) train professional and other persons to organize and participate in programs of public education in relation to drug abuse; (5) coordinate activities carried on by such departments, agencies, and instrumentalities of the Federal Government as he shall designate with respect to health education aspects of drug abuse; (6) provide technical assistance to State and local health and educational agencies with respect to the establishment and implementation of programs and procedures for public education on drug abuse; and (7) undertake other activities essential to a national program for drug abuse education.

Personnel training.

"(c) The Secretary, acting through the National Institute of Mental Health, is authorized to develop and conduct workshops, institutes, and other activities for the training of professional and other personnel to work in the area of drug abuse education.

Appropriation.

"(d) To carry out the purposes of this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending June 30, 1971, $12,000,000 for the fiscal year ending June 30, 1972, and $14,000,000 for the fiscal year ending June 30, 1973."

82 Stat. 1009; Ante, p.1238. 42 USC 2688k.

(d) Such part D is further amended by adding at the end thereof the following new section:

"SPECIAL PROJECTS FOR NARCOTIC ADDICTS AND DRUG DEPENDENT PERSONS

Grants, treatment and rehabilitation.

"SEC. 256. (a) The Secretary is authorized to make grants to public or nonprofit private agencies and organizations to cover a portion of the costs of programs for treatment and rehabilitation of narcotic addicts or drug dependent persons which include one or more of the following: (1) Detoxification services or (2) institutional services (including medical, psychological, educational, or counseling services) or (3) community-based aftercare services.

Conditions.

"(b) Grants under this section for the costs of any treatment and rehabilitation program—

"(1) may be made only for the period beginning with the first day of the first month for which such a grant is made and ending with the close of eight years after such first day; and

Limitation.

"(2)(A) except as provided in subparagraph (B), may not exceed 80 per centum of such costs for each of the first two years after such first day, 75 per centum of such costs for the third year after such first day, 60 per centum of such costs for the fourth year after such first day, 45 per centum of such costs for the fifth year after such first day, and 30 per centum of such costs for each of the next three years after such first day; and

"(B) in the case of any such program providing services for persons in an area designated by the Secretary as an urban or rural poverty area, such grants may not exceed 90 per centum of such costs for each of the first two years after such first day, 80 per centum of such costs for the third year after such first day, 75 per centum of such costs for the fourth and fifth years after such first day, and 70 per centum of such costs for each of the next three years after such first day.

"(c) No application for a grant authorized by this section shall be approved by the Secretary unless such application is forwarded through the State agency responsible for administering the plan submitted pursuant to section 204 of this Act or, if there be a separate State agency, designated by the Governor as responsible for planning, coordinating, and executing the State's efforts in the treatment and

77 Stat. 291; 81 Stat. 79. 42 USC 2684.

rehabilitation of narcotic addicts and drug dependent persons, through such latter agency, which shall submit to the Secretary such comments as it deems appropriate. No application for a grant under this section for a program to provide services for persons in an area in which is located a facility constructed as a new facility after the date of enactment of this section with funds provided under a grant under part A or this part shall be approved unless such application contains satisfactory assurance that, to the extent feasible, such program will be included as part of the programs conducted in or through such facility.

Criteria.

"(d) The Secretary shall make grants under this section for projects within the States in accordance with criteria determined by him designed to provide priority for grant applications in States, and in areas within the States, having the higher percentages of population who are narcotic addicts or drug dependent persons.

Appropriation.

"(e) There are authorized to be appropriated to carry out this section not to exceed $20,000,000 for the fiscal year ending June 30, 1971; $30,000,000 for the fiscal year ending June 30, 1972; and $35,000,000 for the fiscal year ending June 30, 1973."

BROADER TREATMENT AUTHORITY IN PUBLIC HEALTH SERVICE HOSPITALS FOR PERSONS WITH DRUG ABUSE AND OTHER DRUG DEPENDENCE PROBLEMS

SEC. 2. (a) Part E of title III of the Public Health Service Act is amended as follows:

(1) Section 341(a) of such part is amended by adding immediately after "addicts" the second time it appears the following: "and other persons with drug abuse and drug dependence problems". 80 Stat. 1449. 42 USC 257.

(2)(A) Sections 342, 343, 344, and 346 of such part are each amended by inserting "or other persons with drug abuse and drug dependence problems" immediately after "addicts" each place it appears in those sections. 58 Stat. 699; 68 Stat. 79. 42 USC 258-260, 261.

(B) The section heading of section 342 of such part is amended by inserting "OR OTHER PERSONS WITH DRUG ABUSE AND DRUG DEPENDENCE PROBLEMS" after "ADDICTS".

(3) Sections 343 and 344 of such part are each amended by inserting "or other person with a drug abuse or other drug dependence problem" immediately after "addict" each place it appears in those sections.

(4) Sections 343, 344, and 347 of such part are each amended by inserting ", drug abuse, or drug dependence" immediately after "addiction" each place it appears in those sections. 42 USC 261a.

(5) Section 346 of such part is amended by inserting "or substance controlled under the Controlled Substances Act" immediately after "habit-forming narcotic drug". Post, p. 1242.

(6) The heading for such part is amended to read as follows:

"PART E—NARCOTIC ADDICTS AND OTHER DRUG ABUSERS".

(b) Section 2 of the Public Health Service Act (42 U.S.C. 201) is amended by adding after paragraph (p) the following new paragraph: 58 Stat. 682; 74 Stat. 34.

"(q) The term 'drug dependent person' means a person who is using a controlled substance (as defined in section 102 of the Controlled Substances Act) and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence." Post, p. 1243.

RESEARCH UNDER THE PUBLIC HEALTH SERVICE ACT IN DRUG USE, ABUSE, AND ADDICTION

Research populations, protection of identity. 70 Stat. 929.

SEC. 3. (a) Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) is amended by adding after and below paragraph (2) the following:

"The Secretary may authorize persons engaged in research on the use and effect of drugs to protect the privacy of individuals who are the subject of such research by withholding from all persons not connected with the conduct of such research the names or other identifying characteristics of such individuals. Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals."

80 Stat. 1184. 42 USC 246.

(b) Section 314(d)(2) of the Public Health Service Act is amended—

(1) by striking out "and" at the end of subparagraph (I);

(2) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof "; and"; and

(3) by adding after subparagraph (J) the following new subparagraph:

"(K) provide for services for the prevention and treatment of drug abuse and drug dependence, commensurate with the extent of the problem."

81 Stat. 79.

(c) Section 507 of the Public Health Service Act (42 U.S.C. 225a) is amended—

(1) by striking out "available for research, training, or demonstration project grants pursuant to this Act" and inserting in lieu thereof "available under this Act for research, training, or demonstration project grants or for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence, and appropriations available under the Community Mental Health Centers Act for construction and staffing of community mental health centers and alcoholism and narcotic addiction, drug abuse, and drug dependence facilities", and

77 Stat. 190. 42 USC 2681 note.

(2) by inserting immediately before the period at the end thereof the following: ", except that grants to such Federal institutions may be funded at 100 per centum of the costs".

MEDICAL TREATMENT OF NARCOTIC ADDICTION

SEC. 4. The Secretary of Health, Education, and Welfare, after consultation with the Attorney General and with national organizations representative of persons with knowledge and experience in the treatment of narcotic addicts, shall determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and shall report thereon from time to time to the Congress.

Report to Congress.

TITLE II—CONTROL AND ENFORCEMENT

PART A—SHORT TITLE; FINDINGS AND DECLARATION; DEFINITIONS

SHORT TITLE

SEC. 100. This title may be cited as the "Controlled Substances Act". Citation of title.

FINDINGS AND DECLARATIONS

SEC. 101. The Congress makes the following findings and declarations:

(1) Many of the drugs included within this title have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

(2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.

(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because—

(A) after manufacture, many controlled substances are transported in interstate commerce,

(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and

(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.

(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.

(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

(7) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances. 18 UST 1407.

DEFINITIONS

SEC. 102. As used in this title:

(1) The term "addict" means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term "administer" refers to the direct application of a controlled substance to the body of a patient or research subject by—

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of the practitioner,

whether such application be by injection, inhalation, ingestion, or any other means.

(3) The term "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's or warehouseman's business.

(4) The term "Bureau of Narcotics and Dangerous Drugs" means the Bureau of Narcotics and Dangerous Drugs in the Department of Justice.

(5) The term "control" means to add a drug or other substance, or immediate precursor, to a schedule under part B of this title, whether by transfer from another schedule or otherwise.

Post, p. 1247.

(6) The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954.

68A Stat. 595, 26 USC 5001.

(7) The term "counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(8) The terms "deliver" or "delivery" mean the actual, constructive, or attempted transfer of a controlled substance, whether or not there exists an agency relationship.

(9) The term "depressant or stimulant substance" means—

(A) a drug which contains any quantity of (i) barbituric acid or any of the salts of barbituric acid; or (ii) any derivative of barbituric acid which has been designated by the Secretary as habit forming under section 502(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(d)); or

52 Stat. 1050.

(B) a drug which contains any quantity of (i) amphetamine or any of its optical isomers; (ii) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(C) lysergic acid diethylamide; or

(D) any drug which contains any quantity of a substance which the Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(10) The term "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. The term "dispenser" means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

(11) The term "distribute" means to deliver (other than by administering or dispensing) a controlled substance. The term "distributor" means a person who so delivers a controlled substance.

(12) The term "drug" has the meaning given that term by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act.

52 Stat. 1041; 79 Stat. 234. 21 USC 321.

(13) The term "felony" means any Federal or State offense classified by applicable Federal or State law as a felony.

(14) The term "manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term "manufacturer" means a person who manufactures a drug or other substance.

(15) The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(16) The term "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, coca leaves, and opiates.

(B) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates.

(C) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in clause (A) or (B).

Such term does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine.

(17) The term "opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

(18) The term "opium poppy" means the plant of the species Papaver somniferum L., except the seed thereof.

(19) The term "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(20) The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(21) The term "production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(22) The term "immediate precursor" means a substance—

(A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(23) The term "Secretary", unless the context otherwise indicates, means the Secretary of Health, Education, and Welfare.

(24) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Canal Zone.

(25) The term "ultimate user" means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

(26) The term "United States", when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States.

INCREASED NUMBERS OF ENFORCEMENT PERSONNEL

SEC. 103. (a) During the fiscal year 1971, the Bureau of Narcotics and Dangerous Drugs is authorized to add at least 300 agents, together with necessary supporting personnel, to the number of enforcement personnel currently available to it.

Appropriation.

(b) There are authorized to be appropriated not to exceed $6,000,000 for the fiscal year 1971 and for each fiscal year thereafter to carry out the provisions of subsection (a).

PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

AUTHORITY AND CRITERIA FOR CLASSIFICATION OF SUBSTANCES

SEC. 201. (a) The Attorney General shall apply the provisions of this title to the controlled substances listed in the schedules established by section 202 of this title and to any other drug or other substance added to such schedules under this title. Except as provided in subsections (d) and (e), the Attorney General may by rule—

(1) add to such a schedule or transfer between such schedules any drug or other substance if he—

(A) finds that such drug or other substance has a potential for abuse, and

(B) makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 202 for the schedule in which such drug is to be placed; or

(2) remove any drug or other substance from the schedules if he finds that the drug or other substance does not meet the requirements for inclusion in any schedule.

Hearing opportunity. Rules. 80 Stat. 381. 5 USC 551.

Rules of the Attorney General under this subsection shall be made on the record after opportunity for a hearing pursuant to the rulemaking procedures prescribed by subchapter II of chapter 5 of title 5 of the United States Code. Proceedings for the issuance, amendment, or

repeal of such rules may be initiated by the Attorney General (1) on his own motion, (2) at the request of the Secretary, or (3) on the petition of any interested party.

Evaluation.

(b) The Attorney General shall, before initiating proceedings under subsection (a) to control a drug or other substance or to remove a drug or other substance entirely from the schedules, and after gathering the necessary data, request from the Secretary a scientific and medical evaluation, and his recommendations, as to whether such drug or other substance should be so controlled or removed as a controlled substance. In making such evaluation and recommendations, the Secretary shall consider the factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) and any scientific or medical considerations involved in paragraphs (1), (4), and (5) of such subsection. The recommendations of the Secretary shall include recommendations with respect to the appropriate schedule, if any, under which such drug or other substance should be listed. The evaluation and the recommendations of the Secretary shall be made in writing and submitted to the Attorney General within a reasonable time. The recommendations of the Secretary to the Attorney General shall be binding on the Attorney General as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or other substance. If the Attorney General determines that these facts and all other relevant data constitute substantial evidence of potential for abuse such as to warrant control or substantial evidence that the drug or other substance should be removed entirely from the schedules, he shall initiate proceedings for control or removal, as the case may be, under subsection (a).

(c) In making any finding under subsection (a) of this section or under subsection (b) of section 202, the Attorney General shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:

(1) Its actual or relative potential for abuse.
(2) Scientific evidence of its pharmacological effect, if known.
(3) The state of current scientific knowledge regarding the drug or other substance.
(4) Its history and current pattern of abuse.
(5) The scope, duration, and significance of abuse.
(6) What, if any, risk there is to the public health.
(7) Its psychic or physiological dependence liability.
(8) Whether the substance is an immediate precursor of a substance already controlled under this title.

(d) If control is required by United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part, the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by subsection (a) of this section or section 202(b) and without regard to the procedures prescribed by subsections (a) and (b) of this section.

Order.

(e) The Attorney General may, without regard to the findings required by subsection (a) of this section or section 202(b) and without regard to the procedures prescribed by subsections (a) and (b) of this section, place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule with a higher numerical designation. If the Attorney General designates a substance as an immediate precursor and places it in a schedule, other substances shall not be placed in a schedule solely because they are its precursors.

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(f) If, at the time a new-drug application is submitted to the Secretary for any drug having a stimulant, depressant, or hallucinogenic effect on the central nervous system, it appears that such drug has an abuse potential, such information shall be forwarded by the Secretary to the Attorney General.

(g) (1) The Attorney General shall by regulation exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

52 Stat. 1040. 21 USC 321.

Dextromethorphan, exception.

(2) Dextromethorphan shall not be deemed to be included in any schedule by reason of enactment of this title unless controlled after the date of such enactment pursuant to the foregoing provisions of this section.

SCHEDULES OF CONTROLLED SUBSTANCES

Establishment.

SEC. 202. (a) There are established five schedules of controlled substances, to be known as schedules I, II, III, IV, and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semiannual basis during the two-year period beginning one year after the date of enactment of this title and shall be updated and republished on an annual basis thereafter.

Placement on schedules, findings required.

(b) Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on the effective date of this part, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) SCHEDULE I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) SCHEDULE II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) SCHEDULE III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) SCHEDULE IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

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(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) SCHEDULE V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

(c) Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 201, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

SCHEDULE I

Opiates.

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmathadol.
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine.
(7) Betacetylmethadol.
(8) Betameprodine.
(9) Betamethadol.
(10) Betaprodine.
(11) Clonitazene.
(12) Dextromoramide.
(13) Dextrorphan.
(14) Diampromide.
(15) Diethylthiambutene.
(16) Dimenoxadol.
(17) Dimepheptanol.
(18) Dimethylthiambutene.
(19) Dioxaphetyl butyrate.
(20) Dipipanone.
(21) Ethylmethylthiambutene.
(22) Etonitazene.
(23) Etoxeridine.
(24) Furethidine.
(25) Hydroxypethidine.
(26) Ketobemidone.
(27) Levomoramide.
(28) Levophenacylmorphan.
(29) Morpheridine.
(30) Noracymethadol.
(31) Norlevorphanol.
(32) Normethadone.
(33) Norpipanone.
(34) Phenadoxone.
(35) Phenampromide.

(36) Phenomorphan.
(37) Phenoperidine.
(38) Piritramide.
(39) Proheptazine.
(40) Properidine.
(41) Racemoramide.
(42) Trimeperidine.

Opium derivatives.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.
(4) Codeine methylbromide.
(5) Codeine-N-Oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Etorphine.
(10) Heroin.
(11) Hydromorphinol.
(12) Methyldesorphine.
(13) Methylhydromorphine.
(14) Morphine methylbromide.
(15) Morphine methylsulfonate.
(16) Morphine-N-Oxide.
(17) Myrophine.
(18) Nicocodeine.
(19) Nicomorphine.
(20) Normorphine.
(21) Pholcodine.
(22) Thebacon.

Hallucinogenic substances.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine.
(2) 5-methoxy-3,4-methylenedioxy amphetamine.
(3) 3,4,5-trimethoxy amphetamine.
(4) Bufotenine.
(5) Diethyltryptamine.
(6) Dimethyltryptamine.
(7) 4-methyl-2,5-dimethoxyamphetamine.
(8) Ibogaine.
(9) Lysergic acid diethylamide.
(10) Marihuana.
(11) Mescaline.
(12) Peyote.
(13) N-ethyl-3-piperidyl benzilate.
(14) N-methyl-3-piperidyl benzilate.
(15) Psilocybin.
(16) Psilocyn.
(17) Tetrahydrocannabinols.

SCHEDULE II

Substances, vegetable origin or chemical synthesis.

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

Opiates.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine.
(2) Anileridine.
(3) Bezitramide.
(4) Dihydrocodeine.
(5) Diphenoxylate.
(6) Fentanyl.
(7) Isomethadone.
(8) Levomethorphan.
(9) Levorphanol.
(10) Metazocine.
(11) Methadone.
(12) Methadone-Intermediate, 4-cyano - 2 - dimethylamino-4,4-diphenyl butane.
(13) Moramide-Intermediate, 2 - methyl - 3 - morpholino-1, 1-diphenylpropane-carboxylic acid.
(14) Pethidine.
(15) Pethidine-Intermediate-A, 4 - cyano-1-methyl-4-phenylpiperidine.
(16) Pethidine-Intermediate-B, ethyl - 4-phenylpiperidine-4-carboxylate.
(17) Pethidine-Intermediate-C, 1-methyl - 4 - phenylpiperidine-4-carboxylic acid.
(18) Phenazocine.
(19) Piminodine.
(20) Racemethorphan.
(21) Racemorphan.

Methamphetamine.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

SCHEDULE III

Stimulants.

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Phenmetrazine and its salts.

(3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(4) Methylphenidate.

Depressants.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.

(2) Chorhexadol.

(3) Glutethimide.

(4) Lysergic acid.

(5) Lysergic acid amide.

(6) Methyprylon.

(7) Phencyclidine.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

Nalorphine.

(c) Nalorphine.

Narcotic drugs.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

SCHEDULE IV

(1) Barbital.
(2) Chloral betaine.
(3) Chloral hydrate.
(4) Ethchlorvynol.
(5) Ethinamate.
(6) Methohexital.
(7) Meprobamate.
(8) Methylphenobarbital.
(9) Paraldehyde.
(10) Petrichloral.
(11) Phenobarbital.

SCHEDULE V

Narcotic drugs containing nonnarcotic active medicinal ingredients.

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

Stimulants or depressants containing active medicinal ingredients, exception.

(d) The Attorney General may by regulation except any compound, mixture, or preparation containing any depressant or stimulant substance in paragraph (a) or (b) of schedule III or in schedule IV or V from the application of all or any part of this title if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

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PART C—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

RULES AND REGULATIONS

Rules and regulations.

SEC. 301. The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances.

PERSONS REQUIRED TO REGISTER

Annual registration.

SEC. 302. (a) Every person who manufactures, distributes, or dispenses any controlled substance or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance, shall obtain annually a registration issued by the Attorney General in accordance with the rules and regulations promulgated by him.

(b) Persons registered by the Attorney General under this title to manufacture, distribute, or dispense controlled substances are authorized to possess, manufacture, distribute, or dispense such substances (including any such activity in the conduct of research) to the extent authorized by their registration and in conformity with the other provisions of this title.

Registration, exceptions.

(c) The following persons shall not be required to register and may lawfully possess any controlled substance under this title:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if such agent or employee is acting in the usual course of his business or employment.

(2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of the controlled substance is in the usual course of his business or employment.

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(3) An ultimate user who possesses such substance for a purpose specified in section 102(25).

Waiver.

(d) The Attorney General may, by regulation, waive the requirement for registration of certain manufacturers, distributors, or dispensers if he finds it consistent with the public health and safety.

Separate registration.

(e) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

Inspection.

(f) The Attorney General is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated by him.

REGISTRATION REQUIREMENTS

Factors consistent with public interest.

SEC. 303. (a) The Attorney General shall register an applicant to manufacture controlled substances in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part. In determining the public interest, the following factors shall be considered:

Controls. Importation and bulk manufacture, limitation.

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule I or II compounded therefrom into other than legitimate medical, scientific, research, or industrial channels, by limiting the importation and bulk manufacture of such controlled substances to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes;

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Compliance. Technology.

(2) compliance with applicable State and local law;

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;

Applicants, prior conviction record. Experience.

(4) prior conviction record of applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) past experience in the manufacture of controlled substances, and the existence in the establishment of effective control against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

Factors consistent to public interest.

(b) The Attorney General shall register an applicant to distribute a controlled substance in schedule I or II unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective control against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

Prohibition.

(c) Registration granted under subsections (a) and (b) of this section shall not entitle a registrant to (1) manufacture or distribute controlled substances in schedule I or II other than those specified in the registration, or (2) manufacture any quantity of those controlled substances in excess of the quota assigned pursuant to section 306.

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(d) The Attorney General shall register an applicant to manufacture controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances and any controlled substance in schedule III, IV, or V compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable State and local law;

(3) promotion of technical advances in the art of manufacturing these substances and the development of new substances;

(4) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(5) past experience in the manufacture, distribution, and dispensing of controlled substances, and the existence in the establishment of effective controls against diversion; and

(6) such other factors as may be relevant to and consistent with the public health and safety.

(e) The Attorney General shall register an applicant to distribute controlled substances in schedule III, IV, or V, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) maintenance of effective controls against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;

(2) compliance with applicable State and local law;

(3) prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the distribution of controlled substances; and

(5) such other factors as may be relevant to and consistent with the public health and safety.

Research.

(f) Practitioners shall be registered to dispense or conduct research with controlled substances in schedule II, III, IV, or V if they are authorized to dispense or conduct research under the law of the State in which they practice. Separate registration under this part for practitioners engaging in research with nonnarcotic controlled substances in schedule II, III, IV, or V, who are already registered under this part in another capacity, shall not be required.

Pharmacies.

Pharmacies (as distinguished from pharmacists) when engaged in commercial activities, shall be registered to dispense controlled substances in schedule II, III, IV, or V if they are authorized to dispense under the law of the State in which they regularly conduct business.

Research applications.

Registration applications by practitioners wishing to conduct research with controlled substances in schedule I shall be referred to the Secretary, who shall determine qualifications and competency of each practitioner requesting registration, as well as the merits of the research protocol. The Secretary, in determining the merits of each research protocol, shall consult with the Attorney General as to effective procedures to adequately safeguard against diversion of such controlled substances from legitimate medical or scientific use. Registration for the purpose of bona fide research with controlled substances in schedule I by a practitioner deemed qualified by the Secretary may be denied by the Attorney General only on a ground specified in section 304(a).

DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION

SEC. 304. (a) A registration pursuant to section 303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant—

(1) has materially falsified any application filed pursuant to or required by this title or title III;

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(2) has been convicted of a felony under this title or title III or any other law of the United States, or of any State, relating to any substance defined in this title as a controlled substance; or

(3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances.

(b) The Attorney General may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

Service of order.

(c) Before taking action pursuant to this section, or pursuant to a denial of registration under section 303, the Attorney General shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended. The order to show cause shall contain a statement of the basis thereof and shall call upon the applicant or registrant to appear before the Attorney

General at a time and place stated in the order, but in no event less than thirty days after the date of receipt of the order. Proceedings to deny, revoke, or suspend shall be conducted pursuant to this section in accordance with subchapter II of chapter 5 of title 5 of the United States Code. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this title or any other law of the United States.

80 Stat. 381. 5 USC 551.

Registration, suspension.

(d) The Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health or safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the Attorney General or dissolved by a court of competent jurisdiction.

(e) The suspension or revocation of a registration under this section shall operate to suspend or revoke any quota applicable under section 306.

(f) In the event the Attorney General suspends or revokes a registration granted under section 303, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may, in the discretion of the Attorney General, be placed under seal. No disposition may be made of any controlled substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded except that a court, upon application therefor, may at any time order the sale of perishable controlled substances. Any such order shall require the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances (or proceeds of sale deposited in court) shall be forfeited to the United States; and the Attorney General shall dispose of such controlled substances in accordance with section 511(e).

Post, p. 1277.

LABELING AND PACKAGING REQUIREMENTS

Symbol.

SEC. 305. (a) It shall be unlawful to distribute a controlled substance in a commercial container unless such container, when and as required by regulations of the Attorney General, bears a label (as defined in section 201(k) of the Federal Food, Drug, and Cosmetic Act) containing an identifying symbol for such substance in accordance with such regulations. A different symbol shall be required for each schedule of controlled substances.

52 Stat. 1041. 21 USC 321.

(b) It shall be unlawful for the manufacturer of any controlled substance to distribute such substance unless the labeling (as defined in section 201(m) of the Federal Food, Drug, and Cosmetic Act) of such substance contains, when and as required by regulations of the Attorney General, the identifying symbol required under subsection (a).

(c) The Secretary shall prescribe regulations under section 503(b) of the Federal Food, Drug, and Cosmetic Act which shall provide that the label of a drug listed in schedule II, III, or IV shall, when dispensed to or for a patient, contain a clear, concise warning that it is a crime to transfer the drug to any person other than the patient.

65 Stat. 648. 21 USC 353.

Unlawful distribution.

(d) It shall be unlawful to distribute controlled substances in schedule I or II, and narcotic drugs in schedule III or IV, unless the bottle or other container, stopper, covering, or wrapper thereof is securely sealed as required by regulations of the Attorney General.

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QUOTAS APPLICABLE TO CERTAIN SUBSTANCES

Production quota.

SEC. 306. (a) The Attorney General shall determine the total quantity and establish production quotas for each basic class of controlled substance in schedules I and II to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. Production quotas shall be established in terms of quantities of each basic class of controlled substance and not in terms of individual pharmaceutical dosage forms prepared from or containing such a controlled substance.

(b) The Attorney General shall limit or reduce individual production quotas to the extent necessary to prevent the aggregate of individual quotas from exceeding the amount determined necessary each year by the Attorney General under subsection (a). The quota of each registered manufacturer for each basic class of controlled substance in schedule I or II shall be revised in the same proportion as the limitation or reduction of the aggregate of the quotas. However, if any registrant, before the issuance of a limitation or reduction in quota, has manufactured in excess of his revised quota, the amount of the excess shall be subtracted from his quota for the following year.

Manufacturing quota.

(c) On or before July 1 of each year, upon application therefor by a registered manufacturer, the Attorney General shall fix a manufacturing quota for the basic classes of controlled substances in schedules I and II that the manufacturer seeks to produce. The quota shall be subject to the provisions of subsections (a) and (b) of this section. In fixing such quotas, the Attorney General shall determine the manufacturer's estimated disposal, inventory, and other requirements for the calendar year; and, in making his determination, the Attorney General shall consider the manufacturer's current rate of disposal, the trend of the national disposal rate during the preceding calendar year, the manufacturer's production cycle and inventory position, the economic availability of raw materials, yield and stability problems, emergencies such as strikes and fires, and other factors.

(d) The Attorney General shall, upon application and subject to the provisions of subsections (a) and (b) of this section, fix a quota for a basic class of controlled substance in schedule I or II for any registrant who has not manufactured that basic class of controlled substance during one or more preceding calendar years. In fixing such quota, the Attorney General shall take into account the registrant's reasonably anticipated requirements for the current year; and, in making his determination of such requirements, he shall consider such factors specified in subsection (c) of this section as may be relevant.

Quota, increase.

(e) At any time during the year any registrant who has applied for or received a manufacturing quota for a basic class of controlled substance in schedule I or II may apply for an increase in that quota to meet his estimated disposal, inventory, and other requirements during the remainder of that year. In passing upon the application the Attorney General shall take into consideration any occurrences since the filing of the registrant's initial quota application that may require an increased manufacturing rate by the registrant during the balance of the year. In passing upon the application the Attorney General may also take into account the amount, if any, by which the determination of the Attorney General under subsection (a) of this section exceeds the aggregate of the quotas of all registrants under this section.

Controlled substances, incidental production, exception.

(f) Notwithstanding any other provisions of this title, no registration or quota may be required for the manufacture of such quantities of controlled substances in schedules I and II as incidentally and

necessarily result from the manufacturing process used for the manufacture of a controlled substance with respect to which its manufacturer is duly registered under this title. The Attorney General may, by regulation, prescribe restrictions on the retention and disposal of such incidentally produced substances. Restrictions.

RECORDS AND REPORTS OF REGISTRANTS

Inventory.

SEC. 307. (a) Except as provided in subsection (c)—

(1) every registrant under this title shall, on the effective date of this section, or as soon thereafter as such registrant first engages in the manufacture, distribution, or dispensing of controlled substances, and every second year thereafter, make a complete and accurate record of all stocks thereof on hand, except that the regulations prescribed under this section shall permit each such biennial inventory (following the initial inventory required by this paragraph) to be prepared on such registrant's regular general physical inventory date (if any) which is nearest to and does not vary by more than six months from the biennial date that would otherwise apply;

(2) on the effective date of each regulation of the Attorney General controlling a substance that immediately prior to such date was not a controlled substance, each registrant under this title manufacturing, distributing, or dispensing such substance shall make a complete and accurate record of all stocks thereof on hand; and

(3) on and after the effective date of this section, every registrant under this title manufacturing, distributing, or dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each such substance manufactured, received, sold, delivered, or otherwise disposed of by him, except that this paragraph shall not require the maintenance of a perpetual inventory.

Availability.

(b) Every inventory or other record required under this section (1) shall be in accordance with, and contain such relevant information as may be required by, regulations of the Attorney General, (2) shall (A) be maintained separately from all other records of the registrant, or (B) alternatively, in the case of nonnarcotic controlled substances, be in such form that information required by the Attorney General is readily retrievable from the ordinary business records of the registrant, and (3) shall be kept and be available, for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General.

Nonapplicability.

(c) The foregoing provisions of this section shall not apply—

(1) (A) with respect to narcotic controlled substances in schedule II, III, IV, or V, to the prescribing or administering of such substances by a practitioner in the lawful course of his professional practice; or

(B) with respect to nonnarcotic controlled substances in schedule II, III, IV, or V, to any practitioner who dispenses such substances to his patients, unless the practitioner is regularly engaged in charging his patients, either separately or together with charges for other professional services, for substances so dispensed;

(2) (A) to the use of controlled substances, at establishments registered under this title which keep records with respect to such substances, in research conducted in conformity with an exemption granted under section 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act;

52 Stat. 1052; 76 Stat. 783, 82 Stat. 343, 21 USC 355, 360b.

(B) to the use of controlled substances, at establishments registered under this title which keep records with respect to such substances, in preclinical research or in teaching; or

(3) to the extent of any exemption granted to any person, with respect to all or part of such provisions, by the Attorney General by or pursuant to regulation on the basis of a finding that the application of such provisions (or part thereof) to such person is not necessary for carrying out the purposes of this title.

(d) Every manufacturer registered under section 303 shall, at such time or times and in such form as the Attorney General may require, make periodic reports to the Attorney General of every sale, delivery, or other disposal by him of any controlled substance, and each distributor shall make such reports with respect to narcotic controlled substances, identifying by the registration number assigned under this title the person or establishment (unless exempt from registration under section 302(d)) to whom such sale, delivery, or other disposal was made.

(e) Regulations under sections 505(i) and 512(j) of the Federal Food, Drug, and Cosmetic Act, relating to investigational use of drugs, shall include such procedures as the Secretary, after consultation with the Attorney General, determines are necessary to insure the security and accountability of controlled substances used in research to which such regulations apply.

52 Stat. 1052; 76 Stat. 783. 82 Stat. 343. 21 USC 355, 360b.

ORDER FORMS

Unlawful distribution.

SEC. 308. (a) It shall be unlawful for any person to distribute a controlled substance in schedule I or II to another except in pursuance of a written order of the person to whom such substance is distributed, made on a form to be issued by the Attorney General in blank in accordance with subsection (d) and regulations prescribed by him pursuant to this section.

Nonapplicability.

(b) Nothing in subsection (a) shall apply to—

(1) the exportation of such substances from the United States in conformity with title III;

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(2) the delivery of such a substance to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business; but where such carriage or storage is in connection with the distribution by the owner of the substance to a third person, this paragraph shall not relieve the distributor from compliance with subsection (a).

Preservation and availability.

(c)(1) Every person who in pursuance of an order required under subsection (a) distributes a controlled substance shall preserve such order for a period of two years, and shall make such order available for inspection and copying by officers and employees of the United States duly authorized for that purpose by the Attorney General, and by officers or employees of States or their political subdivisions who are charged with the enforcement of State or local laws regulating the production, or regulating the distribution or dispensing, of controlled substances and who are authorized under such laws to inspect such orders.

Duplicate, preservation and availability.

(2) Every person who gives an order required under subsection (a) shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued by the Attorney General in blank in accordance with subsection (d) and regulations prescribed by him pursuant to this section and shall, if such order is accepted, preserve such duplicate for a period of two years and make it available for inspection and copying by the officers and employees mentioned in paragraph (1) of this subsection.

Forms, issuance.

(d)(1) The Attorney General shall issue forms pursuant to subsections (a) and (c)(2) only to persons validly registered under section 303 (or exempted from registration under section 302(d)). Whenever any such form is issued to a person, the Attorney General shall, before delivery thereof, insert therein the name of such person, and it shall be unlawful for any other person (A) to use such form for the purpose of obtaining controlled substances or (B) to furnish such form to any person with intent thereby to procure the distribution of such substances.

Fees.

(2) The Attorney General may charge reasonable fees for the issuance of such forms in such amounts as he may prescribe for the purpose of covering the cost to the United States of issuing such forms, and other necessary activities in connection therewith.

Unlawful act.

(e) It shall be unlawful for any person to obtain by means of order forms issued under this section controlled substances for any purpose other than their use, distribution, dispensing, or administration in the conduct of a lawful business in such substances or in the course of his professional practice or research.

PRESCRIPTIONS

SEC. 309. (a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed without the written prescription of a practitioner, except that in emergency situations, as prescribed by the Secretary by regulation after consultation with the Attorney General, such drug may be dispensed upon oral prescription in accordance with section 503(b) of that Act. Prescriptions shall be retained in conformity with the requirements of section 307 of this title. No prescription for a controlled substance in schedule II may be refilled.

52 Stat. 1040. 21 USC 301.

65 Stat. 648. 21 USC 353.

(b) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule III or IV, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed without a written or oral prescription in conformity with section 503(b) of that Act. Such prescriptions may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription unless renewed by the practitioner.

(c) No controlled substance in schedule V which is a drug may be distributed or dispensed other than for a medical purpose.

(d) Whenever it appears to the Attorney General that a drug not considered to be a prescription drug under the Federal Food, Drug, and Cosmetic Act should be so considered because of its abuse potential, he shall so advise the Secretary and furnish to him all available data relevant thereto.

PART D—OFFENSES AND PENALTIES

PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in section 405, any person who violates subsection (a) of this section shall be sentenced as follows:

Penalties.

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

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Special parole term.

(B) In the case of a controlled substance in schedule I or II which is not a narcotic drug or in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $15,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $30,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than $10,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than $20,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000, or both.

Marihuana, simple possession.

(4) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of section 404.

Special parole term.

(c) A special parole term imposed under this section or section 405 may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 405 shall be in addition to, and not in lieu of, any other parole provided for by law.

PROHIBITED ACTS B—PENALTIES

SEC. 402. (a) It shall be unlawful for any person—

(1) who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 309;

(2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;

(3) who is a registrant to distribute a controlled substance in violation of section 305 of this title;

(4) to remove, alter, or obliterate a symbol or label required by section 305 of this title;

(5) to refuse or fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this title or title III;

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(6) to refuse any entry into any premises or inspection authorized by this title or title III;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 304(f) or 511 or to remove or dispose of substances so placed under seal; or

Ante, p. 1256.
Post, p. 1276.

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this title or title III, any information acquired in the course of an inspection authorized by this title concerning any method or process which as a trade secret is entitled to protection.

(b) It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II which is—

(1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 306; or

(2) in excess of a quota assigned to him pursuant to section 306.

Penalty.

(c)(1) Except as provided in paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than $25,000.

Jurisdiction of courts.

The district courts of the United States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of title 28 of the United States Code to enforce this paragraph.

62 Stat. 934.

(2)(A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) of this paragraph, be sentenced to imprisonment of not more than one year or a fine of not more than $25,000, or both.

Penalty.

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this title or title III or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of $50,000, or both.

Post, p.1285.

Penalty.

(3) Except under the conditions specified in paragraph (2) of this subsection, a violation of this section does not constitute a crime, and a judgment for the United States and imposition of a civil penalty pursuant to paragraph (1) shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

Exception.

PROHIBITED ACTS C—PENALTIES

SEC. 403. (a) It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 308 of this title;

Ante, p.1259.

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this title or title III; or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance.

(b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this title or title III. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

"Communication facility."

Penalty.

(c) Any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than $30,000, or both; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this title or title III or other law of the United States relating to narcotic drugs,

marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than $60,000, or both.

Penalty.

PENALTY FOR SIMPLE POSSESSION; CONDITIONAL DISCHARGE AND EXPUNGING OF RECORDS FOR FIRST OFFENSE

SEC. 404. (a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both, except that if he commits such offense after a prior conviction or convictions under this subsection have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000, or both.

Post, p.1285.

(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this title or title III, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

Nonpublic record, retention.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order.

First offense, expunging of records, order.

The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

DISTRIBUTION TO PERSONS UNDER AGE TWENTY-ONE

SEC. 405. (a) Any person at least eighteen years of age who violates section 401(a)(1) by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b)) punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by section 401(b), and (2) at least twice any special parole term authorized by section 401(b), for a first offense involving the same controlled substance and schedule.

(b) Any person at least eighteen years of age who violates section 401(a)(1) by distributing a controlled substance to a person under twenty-one years of age after a prior conviction or convictions under subsection (a) of this section (or under section 303(b)(2) of the Federal Food, Drug, and Cosmetic Act as in effect prior to the effective date of section 701(b) of this Act) have become final, is punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b), and (2) at least three times any special parole term authorized by section 401(b), for a second or subsequent offense involving the same controlled substance and schedule.

82 Stat. 1361.
21 USC 333.

ATTEMPT AND CONSPIRACY

SEC. 406. Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

ADDITIONAL PENALTIES

SEC. 407. Any penalty imposed for violation of this title shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

CONTINUING CRIMINAL ENTERPRISE

SEC. 408. (a)(1) Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 10 years and which may be up to life imprisonment, to a fine of not more than $100,000, and to the forfeiture prescribed in paragraph (2); except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine of not more than $200,000, and to the forfeiture prescribed in paragraph (2).

Penalty.

(2) Any person who is convicted under paragraph (1) of engaging in a continuing criminal enterprise shall forfeit to the United States—

Forfeiture.

(A) the profits obtained by him in such enterprise, and

(B) any of his interest in, claim against, or property or contractual rights of any kind affording a source of influence over, such enterprise.

(b) For purposes of subsection (a), a person is engaged in a continuing criminal enterprise if—

(1) he violates any provision of this title or title III the punishment for which is a felony, and

Post, p.1285.

(2) such violation is a part of a continuing series of violations of this title or title III—

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources.

(c) In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and section 4202 of title 18 of the United States Code and the Act of July 15, 1932 (D.C. Code, secs. 24-203—24-207), shall not apply.

65 Stat. 150.
47 Stat. 697;
61 Stat. 378;
67 Stat. 91;
79 Stat. 113.

(d) The district courts of the United States (including courts in the territories or possessions of the United States having jurisdiction under subsection (a)) shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as they shall deem proper.

Jurisdiction of courts.

DANGEROUS SPECIAL DRUG OFFENDER SENTENCING

SEC. 409. (a) Whenever a United States attorney charged with the prosecution of a defendant in a court of the United States for an alleged felonious violation of any provision of this title or title III committed when the defendant was over the age of twenty-one years has reasons to believe that the defendant is a dangerous special drug offender such United States attorney, a reasonable time before trial or acceptance by the court of a plea of guilty or nolo contendere, may sign and file with the court, and may amend, a notice (1) specifying that the defendant is a dangerous special drug offender who upon conviction for such felonious violation is subject to the imposition of a sentence under subsection (b) of this section, and (2) setting out with particularity the reasons why such attorney believes the defendant to be a dangerous special drug offender. In no case shall the fact that the defendant is alleged to be a dangerous special drug offender be an issue upon the trial of such felonious violation, be disclosed to the jury, or be disclosed before any plea of guilty or nolo contendere or verdict or finding of guilty to the presiding judge without the consent of the parties. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special drug offender and his counsel.

Notice.

Prohibition.

(b) Upon any plea of guilty or nolo contendere or verdict or finding of guilty of the defendant of such felonious violation, a hearing shall be held, before sentence is imposed, by the court sitting without a jury.

Hearing without jury.

Notice.

Presentence report, inspection.

Penalty.

Sentence.

Conditions.

The court shall fix a time for the hearing, and notice thereof shall be given to the defendant and the United States at least ten days prior thereto. The court shall permit the United States and counsel for the defendant, or the defendant if he is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant and the United States shall be entitled to assistance of counsel, compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment shall be prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felonious violation and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special drug offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felonious violation. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felonious violation. The court shall place in the record its findings, including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

(c) This section shall not prevent the imposition and execution of a sentence of imprisonment for life or for a term exceeding twenty-five years upon any person convicted of an offense so punishable.

(d) Notwithstanding any other provision of this section, the court shall not sentence a dangerous special drug offender to less than any mandatory minimum penalty prescribed by law for such felonious violation. This section shall not be construed as creating any mandatory minimum penalty.

(e) A defendant is a special drug offender for purposes of this section if—

(1) the defendant has previously been convicted in courts of the United States or a State or any political subdivision thereof for two or more offenses involving dealing in controlled substances, committed on occasions different from one another and different from such felonious violation, and punishable in such courts by death or imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the commission of such felonious violation, and less than five years have elapsed between the commission of such felonious violation and either the defendant's release, or parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous offense or another offense involving dealing in controlled substances and punishable by death or imprisonment in excess of one year under applicable laws of the United States or a State or any political subdivision thereof; or

(2) the defendant committed such felonious violation as part of a pattern of dealing in controlled substances which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

(3) such felonious violation was, or the defendant committed such felonious violation in furtherance of, a conspiracy with three or more other persons to engage in a pattern of dealing in controlled substances which was criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or dealing, or give or receive a bribe or use force in connection with such dealing.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection. In support of findings under paragraph (2) of this subsection, it may be shown that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such dealing. For purposes of paragraph (2) of this subsection, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938 for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of the Internal Revenue Code of 1954. For purposes of paragraph (2) of this subsection, special skill or expertise in such dealing includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of such dealing, the enlistment of accomplices in such dealing, the escape from detection or apprehension for such dealing, or the disposition of the fruits or proceeds of such dealing. For purposes of paragraphs (2) and (3) of this subsection, such dealing forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

Substantial source of income.

80 Stat. 838. 29 USC 206.

68A Stat. 17; 83 Stat. 655. 26 USC 62.

Dealing.

(f) A defendant is dangerous for purposes of this section if a period of confinement longer than that provided for such felonious violation is required for the protection of the public from further criminal conduct by the defendant.

Defendant, dangerous.

(g) The time for taking an appeal from a conviction for which sentence is imposed after proceedings under this section shall be measured from imposition of the original sentence.

Appeal.

(h) With respect to the imposition, correction, or reduction of a sentence after proceedings under this section, a review of the sentence on the record of the sentencing court may be taken by the defendant or the United States to a court of appeals. Any review of the sentence taken by the United States shall be taken at least five days before expiration of the time for taking a review of the sentence or appeal of the conviction by the defendant and shall be diligently prosecuted. The sentencing court may, with or without motion and notice, extend the time for taking a review of the sentence for a period not to exceed thirty days from the expiration of the time otherwise prescribed by law. The court shall not extend the time for taking a review of the sentence by the United States after the time has expired. A court

Sentence, review.

extending the time for taking a review of the sentence by the United States shall extend the time for taking a review of the sentence or appeal of the conviction by the defendant for the same period. The taking of a review of the sentence by the United States shall be deemed the taking of a review of the sentence and an appeal of the conviction by the defendant. Review of the sentence shall include review of whether the procedure employed was lawful, the findings made were clearly erroneous, or the sentencing court's discretion was abused. The court of appeals on review of the sentence may, after considering the record, including the entire presentence report, information submitted during the trial of such felonious violation and the sentencing hearing, and the findings and reasons of the sentencing court, affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand for further sentencing proceedings and imposition of sentence, except that a sentence may be made more severe only on review of the sentence taken by the United States and after hearing. Failure of the United States to take a review of the imposition of the sentence shall, upon review taken by the United States of the correction or reduction of the sentence, foreclose imposition of a sentence more severe than that previously imposed. Any withdrawal or dismissal of review of the sentence taken by the United States shall foreclose imposition of a sentence more severe than that reviewed but shall not otherwise foreclose the review of the sentence or the appeal of the conviction. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence. Any review of the sentence taken by the United States may be dismissed on a showing of the abuse of the right of the United States to take such review.

INFORMATION FOR SENTENCING

SEC. 410. Except as otherwise provided in this title or section 303(a) of the Public Health Service Act, no limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence under this title or title III.

70 Stat. 929.
42 USC 242a.
Post, p. 1285.

PROCEEDINGS TO ESTABLISH PRIOR CONVICTIONS

SEC. 411. (a)(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

Prohibition.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

Previous conviction, affirmation or denial.

(c)(1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

Denial, written response.
Hearing.
Court without jury.
Evidence, introduction.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

Constitution of U.S., violation.

(d)(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part.

Sentence, imposition.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(e) No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

Statute of limitations.

PART E—ADMINISTRATIVE AND ENFORCEMENT PROVISIONS

PROCEDURES

SEC. 501. (a) The Attorney General may delegate any of his functions under this title to any officer or employee of the Department of Justice.

Attorney General, functions, delegation.

Regulations.

(b) The Attorney General may promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this title.

Gifts, etc., acceptance.

(c) The Attorney General may accept in the name of the Department of Justice any form of devise, bequest, gift, or donation where the donor intends to donate property for the purpose of preventing or controlling the abuse of controlled substances. He may take all appropriate steps to secure possession of such property and may sell, assign, transfer, or convey any such property other than moneys.

EDUCATION AND RESEARCH PROGRAMS OF THE ATTORNEY GENERAL

SEC. 502. (a) The Attorney General is authorized to carry out educational and research programs directly related to enforcement of the laws under his jurisdiction concerning drugs or other substances which are or may be subject to control under this title. Such programs may include—

(1) educational and training programs on drug abuse and controlled substances law enforcement for local, State, and Federal personnel;

(2) studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;

(3) studies or special projects designed to assess and detect accurately the presence in the human body of drugs or other substances which are or may be subject to control under this title, including the development of rapid field identification methods which would enable agents to detect microquantities of such drugs or other substances;

(4) studies or special projects designed to evaluate the nature and sources of the supply of illegal drugs throughout the country;

(5) studies or special projects to develop more effective methods to prevent diversion of controlled substances into illegal channels; and

(6) studies or special projects to develop information necessary to carry out his functions under section 201 of this title.

Ante, p. 1245.

(b) The Attorney General may enter into contracts for such educational and research activities without performance bonds and without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

Research populations, identification, prohibition.

(c) The Attorney General may authorize persons engaged in research to withhold the names and other identifying characteristics of persons who are the subjects of such research. Persons who obtain this authorization may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.

Controlled substances, exception.

(d) The Attorney General, on his own motion or at the request of the Secretary, may authorize the possession, distribution, and dispensing of controlled substances by persons engaged in research. Persons who obtain this authorization shall be exempt from State or Federal prosecution for possession, distribution, and dispensing of controlled substances to the extent authorized by the Attorney General.

COOPERATIVE ARRANGEMENTS

SEC. 503. (a) The Attorney General shall cooperate with local, State, and Federal agencies concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he is authorized to—

(1) arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances;

(2) cooperate in the institution and prosecution of cases in the courts of the United States and before the licensing boards and courts of the several States;

(3) conduct training programs on controlled substance law enforcement for local, State, and Federal personnel;

(4) maintain in the Department of Justice a unit which will accept, catalog, file, and otherwise utilize all information and statistics, including records of controlled substance abusers and other controlled substance law offenders, which may be received from Federal, State, and local agencies, and make such information available for Federal, State, and local law enforcement purposes; and

(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

Assistance.

(b) When requested by the Attorney General, it shall be the duty of any agency or instrumentality of the Federal Government to furnish assistance, including technical advice, to him for carrying out his functions under this title; except that no such agency or instrumentality shall be required to furnish the name of, or other identifying information about, a patient or research subject whose identity it has undertaken to keep confidential.

Prohibition.

ADVISORY COMMITTEES

Appointment.

SEC. 504. The Attorney General may from time to time appoint committees to advise him with respect to preventing and controlling the abuse of controlled substances. Members of the committees may be entitled to receive compensation at the rate of $100 for each day (including traveltime) during which they are engaged in the actual performance of duties. While traveling on official business in the performance of duties for the committees, members of the committees shall be allowed expenses of travel, including per diem instead of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

Compensation.

Travel expenses, etc.

80 Stat. 498; 83 Stat. 190. 5 USC 5701.

ADMINISTRATIVE HEARINGS

SEC. 505. (a) In carrying out his functions under this title, the Attorney General may hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States.

(b) Except as otherwise provided in this title, notice shall be given and hearings shall be conducted under appropriate procedures of subchapter II of chapter 5, title 5, United States Code.

80 Stat. 381. 5 USC 551.

SUBPENAS

SEC. 506. (a) In any investigation relating to his functions under this title with respect to controlled substances, the Attorney General may subpena witnesses, compel the attendance and testimony of witnesses, and require the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in any State or in any territory

or other place subject to the jurisdiction of the United States at any designated place of hearing; except that a witness shall not be required to appear at any hearing more than 500 miles distant from the place where he was served with a subpena. Witnesses summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

Exception.

Fees.

(b) A subpena issued under this section may be served by any person designated in the subpena to serve it. Service upon a natural person may be made by personal delivery of the subpena to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpena entered on a true copy thereof by the person serving it shall be proof of service.

Service.

(c) In the case of contumacy by or refusal to obey a subpena issued to any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on or of which the subpenaed person is an inhabitant, or in which he carries on business or may be found, to compel compliance with the subpena. The court may issue an order requiring the subpenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

Refusal to obey subpena.

Order.

Failure to obey order, penalty. Jurisdiction.

JUDICIAL REVIEW

SEC. 507. All final determinations, findings, and conclusions of the Attorney General under this title shall be final and conclusive decisions of the matters involved, except that any person aggrieved by a final decision of the Attorney General may obtain review of the decision in the United States Court of Appeals for the District of Columbia or for the circuit in which his principal place of business is located upon petition filed with the court and delivered to the Attorney General within thirty days after notice of the decision. Findings of fact by the Attorney General, if supported by substantial evidence, shall be conclusive.

POWERS OF ENFORCEMENT PERSONNEL

SEC. 508. Any officer or employee of the Bureau of Narcotics and Dangerous Drug designated by the Attorney General may—

(1) carry firearms;

(2) execute and serve search warrants, arrest warrants, administrative inspection warrants, subpenas, and summonses issued under the authority of the United States;

(3) make arrests without warrant (A) for any offense against the United States committed in his presence, or (B) for any felony, cognizable under the laws of the United States, if he has probable cause to believe that the person to be arrested has committed or is committing a felony;

(4) make seizures of property pursuant to the provisions of this title; and

(5) perform such other law enforcement duties as the Attorney General may designate.

SEARCH WARRANTS

SEC. 509. (a) A search warrant relating to offenses involving controlled substances may be served at any time of the day or night if the judge or United States magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time.

(b) Any officer authorized to execute a search warrant relating to offenses involving controlled substances the penalty for which is imprisonment for more than one year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, if the judge or United States magistrate issuing the warrant (1) is satisfied that there is probable cause to believe that (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, or (B) the giving of such notice will immediately endanger the life or safety of the executing officer or another person, and (2) has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reasons and authority for his entrance upon the premises.

Authority to break and enter under certain conditions.

ADMINISTRATIVE INSPECTIONS AND WARRANTS

SEC. 510. (a) As used in this section, the term "controlled premises" means—

"Controlled premises."

(1) places where original or other records or documents required under this title are kept or required to be kept, and

(2) places, including factories, warehouses, or other establishments, and conveyances, where persons registered under section 303 (or exempted from registration under section 302(d)) may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of controlled substances.

(b)(1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this title and otherwise facilitating the carrying out of his functions under this title, the Attorney General is authorized, in accordance with this section, to enter controlled premises and to conduct administrative inspections thereof, and of the things specified in this section, relevant to those functions.

(2) Such entries and inspections shall be carried out through officers or employees (hereinafter referred to as "inspectors") designated by the Attorney General. Any such inspector, upon stating his purpose and presenting to the owner, operator, or agent in charge of such premises (A) appropriate credentials and (B) a written notice of his inspection authority (which notice in the case of an inspection requiring, or in fact supported by, an administrative inspection warrant shall consist of such warrant), shall have the right to enter such premises and conduct such inspection at reasonable times.

(3) Except as may otherwise be indicated in an applicable inspection warrant, the inspector shall have the right—

(A) to inspect and copy records, reports, and other documents required to be kept or made under this title;

(B) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished drugs and other substances or materials, containers, and labeling found therein, and, except as provided in para-

graph (5) of this subsection, all other things therein (including records, files, papers, processes, controls, and facilities) appropriate for verification of the records, reports, and documents referred to in clause (A) or otherwise bearing on the provisions of this title; and

(C) to inventory any stock of any controlled substance therein and obtain samples of any such substance.

(4) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to—

(A) financial data;

(B) sales data other than shipment data; or

(C) pricing data.

(c) A warrant under this section shall not be required for the inspection of books and records pursuant to an administrative subpena issued in accordance with section 506, nor for entries and administrative inspections (including seizures of property)—

(1) with the consent of the owner, operator, or agent in charge of the controlled premises;

(2) in situations presenting imminent danger to health or safety;

(3) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(5) in any other situations where a warrant is not constitutionally required.

Administrative inspection warrants, issuance and execution.

(d) Issuance and execution of administrative inspection warrants shall be as follows:

"Probable cause."

(1) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this title or regulations thereunder, and seizures of property appropriate to such inspections. For the purposes of this section, the term "probable cause" means a valid public interest in the effective enforcement of this title or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or conveyance, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of such inspection, and, where appropriate, the type of property to be inspected, if any. The warrant shall identify the items or types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (b) (2) to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified, and, where appropriate, shall direct the seizure of the property specified. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the United States of a need therefor, the judge or magistrate allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

Warrants, filing.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

FORFEITURES

SEC. 511. (a) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this title.

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this title.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that—

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this title or title III; and

Post, p. 1285.

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any State.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this title.

(b) Any property subject to forfeiture to the United States under this title may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the United States in a criminal injunction or forfeiture proceeding under this title;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of this title.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

Property, custody of Attorney General.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this title, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this title by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e) Whenever property is forfeited under this title the Attorney General may—

(1) retain the property for official use;

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs;

(3) require that the General Services Administration take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the Bureau of Narcotics and Dangerous Drugs for disposition (including delivery for medical or scientific use to any Federal or State agency under regulations of the Attorney General).

Controlled substances, forfeiture.

(f) All controlled substances in schedule I that are possessed, transferred, sold, or offered for sale in violation of the provisions of this title shall be deemed contraband and seized and summarily forfeited to the United States. Similarly, all substances in schedule I, which are seized or come into the possession of the United States, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the United States.

(g) (1) All species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this title, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the United States.

(2) The failure, upon demand by the Attorney General or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(3) The Attorney General, or his duly authorized agent, shall have authority to enter upon any lands, or into any dwelling pursuant to a search warrant, to cut, harvest, carry off, or destroy such plants.

INJUNCTIONS

Jurisdiction of courts.

SEC. 512. (a) The district courts of the United States and all courts exercising general jurisdiction in the territories and possessions of the United States shall have jurisdiction in proceedings in accordance with the Federal Rules of Civil Procedure to enjoin violations of this title.

(b) In case of an alleged violation of an injunction or restraining order issued under this section, trial shall, upon demand of the accused, be by a jury in accordance with the Federal Rules of Civil Procedure.

28 USC app.

ENFORCEMENT PROCEEDINGS

Notice.

SEC. 513. Before any violation of this title is reported by the Director of the Bureau of Narcotics and Dangerous Drugs to any United States attorney for institution of a criminal proceeding, the Director may require that the person against whom such proceeding is contemplated be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

IMMUNITY AND PRIVILEGE

Refusal to testify, prohibition.

SEC. 514. (a) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before a court or grand jury of the United States, involving a violation of this title, and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order issued under subsection (b) of this section or any information obtained by the exploitation of such testimony or other information, may be used against the witness in any criminal case, including any criminal case brought in a court of a State, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

84 STAT. 1279

Order.

(b) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before a court or grand jury of the United States, the United States district court for the judicial district in which the proceeding is or may be held shall issue, upon the request of the United States attorney for such district, an order requiring such individual to give any testimony or provide any other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

(c) A United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, or any Assistant Attorney General designated by the Attorney General, request an order under subsection (b) when in his judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

BURDEN OF PROOF; LIABILITIES

SEC. 515. (a) (1) It shall not be necessary for the United States to negative any exemption or exception set forth in this title in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this title, and the burden of going forward with the evidence with respect to any such exemption or exception shall be upon the person claiming its benefit.

Ante, p. 1264.

(2) In the case of a person charged under section 404(a) with the possession of a controlled substance, any label identifying such substance for purposes of section 503(b)(2) of the Federal Food, Drug, and Cosmetic Act shall be admissible in evidence and shall be prima facie evidence that such substance was obtained pursuant to a valid prescription from a practitioner while acting in the course of his professional practice.

65 Stat. 648.
21 USC 353.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this title, he shall be presumed not to be the holder of such registration or form, and the burden of going forward with the evidence with respect to such registration or form shall be upon him.

(c) The burden of going forward with the evidence to establish that a vehicle, vessel, or aircraft used in connection with controlled substances in schedule I was used in accordance with the provisions of this title shall be on the persons engaged in such use.

Criminal liability, prohibition, exception.
62 Stat. 803.

(d) Except as provided in sections 2234 and 2235 of title 18, United States Code, no civil or criminal liability shall be imposed by virtue of this title upon any duly authorized Federal officer lawfully engaged in the enforcement of this title, or upon any duly authorized officer of any State, territory, political subdivision thereof, the District of Columbia, or any possession of the United States, who shall be lawfully engaged in the enforcement of any law or municipal ordinance relating to controlled substances.

PAYMENTS AND ADVANCES

Informers, payment.

SEC. 516. (a) The Attorney General is authorized to pay any person, from funds appropriated for the Bureau of Narcotics and Dangerous Drugs, for information concerning a violation of this title, such sum or sums of money as he may deem appropriate, without reference to any moieties or rewards to which such person may otherwise be entitled by law.

(b) Moneys expended from appropriations of the Bureau of Narcotics and Dangerous Drugs for purchase of controlled substances and subsequently recovered shall be reimbursed to the current appropriation for the Bureau.

Funds, advancement, authority of Attorney General.

(c) The Attorney General is authorized to direct the advance of funds by the Treasury Department in connection with the enforcement of this title.

PART F—ADVISORY COMMISSION

ESTABLISHMENT OF COMMISSION ON MARIHUANA AND DRUG ABUSE

SEC. 601. (a) There is established a commission to be known as the Commission on Marihuana and Drug Abuse (hereafter in this section referred to as the "Commission"). The Commission shall be composed of—

Membership.

(1) two Members of the Senate appointed by the President of the Senate;

(2) two Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(3) nine members appointed by the President of the United States.

At no time shall more than one of the members appointed under paragraph (1), or more than one of the members appointed under paragraph (2), or more than five of the members appointed under paragraph (3) be members of the same political party.

(b) (1) The President shall designate one of the members of the Commission as Chairman, and one as Vice Chairman. Seven members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

Quorum.

(2) Members of the Commission who are Members of Congress or full-time officers or employees of the United States shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Commission. Members of the Commission from private life shall receive $100 per diem while engaged in the actual performance of the duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

Travel expenses, etc.

Compensation.

(3) The Commission shall meet at the call of the Chairman or at the call of a majority of the members thereof.

Meetings.

(c) (1) The Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

Personnel.

80 Stat. 443, 467.
5 USC 5101, 5331.

(2) The Commission may procure, in accordance with the provisions of section 3109 of title 5, United States Code, the temporary or intermittent services of experts or consultants. Persons so employed shall receive compensation at a rate to be fixed by the Commission, but not in excess of $75 per diem, including traveltime. While away from his home or regular place of business in the performance of services for the Commission, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

35 F. R. 6247.
Experts and consultants.
80 Stat. 416.
Travel expenses, etc.
80 Stat. 499; 83 Stat. 190.

(3) The Commission may secure directly from any department or agency of the United States information necessary to enable it to

Information, availability.

carry out its duties under this section. Upon request of the Chairman of the Commission, such department or agency shall furnish such information to the Commission.

Marihuana, study.

(d) (1) The Commission shall conduct a study of marihuana including, but not limited to, the following areas:

(A) the extent of use of marihuana in the United States to include its various sources, the number of users, number of arrests, number of convictions, amount of marihuana seized, type of user, nature of use;

(B) an evaluation of the efficacy of existing marihuana laws;

(C) a study of the pharmacology of marihuana and its immediate and long-term effects, both physiological and psychological;

(D) the relationship of marihuana use to aggressive behavior and crime;

(E) the relationship between marihuana and the use of other drugs; and

(F) the international control of marihuana.

Report to President and Congress.

(2) Within one year after the date on which funds first become available to carry out this section, the Commission shall submit to the President and the Congress a comprehensive report on its study and investigation under this subsection which shall include its recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.

Drug abuse, study and investigation. Interim reports. Final report to President and Congress. Termination. Expenditures, limitation.

(e) The Commission shall conduct a comprehensive study and investigation of the causes of drug abuse and their relative significance. The Commission shall submit to the President and the Congress such interim reports as it deems advisable and shall within two years after the date on which funds first become available to carry out this section submit to the President and the Congress a final report which shall contain a detailed statement of its findings and conclusions and also such recommendations for legislation and administrative actions as it deems appropriate. The Commission shall cease to exist sixty days after the final report is submitted under this subsection.

(f) Total expenditures of the Commission shall not exceed $1,000,000.

Part G—Conforming, Transitional and Effective Date, and General Provisions

Repeals and conforming amendments

Repeals. 79 Stat. 227, 232, 228; 82 Stat. 1361.

Sec. 701. (a) Sections 201(v), 301(q), and 511 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(v), 331(q), 360(a) are repealed.

Penalties. 82 Stat. 1361.

(b) Subsections (a) and (b) of section 303 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333) are amended to read as follows:

"Sec. 303. (a) Any person who violates a provision of section 301 shall be imprisoned for not more than one year or fined not more than $1,000, or both.

"(b) Notwithstanding the provisions of subsection (a) of this section, if any person commits such a violation after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than $10,000 or both."

79 Stat. 233.

(c) Section 304(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334(a)(2)) is amended (1) by striking out clauses (A) and (D), (2) by striking out "of such depressant or stimulant drug or" in clause (C), (3) by adding "and" after the comma at the end of clause (C), and (4) by redesignating clauses (B), (C), and (E) as clauses (A), (B), and (C), respectively.

(d) Section 304(d)(3)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334(d)(3)(iii)) is amended by striking out "depressant or stimulant drugs or". 79 Stat. 233.

(e) Section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) is amended (1) in subsection (a) by striking out paragraph (2), by inserting "and" at the end of paragraph (1), and by redesignating paragraph (3) as paragraph (2); (2) by striking out "or in the wholesaling, jobbing, or distributing of any depressant or stimulant drug" in the first sentence of subsection (b); (3) by striking out the last sentence of subsection (b); (4) by striking out "or in the wholesaling, jobbing, or distributing of any depressant or stimulant drug" in the first sentence of subsection (c); (5) by striking out the last sentence of subsection (c); (6) by striking out "(1)" in subsection (d) and by inserting a period after "drug or drugs" in that subsection and deleting the remainder of that subsection; and (7) by striking out "AND CERTAIN WHOLESALERS" in the section heading. 76 Stat. 794; 79 Stat. 231.

(f) Section 702 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372) is amended by striking out "to depressant or stimulant drugs or" in subsection (e). 79 Stat. 234.

(g) Section 201(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(a)(2)) is amended by inserting a period after "Canal Zone" the first time these words appear and deleting all thereafter in such section 201(a)(2). 76 Stat. 796; 82 Stat. 1362.

(h) The last sentence of section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) is amended (1) by striking out "This paragraph" and inserting in lieu thereof "Clause (2) of the third sentence of this paragraph,", and (2) by striking out "section 2 of the Act of May 26, 1922, as amended (U.S.C. 1934, edition, title 21, sec. 173)" and inserting in lieu thereof "the Controlled Substances Import and Export Act". 52 Stat. 1058.

(i)(1) Section 1114 of title 18, United States Code, is amended by striking out "the Bureau of Narcotics" and inserting in lieu thereof "the Bureau of Narcotics and Dangerous Drugs". 65 Stat. 721.

(2) Section 1952 of such title is amended—

(A) by inserting in subsection (b)(1) "or controlled substances (as defined in section 102(6) of the Controlled Substances Act)" immediately following "narcotics"; and 75 Stat. 498. 18 USC 1952.

(B) by striking out "or narcotics" in subsection (c).

(j) Subsection (a) of section 302 of the Public Health Service Act (42 U.S.C. 242(a)) is amended to read as follows: Drugs, study. 58 Stat. 692.

"Sec. 302. (a) In carrying out the purposes of section 301 with respect to drugs the use or misuse of which might result in drug abuse or dependency, the studies and investigations authorized therein shall include the use and misuse of narcotic drugs and other drugs. Such studies and investigations shall further include the quantities of crude opium, coca leaves, and their salts, derivatives, and preparations, and other drugs subject to control under the Controlled Substances Act and Controlled Substances Import and Export Act, together with reserves thereof, necessary to supply the normal and emergency medicinal and scientific requirements of the United States. The results of studies and investigations of the quantities of narcotic drugs or other drugs subject to control under such Acts, together with reserves of such drugs, that are necessary to supply the normal and emergency medicinal and scientific requirements of the United States, shall be

Ante, p. 1242. Post, p. 1285.

Report to Attorney General.

reported not later than the first day of April of each year to the Attorney General, to be used at his discretion in determining manufacturing quotas or importation requirements under such Acts."

PENDING PROCEEDINGS

SEC. 702. (a) Prosecutions for any violation of law occurring prior to the effective date of section 701 shall not be affected by the repeals or amendments made by such section, or abated by reason thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of section 701 shall not be affected by the repeals or amendments made by such section, or abated by reason thereof.

(c) All administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on the date of enactment of this Act shall be continued and brought to final determination in accord with laws and regulations in effect prior to such date of enactment. Where a drug is finally determined under such proceedings to be a depressant or stimulant drug, as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act, such drug shall automatically be controlled under this title by the Attorney General without further proceedings and listed in the appropriate schedule after he has obtained the recommendation of the Secretary. Any drug with respect to which such a final determination has been made prior to the date of enactment of this Act which is not listed in section 202 within schedules I through V shall automatically be controlled under this title by the Attorney General without further proceedings, and be listed in the appropriate schedule, after he has obtained the recommendations of the Secretary.

Ante, p. 1281.

Ante, p. 1247.

PROVISIONAL REGISTRATION

SEC. 703. (a) (1) Any person who—

(A) is engaged in manufacturing, distributing, or dispensing any controlled substance on the day before the effective date of section 302, and

(B) is registered on such day under section 510 of the Federal Food, Drug, and Cosmetic Act or under section 4722 of the Internal Revenue Code of 1954,

shall, with respect to each establishment for which such registration is in effect under any such section, be deemed to have a provisional registration under section 303 for the manufacture, distribution, or dispensing (as the case may be) of controlled substances.

Ante, p. 1282.

68A Stat. 555.

(2) During the period his provisional registration is in effect under this section, the registration number assigned such person under such section 510 or under such section 4722 (as the case may be) shall be his registration number for purposes of section 303 of this title.

(b) The provisions of section 304, relating to suspension and revocation of registration, shall apply to a provisional registration under this section.

(c) Unless sooner suspended or revoked under subsection (b), a provisional registration of a person under subsection (a)(1) of this section shall be in effect until—

(1) the date on which such person has registered with the Attorney General under section 303 or has had his registration denied under such section, or

(2) such date as may be prescribed by the Attorney General for registration of manufacturers, distributors, or dispensers, as the case may be,

whichever occurs first.

EFFECTIVE DATES AND OTHER TRANSITIONAL PROVISIONS

SEC. 704. (a) Except as otherwise provided in this section, this title shall become effective on the first day of the seventh calendar month that begins after the day immediately preceding the date of enactment.

(b) Parts A, B, E, and F of this title, section 702, this section, and sections 705 through 709, shall become effective upon enactment.

(c) Sections 305 (relating to labels and labeling), and 306 (relating to manufacturing quotas) shall become effective on the date specified in subsection (a) of this section, except that the Attorney General may by order published in the Federal Register postpone the effective date of either or both of these sections for such period as he may determine to be necessary for the efficient administration of this title.

Ante, p. 1256.

Publication in Federal Register.

CONTINUATION OF REGULATIONS

SEC. 705. Any orders, rules, and regulations which have been promulgated under any law affected by this title and which are in effect on the day preceding enactment of this title shall continue in effect until modified, superseded, or repealed.

SEVERABILITY

SEC. 706. If a provision of this Act is held invalid, all valid provisions that are severable shall remain in effect. If a provision of this Act is held invalid in one or more of its applications, the provision shall remain in effect in all its valid applications that are severable.

SAVING PROVISION

SEC. 707. Nothing in this Act, except this part and, to the extent of any inconsistency, sections 307(e) and 309 of this title, shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act.

52 Stat. 1040.
21 USC 301.

APPLICATION OF STATE LAW

SEC. 708. No provision of this title shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together.

APPROPRIATIONS AUTHORIZATIONS

SEC. 709. There are authorized to be appropriated for expenses of the Department of Justice in carrying out its functions under this title (except section 103) not to exceed $60,000,000 for the fiscal year ending June 30, 1972, $70,000,000 for the fiscal year ending June 30, 1973, and $90,000,000 for the fiscal year ending June 30, 1974.

Ante, p. 1245.

TITLE III—IMPORTATION AND EXPORTATION; AMENDMENTS AND REPEALS OF REVENUE LAWS

SHORT TITLE

Citation of title.

SEC. 1000. This title may be cited as the "Controlled Substances Import and Export Act".

PART A—IMPORTATION AND EXPORTATION

DEFINITIONS

SEC. 1001. (a) For purposes of this part—

(1) The term "import" means, with respect to any article, any bringing in or introduction of such article into any area (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(2) The term "customs territory of the United States" has the meaning assigned to such term by general headnote 2 to the Tariff Schedules of the United States (19 U.S.C. 1202).

77A Stat. 11.

(b) Each term defined in section 102 of title II shall have the same meaning for purposes of this title as such term has for purposes of title II.

Ante, p. 1242.

IMPORTATION OF CONTROLLED SUBSTANCES

Unlawful acts.

SEC. 1002. (a) It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of title II, or any narcotic drug in schedule III, IV, or V of title II, except that—

Exceptions.

(1) such amounts of crude opium and coca leaves as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and

(2) such amounts of any controlled substance in schedule I or II or any narcotic drug in schedule III, IV, or V that the Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States—

(A) during an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate, or

(B) in any case in which the Attorney General finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 303,

Ante, p. 1253.

may be so imported under such regulations as the Attorney General shall prescribe. No crude opium may be so imported for the purpose of manufacturing heroin or smoking opium.

(b) It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any nonnarcotic controlled substance in schedule III, IV, or V, unless such nonnarcotic controlled substance—

(1) is imported for medical, scientific, or other legitimate uses, and

(2) is imported pursuant to such notification or declaration requirements as the Attorney General may by regulation prescribe.

(c) In addition to the amount of coca leaves authorized to be imported into the United States under subsection (a), the Attorney General may permit the importation of additional amounts of coca leaves. All cocaine and ecgonine (and all salts, derivatives, and preparations from which cocaine or ecgonine may be synthesized or made) contained in such additional amounts of coca leaves imported under this subsection shall be destroyed under the supervision of an authorized representative of the Attorney General.

EXPORTATION OF CONTROLLED SUBSTANCES

Unlawful acts.

SEC. 1003. (a) It shall be unlawful to export from the United States any narcotic drug in schedule I, II, III, or IV unless—

(1) it is exported to a country which is a party to—

(A) the International Opium Convention of 1912 for the Suppression of the Abuses of Opium, Morphine, Cocaine, and Derivative Drugs, or to the International Opium Convention signed at Geneva on February 19, 1925; or

38 Stat. 1912.
61 Stat. 2230.

(B) the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs concluded at Geneva, July 13, 1931, as amended by the protocol signed at Lake Success on December 11, 1946, and the protocol bringing under international control drugs outside the scope of the convention of July 13, 1931, for limiting the manufacture and regulating the distribution of narcotic drugs (as amended by the protocol signed at Lake Success on December 11, 1946), signed at Paris, November 19, 1948; or

48 Stat. 1543.
62 Stat. 1796.

(C) the Single Convention on Narcotic Drugs, 1961, signed at New York, March 30, 1961;

2 UST 1629.

18 UST 1407.

(2) such country has instituted and maintains, in conformity with the conventions to which it is a party, a system for the control of imports of narcotic drugs which the Attorney General deems adequate;

(3) the narcotic drug is consigned to a holder of such permits or licenses as may be required under the laws of the country of import, and a permit or license to import such drug has been issued by the country of import;

(4) substantial evidence is furnished to the Attorney General by the exporter that (A) the narcotic drug is to be applied exclusively to medical or scientific uses within the country of import, and (B) there is an actual need for the narcotic drug for medical or scientific uses within such country; and

(5) a permit to export the narcotic drug in each instance has been issued by the Attorney General.

(b) Notwithstanding subsection (a), the Attorney General may authorize any narcotic drug (including crude opium and coca leaves) in schedule I, II, III, or IV to be exported from the United States to a country which is a party to any of the international instruments mentioned in subsection (a) if the particular drug is to be applied to a special scientific purpose in the country of destination and the authorities of such country will permit the importation of the particular drug for such purpose.

Ante, p. 1248.

(c) It shall be unlawful to export from the United States any nonnarcotic controlled substance in schedule I or II unless—

(1) it is exported to a country which has instituted and maintains a system which the Attorney General deems adequate for the control of imports of such substances;

(2) the controlled substance is consigned to a holder of such permits or licenses as may be required under the laws of the country of import;

(3) substantial evidence is furnished to the Attorney General that (A) the controlled substance is to be applied exclusively to medical, scientific, or other legitimate uses within the country to which exported, (B) it will not be exported from such country, and (C) there is an actual need for the controlled substance for medical, scientific, or other legitimate uses within the country; and

(4) a permit to export the controlled substance in each instance has been issued by the Attorney General.

(d) Notwithstanding subsection (c), the Attorney General may authorize any nonnarcotic controlled substance in schedule I or II to be exported from the United States if the particular substance is to be applied to a special scientific purpose in the country of destination and the authorities of such country will permit the importation of the particular drug for such purpose.

Ante, p. 1248.

(e) It shall be unlawful to export from the United States to any other country any nonnarcotic controlled substance in schedule III or IV or any controlled substance in schedule V unless—

(1) there is furnished (before export) to the Attorney General documentary proof that importation is not contrary to the laws or regulations of the country of destination;

(2) a special controlled substance invoice, in triplicate, accompanies the shipment setting forth such information as the Attorney General may prescribe to identify the parties to the shipment and the means of shipping, and

(3) two additional copies of the invoice are forwarded to the Attorney General before the controlled substance is exported from the United States.

TRANSSHIPMENT AND IN-TRANSIT SHIPMENT OF CONTROLLED SUBSTANCES

SEC. 1004. Notwithstanding sections 1002, 1003, and 1007—

(1) A controlled substance in schedule I may—

(A) be imported into the United States for transshipment to another country, or

(B) be transferred or transshipped from one vessel, vehicle, or aircraft to another vessel, vehicle, or aircraft within the United States for immediate exportation,

if and only if it is so imported, transferred, or transshipped (i) for scientific, medical, or other legitimate purposes in the country of destination, and (ii) with the prior written approval of the Attorney General (which shall be granted or denied within 21 days of the request).

(2) A controlled substance in schedule II, III, or IV may be so imported, transferred, or transshipped if and only if advance notice is given to the Attorney General in accordance with regulations of the Attorney General.

POSSESSION ON BOARD VESSELS, ETC., ARRIVING IN OR DEPARTING FROM UNITED STATES

SEC. 1005. It shall be unlawful for any person to bring or possess on board any vessel or aircraft, or on board any vehicle of a carrier, arriving in or departing from the United States or the customs territory of the United States, a controlled substance in schedule I or II or a narcotic drug in schedule III or IV, unless such substance or drug is a part of the cargo entered in the manifest or part of the official supplies of the vessel, aircraft, or vehicle.

Ante, p. 1248.

EXEMPTION AUTHORITY

SEC. 1006. (a) The Attorney General may by regulation exempt from sections 1002 (a) and (b), 1003, 1004, and 1005 any individual who has a controlled substance (except a substance in schedule I) in his possession for his personal medical use, or for administration to an animal accompanying him, if he lawfully obtained such substance and he makes such declaration (or gives such other notification) as the Attorney General may by regulation require.

(b) The Attorney General may by regulation except any compound, mixture, or preparation containing any depressant or stimulant substance listed in paragraph (a) or (b) of schedule III or in schedule IV or V from the applicaton of all or any part of this title if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and (2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

PERSONS REQUIRED TO REGISTER

SEC. 1007. (a) No person may—

(1) import into the customs territory of the United States from any place outside thereof (but within the United States), or import into the United States from any place outside thereof, any controlled substance, or

(2) export from the United States any controlled substance in schedule I, II, III, or IV,

unless there is in effect with respect to such person a registration issued by the Attorney General under section 1008, or unless such person is exempt from registration under subsection (b).

(b) (1) The following persons shall not be required to register under the provisions of this section and may lawfully possess a controlled substance:

(A) An agent or an employee of any importer or exporter registered under section 1008 if such agent or employee is acting in the usual course of his business or employment.

(B) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of his business or employment.

(C) An ultimate user who possesses such substance for a purpose specified in section 102(25) and in conformity with an exemption granted under section 1006(a).

Ante, p. 1245.

(2) The Attorney General may, by regulation, waive the requirement for registration of certain importers and exporters if he finds it consistent with the public health and safety; and may authorize any such importer or exporter to possess controlled substances for purposes of importation and exportation.

84 STAT. 1289

REGISTRATION REQUIREMENTS

SEC. 1008. (a) The Attorney General shall register an applicant to import or export a controlled substance in schedule I or II if he determines that such registration is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on the effective date of this section. In determining the public interest, the factors enumerated in paragraph (1) through (6) of section 303(a) shall be considered.

Ante, p. 1253.

(b) Registration granted under subsection (a) of this section shall not entitle a registrant to import or export controlled substances in schedule I or II other than those specified in the registration.

(c) The Attorney General shall register an applicant to import a controlled substance in schedule III, IV, or V or to export a controlled substance in schedule III or IV, unless he determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest, the factors enumerated in paragraphs (1) through (6) of section 303(d) shall be considered.

(d) No registration shall be issued under this part for a period in excess of one year. Unless the regulations of the Attorney General otherwise provide, section 302(f), 304, 305, and 307 shall apply to persons registered under this section to the same extent such sections apply to persons registered under section 303.

Ante, pp. 1253-1258.

(e) The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration of importers and exporters of controlled substances under this section.

Rules and regulations.

(f) Persons registered by the Attorney General under this section to import or export controlled substances may import or export (and, for the purpose of so importing or exporting, may possess) such substances to the extent authorized by their registration and in conformity with the other provisions of this title and title II.

(g) A separate registration shall be required at each principal place of business where the applicant imports or exports controlled substances.

(h) Except in emergency situations as described in section 1002(a)(2)(A), prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, the Attorney General shall give manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

MANUFACTURE OR DISTRIBUTION FOR PURPOSES OF UNLAWFUL IMPORTATION

SEC. 1009. It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II—

(1) intending that such substance be unlawfully imported into the United States; or

(2) knowing that such substance will be unlawfully imported into the United States.

This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates this section shall be tried in the United States district court at the point of entry where such person enters the United States, or in the United States District Court for the District of Columbia.

84 STAT. 1290

PROHIBITED ACTS A—PENALTIES

SEC. 1010. (a) Any person who—

(1) contrary to section 1002, 1003, or 1007, knowingly or intentionally imports or exports a controlled substance,

(2) contrary to section 1005, knowingly or intentionally brings or possesses on board a vessel, aircraft, or vehicle a controlled substance, or

(3) contrary to section 1009, manufactures or distributes a controlled substance,

shall be punished as provided in subsection (b).

(b)(1) In the case of a violation under subsection (a) with respect to a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than fifteen years, or fined not more than $25,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than three years in addition to such term of imprisonment.

Ante, p. 1248.

(2) In the case of a violation under subsection (a) with respect to a controlled substance other than a narcotic drug in schedule I or II, the person committing such violation shall be imprisoned not more than five years, or be fined not more than $15,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall, in in addition to such term of imprisonment, include (A) a special parole term of not less than two years if such controlled substance is in schedule I, II, III, or (B) a special parole term of not less than one year if such controlled substance is in schedule IV.

(c) A special parole term imposed under this section or section 1012 may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. The special term provided for in this section and in section 1012 is in addition to, and not in lieu of, any other parole provided for by law.

PROHIBITED ACTS B—PENALTIES

SEC. 1011. Any person who violates section 1004 shall be subject to the following penalties:

(1) Except as provided in paragraph (2), any such person shall, with respect to any such violation, be subject to a civil penalty of not more than $25,000. Sections 402 (c)(1) and (c)(3) shall apply to any civil penalty assessed under this paragraph.

Ante, p. 1262.

(2) If such a violation is prosecuted by an information or indictment which alleges that the violation was committed knowingly or intentionally and the trier of fact specifically finds that the violation was so committed, such person shall be sentenced to imprisonment for not more than one year or a fine of not more than $25,000 or both.

SECOND OR SUBSEQUENT OFFENSES

SEC. 1012. (a) Any person convicted of any offense under this part is, if the offense is a second or subsequent offense, punishable by a term of imprisonment twice that otherwise authorized, by twice the fine otherwise authorized, or by both. If the conviction is for an offense

punishable under section 1010(b), and if it is the offender's second or subsequent offense, the court shall impose, in addition to any term of imprisonment and fine, twice the special parole term otherwise authorized.

(b) For purposes of this section, a person shall be considered convicted of a second or subsequent offense if, prior to the commission of such offense, one or more prior convictions of him for a felony under any provision of this title or title II or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant drugs, have become final.

Ante, p. 1242.

(c) Section 411 shall apply with respect to any proceeding to sentence a person under this section.

Ante, p. 1269.

ATTEMPT AND CONSPIRACY

SEC. 1013. Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

ADDITIONAL PENALTIES

SEC. 1014. Any penalty imposed for violation of this title shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

APPLICABILITY OF PART E OF TITLE II

SEC. 1015. Part E of title II shall apply with respect to functions of the Attorney General (and of officers and employees of the Bureau of Narcotics and Dangerous Drugs) under this title, to administrative and judicial proceedings under this title, and to violations of this title, to the same extent that such part applies to functions of the Attorney General (and such officers and employees) under title II, to such proceedings under title II, and to violations of title II. For purposes of the application of this section to section 510, any reference in such section 510 to "this title" shall be deemed to be a reference to title III, any reference to section 303 shall be deemed to be a reference to section 1008, and any reference to section 302(d) shall be deemed to be a reference to section 1007(b)(2).

Ante, p. 1270.
Ante, p. 1274.
Ante, p. 1285.
Ante, p. 1253.

AUTHORITY OF SECRETARY OF TREASURY

SEC. 1016. Nothing in this Act shall derogate from the authority of the Secretary of the Treasury under the customs and related laws.

PART B—AMENDMENTS AND REPEALS, TRANSITIONAL AND EFFECTIVE DATE PROVISIONS

REPEALS

SEC. 1101. (a) The following provisions of law are repealed:

(1) The Act of February 23, 1887 (21 U.S.C. 191–193). 24 Stat. 409.

(2) The Narcotic Drugs Import and Export Act (21 U.S.C. 171, 173, 174–184, 185). 38 Stat. 275.

(3) The Act of March 28, 1928 (31 U.S.C. 529a). 53 Stat. 1262.

(4) Sections 2(b), 6, 7, and 8 of the Act of June 14, 1930 (21 U.S.C. 162(b), 173a, 197, 198). 46 Stat. 585; 70 Stat. 575.

(5) The Act of July 3, 1930 (21 U.S.C. 199). 46 Stat. 850.

(6) Section 6 of the Act of March 28, 1928 (31 U.S.C. 529g). 53 Stat. 1263.

(7) The Opium Poppy Control Act of 1942 (21 U.S.C. 188–188n). 56 Stat. 1045.

(8) Section 15 of the Act of August 1, 1956 (48 U.S.C. 1421m). 70 Stat. 910.

(9) The Act of July 11, 1941 (21 U.S.C. 184a). 55 Stat. 584.

(10) The Narcotics Manufacturing Act of 1960 (21 U.S.C. 501–517). 74 Stat. 55.

(b)(1)(A) Chapter 68 of title 18 of the United States Code (relating to narcotics) is repealed. 70 Stat. 572. 18 USC 1401–1405.

(B) The item relating to such chapter 68 in the analysis of part I of such title 18 is repealed.

(2)(A) Section 3616 of title 18 of the United States Code (relating to use of confiscated motor vehicles) is repealed. 62 Stat. 840.

(B) The item relating to such section 3616 in the analysis of chapter 229 of such title 18 is repealed. 68A Stat. 549. 26 USC 4701–4776.

(3)(A) Subchapter A of chapter 39 of the Internal Revenue Code of 1954 (relating to narcotic drugs and marihuana) is repealed.

(B) The table of subchapters of such chapter 39 is amended by striking out

"SUBCHAPTER A. Narcotic drugs and marihuana."

(4)(A) Sections 7237 (relating to violation of laws relating to narcotic drugs and to marihuana) and 7238 (relating to violation of laws relating to opium for smoking) of the Internal Revenue Code of 1954 are repealed. 70 Stat. 568; 80 Stat. 1449.

(B) The table of sections of part II of subchapter A of chapter 75 of the Internal Revenue Code of 1954 is amended by striking out the items relating to such sections 7237 and 7238. 26 USC 7237, 7238.

(5)(A) Section 7491 of the Internal Revenue Code of 1954 (relating to burden of proof of exemptions in case of marihuana offenses) is repealed. 26 USC 7491.

(B) The table of sections for subchapter E of chapter 76 of the Internal Revenue Code of 1954 is amended by striking out the item relating to such section 7491.

CONFORMING AMENDMENTS

SEC. 1102. (a) Section 4901(a) of the Internal Revenue Code of 1954 is amended by striking out the comma immediately before "4461" and inserting in lieu thereof "or", and by striking out ", 4721 (narcotic drugs), or 4751 (marihuana)". 79 Stat. 149.

(b) Section 4905(b)(1) of the Internal Revenue Code of 1954 (relating to registration) is amended by striking out ", narcotics, marihuana," and ", 4722, 4753,".

(c) Section 6808 of the Internal Revenue Code of 1954 (relating to special provisions relating to stamps) is amended by striking out paragraph (8).

(d) Section 7012 of the Internal Revenue Code of 1954 (relating to cross references) is amended by striking out subsections (a) and (b).

(e) Section 7103(d)(3) of the Internal Revenue Code of 1954 (relating to bonds required with respect to certain products) is amended by striking out subparagraph (D).

(f) Section 7326 of the Internal Revenue Code of 1954 (relating to disposal of forfeited or abandoned property in special cases) is amended by striking out subsection (b). 72 Stat. 1429.

(g)(1) Section 7607 of the Internal Revenue Code of 1954 (relating to additional authority for Bureau of Narcotics and Bureau of Customs) is amended— 70 Stat. 570.

(A) by striking out "The Commissioner, Deputy Commissioner, Assistant to the Commissioner, and agents of the Bureau of Narcotics of the Department of the Treasury, and officers" and inserting in lieu thereof "Officers";

(B) by striking out in paragraph (2) "narcotic drugs (as defined in section 4731) or marihuana (as defined in section 4761)" and inserting in lieu thereof "narcotic drugs (as defined in section 102(16) of the Controlled Substances Act) or marihuana (as defined in section 102(15) of the Controlled Substances Act)"; and

(C) by striking out "BUREAU OF NARCOTICS AND" in the section heading.

(2) The item relating to section 7607 in the table of contents of subchapter A of chapter 78 of the Internal Revenue Code of 1954 is amended by striking out "Bureau of Narcotics and".

70 Stat. 570.

(h) Section 7609(a) of the Internal Revenue Code of 1954 (relating to cross references) is amended by striking out paragraphs (3) and (4).

72 Stat. 1430.

(i) Section 7641 of the Internal Revenue Code of 1954 (relating to supervision of operations of certain manufacturers) is amended by striking out "opium suitable for smoking purposes,".

68A Stat. 905.
26 USC 7641.

(j) Section 7651 of the Internal Revenue Code of 1954 (relating to administration and collection of taxes in possessions) is amended by striking out "and in sections 4705(b), 4735, and 4762 (relating to taxes on narcotic drugs and marihuana)".

(k) Section 7655(a) of the Internal Revenue Code of 1954 (relating to cross references) is amended by striking out paragraphs (3) and (4).

(l) Section 2901(a) of title 28 of the United States Code is amended by striking out "as defined by section 4731 of the Internal Revenue Code of 1954, as amended," and inserting in lieu thereof "as defined by section 102(16) of the Controlled Substances Act".

80 Stat. 1438.

(m) The last sentence of the second paragraph of section 584 of the Act of June 17, 1930 (19 U.S.C. 1584), is amended to read as follows: "As used in this paragraph, the terms 'opiate' and 'marihuana' shall have the same meaning given those terms by sections 102(17) and 102(15), respectively, of the Controlled Substances Act."

58 Stat. 722;
60 Stat. 39.

(n) (1) The first section of the Act of August 7, 1939 (31 U.S.C. 529a), is repealed.

Repeal.
53 Stat. 1262.

(2) Section 3 of such Act (31 U.S.C. 529d) is amended by striking out "or the Commissioner of Narcotics, as the case may be,".

(3) Section 4 of such Act (31 U.S.C. 529e) is amended by striking out "or narcotics" each place it appears.

(4) Section 5 of such Act (31 U.S.C. 529f) is amended by striking out "or narcotics" in the first sentence.

(o) Section 308(c)(2) of the Act of August 27, 1935 (40 U.S.C. 304m) is amended by striking out "Narcotic Drug Import and Export Act" and inserting in lieu thereof "Controlled Substances Act".

49 Stat. 880.

(p) Paragraph (a) of section 301 of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. 3411) is amended by striking out "as defined in section 4731 of the Internal Revenue Code of 1954, as amended," and inserting in lieu thereof "as defined in section 102(16) of the Controlled Substances Act".

80 Stat. 1444.

(q) Paragraph (a) of the first section of the Act of July 15, 1954 (46 U.S.C. 239a) is amended to read as follows:

68 Stat. 484.

"(a) The term 'narcotic drug' shall have the meaning given that term by section 102(16) of the Controlled Substances Act and shall also include marihuana as defined by section 102(15) of such Act."

(r) Paragraph (d) of section 7 of the Act of August 9, 1939 (49 U.S.C. 787) is amended to read as follows:

53 Stat. 1292.

"(d) The term 'narcotic drug' shall have the meaning given that term by section 102(16) of the Controlled Substances Act and shall also include marihuana as defined by section 102(15) of such Act;"

"Narcotic drug."

(s) Paragraph (a) of section 4251 of title 18, United States Code, is amended by striking out "as defined in section 4731 of the Internal Revenue Code of 1954, as amended," and inserting in lieu thereof "as defined in section 102(16) of the Controlled Substances Act".

80 Stat. 1442.

(t) The first section of the Act of August 11, 1955 (21 U.S.C. 198a), is amended to read as follows: "That for the purpose of any investigation which, in the opinion of the Secretary of the Treasury, is necessary and proper to the enforcement of section 545 of title 18 of the United States Code (relating to smuggling goods into the United States) with respect to any controlled substance (as defined in section 102 of the Controlled Substances Act), the Secretary of the Treasury may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of records (including books, papers, documents, and tangible things which constitute or contain evidence) relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place within the customs territory of the United States, except that a witness shall not be required to appear at any hearing distant more than 100 miles from the place where he was served with subpena. Witnesses summoned by the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Oaths and affirmations may be made at any place subject to the jurisdiction of the United States."

Investigations, subpoena power.
69 Stat. 684.

62 Stat. 716.

Witnesses, travel expenses.

PENDING PROCEEDINGS

SEC. 1103. (a) Prosecutions for any violation of law occurring prior to the effective date of section 1101 shall not be affected by the repeals or amendments made by such section or section 1102, or abated by reason thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of section 1101 shall not be affected by the repeals or amendments made by such section or section 1102, or abated by reason thereof.

PROVISIONAL REGISTRATION

SEC. 1104. (a) (1) Any person—

(A) who is engaged in importing or exporting any controlled substance on the day before the effective date of section 1007,

(B) who notifies the Attorney General that he is so engaged, and

(C) who is registered on such day under section 510 of the Federal Food, Drug, and Cosmetic Act or under section 4722 of the Internal Revenue Code of 1954,

shall, with respect to each establishment for which such registration is in effect under any such section, be deemed to have a provisional registration under section 1008 for the import or export (as the case may be) of controlled substances.

76 Stat. 794;
79 Stat. 231.
21 USC 360.
68A Stat. 555.
26 USC 4722.

(2) During the period his provisional registration is in effect under this section, the registration number assigned such person under such section 510 or under such section 4722 (as the case may be) shall be his registration number for purposes of part A of this title.

Ante, p. 1285.

Ante, p. 1255.

(b) The provisions of section 304, relating to suspension and revocation of registration, shall apply to a provisional registration under this section.

(c) Unless sooner suspended or revoked under subsection (b), a provisional registration of a person under subsection (a)(1) of this section shall be in effect until—

(1) the date on which such person has registered with the Attorney General under section 1008 or has had his registration denied under such section, or

(2) such date as may be prescribed by the Attorney General for registration of importers or exporters, as the case may be,

whichever occurs first.

EFFECTIVE DATES AND OTHER TRANSITIONAL PROVISIONS

SEC. 1105. (a) Except as otherwise provided in this section, this title shall become effective on the first day of the seventh calendar month that begins after the day immediately preceding the date of enactment.

(b) Sections 1000, 1001, 1006, 1015, 1016, 1103, 1104, and this section shall become effective upon enactment.

Ante, pp. 1284, 1257.

(c)(1) If the Attorney General, pursuant to the authority of section 704(c) of title II, postpones the effective date of section 306 (relating to manufacturing quotas) for any period beyond the date specified in section 704(a) and such postponement applies to narcotic drugs, the repeal of the Narcotics Manufacturing Act of 1960 by paragraph (10) of section 1101(a) of this title is hereby postponed for the same period, except that the postponement made by this paragraph shall not apply to the repeal of sections 4, 5, 13, 15, and 16 of that Act.

(2) Effective for any period of postponement, by paragraph (1) of this subsection, of the repeal of provisions of the Narcotics Manufacturing Act of 1960, that Act shall be applied subject to the following modifications:

"Narcotic drug." Ante, p. 1244.

(A) The term "narcotic drug" shall mean a narcotic drug as defined in section 102(16) of title II, and all references, in the Narcotics Manufacturing Act of 1960, to a narcotic drug as defined by section 4731 of the Internal Revenue Code of 1954 are amended to refer to a narcotic drug as defined by such section 102(16).

(B) On and after the date prescribed by the Attorney General pursuant to clause (2) of section 703(c) of title II, the requirements of a manufacturer's license with respect to a basic class of narcotic drug under the Narcotics Manufacturing Act of 1960, and of a registration under section 4722 of the Internal Revenue Code of 1954 as a prerequisite to issuance of such a license, shall be superseded by a requirement of actual registration (as distinguished from provisional registration) as a manufacturer of that class of drug under section 303(a) of title II.

Ante, p. 1253.

(C) On and after the effective date of the repeal of such section 4722 by section 1101(b)(3) of this title, but prior to the date specified in subparagraph (B) of this paragraph, the requirement of registration under such section 4722 as a prerequisite of a manufacturer's license under the Narcotics Manufacturing Act of 1960 shall be superseded by a requirement of either (i) actual registration as a manufacturer under section 303 of title II or (ii) provisional registration (by virtue of a preexisting registration under such section 4722) under section 703 of title II.

(d) Any orders, rules, and regulations which have been promulgated under any law affected by this title and which are in effect on the day preceding enactment of this title shall continue in effect until modified, superseded, or repealed.

TITLE IV—REPORT ON ADVISORY COUNCILS

REPORT ON ADVISORY COUNCILS

Reports to Congress.

SEC. 1200. (a) Not later than March 31 of each calendar year after 1970, the Secretary of the Department of Health, Education, and Welfare shall submit a report on the activities of advisory councils (established or organized pursuant to any applicable statute of the Public Health Service Act, Public Law 410, Seventy-eighth Congress, as amended, or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Public Law 88-164, as amended) to the Committee on Labor and Public Welfare of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. Such report shall contain, at least, a list of all such advisory councils, the names and occupations of their members, a description of the function of each advisory council, and a statement of the dates of the meetings of each advisory council.

58 Stat. 682. 42 USC 201 note. 77 Stat. 282. 42 USC 2661 note.

(b) If the Secretary determines that a statutory advisory council is not needed or that the functions of two or more statutory advisory councils should be combined, he shall include in the report a recommendation that such advisory council be abolished or that such functions be combined.

"Statutory advisory council."

(c) As used in this section, the term "statutory advisory council" means any committee, board, commission, council, or other similar group established or organized pursuant to any applicable statute to advise and make recommendations with respect to the administration or improvement of an applicable program or other related matter.

Approved October 27, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1444 (pts. 1 and 2) (Comm. on Interstate and Foreign Commerce) and No. 91-1603 (Comm. of Conference).
SENATE REPORT No. 91-613 accompanying S. 3246 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 116 (1970):
Jan. 23, 24, 26-28, S. 3246 considered and passed Senate.
Sept. 23, 24, considered and passed House.
Oct. 6, 7, considered and passed Senate, amended.
Oct. 8, 14, House agreed to conference report.
Oct. 14, Senate agreed to conference report.

EXHIBIT NO. 3

93D CONGRESS
1ST SESSION

S. 1646

IN THE SENATE OF THE UNITED STATES

APRIL 18, 1973

Mr. BAYH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Controlled Substances Act of 1970 to discharge obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation, of psychotropic substances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Psychotropic Substances Act of 1973".

SEC. 2. Subsection (d) of section 201 of the Controlled Substances Act (21 U.S.C. 811 (d)) is amended by adding "(1)" after "(d)" and inserting the following new paragraphs at the end thereof:

"(2) If control is required by United States obligations under the original schedules of the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971, after the convention comes into force, the Attorney General shall issue an order controlling the drug or other substance under the least restrictive schedule meeting such obligations, without regard to the findings required by subsection (a) of this section or section 202 (b) and without regard to the procedures prescribed by subsections (a) and (b) of this section.

"(3) (A) When proceedings are before the United Nations Commission on Narcotic Drugs to control or remove from control a drug or other substance under the Psychotropic Convention, the United States delegate to the Commission shall request the recommendation of the Secretary regarding whether such a drug or other substance should be so controlled or removed. In making his recommendation the Secretary shall consider the factors listed in paragraphs (2), (3), (6), (7), and (8) of subsection (c) and any scientific or medical considerations involved in paragraphs (1), (4), and (5) of such subsection. The recommendations of the Secretary to the United States delegate shall be binding on the United States delegate as to such scientific and medical matters, and if the Secretary recommends that a drug or other substance be controlled or removed from control, the United

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States delegate shall cast his vote on the Commission accordingly.

"(B) When the United States receives notification pursuant to article 2 of the Convention on Psychotropic Substances that a drug or other substance has been added or transferred to the schedule specified in the notification, the Attorney General shall, unless such drug or other substance is already subject to legal controls which meet the requirements of the schedule specified in the notification, initiate proceedings for control in accordance with subsections (a) and (b) of this section.

"(C) If the Attorney General determines, in view of exceptional circumstances, that the United States will not be in a position to give effect to all of the provisions of the Convention on Psychotropic Substances applicable to that drug or substance, he shall transmit notice of his determination and the reasons therefor to the Secretary of State for transmittal to the Secretary General of the United Nations within the time required by the convention. Concurrently with the transmittal of such notice, the Attorney General shall, unless the drug or substance is already controlled under this title or unless the proceedings for control are completed, issue an order, after consultation with the Secretary, controlling the drug or substance under a schedule IV or V, whichever is most appropriate to carry out the United States

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obligations under article 2, paragraph 7, of the convention, without regard to the findings required by subsection (a) of this section or section 202(b) and without regard to the procedures prescribed by subsections (a) and (b) of this section. As a part of such order, the Attorney General shall by regulation except such drug or substance from the application of any provisions of part C of this title which he finds is not required to carry out the United States obligations under article 2, paragraph 7, of the convention.

"(D) Upon completion of proceedings for control in accordance with subsections (a) and (b) of this section, the Attorney General shall issue a final order controlling the drug or substance under the appropriate schedule as determined by such proceedings: *Provided*, That if the Secretary recommends that such drug or substance not be controlled the Attorney General shall continue control of the drug or substance under schedule IV or V in accordance with paragraph (3) (B) of this subsection: *Provided further*, That the authority to determine the definition of 'medical and scientific purposes' and of 'very limited medical purposes' as required by article 5, section 2, and article 7 of the convention shall reside in the Secretary: *And provided further*, That the Secretary of State shall immediately request the United Nations Economic and Social Council to review the decision of the Commission. The Attorney General shall not request

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a review of a decision of the Commission without the concurrence in writing of the Secretary. The Secretary's decision to concur or not concur shall be guided by the factors referred to in subsection 201 (b)."

SEC. 3. Subsection (d) of section 202 of the Controlled Substances Act (21 U.S.C. 812 (d)) is amended by adding the following before the period at the end thereof: ", and (3) such exception does not conflict with United States obligations under the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971".

SEC. 4. Subsection (d) of section 307 of the Controlled Substances Act (21 U.S.C. 827 (d)) is amended by adding "(1)" after "(d)" the first time it appears, and adding the following at the end of the subsection:

"(2) Every manufacturer registered under section 303 shall, at such time or times and in such form as the Attorney General may require, make periodic reports to the Attorney General with respect to non-narcotic-controlled substances which are psychotropic substances subject to the Convention on Psychotropic Substances, signed in Vienna, February 21, 1971. These reports shall include the quantities used in the manufacture of substances either not listed in any schedule or listed in a schedule but excepted from certain controls under section 201 (d) (3) (B) or section 202 (d), the

stocks of these controlled substances held by the manufacturer."

SEC. 5. Section 301 of the Controlled Substances Act (21 U.S.C. 821) is amended by adding after the initial sentence the following new sentence: "The Attorney General shall consult with the Secretary before rules and regulations relating to the dispensing of controlled substances are issued."

SEC. 6. Subsection (f) of section 303 of the Controlled Substances Act (21 U.S.C. 823 (f)), is amended by adding the following sentence at the end of the subsection: "Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit research with substances scheduled under the convention in accordance with this subsection."

SEC. 7. Subsection (a) of section 306 of the Controlled Substances Act (21 U.S.C. 826 (a)) is amended by adding the following sentence at the end of that section: "In determining the total quantity and establishing production quotas under this subsection, the Attorney General shall consult with the Secretary regarding the medical, scientific, research, and industrial needs of the United States and the reserve stocks required for these needs."

SEC. 8. Subsection (c) of section 307 of the Controlled Substances Act (21 U.S.C. 827 (c)) is amended by inserting a new first sentence: "No provisions of the Convention on

Psychotropic Substances shall be construed to interfere with the exceptions described in this subsection."

SEC. 9. Part C of the Controlled Substances Act is amended by adding the following new section:

"SEC. 310. The Attorney General may, by regulation, after consultation with the Secretary, prescribe restrictions on the advertising to the general public concerning any controlled substance which is a psychotropic substance subject to the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971."

SEC. 10. Subsection (a) of section 402 of the Controlled Substances Act (21 U.S.C. 842(a)) is amended—

(a) by striking out "or" at the end of paragraph (7);

(b) by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; or"; and

(c) by adding the following new paragraph: "(9) to advertise to the general public any controlled substance in violation of regulations issued pursuant to section 310."

SEC. 11. Section 309 of the Controlled Substances Act (21 U.S.C. 829) is amended by adding the following new subsection (e): "The application of the provisions of article 9, paragraph 2, of the Convention on Psychotropic Substances which require that prescriptions for substances in schedules II, III, and IV of the convention 'are issued in accordance with sound medical practice and subject to such regulation, particularly as to the number of times they may be refilled and the duration of their validity,' shall be determined by the Secretary, after consultation with the Attorney General."

SEC. 12. Subsection (b) of section 1002 of the Controlled Substances Import and Export Act (21 U.S.C. 952) is amended by adding the following sentence to paragraph (2): "*Provided, however,* That if a nonnarcotic controlled substance is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements as the Attorney General may by regulation prescribe."

SEC. 13. Subsection (e) of section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953) is amended—

(a) by striking out ", and" at the end of paragraph (2) and inserting in lieu thereof ";";

(b) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(c) by adding the following new paragraph:

"(4) in any case when a nonnarcotic substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances, it is

exported pursuant to such export permit requirements as the Attorney General may by regulation prescribe, instead of the invoice required by subparagraphs (e) (2) and (e) (3) above."

SEC. 14. Section 3 (a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513) is amended by adding "(1)" before "The Secretary" and inserting the following new paragraph at the end thereof:

"(2) The provisions of article 7 or article 15 or any other provisions of the Convention on Psychotropic Substances shall not prevent the protection of (i) the confidentiality of patient records provided by section 408 of Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972, (ii) the confidentiality of names and identities of research subjects provided by this section and shall not be used as a basis for any modification or change in accepted medical practice or research activities in regard to records of the identity, diagnosis, prognosis, or treatment of patients or identity of research subjects in connection with the use of psychotropic substances."

SEC. 15. Section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513) is amended by inserting "regarding the security and safeguards against diversion of controlled substances" immediately after "Attorney General."

[From the Congressional Record, Wednesday, April 18, 1973.]

By Mr. BAYH:

S. 1646. A bill to amend the Controlled Substances Act of 1970 to discharge obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation of psychotropic substances, and for other purposes. Referred to the Committee on the Judiciary.

INTERNATIONAL PSYCHOTROPIC SUBSTANCES ACT OF 1973

Mr. BAYH. Mr. President, I am introducing today the International Psychotropic Substances Act of 1973, which is designed to permit the United States to comply with the provisions of the Convention on Psychotropic Substances signed at Vienna on February 21, 1971, which is now pending before the Senate Foreign Relations Committee. I ask that this bill which amends the Controlled Substances Act of 1970 be appropriately referred.

The Convention on Psychotropic Substances was transmitted on June 29, 1971, to the Senate, for its advice and consent to ratification. This Convention has as its purpose the international control of substances that are not included under any of the existing multilateral opium and other narcotic drug treaties. The Convention governs the so-called psychotropic—or mind-altering—substances: The hallucinogenes—such as LSD and mecaline—the amphetamines, the barbiturtes, and the tranquilizers. The Convention will come into force 90 days after 40 countries have ratified it.

The aim of the Convention is to limit to medical and scientific purposes the manufacture, distribution and use of psychotropic substances. The structure of the Convention is similar to that of the Comprehensive Drug Abuse Prevention and Control Act of 1970. It lists 32 substances in four schedules depending on the extent of their abuse, their potential for abuse and their therapeutic usefulness. The Convention contains a procedure for adding new substances to schedules, moving them among schedules and deleting them from the schedules. Like the Comprehensive Drug Abuse Prevention and Control Act, the Convention provides gradations of controls, with the most stringent controls applied to Schedule I substances—such as LSD, mescaline and the tetrahydrocannabinols—and lesser restrictions on substances in schedules II, III, and IV. Most of the control provisions are similar to the control of narcotic drugs by other treaties, such as the Single Convention on Narcotic Drugs, 1961.

In addition to controlling domestic commercial and medical activity, Parties must make certain reports to the International Narcotic Control Board, take actions against illicit traffic and apply penal provisions, and, where possible establish programs of drug abuse prevention, treatment, and rehabilitation.

Although the Controlled Substances Act and the Controlled Substances Import and Export Act provide most of the mechanisms to fulfill United States obligations under the Convention on Psychotropic Substances, new legislation will be required to satisfy all commitments under the Convention.

Last year legislation was introduced on behalf of the administration to accomplish similar purposes. That bill, however, was the subject of considerable controversy. Representatives of the Committee on Effective Drug Abuse Legislation, the American College of Neuro-Psychopharmacology, the American Psychiatric Association, the American Medical Association, and our distinguished colleague from Iowa, Senator HUGHES expressed concern that the enabling legislation failed to adequately protect the confidentiality of patient records; that it failed to adequately protect a private practitioner's right to carry on research with psychotropic substances; that it failed to designate who would determine the application of phrases—in the Convention—like sound medical practice and very limited medical and scientific purposes, and most importantly that it failed to provide an affirmative policy-making role for health and scientific professionals to balance any restrictions on their role imposed by the Convention.

The specific control measures which the Convention requires each Party to implement are largely satisfied by the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Food, Drug, and Cosmetic Act. For example, under the Convention, each Party must license manufac-

turers and distributors of psychotropic substances; sections 301 and 304 of the 1970 act provide for registration of these persons. Each party must restrict the use of schedule I—hallucinogenic—substances to scientific and very limited medical purposes; section 303 of the Controlled Substances Act—title II of the Comprehensive Act—limits access to such substances to qualified researchers. Psychotropic substances must be dispensed only upon a physician's prescription; all are subject to prescription requirements under the Federal Food, Drug, and Cosmetic Act. Each Party must require all handlers of psychotropic substances to keep records of all drugs manufactured, distributed or dispensed; section 307 of the act already imposes such recordkeeping requirements. Importation and exportation of psychotropic substances must be controlled in a manner similar to the requirements imposed by the Controlled Substances Import and Export Act, which is title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

My bill addresses these important concerns. I believe that, in areas which the Convention leaves to national discretion and in areas where the Convention language is ambiguous and this subjected to interpretation, it provides adequate clarification to ensure a significant role in these matters for the medical and scientific communities and to allay fears regarding restrictions on researchers or breaches of the confidentiality accorded medical records.

During my 2 years as chairman of the Subcommittee To Investigate Juvenile Delinquency, I have conducted an intensive investigation into the diversion and abuse of legitimately produced narcotic and nonnarcotic dangerous drugs.

Additional efforts are necessary to deal with the problems of international narcotic traffic. But even if the war on heroin should result in total victory, the epidemic of drug abuse which plagues American society would not be vanquished; for the source of supply for growing legions of addicts is a legitimate one.

During the past 2 years we have been able to obtain a drastic, but necessary, reduction in the production and diversion of amphetamines and amphetaminelike substances such as Ritalin and Preludin. My subcommittee conducted a national investigation of barbiturate abuse and diversion and found barbiturate abuse to be both a substantial public health problem and an ever-increasing concern of law enforcement officials.

As part of our effort to establish stricter controls on the production and distribution of barbiturates I have reintroduced, S. 3539, in the form of S. 983, which is cosponsored by 29 Members of the Senate.

More recently I have introduced S. 1252 to provide adequate controls on the production and distribution of methaqualone, commonly known as "sopors" and "quaaludes."

But regardless of the success of our efforts to impose domestic controls on these and other psychotropic substances, the absence of international cooperation and regulation could result in a failure to reduce the availability of dangerous psychotropic substances.

As a result of our study of the diversion of legitimate pharmaceutical drugs to illegal markets, I introduced the Dangerous Drug Identification Act, S. 3538, and the Dangerous Drug Tracer and Law Enforcement Information Act, S. 3819. Both of these measures were designed to assist law enforcement agencies in the identification of seized controlled substances. The identification bill, introduced this year as S. 984, would require manufacturers to place identifying marks or symbols on their capsules and tablets. The tracer bill, reintroduced as S. 985, would require manufacturers to incorporate an inert tracer ingredient in all schedule II and schedule III stimulants and depressants and thus whether seized in bulk form or in the form of illicitly capsulized pills, officials could determine the manufacturers, if domestic in origin.

These measures, however, will not assist law enforcement agencies efforts to curb diversion of psychotropic substances which are not domestic products. Last May, Mr. John Ingersoll, Director of the Bureau of Narcotics and Dangerous Drugs, reported to the subcommittee that a substantial portion of the so-called Mexican Reds—capsules containing legitimately produced barbiturates, but illicitly repackaged—contained barbiturates of European origin.

Likewise, during our March 28, 29 and April 16, 1973, hearings on methaqualone, several witnesses indicated that legitimately produced foreign methaqualone was being illegally imported into the United States for sale in the black market and that counterfeit methaqualone was being produced in Canada and Mexico for illicit sale in the United States.

These are but several examples of many which underscore the need for some international controls on psychotropic substances.

I am hopeful that my bill will satisfy those in the medical and scientific communities who expressed concern about the enabling legislation introduced last year. The subcommittee, however, will hold hearings which will provide ample opportunity for further comment and recommendations regarding the legislation.

The diversion and abuse of legitimately produced dangerous drugs into channels other than legitimate medical, scientific, and industrial channels should be a primary concern for all citizens. This measure is not a panacea, but it is my belief that it will not only help us solve our problem here at home, but will also be of assistance to other nations, whose legitimate production when diverted to illicit markets can reap havoc in their countries as well as ours.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill, together with the bill be printed at this point in the RECORD.

There being no objection, the analysis and bill were ordered to be printed in the RECORD, as follows:

"SECTION-BY-SECTION ANALYSIS OF THE INTERNATIONAL PSYCHOTROPIC SUBSTANCES ACT OF 1973

"Section 1. This section contains a short title to reflect the amending of the Controlled Substances Act of 1970 and for other purposes.

"Section 2. This section amends section 201 of the Controlled Substances Act (21 U.S.C. 811) to authorize and direct the Attorney General to take steps to control substances which the Convention obligates the United States to control. It also provides that the U.S. Delegate to the U.N. Commission on Narcotic Drugs must request the recommendation of the Secretary regarding any scientific or medical considerations involved in proceeding before the Commission and that with respect to such scientific and medical matters to U.S. Delegate is bound by the recommendation of the Secretary. This section provides that regardless of the outcome of the nation's internal efforts to require control certain minimum national controls must be imposed by the Attorney General, after consultation with the Secretary, once the Commission has notified members of its decision and after all appellate procedures have been exhausted. It permits the Attorney General to withhold any controls under the law which he does not find required by American obligations under the Convention on Psychotropic Substances. This section provides that determination of the definition of 'medical and scientific purposes' and of 'very limited medical purposes' in the Convention resides in the Secretary and that the Attorney General must obtain the written concurrence of the Secretary prior to seeking a review of a Commission decision and that the Secretary's decision shall be guided by the factors referred to in subsection 201(b) of the Act.

"Section 3. This section amends section 202(d) of the Controlled Substances Act to create an additional condition to be satisfied before a psychotropic substance contained in a combination product could be expected, namely that such exception does not conflict with United States obligations under the Convention.

"Section 4. This section amends section 306 of the Controlled Substances Act by providing new authority to the Attorney General to gather information regarding the quantities of materials used in the manufacture of substances either not listed or listed in a schedule but excepted from controls and the stocks of these substances held by manufacturers. This section will make certain that the Attorney General can obtain all data necessary to prepare the United States Reports to the Commission on Narcotic Drugs under the Convention.

"Section 5. This section amends section 301 of the Controlled Substances Act by requiring the Attorney General to consult with the Secretary before rules and regulations relating to the dispensing of controlled substances are issued.

"Section 6. This section amends section 303(f) of the Controlled Substances Act by providing that the Convention shall not be construed to prohibit research with substances scheduled under the Convention.

"Section 7. This section amends section 306 of the Controlled Substances Act by providing that the Attorney General consult with the Secretary regarding the legitimate needs and reserve stocks required for these needs prior to the establishment of production quotas.

"Section 8. This section amends section 307 of the Controlled Substances Act by providing that the Convention shall not be construed to modify current recordskeeping requirements under the Act.

"Section 9. This section amends Part C of the Controlled Substances Act by adding a new section which authorizes the Attorney General, after consultation with the Secretary, to issue regulations restricting the advertising of psychotropic substances. This section is necessary to comply with Article 10 of the Convention which requires each Party to prohibit, with due regard to the Party's constitutional provisions, the advertisement of psychotropic substances to the general public.

"Section 10. This section amends section 402 of the Controlled Substances Act by establishing civil and criminal penalties for violations of the restrictions on advertising.

"Section 11. This section amends section 309 of the Controlled Substances Act by providing that prescription controls provided for in Article 9 of the Convention are issued in accordance with sound medical practice as determined by the Secretary, after consultation with the Attorney General.

"Section 12. This section amends section 1002 of the Controlled Substances Import and Export Act to permit the Attorney General to comply with Convention requirements that obligates each Party to require prior government authorization for importation of any substance listed in schedule I or II of the Convention. This section permits the Attorney General to impose the import controls on any domestic schedule III, IV or V substances (although schedule I or II under the Convention) without rescheduling the substance and thereby subjecting it to other unnecessary controls.

"Section 13. This section amends section 1003 of the Controlled Substances Import and Export Act to permit the Attorney General to comply with Convention requirements that obligates each Party to require prior government authorization for exportation of any substance listed in schedule I or II of the Convention. This section permits the Attorney General to impose the export controls on any domestic schedule III, IV or V substances (although schedule I or II under the Convention) without rescheduling the substance and thereby subjecting it to other unnecessary controls.

"Section 14. This section amends section 3(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (PL 91-513) by providing that the provisions of the Convention on Psychotropic Substances shall not prevent the protection of the confidentiality of patient records or the confidentiality of names and identities of research subjects and shall not modify accepted medical practice or research activities regarding psychotropic substances.

"Section 15. This section amends section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (PL 91-513) by providing a clarification of the relative role of the Attorney General and Secretary regarding the medical treatment of narcotic addition."

EXHIBIT NO. 4

93D CONGRESS
1ST SESSION

S. 2544

IN THE SENATE OF THE UNITED STATES

OCTOBER 8, 1973

Mr. HRUSKA (for himself, Mr. BAYH, Mr. COOK, Mr. GURNEY, Mr. HUGH SCOTT, Mr. THURMOND, and Mr. TUNNEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other laws to discharge obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation of psychotropic substances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Psychotropic Substances Act of 1973".

SEC. 2. The Congress makes the following findings and declarations:

(1) The Congress has long recognized the danger involved in the manufacture, distribution, and use of certain

psychotropic substances for nonscientific and nonmedical purposes, and has provided strong and effective legislation to control illicit trafficking and to regulate legitimate uses of psychotropic substances in this country. Abuse of psychotropic substances has become a phenomenon common to many countries, however, and is not confined to national borders. It is, therefore, essential that the United States cooperate with other nations in establishing effective controls over international traffic in such substances as well.

(2) The United States has joined with other countries in executing an international treaty entitled the "Convention on Psychotropic Substances", signed at Vienna, February 21, 1971, which is designed to establish suitable controls over manufacture, distribution, transfer, and use of certain psychotropic substances. The convention is not self-executing, and the obligations of the United States thereunder must be performed pursuant to appropriate legislation. It is the intent of Congress that the provisions of this Act will satisfy all obligations of the United States under the convention not already met by existing law and that no further legislation is necessary.

(3) In implementing the Convention on Psychotropic Substances, the Congress is desirous that control of psychotropic substances in the United States should be accomplished

within the framework of the procedures and criteria for classification of substances provided in the Comprehensive Drug Abuse Prevention and Control Act of 1970, or when appropriate, in accordance with the provisions for new drugs pursuant to the Federal Food, Drug, and Cosmetic Act, consistent with the obligations of the United States under the convention. This will insure that (a) availability of psychotropic substances to manufacturers, distributors, dispensers, and researchers for useful and legitimate medical and scientific purposes shall not be unduly restricted; (b) nothing in the convention shall interfere with bona fide research activities; and (c) nothing in the convention shall interfere with ethical medical practice in this country, based on the consensus of the American medical and scientific community as reflected in recommendations of the Secretary of Health, Education, and Welfare.

SEC. 3. Subsection (d) of section 201 of the Controlled Substances Act (21 U.S.C. 811 (d)) is amended by adding "(1)" after "(d)" and inserting the following new paragraphs at the end thereof:

"(2) Whenever the Secretary of State receives notification from the Secretary General of the United Nations that information has been transmitted by or to the World Health Organization, pursuant to article 2 of the Conven-

tion on Psychotropic Substances, which may justify adding a drug or other substance to one of the schedules of the convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State shall immediately transmit the notice to the Secretary. The Secretary shall prepare for transmission through the Secretary of State to the World Health Organization such medical and scientific evaluations as may be appropriate regarding the possible action that could be proposed by the World Health Organization.

"(3) Whenever the Secretary of State receives notification pursuant to article 2 of the Convention on Psychotropic Substances that the Commisison on Narcotic Drugs of the United Nations is to decide whether to add a drug or other substance to one of the schedules of the convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State shall transmit timely notice to the Secretary. The Secretary shall evaluate the proposal and furnish a recommendation to the Secretary of State, which shall be binding on the representative of the United States in discussions and negotiations relating to the action.

"(4) (A) When the United States receives notification of a scheduling decision pursuant to article 2 of the Convention on Psychotropic Substances that a drug or other

substance has been added or transferred to a schedule specified in the notification, the Secretary, after consultation with the Attorney General, shall first determine whether existing legal controls under this title or under the Federal Food, Drug, and Cosmetic Act applicable to the drug or substance meet the requirements of the schedule specified in the notification.

"(1) If such requirements are met by existing controls but the Secretary nonetheless believes that more stringent controls should be instituted, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance pursuant to subsections (a) and (b) of this section.

"(2) If such requirements are not met by existing controls and the Secretary concurs in the scheduling decision transmitted by the notification, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance under the appropriate schedule pursuant to subsections (a) and (b) of this section.

"(3) If such requirements are not met by existing controls and the Secretary does not concur in the scheduling decision transmitted by the notification, the Secretary shall—

"(a) (i) Apply the controls applicable to new drugs, pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, or

"(ii) If he deems that additional controls are necessary to protect the public health and safety, recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance pursuant to subsections (a) and (b) of this section;

"(b) Request the Secretary of State to transmit a notice of qualified acceptance, within the period specified in the convention, pursuant to paragraph 7 of article 2 of the convention, to the Secretary General of the United Nations; and

"(c) Request the Secretary of State to ask for a review of the scheduling decision by the Economic and Social Council of the United Nations, in accordance with paragraph 8 of article 2 of the convention.

"(B) If the Attorney General determines, after consultation with the Secretary, that proceedings initiated under subparagraphs (A) (2) or (A) (3) (a) (ii) of this paragraph (4) will not be completed within the time period required by paragraph 7 of article 2 of the convention, the Attorney General after consultation with the Secretary shall, unless the drug or substance is already controlled under this

title, issue a temporary order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under article 2, paragraph 7, of the convention. As a part of such order, the Attorney General shall by regulation, after consultation with the Secretary, except such drug or substance from the application of any provisions of part C of this title which he finds is not required to carry out the United States obligations under article 2, paragraph 7, of the convention. In the case of proceedings initiated under subparagraph (A) (2) of this paragraph (4), the Attorney General concurrently with the issuance of such order shall request the Secretary of State to transmit a notice of qualified acceptance to the Secretary General of the United Nations, pursuant to paragraph 7 of article 2 of the convention.

"(C) If the review requested pursuant to subparagraph (A) (3) (c) of this paragraph (4) results in reversal of the scheduling decision in question and acceptance of the Secretary's recommendations, the Attorney General shall issue a final order scheduling the drug or substance or removing it from controls, as appropriate, in accordance with such recommendations: *Provided, however,* That in the case of a drug or substance which has been subjected to control under subparagraph (A) (3) (a) (i), the Secretary shall take such

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action as necessary consistent with the outcome of such review. If the scheduling decision in question is affirmed upon such review, the Attorney General shall, after consultation with the Secretary and subject to the provisions of the second sentence of subparagraph (B) of this paragraph (4), issue a final order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the the minimum United States obligations under article 2, paragraph 7, of the convention (unless the drug or substance is already controlled under this title or under the Federal Food, Drug, and Cosmetic Act).

"(D) Nothing in the Psychotropic Substances Act of 1973 or the regulations promulgated thereunder shall be construed to preclude requests by the Secretary or the Attorney General through the Secretary of State, pursuant to article 2 or other applicable provisions of the Convention on Psychotropic Substances, for review of scheduling decisions under such convention, based on new or additional information.".

SEC. 4. Subsection (d) of section 202 of the Controlled Substances Act (21 U.S.C. 812(d)) is amended by adding the following before the period at the end thereof: ", and (3) such exceptions does not conflict with United States obligations under the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971".

SEC. 5. Subsection (d) of section 307 of the Controlled Substances Act (21 U.S.C. 827(d)) is amended by adding "(1)" after "(d)" the first time it appears, and adding the following new paragraph at the end of the subsection:

"(2) Every manufacturer registered under section 303 shall, at such time or times and in such form as the Attorney General may require, make periodic reports to the Attorney General with respect to nonnarcotic controlled substances which are psychotropic substances subject to the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971. These reports shall consist of the information required by article 16, paragraph 4, of the convention.".

SEC. 6. Section 1002(b) of the Controlled Substances Import and Export Act (21 U.S.C. 925(b)) is amended by inserting immediately before the period at the end of paragraph (2) the following: ", except that if a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the convention".

SEC. 7. Subsection (e) of section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953(e)) is amended—

(a) by striking out ", and" at the end of paragraph (2) and inserting in lieu thereof ";";

(b) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(c) by adding the following new paragraph:

"(4) in any case when a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements prescribed by regulation of the Attorney General as are required by the convention, instead of the invoice required by paragraphs (2) and (3) above.".

SEC. 8. (a) Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end thereof the following new section:

"APPLICATION OF INTERNATIONAL TREATIES OR AGREEMENTS

"SEC. 412. Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to require a specific punishment for offenses involving narcotic drugs or psychotropic substances or to limit the provision of such treatment, education, aftercare, rehabilitation, and social reintegration as alternatives to conviction or

punishment for such offenses as may be authorized by any Act of Congress.".

(b) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting—

"Sec. 412. Application of International treaties or agreements."

immediately after

"Sec. 411. Proceedings to establish previous convictions.".

SEC. 9. (a) Section 502 of the Controlled Substances Act (21 U.S.C. 872) is amended by redesignating subsection (d) as subsection (e), and by adding after subsection (c) the following new subsection:

"(d) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other international treaties or agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local enactment or regulation.".

(b) Section 303 of the Public Health Service Act (42 U.S.C. 242a) is amended by redesignating subsection (b) as subsection (c), and by adding after subsection (a) the following new subsection:

"(b) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other

international treaties or agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local enactment or regulation.".

SEC. 10. Subsection (f) of section 303 of the Controlled Substances Act (21 U.S.C. 823 (f)) is amended by adding the following sentence at the end of the subsection: "Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the convention which is conducted in conformity with this subsection and other applicable provisions of this title.".

SEC. 11. Subsection (c) of section 307 of the Controlled Substances Act (21 U.S.C. 827 (c)) is amended by adding the following after and below paragraph (3):

"Nothing in the Convention on Psychotropic Substances shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of paragraphs (1)(B), (2), or (3) of this subsection.".

SEC. 12. Subsection (n) of section 502 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 352 (n)), is amended by adding the following new sentence at the end thereof: "Nothing in the Convention of Psychotropic Substances, signed at Vienna, February 21, 1971, shall be construed to prevent drug price communications to consumers.".

SEC. 13. This Act shall become effective on the date the Convention on Psychotropic Substances enters into force in respect to the United States.

By MR. HRUSKA (for himself, Mr. BAYH, Mr. COOK, Mr. GURNEY, Mr. HUGH SCOTT, Mr. THURMOND, and Mr. TUNNEY):

S. 2544. A bill to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 and other laws to discharge obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation of psychotropic substances. Referred to the Committee on the Judiciary.

PSYCHOTROPIC SUBSTANCES ACT OF 1973

Mr. HRUSKA. Mr. President, today, I am introducing a bill for myself and my distinguished colleagues Messrs. BAYH, COOK, GURNEY, HUGH SCOTT, THURMOND, and TUNNEY to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970. This bill would implement the terms of the Convention on Psychotropic Substances which was negotiated in Vienna at an international conference in 1971.

The purpose of this convention is to improve the international control of substances that are not included under any of the existing multilateral drug treaties covering opium and other narcotics. It is designed to govern the so-called psychotropic or mind-altering substances, such as hallucinogens, amphetamines, barbiturates and tranquilizers, and limit the manufacture, distribution and use of these substances to medical and scientific purposes.

Because psychotropic substances are relatively new to both licit and illicit channels, they have never been subjected to similar treaties and regulations. This is an oversight which the United States, in the exercise of its international leadership, sought to cure in the negotiation of the present convention.

President Nixon has asked the Senate to ratify the Convention on Psychotropic Substances. It has been referred to the Senate Committee on Foreign Relations. It is in order that before it receives further consideration there implementing legislation such as contained in this bill should be passed.

The extent of drug abuse throughout the world at the present time is of critical proportion. Hundreds of pounds of deadly drugs are being illegally diverted from international commerce and ending up for sale in the streets of major cities around the globe. Recent reports from the Bureau of Narcotics and Dangerous Drugs and its successor agency, the Drug Enforcement Administration, have made us increasingly aware that the mind-altering drugs present a danger to our society which may equal, or even exceed, that of heroin. It is time, therefore, for the community of nations, including the United States, to remedy this serious problem.

Our Government has long been in a position of leadership in the fight against drug abuse. For example, we have recently proposed to other nations that even stronger measures be taken with regard to the international control of opium and other narcotics. Most of the countries which produce these items are the less-developed nations which do not produce the so-called psychotropic drugs. These psychotropic substances are, however, manufactured in the United States and Europe. It is possible, therefore, that the failure to adequately regulate domestic activity in such drugs will embarrass our efforts to place tighter controls over the production of narcotic crops in these other countries. This is a diplomatic problem which we should not allow to develop.

I shall now describe briefly what the bill itself will do; and of equal importance to many, some things that it will not do.

Nearly all of the requirements which membership in this international convention would impose on the United States are already met by existing laws. Therefore, although the impact of this bill I am introducing today is highly important for international drug control, it will require little change in Federal law.

Under the convention, a special United Nations Commission could place new drugs under international control after receiving scientific and medical advice from the World Health Organization. To implement this, it would be necessary for the United States to impose some minimum controls over the designated drug. This bill would provide mechanisms to insure that the views of the Secretary of Health, Education, and Welfare would be represented in the international body and that only minimum controls would be

applied to the drug under our law unless both the Secretary and the Attorney General were to agree to more stringent requirements.

These controls would be limited almost exclusively to international commerce in these substances. For example, in some cases, import and export permits might be required and certain annual reports of production would have to be forwarded to the Federal Government by manufacturers. However, no restrictions would be placed on the actual manufacture or legitimate distribution of such drugs unless our own Government felt that action to be necessary.

Other provisions of the bill make it clear that there is no intention by the Congress to accept international restraints on our own sovereign power to determine specific punishment for various drug offenses, or to impose any other restrictions on research, marketing, and advertising in connection with such drugs.

This bill holds the promise of a great gain in our international drug suppression at a small price. Therefore, I am hopeful that we may have early action on both the convention, now before the Foreign Affairs Committee, and this proposal to enact implementing legislation.

I ask unanimous consent that the bill and the letter of transmittal from the Attorney General be printed in the RECORD at this point.

There being no objection, the bill and letter were ordered to be printed in the RECORD, as follows:

"S. 2544

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the 'Psychotropic Substances Act of 1973.'

"SEC. 2. The Congress makes the following findings and declarations:

"(1) The Congress has long recognized the danger involved in the manufacture, distribution, and use of certain psychotropic substances for nonscientific and non-medical purposes, and has provided strong and effective legislation to control ellicit trafficking and to regulate legitimate uses of psychotropic substances in this country. Abuse of psychotropic substances has become a phenomenon common to many countries, however, and is not confined to national borders. It is, therefore, essential that the United States cooperate with other nations in establishing effective controls over international traffic in such substances as well.

"(2) The United States has joined with other countries in executing an international treaty entitled the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971, which is designed to establish suitable controls over manufacture, distribution, transfer, and use of certain psychotropic substances. The Convention is not self-executing, and the obligations of the United States thereunder must be performed pursuant to appropriate legislation. It is the intent of Congress that the provisions of this Act will satisfy all obligations of the United States under the Convention not already met by existing law and that no further legislation is necessary.

"(3) In implementing the Convention on Psychotropic Substances, the Congress is desirous that control of psychotropic substances in the United States should be accomplished within the framework of the procedures and criteria for classification of substances provided in the Comprehensive Drug Abuse Prevention and Control Act of 1970, or when appropriate, in accordance with the provisions for new drugs pursuant to the Federal Food, Drug, and Cosmetic Act, consistent with the obligations of the United States under the Convention. This will ensure that (a) availability of psychotropic substances to manufacturers, distributors, dispensers, and researchers for useful and legitimate medical and scientific purposes shall not be unduly restricted; (b) nothing in the convention shall interfere with bona fide research activities; and (c) nothing in the Convention shall interfere with ethical medical practice in this country, based on the consensus of the American medical and scientific community as reflected in recommendations of the Secretary of Health, Education, and Welfare.

"SEC. 3. Subsection (d) of section 201 of the Controlled Substances Act (21 U.S.C. 811 (d) is amended by adding '(1)' after '(d)' and inserting the following new paragraphs at the end thereof:

"'(2) Whenever the Secretary of State receives notification from the Secretary-General of the United Nations that information has been transmitted

by or to the World Health Organization pursuant to article 2 of the Convention on Psychotropic Substances, which may justify adding a drug or other substance to one of the schedules of the Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State shall immediately transmit the notice to the Secretary. The Secretary shall prepare for transmission through the Secretary of State to the World Health Organization such medical and scientific evaluations as may be appropriate regarding the possible action that could be proposed by the World Health Organization.

"'(3) Whenever the Secretary of State receives notification pursuant to article 2 of the Convention on Psychotropic Substances that the Commission on Narcotic Drugs of the United Nations is to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State shall transmit timely notice to the Secretary. The Secretary shall evaluate the proposal and furnish a recommendation to the Secretary of State, which shall be binding on the representative of the United States in discussions and negotiations relating to the action.

"'(4) (A) When the United States receives notification of a scheduling decision pursuant to article 2 of the Convention on Psychotropic Substances that a drug or other substance has been added or transferred to a schedule specified in the notification, the Secretary, after consultation with the Attorney General, shall first determine whether existing legal controls under this title or under the Federal Food, Drug, and Cosmetic Act applicable to the drug or substance meets the requirements of the schedule specified in the notification.

"'(1) If such requirements are met by existing controls but the Secretary nonetheless believes that more stringent controls should be instituted, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance pursuant o subsections (a) and (b) of this section.

"'(2) If such requirements are not met by existing controls and the Secretary concurs in the scheduling decision transmitted by the notification, the Secretary shall recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance under the appropriate schedule pursuant to subsections (a) and (b) of this section.

"'(3) If such requirements are not met by existing controls and the Secretary does not concur in the scheduling decision transmitted by the notification, the Secretary shall:

"'(a) (i) Apply the controls applicable to new drugs, pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, or

"'(ii) If he deems that additional controls are necessary to protect the public health and safety, recommend to the Attorney General that he initiate proceedings for scheduling the drug or substance pursuant to subsections (a) and (b) of this section;

"'(b) Request the Secretary of State to transmit a notice of qualified acceptance, within the period specified in the Convention, pursuant to paragraph 7 of article 2 of the Convention, to the Secretary-General of the United Nations; and

"'(c) Request the Secretary of State to ask for a review of the scheduling decision by the Economic and Social Council of the United Nations, in accordance with paragraph 8 of article 2 of the Convention.

"'(B) If the Attorney General determines, after consultation with the Secretary, that proceedings initiated under subparagraphs (A)(2) or (A)(3)(a)(ii) of this paragraph (4) will not be completed within the time period required by paragraph 7 of article 2 of the Convention, the Attorney General after consultation with the Secretary shall, unless the drug or substance is already controlled under this title, issue a temporary order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under article 2, paragraph 7, of the Convention. As a part of such order, the Attorney General shall by regulation, after consultation with the Secretary, except such drug or substance from the application of any provisions of part C of this title which he finds is not required to carry out the United States obligations under article 2, paragraph 7, of the Convention. In the case of proceedings initiated under subparagraph (A)(2) of this paragraph (4), the Attorney General con-

currently with the issuance of such order shall request the Secretary of State to transmit a notice of qualified acceptance to the Secretary-General of the United Nations, pursuant to paragraph 7 of article 2 of the Convention.

"'(C) If the review requested pursuant to subparagraph (A)(3)(c) of this paragraph (4) results in reversal of the scheduling decision in question and acceptance of the Secretary's recommendations, the Attorney General shall issue a final order scheduling the drug or substance or removing it from controls, as appropriate, in accordance with such recommendations: Provided, however, that in the case of a drug or substance which has been subjected to control under subparagraph (A)(3)(i), the Secretary shall take such action as necessary consistent with the outcome of such review. If the scheduling decision in question is affirmed upon such review, the Attorney General shall, after consultation with the Secretary and subject to the provisions of the second sentence of subparagraph (B) of this paragraph (4), issue a final order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the minimum United States obligations under article 2, paragraph 7, of the Convention (unless the drug or substance is already controlled under this title or under the Federal Food, Drug, and Cosmetic Act).

"'(D) Nothing in the Psychotropic Substances Act of 1973 or the regulations promulgated thereunder shall be construed to preclude requests by the Secretary or the Attorney General through the Secretary of State, pursuant to article 2 or other applicable provisions of the Convention on Psychotropic Substances, for review of scheduling decisions under such Convention, based on new or additional information.'

"SEC. 4. Subsection (d) of section 202 of the Controlled Substances Act (21 U.S.C. 812(d)) is amended by adding the following before the period at the end thereof: ', and (3) such exception does not conflict with United States obligations under the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971'.

"SEC. 5. Subsection (d) of section 307 of the Controlled Substances Act (21 U.S.C. 827(d) is amended by adding '(1)' after '(d)' the first time it appears, and adding the following new paragraph at the end of the subsection:

"'(2) Every manufacturer registered under section 303 shall, at such time or times and in such form as the Attorney General may require, make periodic reports to the Attorney General with respect to nonnarcotic controlled substances which are psychotropic substances subject to the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971. These reports shall consist of the information required by article 16, paragraph 4, of the Convention."

"SEC. 6. Section 1002(b) of the Controlled Substances Import and Export Act (21 U.S.C. 952(b)) is amended by inserting immediately before the period at the end of paragraph (2) the following: ', except that if a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention'.

"SEC. 7. Subsection (e) of section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953(e) is amended—

"(a) by striking out ', and' at the end of paragraph (2) and inserting in lieu thereof ', ';

"(b) by striking out the period at the end of paragraph (3) and inserting in lieu thereof ', and ', and

"(c) by adding the following new paragraph:

"'(4) in any case when a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements prescribed by regulation of the Attorney General as are required by the Convention, instead of the invoice required by paragraphs (2) and (3) above."

"SEC. 8. (a) Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end thereof the following new section:

"'APPLICATION OF INTERNATIONAL TREATIES OR AGREEMENTS

"'SEC. 412. Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agree-

ments shall be construed to require a specific punishment for offenses involving narcotic drugs or psychotropic substances or to limit the provision of such treatment, education, aftercare, rehabilitation, and social reintegration as alternatives to conviction or punishment for such offenses as may be authorized by any Act of Congress.'

"(b) The table of contents of the comprehensive Drug Abuse and Prevention and Control Act of 1970 is amended by inserting—

"SEC. 412. Application of International treaties or agreements."

immediately after

"'SEC. 411. Proceedings to establish previous convictions.'

"SEC. 9. (a) Section 502 of the Controlled Substances Act (21 U.S.C. 872) is amended by redesignating subsection (d) as subsection (e) the following new subsection:

"'(d) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other international treaties or agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State or local enactment or regulation."

"(b) Section 303 of the Public Health Service Act (42 U.S.C. 242 a) is amended by redesignating subsection (b) as subsection (c), and by adding after subsection (a) the following new subsection:

"'(b) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other international treaties or agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local enactment or regulation."

"'SEC. 10. Subsection (f) of section 303 of the Controlled Substance Act (21 U.S.C. 823(f)) is amended by adding the following sentence at the end of the subsection: "Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this title."'

"SEC. 11. Subsection (c) of section 307 of the Controlled Substances Act (21 U.S.C. 827(c)) is amended by adding the following after and below paragraph (3): 'Nothing in the Convention on Psychotropic Substances shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of paragraphs (1) (B), (2), or (3) of this subsection.'

"SEC. 12. Subsection (n) of section 502 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 352(n)), is amended by adding the following new sentence at the end thereof 'Nothing in the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971, shall be construed to prevent drug price communications to consumers.'

"SEC. 13. This Act shall become effective on the date the Convention on Psychotropic Substances enters into force in respect to the United States."

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 19, 1973.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: Enclosed for your consideration and appropriate reference is a legislative proposal to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970, (84 Stat. 1242, 21 U.S.C. 801) and other laws, to permit the United States Government to comply with the provisions of the Convention on Psychotropic Substances signed at Vienna on February 21, 1971.

On June 29, 1971, the President transmitted to the Senate, for its advice and consent to ratification, the Convention of Psychotropic Substances. This Convention has as its purpose the international control of substances that are not included under any of the existing multilateral opium and other narcotic drug treaties. The Convention governs the so-called psychotropic (or mind-

altering) substances: the hallucinogens (such as LSD and mescaline), the amphetamines, the barbiturates, and the tranquilizers. The Convention will come into force 90 days after 40 countries have ratified it.

The aim of the Convention is to limit to medical and scientific purposes the manufacture, distribution and use of psychotropic substances. The structure of the Convention is similar to that of the Comprehensive Drug Abuse Prevention and Control Act of 1970. It lists 32 substances in four schedules depending on the extent of their abuse, their potential for abuse and their therapeutic usefulness. The Convention contains a procedure for adding new substances to schedules, moving substances among schedules and deleting substances from the schedules. Like the Comprehensive Drug Abuse Prevention and Control Act, the Convention provides gradation of controls, with the most stringent controls applied to Schedule I substances (such as LSD, mescaline and the tetrahydrocannabinols) and lesser restrictions on substances in Schedules II, III, and IV. Most of the control provisions are similar to the control of narcotic drugs by other treaties, such as the Single Convention on Narcotic Drugs, 1961.

The specific control measures which the Convention requires each Party to implement are largely satisfied by the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Federal Food, Drug, and Cosmetic Act. For example, under the Convention, each Party must license manufacturers and distributors of psychotropic substances, sections 301 and 304 of the 1970 Act provided for registration of these persons. Each Party must restrict the use of Schedule I (hallucinogenic) substances to scientific and very limited medical purposes; section 303 of the Controlled Substances Act (Title II of the Comprehensive Act) limits access to such substances to qualified researchers. Psychotropic substances generally must be dispersed only upon a physician's prescription; this Convention requirement is satisfied by prescription requirements under the Federal Food, Drug, and Cosmetic Act. Each Party must require all handlers of psychotropic substances to keep records of all these substances manufactured, distributed or dispensed; section 307 of the Controlled Substances Act already imposes such recordkeeping requirements. Importation and exportation of psychotropic substances must be controlled in a manner similar to the requirements imposed by the Controlled Substances Import and Export Act which is Title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

In addition to controlling domestic commercial and medical activity. Parties must make certain reports to the International Narcotic Control Board, take actions against illicit traffic and apply penal provisions, and, where possible, establish programs of drug abuse prevention, treatment, and rehabilitation.

Although the Controlled Substances Act and the Controlled Substances Import and Export Act provide most of the mechanisms to fulfill United States obligations under the Convention on Psychotropic Substances, new legislation will be required to satisfy all commitments under the Convention. For this purpose, the enclosed legislative proposal is submitted.

Section 1 specifies that the Act may be cited as the "Psychotropic Substances Act of 1973."

Section 2 of the bill contains findings and declarations by Congress that (1) there is a need for international collaboration to effectively control psychotropic substances; (2) there is a need for legislation to implement United States obligations under the Convention; and (3) implementation must be accomplished within the framework of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513), or the new drug provisions of the Federal Food, Drug, and Cosmetic Act.

The Convention procedure for bringing a new substance under control or moving substances among schedules requires certain medical and scientific findings by the World Health Organization, additional findings and a decision to control by the Commission on Narcotic Drugs, and notification of the Parties by the Secretary-General of the United Nations. Upon such notification, each Party is required to impose national control mechanisms on the substance within 180 days. The United States delegation sought and obtained the right of each Party to utilize its own procedures for imposing national controls, such as are provided in the Controlled Substances Act, on the condition that certain minimum controls be imposed regardless of the outcome of the nation's internal efforts to require control. Thus, in the event that a

substance cannot, within the 180-day period, be included in any schedule of the Controlled Substances Act through the normal procedures set forth in section 201 (because of delays in administrative hearings or court proceedings provided for in the law), the United States will still have to require such controls as registration of manufacturers and wholesalers, import and export restrictions and recordkeeping requirements.

In the Comprehensive Drug Abuse Prevention and Control Act of 1970, Congress carefully established a procedure for future determinations as to drugs and substances to be subject to the controls of the Act. So far as possible, the proposed bill will retain a balance between the extent to which control decisions should be based upon law enforcement criteria, and the extent to which such decisions should be based on medical and scientific determinations. The proposed bill provides that all scientific and medical determinations shall be made by the Secretary of Health, Education, and Welfare, and that these determinations shall be binding on the Attorney General and the Secretary of State during all international discussions and negotiations in regard to scheduling a drug or substance for control under the Convention.

Section 3 of the proposed bill would amend section 201 of the Controlled Substances Act (21 U.S.C. 811) to authorize and direct the Attorney General and the Secretary of Health, Education, and Welfare to take steps relative to international controls proposed under the Convention and to prescribe applicable controls on psychotropic substances which are required by United States obligations under the Convention.

Paragraph (2) of section 3 provides that whenever notice is received that the World Health Organization is considering a drug or substance for control under the Convention, the Secretary of Health, Education, and Welfare shall be authorized to comment on the matter to the World Health Organization.

Paragraph (3) of section 3 specifies that in all matters relating to a decision to control a drug or substance by the United Nations Commission on Narcotic Drugs, the recommendations of the Secretary of Health, Education, and Welfare shall be binding on the United States representative, and if the Secretary recommends that a drug or substance should not be controlled in the manner proposed, the United States representative shall vote against such control.

Paragraph (4)(A) of section 3 requires that when notice is received from the Secretary-General of the United Nations that a substance has been designated for control under the Convention, the Secretary of Health, Education, and Welfare shall decide in consultation with the Attorney General whether existing controls under the Controlled Substances Act or the Federal Food, Drug, and Cosmetic Act in the United States are adequate to meet the treaty obligations. Even if existing controls adequately meet the requirements of the Convention, the Secretary may recommend to the Attorney General that he initiate proceedings in the usual way in accordance with subsections (a) and (b) of section 201 of the Controlled Substances Act (21 U.S.C. 811).

If existing controls in the United States do not meet the obligations of the Convention, and if the Secretary agrees with the scheduling decision of the international organization, the Secretary shall recommend to the Attorney General that he initiate proceedings under subsections (a) and (b) of section 201 of the Controlled Substances Act of (21 U.S.C. 811).

If existing controls in the United States do not meet the obligations of the Convention, and if the Secretary does not concur in the scheduling decision of the international organization, he shall (1) apply the controls applicable to new drugs, pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, or (2) if these controls are not adequate to protect the public health and safety, recommend to the Attorney General that he initiate proceedings under subsections (a) and (b) of section 201 of the Controlled Substances Act (21 U.S.C. 811).

Also, whenever the Secretary of Health, Education, and Welfare does not concur in the scheduling decision of the international organization, the Secretary shall request the Secretary of State to transmit to the Secretary-General of the United Nations a notice of qualified acceptance; and request

the Secretary of State to ask for a review of the decision by the Economic and Social Council of the United Nations.

Paragraph (4)(B) of section 3 provides that if the regular control procedures of subsections (a) and (b) of section 201 (21 U.S.C. 811) will not be completed within the time limit of 180 days specified in the Convention, the Attorney General after consultation with the Secretary of Health, Education, and Welfare, shall, unless the substance is already controlled under the Controlled Substances Act, issue a temporary order controlling the substance under either schedule IV or V, whichever is most appropriate to carry out minimum United States obligations under the Convention. Also, the Attorney General after consultation with the Secretary, shall except the substance from such controls of the Controlled Substances Act as he finds are not necessary to carry out those United States obligations.

Paragraph (4)(C) of section 3 provides that if the Economic and Social Council reverses the scheduling decision of the international organization, the Attorney General shall vacate the temporary control order. If the decision is affirmed, the Attorney General after consultation with the Secretary, shall, unless subsequent action has been taken to control the substance, issue a final order controlling the substance under schedule IV or V.

Paragraph (4)(D) allows both the Attorney General and the Secretary of Health, Education, and Welfare to request through the Secretary of State a review by the international organization of any scheduling decision based on new or additional information.

Section 4 of the proposed legislation would amend section 202(d) of the Controlled Substances Act (21 U.S.C. 812(d)) to create a third condition to be satisfied before a nonnarcotic substance contained in a combination product could be excepted from regulatory control. Article 3 of the Convention on Psychotropic Substances imposes restrictions on any Party's right to grant exceptions from control for combination products, and the statute should specify that the exemptions granted under section 202(d) shall not be in conflict with the obligations under the Convention.

Section 5 of the proposal adds new authority to the Attorney General to gather information by amending section 307(d) of the Controlled Substances Act (21 U.S.C. 827(d)). Each Party to the Convention is required under Article 16 to submit certain statistical data on psychotropic drugs regarding inventories, quantities manufactured, quantities imported and exported, and quantities used in manufacture of other substances. The Attorney General can acquire much of this information directly through existing authority under the Act; he cannot, however, directly obtain data on quantities manufactured or on inventories. Manufacturing data is currently submitted to the Food and Drug Administration on psychotropic (and other) drugs having a new drug application on file with that agency; this information is not in a form readily usable by the Attorney General, however, and does not cover certain psychotropic drugs not subject to new drug application requirements. Section 5 will make certain that the Attorney General can obtain all data necessary to prepare the United States reports to the Commission on Narcotic Drugs and the International Narcotic Control Board under the Convention.

Section 6 and 7 of the proposed legislation would amend the Controlled Substances Import and Export Act to permit full compliance with any possible obligation under Articles 12 and 13 of the Convention on Psychotropic Substances. The Convention obligates each Party to require prior government authorization for importation or exportation of any substance listed in schedules I or II of the Convention; the existing United States law requires such authorization before importing or exporting a nonnarcotic substance listed in schedules I or II of the Act. Therefore, the possibility exists that a substance listed in schedules I or II under the Convention could be listed in schedules III, IV or V of the Act, thereby preventing imposition of the prior authorization system. Section 6 is an amendment to section 1002 of the Controlled Substances Import and Export Act (21 U.S.C. 952) and Section 7 proposed to amend section 1003 of that Act (21 U.S.C. 953). The effect of these suggested changes would be to permit the Attorney General to impose the schedule II import and export controls on any schedules III, IV and V substances without rescheduling the substance and thereby subjecting it to other unnecessary controls.

A number of questions can be raised as to the interpretation to be placed on certain features of the Convention. In order to provide guidance for the future, sections 8, 9, 10, 11, and 12 of the proposed bill include the following features. Section 8 makes certain that the Convention is not construed to require a particular punishment or limit or forbid the provision of treatment alternatives to criminal prosecution and punishment for offenses related to psychotropic substances, if such alternatives are permitted in existing law. Section 9 ensures that no provision of the Convention can be construed to preempt any existing legislative or regulatory protection of confidentiality of patient records or the identities of research subjects. Section 10 clarifies issues raised by the research community and specifies that Article 7 of the Convention shall not be construed as imposing any prohibitions or further restrictions on research involving psychotropic substances, which complies with the registration and other applicable requirements now provided in the Controlled Substances Act. Section 11 provides that the Convention shall not be used as a basis of imposing any recordkeeping requirements on practitioners, researchers and establishments in addition to those provided in section 307 of the Controlled Substances Act (21 U.S.C. 827). Section 12 amends the Federal Food, Drug, and Cosmetic Act and provides that nothing in the Convention shall be interpreted to prevent drug price communications to consumers.

Section 13 of the bill establishes the effective date of the legislation as the date on which the Convention comes into force in respect to the United States.

We urge the early consideration of this legislation and the Convention so that we may become Parties to this international effort in the near future.

The Office of Management and Budget has advised that the submission of this recommendation is consistent with the Administration's objectives.

Sincerely,

———— ————,

Attorney General.

Mr. HUGH SCOTT. Mr. President, I believe it is essential that Congress adopt, as expeditiously as possible, legislation to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970. In essence, this bill introduced by the Senator from Nebraska (Mr. HRUSKA), will restrict the manufacture, distribution, and use of mind-altering drugs to legitimate medical and scientific purposes.

I am pleased to join as a cosponsor of this legislation which will enable the United States to become a member of the International Convention on Psychotropic Substances and will impose controls on the international movement of psychotropic drugs, with the ultimate end of eliminating their diversion into illicit channels. The need for such a bill is obvious and I am delighted that the Senator from Nebraska (Mr. HRUSKA) has introduced legislation which I feel will aid U.S. enforcement as well as diplomatic initiatives in curbing the traffic in drugs diverted from international commerce.

It is essential that the United States assert its proper authority into the area of international agreements in the control of narcotics. This legislation by enabling the United States to become a member of the International Convention on Psychotropic Substances, is the proper vehicle for such action.

Mr. BAYH. Mr. President, I am pleased to join the distinguished Senator from Nebraska (Mr. HRUSKA) and my other colleagues on the Judiciary Committee as a sponsor of the Psychotropic Substances Act of 1973. This measure is very similar to legislation—S. 1646—which I introduced on April 18, 1973.These bills are designed to permit the United States to comply with the provisions of the Convention on Psychotropic Substances signed at Vienna on February 21, 1971, which is now pending before the Senate Foreign Relations Committee.

The Convention on Psychotropic Substances was transmitted on June 29, 1971, to the Senate, for its advice and consent to ratification. This Convention has as its purpose the international control of substances that are not included under any of the existing multilateral opium and other narcotic drug treaties. The Convention governs the so-called psychotropic—or mind-altering—substances: The hallucinogenes—such as LSD and mescaline—the amphetamines, the barbiturates, and the tranquilizers. The Convention will come into force 90 days after 40 countries have ratified it.

The aim of the Convention is to limit to medical and scientific purposes the manufacture, distribution, and use of psychotropic substances. The structure of the Convention is similar to that of the Comprehensive Drug Abuse Prevention and Control Act of 1970. It lists 32 substances in 4 schedules depending on the extent of their abuse, their potential for abuse, and their therapeutic usefulness. The Convention contains a procedure for adding new substances to schedules, moving them among schedules, and deleting them from the schedules. Like the Comprehensive Drug Abuse Prevention and Control Act, the Convention provides gradation of controls, with the most stringent controls applied to schedule I substances—such as LSD, mescaline, and tetrahydrocannabinols—and lesser restrictions on substances in schedules II, III, and IV. Most of the control provisions are similar to the control of narcotic drugs by other treaties, such as the Single Convention on Narcotic Drugs, 1961.

The specific control measures which the Convention requires each party to implement are largely satisfied by the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Food, Drug, and Cosmetic Act. For example, under the Convention, each party must license manufacturers and distributors of psychotropic substances; sections 301 and 304 of the 1970 act provide for registration of these persons. Each party must restrict the use of schedule I—hallucinogenic—substances to scientific and very limited medical purposes; section 303 of the Controlled Substances Act—title II of the Comprehensive Act—limits access to such substances to qualified researchers. Psychotropic substances must be dispensed only upon a physician's prescription; all are subject to prescription requirements under the Federal Food, Drug, and Cosmetic Act. Each party must require all handlers of psychotropic substances to keep records of all drugs manufactured, distributed, or dispensed; section 307 of the act already imposes such recordkeeping requirements. Importation and exportation of psychotropic substances must be controlled in a manner similar to the requirements imposed by the Controlled Substances Import and Export Act, which is title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

Although the Controlled Substances Act and the Controlled Substances Import and Export Act provide most of the mechanisms to fulfill United States obligations under the Convention on Psychotropic Substances, new legislation, such as S. 1646 or that which we are introducing today, will be required to satisfy all commitments under the Convention.

In the 92d Congress legislation, S. 3118, was introduced on behalf of the administration to accomplish similar purposes. That bill, however, was the subject of considerable controversy. Representatives of the Committee on Effective Drug Abuse Legislation, the American College of Neuro-Psychopharmacology, the American Psychiatric Association, the American Medical Association, and our distinguished colleague from Iowa, Senator Hughes expressed concern that the legislation failed to adequately protect the confidentiality of patient records; that it failed to adequately protect a private practitioner's right to carry on research with psychotropic substances; that it failed to designate who would determine the application of phrases—in the Convention—like "sound medical practice" and "very limited medical and scientific purposes," but most importantly that it failed to provide an affirmative policymaking role for health and scientific professionals to balance any restrictions on their role imposed by the Convention.

Both the Psychotropic Substances Act and S. 1646 address these important concerns. I believe that, in areas which the Convention leaves to national discretion and in areas where the Convention language is ambiguous and thus subjected to interpretation, they provide adequate clarification to ensure a significant role in these matters for the medical and scientific communities and to allay fears regarding restrictions on researchers of breaches of the confidentiality accorded medical records.

Additional efforts are necessary to deal with the problems of international narcotic traffic. But even if the war on heroin should result in total victory, the epidemic of drug abuse which plagues American society would not be vanquished, for the source of supply for growing legions of addicts is a legitimate one.

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During my 3 years as chairman of the Subcommittee to Investigate Juvenile Delinquency, I have conducted an intensive investigation into the diversion and abuse of legitimately produced narcotic and non-narcotic dangerous drugs.

We have been able to obtain a drastic, but necessary, reduction in the production and diversion of amphetamines and amphetamine-like substances; more appropriate controls on the production and distribution of methaqualone —"sopors" and "quaaludes"—and hopefully will soon achieve similar controls on the production and distribution of the widely abused short-acting barbiturates. These are all important steps in limiting the diversion of legitimately manufactured drugs to illicit purposes.

But regardless of the success of our efforts to impose domestic controls on these and other psychotropic substances, the absence of international cooperation and regulation could result in a failure to reduce the availability of dangerous psychotropic substances.

As a result of our study of the diversion of legitimate pharmaceutical drugs to illegal markets, I introduced the Dangerous Drug Identification Act, S. 3538, and the Dangerous Drug Tracer and Law Enforcement Information Act, S. 3819, in the 92d Congress. Both of these measures were designed to assist law enforcement agencies in the identification of seized controlled substances. The identification bill, reintroduced this Congress as S. 984, would require manufacturers to place identifying marks or symbols on their capsules and tablets. The tracer bill, reintroduced as S. 985, would require manufacturers to incorporate an inert tracer ingredient in all schedule II and schedule III stimulants and depressants and thus whether seized in bulk form or in the form of illicitly manufactured or illicitly capsulized pills, officials could determine the manufacturers, if domestic in origin.

These measures, however, will not assist law enforcement agencies efforts to curb diversion of psychotropic substances which are not domestic products. Last May, Mr. John Ingersoll, Director of the Bureau of Narcotics and Dangerous Drugs, reported to the subcommittee that a substantial portion of the so-called Mexican Reds—capsules containing legitimately produced barbiturates, but illicitly repackaged—contained barbiturates of European origin.

Likewise, during our March 28, 29, and April 6, 1973, hearings on methaqualone, several witnesses indicated that legitimately produced foreign methaqualone was being illegally imported into the United States for sale in the black market and that counterfeit methaqualine was being produced in Canada and Mexico for illicit sale in the United States.

These are but several examples of many which underscore the need for some international controls on psychotropic substances.

I am hopeful that the concerns reflected in S. 1646 and the measure we are introducing today will satisfy those in the medical and scientific communities who expressed concern about the enabling legislation introduced in the 92d Congress. The subcommittee, however, will hold hearings which will provide ample opportunity for further comment and recommendations regarding the legislation.

The diversion and abuse of legitimately produced dangerous drugs into channels other than legitimate medical, scientific, and industrial channels should be a primary concern for all citizens. These measures are not a panacea, but it is my belief that they will not only help us solve our problem here at home, but will also be of assistance to other nations, whose legitimate production when diverted to illicit markets can reap havoc in their countries as well as ours.

EXHIBIT NO. 5

92D CONGRESS, 1st Session } SENATE { EXECUTIVE G

CONVENTION ON PSYCHOTROPIC SUBSTANCES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A COPY OF THE CONVENTION ON PSYCHOTROPIC SUBSTANCES, SIGNED AT VIENNA, FEBRUARY 21, 1971

JUNE 29, 1971.—Convention was read the first time and, together with the message and accompanying papers, was referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
65-118 WASHINGTON : 1971

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 29, 1971.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a copy of the Convention on Psychotropic Substances, signed at Vienna February 21, 1971. I transmit also, for the information of the Senate, the report of the Secretary of State with respect to the Convention.

Nationally and internationally, we are faced today with a very serious problem posed by a new group of dangerous drugs—the psychotropic or "mind-bending" substances, such as LSD, mescaline, amphetamines, barbiturates and tranquilizers. It is the purpose of this Convention to limit to medical and scientific uses those substances that are liable to abuse but not covered by the existing treaties for the international control of narcotic drugs. The Convention will close an important gap which now exists in international drug regulations.

Nearly all of the psychotropic substances are manufactured rather than derived initially from plants, as are the narcotic drugs—such as heroin—that are involved in so much illicit traffic. As a major manufacturer of psychotropic substances, it is important that the United States cooperate with other countries in efforts to limit the use of those substances to medical and scientific purposes. I urgently recommend, therefore, that the Senate give early consideration to the Convention and that it give its advice and consent, with the reservation as proposed in the report of the Secretary of State in accordance with the provisions of the Convention.

RICHARD NIXON.

(Enclosures: (1) Report of the Secretary of State. (2) Copy of the Convention on Psychotropic Substances.)

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 18, 1971.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for its advice and consent to ratification, a copy of the Convention on Psychotropic Substances which was signed at Vienna February 21, 1971.

This Convention is the first international instrument adopted for the purpose of combating the abuse of psychotropic substances and the illicit traffic to which it gives rise. Since the signature in 1912 of the Hague Convention for the suppression of the abuse of opium and other drugs, various international instruments for the control of narcotic drugs have been formulated, the most recent being the Single Convention on Narcotic Drugs, 1961, but no international controls over psychotropic substances were agreed upon until February of the present year. The psychotropic (mind-bending) substances include the hallucinogens, such as LSD and mescaline; the amphetamines; the barbiturates; and the tranquilizers. The continually increasing abuse of these substances has convinced the world community that international controls regarding them are necessary.

In 1966 the United Nations Commission on Narcotic Drugs undertook a close study of the problem of the abuse of psychotropic substances. As the result of the Commission's efforts in the ensuing years and the observations made by Governments on draft texts that were formulated, the United Nations Conference for the Adoption of a Protocol on Psychotropic Substances was held at Vienna January 11 through February 21, 1971, at which the Convention on Psychotropic Substances was adopted.

Consideration had been given to the control of the psychotropic substances under the Single Convention on Narcotic Drugs, 1961, or to amending that Convention for the purpose, but it was the view of nearly all of the countries concerned that a completely new international instrument regarding those substances was necessary.

The preamble to the Convention reflects the concern over the public health and social problems resulting from the abuse of certain psychotropic substances and the illicit traffic to which it gives rise. It records the conclusion that rigorous measures are necessary to restrict the use of such substances to legitimate purposes. At the same time, it includes the recognition that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted.

Basically, the structure of the Convention provides four schedules. It lists thirty-two different substances in the schedules, depending

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on the extent of their abuse, their potential for abuse, and their therapeutic usefulness, then provides gradations of controls for each schedule.

The Convention provides that if a party or the World Health Organization has information relating to a substance not yet under international control which, in its opinion, may require the addition of such substance to any of the schedules of the Convention, it shall notify the Secretary General of the United Nations who, in his turn, shall notify the parties and the Commission on Narcotic Drugs. The Commission, taking into account the assessment of the substance by the World Health Organization and its recommendations, may add the substance to any of the schedules. Based on assessments of the World Health Organization, which shall be determinative as to medical and scientific matters, substances may be transferred from one schedule to another or may be removed from control.

A decision of the Commission to control, decontrol, or change the schedule and thus the level of control of a substance shall become fully effective except for any party which gives notice in writing that, in view of exceptional circumstances, it is not in a position to give effect with respect to that substance to all of the provisions of the Convention applicable to substances in that schedule. Such notice shall state the reasons for this exceptional action. Notwithstanding its notice, each party shall apply certain minimum control measures. The decisions of the Commission are subject to review by the United Nations Economic and Social Council.

The Convention provides for the most rigorous measures of control for substances in Schedule I (LSD, mescaline, et cetera), which are controlled more strictly than morphine under the narcotics treaties. Their use is prohibited except for scientific and very limited medical purposes by duly authorized persons.

The Convention has provisions requiring the licensing of manufacture, trade, and distribution, the supply or dispensing pursuant to medical prescription only, the keeping of records by manufacturers and distributors, warnings on labels, a system of inspections, and statistical and other reports. An essential part of the Convention is the regulation of international trade. For the more dangerous substances, both export and import authorization are required; for the less dangerous, notification of export to the importing country is sufficient. Any party may prohibit imports of a controlled substance and notify other parties accordingly.

The International Narcotics Control Board will have reporting and supervisory functions, and the Commission on Narcotic Drugs will have, in addition to the decision-making authority mentioned, reviewing and recommending authority.

The new Convention calls for measures of prevention and education and for treatment, rehabilitation, and social reintegration of drug-dependent persons, as well as for coordinated action against the illicit traffic, punishment of violations of the Convention, and extradition of offenders.

The Convention on Psychotropic Substances is similar in many respects to the Single Convention on Narcotic Drugs, but in other respects it is considerably different.

The two Conventions are in general similar in that each has for its principal objective the restriction to medical and scientific purposes of drugs and other substances that may be the subject of abuse; the

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substances controlled by the Convention are listed in four differing schedules annexed to each with the extent of control being determined by the schedule in which a substance is listed; the schedules may be amended by the addition, transfer or deletion of substances; and functions involved in the application of both Conventions are entrusted to the Secretary General of the United Nations, the World Health Organization, the Economic and Social Council, the International Commission on Narcotic Drugs, and the International Narcotics Control Board.

There are a number of significant differences between the two Conventions, including the following. The new Convention does not undertake to control the cultivation of plants from which psychotropic substances may be derived as in the case of the Single Convention with respect to narcotic drugs. Provision is made in the new Convention that assessments by the World Health Organization are determinative as to medical and scientific matters with respect to psychotropic substances. Decisions by the United Nations Commission on Narcotic Drugs to place a new psychotropic substance under control or to change existing controls over a substance must be by a two-thirds majority of members of that Commission as compared with a simple majority of members with respect to controls over narcotic drugs, and such decisions regarding narcotic drugs under the Single Convention are binding immediately upon receipt by the parties of notification thereof. Corresponding decisions under the new Convention regarding psychotropic substances are not binding until 180 days after their receipt; a party may take an exception to such a decision and apply a lower category of controls to the substance. The manufacture, export, import and use of substances in Schedule I of the new Convention is much more restricted than drugs in the comparable Schedule of the Single Convention. No annual estimates of quantities of psychotropic substances are necessary under the new Convention as in the case of narcotic drugs under the Single Convention. Under the Single Convention preparations containing a drug under control are subject to all the controls to which the drug itself is subject except where lesser controls may be applied after the preparation has been included in Schedule III to that Convention, but under the new Convention a party need apply only certain limited controls to a preparation if the party exempts the preparation, such exemption being subject to replacement by a decision of the Commission to terminate the exemption of the preparation from any or all control measures.

The differences between the two Conventions arise basically from the fact that the world community has had over half a century of experience in the application of international controls to narcotic drugs beginning with the Hague Convention of 1912, and has had no such experience with respect to the psychotropic substances; the production of narcotic drugs is of far more economic and social significance to countries that cultivate the opium poppy and the coca bush than the manufacture of the psychotropic substances is to the manufacturing countries; there are a great many more kinds of psychotropic substances than there are of narcotic drugs, and the quantities of psychotropics manufactured are much greater than the quantities of narcotics manufactured.

The Convention will enter into force on the ninetieth day after forty of the States eligible to become parties to the Convention have signed it without reservation of ratification or have deposited their instruments of ratification or accession.

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During the Conference at which the Convention was negotiated the United States Delegation supported inclusion of a provision in paragraph 4 of Article 32 whereby a State can make a reservation excepting the severe controls of Article 7, as to plants which grow wild and from which a Schedule I substance may be obtained, if the substance is traditionally used by certain small, clearly determined groups in religious rites. The substance peyote is used in religious ceremonies of the Native American Church in the United States, and such use has been excepted from the control of United States law. A derivative of the peyote cactus, mescaline, is included in Schedule I of the Convention, and it is possible in the future to include peyote itself as a hallucinogenic substance. I recommend, therefore, that the United States instrument of ratification include a reservation, in accord with paragraph 4 of Article 32 of the Convention, with respect to peyote harvested and distributed for use by the Native American Church in its religious rites.

For over sixty years the United States has been a leader in the development and strengthening of international controls over narcotic drugs. The first international body established for cooperation in the control of narcotic drugs, the International Opium Commission, which met in Shanghai in 1909, was established pursuant to proposals made in 1906 by the United States Government. The International Conference convened at the Hague in 1912, which adopted the first convention for the suppression of the abuse of opium and other drugs, was convened at the urging of the United States. Since then we have urged closer international cooperation and stronger controls over drugs. Our most recent efforts in this respect were our proposal that resulted in the establishment of an international fund to assist countries in the elimination of illicit traffic and drug abuse, our pledge of two million dollars to that fund, and our proposal of amendments to strengthen the Single Convention on Narcotic Drugs, 1961. I hope that the United States will continue its leadership by ratifying this Convention as soon as possible.

Respectfully submitted.

WILLIAM P. ROGERS.

(Enclosure: Copy of the Convention on Psychotropic Substances.)

CONVENTION ON PSYCHOTROPIC SUBSTANCES

PREAMBLE

The Parties,

Being concerned with the health and welfare of mankind,

Noting with concern the public health and social problems resulting from the abuse of certain psychotropic substances,

Determined to prevent and combat abuse of such substances and the illicit traffic to which it gives rise,

Considering that rigorous measures are necessary to restrict the use of such substances to legitimate purposes,

Recognizing that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted,

Believing that effective measures against abuse of such substances require co-ordination and universal action,

Acknowledging the competence of the United Nations in the field of control of psychotropic substances and desirous that the international organs concerned should be within the framework of that Organization,

Recognizing that an international convention is necessary to achieve these purposes,

Agree as follows:

ARTICLE 1

Use of terms

Except where otherwise expressly indicated, or where the context otherwise requires, the following terms in this Convention have the meanings given below:

(a) "Council" means the Economic and Social Council of the United Nations.

(b) "Commission" means the Commission on Narcotic Drugs of the Council.

(c) "Board" means the International Narcotics Control Board provided for in the Single Convention on Narcotic Drugs, 1961.

(d) "Secretary-General" means the Secretary-General of the United Nations.

(e) "Psychotropic substance" means any substance, natural or synthetic, or any natural material in Schedule I, II, III or IV.

(f) "Preparation" means:

(i) any solution or mixture, in whatever physical state, containing one or more psychotropic substances, or

(ii) one or more psychotropic substances in dosage form.

(g) "Schedule I", "Schedule II", "Schedule III" and "Schedule IV" mean the correspondingly numbered lists of psychotropic substances annexed to this Convention, as altered in accordance with article 2.

(h) "Export" and "import" mean in their respective connotations the physical transfer of a psychotropic substance from one State to another State.

(i) "Manufacture" means all processes by which psychotropic substances may be obtained, and includes refining as well as the transformation of psychotropic substances into other psychotropic substances. The term also includes the making of preparations other than those made on prescription in pharmacies.

(j) "Illicit traffic" means manufacture of or trafficking in psychotropic substances contrary to the provisions of this Convention.

(k) "Region" means any part of a State which pursuant to article 28 is treated as a separate entity for the purposes of this Convention.

(l) "Premises" means buildings or parts of buildings, including the appertaining land.

ARTICLE 2

Scope of control of substances

1. If a Party or the World Health Organization has information relating to a substance not yet under international control which in its opinion may require the addition of that substance to any of the Schedules of this Convention, it shall notify the Secretary-General and furnish him with the information in support of that notification. The foregoing procedure shall also apply when a Party or the World Health Organization has information justifying the transfer of a substance from one Schedule to another among those Schedules, or the deletion of a substance from the Schedules.

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

3. If the information transmitted with such a notification indicates that the substance is suitable for inclusion in Schedule I or Schedule II pursuant to paragraph 4, the Parties shall examine, in the light of all information available to them, the possibility of the provisional application to the substance of all measures of control applicable to substances in Schedule I or Schedule II, as appropriate.

4. If the World Health Organization finds:

(a) that the substance has the capacity to produce

(i) (1) a state of dependence, and

(2) central nervous system stimulation or depression, resulting in hallucinations or disturbances in motor function or thinking or behaviour or perception or mood, or

(ii) similar abuse and similar ill effects as a substance in Schedule I, II, III or IV, and

(b) that there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control,

the World Health Organization shall communicate to the Commission an assessment of the substance, including the extent or likelihood of

abuse, the degree of seriousness of the public health and social problem and the degree of usefulness of the substance in medical therapy, together with recommendations on control measures, if any, that would be appropriate in the light of its assessment.

5. The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources.

6. If a notification under paragraph 1 relates to a substance already listed in one of the Schedules, the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment. The Commission, taking into account the communication from the World Health Organization as under paragraph 5 and bearing in mind the factors referred to in that paragraph, may decide to transfer the substance from one Schedule to another or to delete it from the Schedules.

7. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, to the World Health Organization and to the Board. Such decision shall become fully effective with respect to each Party 180 days after the date of such communication, except for any Party which, within that period, in respect of a decision adding a substance to a Schedule, has transmitted to the Secretary-General a written notice that, in view of exceptional circumstances, it is not in a position to give effect with respect to that substance to all of the provisions of the Convention applicable to substances in that Schedule. Such notice shall state the reasons for this exceptional action. Notwithstanding its notice, each Party shall apply, as a minimum, the control measures listed below:

(a) A Party having given such notice with respect to a previously uncontrolled substance added to Schedule I shall take into account, as far as possible, the special control measures enumerated in article 7 and, with respect to that substance, shall:

(i) require licenses for manufacture, trade and distribution as provided in article 8 for substances in Schedule II;

(ii) require medical prescriptions for supply or dispensing as provided in article 9 for substances in Schedule II;

(iii) comply with the obligations relating to export and import provided in article 12, except in respect to another Party having given such notice for the substance in question;

(iv) comply with the obligations provided in article 13 for substances in Schedule II in regard to prohibition of and restrictions on export and import;

(v) furnish statistical reports to the Board in accordance with paragraph 4(a) of article 16; and

(vi) adopt measures in accordance with article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

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(b) A Party having given such notice with regard to a previously uncontrolled substance added to Schedule II shall, with respect to that substance:

(i) require licenses for manufacture, trade and distribution in accordance with article 8;

(ii) require medical prescriptions for supply or dispensing in accordance with article 9;

(iii) comply with the obligations relating to export and import provided in article 12, except in respect to another Party having given such notice for the substance in question;

(iv) comply with the obligations of article 13 in regard to prohibition of and restrictions on export and import;

(v) furnish statistical reports to the Board in accordance with paragraphs 4 (a), (c) and (d) of article 16; and

(vi) adopt measures in accordance with article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

(c) A Party having given such notice with regard to a previously uncontrolled substance added to Schedule III shall, with respect to that substance:

(i) require licenses for manufacture, trade and distribution in accordance with article 8;

(ii) require medical prescriptions for supply or dispensing in accordance with article 9;

(iii) comply with the obligations relating to export provided in article 12, except in respect to another Party having given such notice for the substance in question;

(iv) comply with the obligations of article 13 in regard to prohibition of and restrictions on export and import; and

(v) adopt measures in accordance with article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

(d) A Party having given such notice with regard to a previously uncontrolled substance added to Schedule IV shall, with respect to that substance:

(i) require licenses for manufacture, trade and distribution in accordance with article 8;

(ii) comply with the obligations of article 13 in regard to prohibition of and restrictions on export and import; and

(iii) adopt measures in accordance with article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

(e) A Party having given such notice with regard to a substance transferred to a Schedule providing stricter controls and obligations shall apply as a minimum all of the provisions of this Convention applicable to the Schedule from which it was transferred.

8. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within 180 days from receipt of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based.

(b) The Secretary-General shall transmit copies of the request for review and the relevant information to the Commission, to the

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World Health Organization and to all the Parties, inviting them to submit comments within ninety days. All comments received shall be submitted to the Council for consideration.

(c) The Council may confirm, alter or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States Members of the United Nations, to non-member States Parties to this Convention, to the Commission, to the World Health Organization and to the Board.

(d) During pendency of the review, the original decision of the Commission shall, subject to paragraph 7, remain in effect.

9. The Parties shall use their best endeavours to apply to substances which do not fall under this Convention, but which may be used in the illicit manufacture of psychotropic substances, such measures of supervision as may be practicable.

Article 3

Special provisions regarding the control of preparations

1. Except as provided in the following paragraphs of this article, a preparation is subject to the same measures of control as the psychotropic substance which it contains, and, if it contains more than one such substance, to the measures applicable to the most strictly controlled of those substances.

2. If a preparation containing a psychotropic substance other than a substance in Schedule I is compounded in such a way that it presents no, or a negligible, risk of abuse and the substance cannot be recovered by readily applicable means in a quantity liable to abuse, so that the preparation does not give rise to a public health and social problem, the preparation may be exempted from certain of the measures of control provided in this Convention in accordance with paragraph 3.

3. If a Party makes a finding under the preceding paragraph regarding a preparation, it may decide to exempt the preparation, in its country or in one of its regions, from any or all of the measures of control provided in this Convention except the requirements of:

(a) article 8 (licenses), as it applies to manufacture;

(b) article 11 (records), as it applies to exempt preparations;

(c) article 13 (prohibition of and restrictions on export and import);

(d) article 15 (inspection), as it applies to manufacture;

(e) article 16 (reports to be furnished by the Parties), as it applies to exempt preparations; and

(f) article 22 (penal provisions), to the extent necessary for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

A Party shall notify the Secretary-General of any such decision, of the name and composition of the exempt preparation, and of the measures of control from which it is exempted. The Secretary-General shall transmit the notification to the other Parties, to the World Health Organization and to the Board.

4. If a Party or the World Health Organization has information regarding a preparation exempted pursuant to paragraph 3 which in its opinion may require the termination, in whole or in part, of the exemption, it shall notify the Secretary-General and furnish him with

the information in support of the notification. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission and, when the notification is made by a Party, to the World Health Organization. The World Health Organization shall communicate to the Commission an assessment of the preparation in relation to the matters specified in paragraph 2, together with a recommendation of the control measures, if any, from which the preparation should cease to be exempted. The Commission, taking into account the communication from the World Health Organization, whose assessment shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may decide to terminate the exemption of the preparation from any or all control measures. Any decision of the Commission taken pursuant to this paragraph shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, to the World Health Organization and to the Board. All Parties shall take measures to terminate the exemption from the control measure or measures in question within 180 days of the date of the Secretary-General's communication.

Article 4

Other special provisions regarding the scope of control

In respect of psychotropic substances other than those in Schedule I, the Parties may permit:

(a) the carrying by international travellers of small quantities of preparations for personal use; each Party shall be entitled, however, to satisfy itself that these preparations have been lawfully obtained;

(b) the use of such substances in industry for the manufacture of non-psychotropic substances or products, subject to the application of the measures of control required by this Convention until the psychotropic substances come to be in such a condition that they will not in practice be abused or recovered;

(c) the use of such substances, subject to the application of the measures of control required by this Convention, for the capture of animals by persons specifically authorized by the competent authorities to use such substances for that purpose.

Article 5

Limitation of use to medical and scientific purposes

1. Each Party shall limit the use of substances in Schedule I as provided in article 7.

2. Each Party shall, except as provided in article 4, limit by such measures as it considers appropriate the manufacture, export, import, distribution and stocks of, trade in, and use and possession of, substances in Schedules II, III and IV to medical and scientific purposes.

3. It is desirable that the Parties do not permit the possession of substances in Schedules II, III and IV except under legal authority.

Article 6

Special administration

It is desirable that for the purpose of applying the provisions of this Convention, each Party establish and maintain a special administration, which may with advantage be the same as, or work in close co-operation with, the special administration established pursuant to the provisions of conventions for the control of narcotic drugs.

Article 7

Special provisions regarding substances in Schedule I

In respect of substances in Schedule I, the Parties shall:

(a) prohibit all use except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their Governments or specifically approved by them;

(b) require that manufacture, trade, distribution and possession be under a special license or prior authorization;

(c) provide for close supervision of the activities and acts mentioned in paragraphs (a) and (b);

(d) restrict the amount supplied to a duly authorized person to the quantity required for his authorized purpose;

(e) require that persons performing medical or scientific functions keep records concerning the acquisition of the substances and the details of their use, such records to be preserved for at least two years after the last use recorded therein; and

(f) prohibit export and import except when both the exporter and importer are the competent authorities or agencies of the exporting and importing country or region, respectively, or other persons or enterprises which are specifically authorized by the competent authorities of their country or region for the purpose. The requirements of paragraph 1 of article 12 for export and import authorizations for substances in Schedule II shall also apply to substances in Schedule I.

Article 8

Licenses

1. The Parties shall require that the manufacture of, trade (including export and import trade) in, and distribution of substances listed in Schedules II, III and IV be under license or other similar control measure.

2. The Parties shall:

(a) control all duly authorized persons and enterprises carrying on or engaged in the manufacture of, trade (including export and import trade) in, or distribution of substances referred to in paragraph 1;

(b) control under license or other similar control measure the establishments and premises in which such manufacture, trade or distribution may take place; and

(c) provide that security measures be taken with regard to such establishments and premises in order to prevent theft or other diversion of stocks.

3. The provisions of paragraphs 1 and 2 of this article relating to licensing or other similar control measures need not apply to persons duly authorized to perform and while performing therapeutic or scientific functions.

4. The Parties shall require that all persons who obtain licenses in accordance with this Convention or who are otherwise authorized pursuant to paragraph 1 of this article or sub-paragraph (b) of article 7 shall be adequately qualified for the effective and faithful execution of the provisions of such laws and regulations as are enacted in pursuance of this Convention.

ARTICLE 9

Prescriptions

1. The Parties shall require that substances in Schedules II, III and IV be supplied or dispensed for use by individuals pursuant to medical prescription only, except when individuals may lawfully obtain, use, dispense or administer such substances in the duly authorized exercise of therapeutic or scientific functions.

2. The Parties shall take measures to ensure that prescriptions for substances in Schedules II, III and IV are issued in accordance with sound medical practice and subject to such regulation, particularly as to the number of times they may be refilled and the duration of their validity, as will protect the public health and welfare.

3. Notwithstanding paragraph 1, a Party may, if in its opinion local circumstances so require and under such conditions, including record-keeping, as it may prescribe, authorize licensed pharmacists or other licensed retail distributors designated by the authorities responsible for public health in its country or part thereof to supply, at their discretion and without prescription, for use for medical purposes by individuals in exceptional cases, small quantities, within limits to be defined by the Parties, of substances in Schedules III and IV.

ARTICLE 10

Warnings on packages, and advertising

1. Each Party shall require, taking into account any relevant regulations or recommendations of the World Health Organization, such directions for use, including cautions and warnings, to be indicated on the labels where practicable and in any case on the accompanying leaflet of retail packages of psychotropic substances, as in its opinion are necessary for the safety of the user.

2. Each Party shall, with due regard to its constitutional provisions, prohibit the advertisement of such substances to the general public.

ARTICLE 11

Records

1. The Parties shall require that, in respect of substances in Schedule I, manufacturers and all other persons authorized under article 7 to trade in and distribute those substances keep records, as may be determined by each Party, showing details of the quantities manufactured, the quantities held in stock, and, for each acquisition and disposal, details of the quantity, date, supplier and recipient.

2. The Parties shall require that, in respect of substances in Schedules II and III, manufacturers, wholesale distributors, exporters and importers keep records, as may be determined by each Party, showing details of the quantities manufactured and, for each acquisition and disposal, details of the quantity, date, supplier and recipient.

3. The Parties shall require that, in respect of substances in Schedule II, retail distributors, institutions for hospitalization and care and scientific institutions keep records, as may be determined by each Party, showing, for each acquisition and disposal, details of the quantity, date, supplier and recipient.

4. The Parties shall ensure, through appropriate methods and taking into account the professional and trade practices in their countries, that information regarding acquisition and disposal of substances in Schedule III by retail distributors, institutions for hospitalization and care and scientific institutions is readily available.

5. The Parties shall require that, in respect of substances in Schedule IV, manufacturers, exporters and importers keep records, as may be determined by each Party, showing the quantities manufactured, exported and imported.

6. The Parties shall require manufacturers of preparations exempted under paragraph 3 of article 3 to keep records as to the quantity of each psychotropic substance used in the manufacture of an exempt preparation, and as to the nature, total quantity and initial disposal of the exempt preparation manufactured therefrom.

7. The Parties shall ensure that the records and information referred to in this article which are required for purposes of reports under article 16 shall be preserved for at least two years.

ARTICLE 12

Provisions relating to international trade

1. (a) Every Party permitting the export or import of substances in Schedule I or II shall require a separate import or export authorization, on a form to be established by the Commission, to be obtained for each such export or import whether it consists of one or more substances.

(b) Such authorization shall state the international non-proprietary name, or, lacking such a name, the designation of the substance in the Schedule, the quantity to be exported or imported, the pharmaceutical form, the name and address of the exporter and importer, and the period within which the export or import must be effected. If the substance is exported or imported in the form of a preparation, the name of the preparation, if any, shall additionally be furnished. The export authorization shall also state the number and date of the import authorization and the authority by whom it has been issued.

(c) Before issuing an export authorization the Parties shall require an import authorization, issued by the competent authority of the importing country or region and certifying that the importation of the substance or substances referred to therein is approved, and such an authorization shall be produced by the person or establishment applying for the export authorization.

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(d) A copy of the export authorization shall accompany each consignment, and the Government issuing the export authorization shall send a copy to the Government of the importing country or region.

(e) The Government of the importing country or region, when the importation has been effected, shall return the export authorization with an endorsement certifying the amount actually imported, to the Government of the exporting country or region.

2. (a) The Parties shall require that for each export of substances in Schedule III exporters shall draw up a declaration in triplicate, on a form to be established by the Commission, containing the following information:

(i) the name and address of the exporter and importer;

(ii) the international non-proprietary name, or, failing such a name, the designation of the substance in the Schedule;

(iii) the quantity and pharmaceutical form in which the substance is exported, and, if in the form of a preparation, the name of the preparation, if any; and

(iv) the date of despatch.

(b) Exporters shall furnish the competent authorities of their country or region with two copies of the declaration. They shall attach the third copy to their consignment.

(c) A Party from whose territory a substance in Schedule III has been exported shall, as soon as possible but not later than ninety days after the date of despatch, send to the competent authorities of the importing country or region, by registered mail with return of receipt requested, one copy of the declaration received from the exporter.

(d) The Parties may require that, on receipt of the consignment, the importer shall transmit the copy accompanying the consignment, duly endorsed stating the quantities received and the date of receipt, to the competent authorities of his country or region.

3. In respect of substances in Schedules I and II the following additional provisions shall apply:

(a) The Parties shall exercise in free ports and zones the same supervision and control as in other parts of their territory, provided, however, that they may apply more drastic measures.

(b) Exports of consignments to a post office box, or to a bank to the account of a person other than the person named in the export authorization, shall be prohibited.

(c) Exports to bonded warehouses of consignments of substances in Schedule I are prohibited. Exports of consignments of substances in Schedule II to a bonded warehouse are prohibited unless the Government of the importing country certifies on the import authorization, produced by the person or establishment applying for the export authorization, that it has approved the importation for the purpose of being placed in a bonded warehouse. In such case the export authorization shall certify that the consignment is exported for such purpose. Each withdrawal from the bonded warehouse shall require a permit from the authorities having jurisdiction over the warehouse and, in the case of a foreign destination, shall be treated as if it were a new export within the meaning of this Convention.

(d) Consignments entering or leaving the territory of a Party not accompanied by an export authorization shall be detained by the competent authorities.

(e) A Party shall not permit any substances consigned to another country to pass through its territory, whether or not the consignment is removed from the conveyance in which it is carried, unless a copy of the export authorization for consignment is produced to the competent authorities of such Party.

(f) The competent authorities of any country or region through which a consignment of substances is permitted to pass shall take all due measures to prevent the diversion of the consignment to a destination other than that named in the accompanying copy of the export authorization, unless the Government of the country or region through which the consignment is passing authorizes the diversion. The Government of the country or region of transit shall treat any requested diversion as if the diversion were an export from the country or region of transit to the country or region of new destination. If the diversion is authorized, the provisions of paragraph 1(e) shall also apply between the country or region of transit and the country or region which originally exported the consignment.

(g) No consignment of substances, while in transit or whilst being stored in a bonded warehouse, may be subjected to any process which would change the nature of the substance in question. The packing may not be altered without the permission of the competent authorities.

(h) The provisions of sub-paragraphs (e) to (g) relating to the passage of substances through the territory of a Party do not apply where the consignment in question is transported by aircraft which does not land in the country or region of transit. If the aircraft lands in any such country or region, those provisions shall be applied so far as circumstances require.

(i) The provisions of this paragraph are without prejudice to the provisions of any international agreements which limit the control which may be exercised by any of the Parties over such substances in transit.

Article 13

Prohibition of and restrictions on export and import

1. A Party may notify all the other Parties through the Secretary-General that it prohibits the import into its country or into one of its regions of one or more substances in Schedule II, III, IV, specified in its notification. Any such notification shall specify the name of the substance as designated in Schedule II, III or IV.

2. If a Party has been notified of a prohibition pursuant to paragraph 1, it shall take measures to ensure that none of the substances specified in the notification is exported to the country or one of the regions of the notifying Party.

3. Notwithstanding the provisions of the preceding paragraphs, a Party which has given notification pursuant to paragraph 1 may authorize by special import licence in each case the import of specified quantities of the substances in question or preparations containing such substances. The issuing authority of the importing country shall send two copies of the special import licence, indicating the name and address of the importer and the exporter, to the competent authority of the exporting country or region, which may then authorize the exporter to make the shipment. One copy of the special import licence, duly endorsed by the competent authority of the exporting country or region, shall accompany the shipment.

ARTICLE 14

Special provisions concerning the carriage of psychotropic substances in first-aid kits of ships, aircraft or other forms of public transport engaged in international traffic

1. The international carriage by ships, aircraft or other forms of international public transport, such as international railway trains and motor coaches, of such limited quantities of substances in Schedule II, III or IV as may be needed during their journey or voyage for first-aid purposes or emergency cases shall not be considered to be export, import or passage through a country within the meaning of this Convention.

2. Appropriate safeguards shall be taken by the country of registry to prevent the improper use of the substances referred to in paragraph 1 or their diversion for illicit purposes. The Commission, in consultation with the appropriate international organizations, shall recommend such safeguards.

3. Substances carried by ships, aircraft or other forms of international public transport, such as international railway trains and motor coaches, in accordance with paragraph 1 shall be subject to the laws, regulations, permits and licences of the country of registry, without prejudice to any rights of the competent local authorities to carry out checks, inspections and other control measures on board these conveyances. The administration of such substances in the case of emergency shall not be considered a violation of the requirements of paragraph 1 of article 9.

ARTICLE 15

Inspection

The Parties shall maintain a system of inspection of manufacturers, exporters, importers, and wholesale and retail distributors of psychotropic substances and of medical and scientific institutions which use such substances. They shall provide for inspections, which shall be made as frequently as they consider necessary, of the premises and of stocks and records.

ARTICLE 16

Reports to be furnished by the Parties

1. The Parties shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions, and in particular an annual report regarding the working of the Convention in their territories including information on:

(a) important changes in their laws and regulations concerning psychotropic substances; and

(b) significant developments in the abuse of and the illicit traffic in psychotropic substances within their territories.

2. The Parties shall also notify the Secretary-General of the names and addresses of the governmental authorities referred to in subparagraph (f) of article 7, in article 12 and in paragraph 3 of article 13. Such information shall be made available to all Parties by the Secretary-General.

3. The Parties shall furnish, as soon as possible after the event, a report to the Secretary-General in respect of any case of illicit traffic in psychotropic substances or seizure from such illicit traffic which they consider important because of:

(a) new trends disclosed;

(b) the quantities involved;

(c) the light thrown on the sources from which the substances are obtained; or

(d) the methods employed by illicit traffickers.

Copies of the report shall be communicated in accordance with subparagraph (b) of article 21.

4. The Parties shall furnish to the Board annual statistical reports in accordance with forms prepared by the Board:

(a) in regard to each substance in Schedules I and II, on quantities manufactured, exported to and imported from each country or region as well as on stocks held by manufacturers;

(b) in regard to each substance in Schedules III and IV, on quantities manufactured, as well as on total quantities exported and imported;

(c) in regard to each substance in Schedules II and III, on quantities used in the manufacture of exempt preparations; and

(d) in regard to each substance other than a substance in Schedule I, on quantities used for industrial purposes in accordance with sub-paragraph (b) of article 4.

The quantities manufactured which are referred to in sub-paragraphs (a) and (b) of this paragraph do not include the quantities of preparations manufactured.

5. A Party shall furnish the Board, on its request, with supplementary statistical information relating to future periods on the quantities of any individual substance in Schedules III and IV exported to and imported from each country or region. That Party may request that the Board treat as confidential both its request for information and the information given under this paragraph.

6. The Parties shall furnish the information referred to in paragraphs 1 and 4 in such a manner and by such dates as the Commission or the Board may request.

ARTICLE 17

Functions of the Commission

1. The Commission may consider all matters pertaining to the aims of this Convention and to the implementation of its provisions, and may make recommendations relating thereto.

2. The decisions of the Commission provided for in articles 2 and 3 shall be taken by a two-thirds majority of the members of the Commission.

ARTICLE 18

Reports of the Board

1. The Board shall prepare annual reports on its work containing an analysis of the statistical information at its disposal, and, in appropriate cases, an account of the explanations, if any, given by or required of Governments, together with any observations and recom-

mendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission, which may make such comments as it sees fit.

2. The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.

ARTICLE 19

Measures by the Board to ensure the execution of the provisions of the Convention

1. (a) If, on the basis of its examination of information submitted by governments to the Board or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention are being seriously endangered by reason of the failure of a country or region to carry out the provisions of this Convention, the Board shall have the right to ask for explanations from the Government of the country or region in question. Subject to the right of the Board to call the attention of the Parties, the Council and the Commission to the matter referred to in sub-paragraph (c) below, it shall treat as confidential a request for information or an explanation by a government under this sub-paragraph.

(b) After taking action under sub-paragraph (a), the Board, if satisfied that it is necessary to do so, may call upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.

(c) If the Board finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under sub-paragraph (a), or has failed to adopt any remedial measures which it has been called upon to take under sub-paragraph (b), it may call the attention of the Parties, the Council and the Commission to the matter.

2. The Board, when calling the attention of the Parties, the Council and the Commission to a matter in accordance with paragraph 1(c), may, if it is satisfied that such a course is necessary, recommend to the Parties that they stop the export, import, or both, of particular psychotropic substances, from or to the country or region concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or region. The State concerned may bring the matter before the Council.

3. The Board shall have the right to publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. If the Board publishes in this report a decision taken under this article or any information relating thereto, it shall also publish therein the views of the Government concerned if the latter so requests.

4. If in any case a decision of the Board which is published under this article is not unanimous, the views of the minority shall be stated.

5. Any State shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.

6. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

7. The provisions of the above paragraphs shall also apply if the Board has reason to believe that the aims of this Convention are being seriously endangered as a result of a decision taken by a Party under paragraph 7 of article 2.

ARTICLE 20

Measures against the abuse of psychotropic substances

1. The Parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved, and shall co-ordinate their efforts to these ends.

2. The Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social reintegration of abusers of psychotropic substances.

3. The Parties shall assist persons whose work so requires to gain an understanding of the problems of abuse of psychotropic substances and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of such substances will become widespread.

ARTICLE 21

Action against the illicit traffic

Having due regard to their constitutional, legal and administrative systems, the Parties shall:

(a) make arrangements at the national level for the co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination;

(b) assist each other in the campaign against the illicit traffic in psychotropic substances, and in particular immediately transmit, through the diplomatic channel or the competent authorities designated by the Parties for this purpose, to the other Parties directly concerned, a copy of any report addressed to the Secretary-General under article 16 in connexion with the discovery of a case of illicit traffic or a seizure;

(c) co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;

(d) ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner; and

(e) ensure that, where legal papers are transmitted internationally for the purpose of judicial proceedings, the transmittal be effected in an expeditious manner to the bodies designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that legal papers be sent to it through the diplomatic channel.

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ARTICLE 22

Penal provisions

1. (a) Subject to its costitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty.

(b) Notwithstanding the preceding sub-paragraph, when abusers of psychotropic substances have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 20.

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

(a)(i) if a series of related actions constituting offences under paragraph 1 has been committed in different countries, each of them shall be treated as a distinct offence;

(ii) intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in connexion with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;

(iii) foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism; and

(iv) serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgment given.

(b) It is desirable that the offences referred to in paragraph 1 and paragraph 2(a)(ii) be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the Parties, and, as between any of the Parties which do not make extradition conditional on the existence of a treaty or on reciprocity, be recognized as extradition crimes; provided that extradition shall be granted in conformity with the law of the Party to which application is made, and that the Party shall have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.

3. Any psychotropic substance or other substance, as well as any equipment, used in or intended for the commission of any of the offences referred to in paragraphs 1 and 2 shall be liable to seizure and confiscation.

4. The provisions of this article shall be subject to the provisions of the domestic law of the Party concerned on questions of jurisdiction.

5. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.

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ARTICLE 23

Application of stricter control measures than those required by this Convention

A Party may adopt more strict or severe measures of control than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the protection of the public health and welfare.

ARTICLE 24

Expenses of international organs incurred in administering the provisions of the Convention

The expenses of the Commission and the Board in carrying out their respective functions under this Convention shall be borne by the United Nations in such manner as shall be decided by the General Assembly. The Parties which are not Members of the United Nations shall contribute to these expenses such amounts as the General Assembly finds equitable and assesses from time to time after consultation with the Governments of these Parties.

ARTICLE 25

Procedure for admission, signature, ratification and accession

1. Members of the United Nations, States not Members of the United Nations which are members of a specialized agency of the United Nations or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and any other State invited by the Council, may become Parties to this Convention:

(a) by signing it; or
(b) by ratifying it after signing it subject to ratification; or
(c) by acceding to it.

2. The Convention shall be open for signature until 1 January 1972 inclusive. Thereafter it shall be open for accession.

3. Instruments of ratification or accession shall be deposited with the Secretary-General.

ARTICLE 26

Entry into force

1. The Convention shall come into force on the ninetieth day after forty of the States referred to in paragraph 1 of article 25 have signed it without reservation of ratification or have deposited their instruments of ratification or accession.

2. For any other State signing without reservation of ratification, or depositing an instrument of ratification or accession after the last signature or deposit referred to in the preceding paragraph, the Convention shall enter into force on the ninetieth day following the date of its signature or deposit of its instrument of ratification or accession.

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ARTICLE 27

Territorial application

The Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such a case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when the consent is obtained the Party shall notify the Secretary-General. The Convention shall apply to the territory or territories named in such a notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

ARTICLE 28

Regions for the purposes of this Convention

1. Any Party may notify the Secretary-General that, for the purposes of this Convention, its territory is divided into two or more regions, or that two or more of its regions are consolidated into a single region.

2. Two or more Parties may notify the Secretary-General that, as the result of the establishment of a customs union between them, those Parties constitute a region for the purposes of this Convention.

3. Any notification under paragraph 1 or 2 shall take effect on 1 January of the year following the year in which the notification was made.

ARTICLE 29

Denunciation

1. After the expiry of two years from the date of the coming into force of this Convention any Party may, on its own behalf or on behalf of a territory for which it has international responsibility, and which has withdrawn its consent given in accordance with article 27, denounce this Convention by an instrument in writing deposited with the Secretary-General.

2. The denunciation, if received by the Secretary-General on or before the first day of July of any year, shall take effect on the first day of January of the succeeding year, and if received after the first day of July it shall take effect as if it had been received on or before the first day of July in the succeeding year.

3. The Convention shall be terminated if, as a result of denunciations made in accordance with paragraphs 1 and 2, the conditions for its coming into force as laid down in paragraph 1 of article 26 cease to exist.

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ARTICLE 30

Amendments

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated to the Secretary-General, who shall communicate them to the Parties and to the Council. The Council may decide either:

(a) that a conference shall be called in accordance with paragraph 4 of Article 62 of the Charter of the United Nations to consider the proposed amendment; or

(b) that the Parties shall be asked whether they accept the proposed amendment and also asked to submit to the Council any comments on the proposal.

2. If a proposed amendment circulated under paragraph 1(b) has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If however a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

ARTICLE 31

Disputes

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed shall be referred, at the request of any one of the parties to the dispute, to the International Court of Justice for decision.

ARTICLE 32

Reservations

1. No reservation other than those made in accordance with paragraphs 2, 3 and 4 of the present article shall be permitted.

2 Any State may at the time of signature, ratification or accession make reservations in respect of the following provisions of the present Convention:

(a) article 19, paragraphs 1 and 2;
(b) article 27; and
(c) article 31.

3. A State which desires to become a Party but wishes to be authorzed to make reservations other than those made in accordance with paragraphs 2 and 4 may inform the Secretary-General of such intention. Unless by the end of twelve months after the date of the Secretary-

General's communication of the reservation concerned, this reservation has been objected to by one third of the States that have signed without reservation of ratification, ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood however that States which have objected to the reservation need not assume toward the reserving State any legal obligation under this Convention which is affected by the reservation.

4. A State on whose territory there are plants growing wild which contain psychotropic substances from among those in Schedule I and which are traditionally used by certain small, clearly determined groups in magical or religious rites, may, at the time of signature, ratification or accession make reservations concerning these plants, in respect of the provisions of article 7, except for the provisions relating to international trade.

5. A State which has made reservations may at any time by notification in writing to the Secretary-General withdraw all or part of its reservations.

ARTICLE 33

Notifications

The Secretary-General shall notify to all the States referred to in paragraph 1 of article 25:

(a) signatures, ratifications and accessions in accordance with article 25;

(b) the date upon which this Convention enters into force in accordance with article 26;

(c) denunciations in accordance with article 29; and

(d) declarations and notifications under articles 27, 28, 30 and 32.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE AT VIENNA, this twenty-first day of February one thousand nine hundred and seventy-one, in a single copy in the Chinese, English, Russian and Spanish languages, each being equally authentic. The Convention shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies thereof to all the Members of the United Nations and to the other States referred to in paragraph 1 of article 25.

LISTS OF SUBSTANCES IN THE SCHEDULES

INN [1]	Other nonproprietary or trivial names	Chemical name
List of substances in schedule I:		
1.	DET	*N,N*-diethyltryptamine.
2.	DMHP	3-(1,2-dimethylheptyl)-1-hydroxy-7,8,9,10 tetrahydro-6,6,9-trimethyl-6*H*-dibenzo [b,9] pyran.
3.	DMT	*N,N*-dimethyltryptamine.
4. (+)LYSERGIDE	LSD, LSD-25	(+)-*N,N*-diethyllysergamide (*d*-lysergic acid diethylamide).
5.	Mescaline	3,4,5-trimethoxyphenethylamine.
6.	Parahexyl	3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo[b,d] pyran.
7.	Psilocine, psilotsin	3-(2-dimethylaminoethyl)-4-hydroxy-indole.
8. PSILOCYBINE		3-(2-dimethylaminoethyl)indol-4-yl] dihydrogen phosphate.
9.	STP, DOM	2-amino-1-(2,5-dimethoxy-4-methyl) phenyl-propane.
10.	Tetrahydrocannabinols, all isomers.	1-hydroxy-3-pentyl-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6-*H*-dibenzo [b,d] pyran;
List of substances in schedule II:		
1. AMPHETAMINE		(±)-2-amino-1-phenylpropane.
2. DEXAMPHETAMINE		(+)-2-amino-1-phenylpropane.
3. METHAMPHETAMINE		(+)-2-methylamino-1-phenylpropane.
4. METHYLPHENIDATE		2-phenyl-2-(2-piperidyl)acetic acid, methyl ester.
5. PHENCYCLIDINE		1-(1-phenylcyclohexyl) piperidine.
6. PHENMETRAZINE		3-methyl-2-phenylmorpholine.
List of substances in schedule III:		
1. AMOBARBITAL		5-ethyl-5-(3-methylbutyl) barbituric acid.
2. CYCLOBARBITAL		5-(1-cyclohexen-1-yl)-5-ethylbarbituric acid.
3. GLUTETHIMIDE		2-ethyl-2-methylamino-1-phenylpropane.
4. PENTOBARBITAL		5-ethyl-5-(1-methylbutyl) barbituric acid.
5. SECOBARBITAL		5-allyl-5-(1-methylbutyl) barbituric acid.
List of substances in schedule IV:		
1. AMFEPRAMONE		2-(diethylamine)propiophenone.
2. BARBITAL		5,5-diethylbarbituric acid.
3.	ethchlorvynel	ethyl-2-chlorovinylethinyl-carbinol.
4. ETHINAMATE		1-ethynylcyclohexanolcarbamate.
5. MEPROBAMATE		2-methyl-2-propyl-1,3-propanediol dicarbamate.
6. METHAQUALONE		2-methyl-3-*o*-tolyl-4(3*H*)-quinazolinone.
7. METHYLPHENO-BARBITAL		5-ethyl-1-methyl-5-phenyl-barbituric acid.
8. METHYPRYLON		3,3-diethyl-5-methyl-2,4-piperidine-dione.
9. PHENOBARBITAL		5-ethyl-5-phenylbarbituric acid.
10. PIPRADROL		1,1-diphenyl-1-1-(2-piperidyl) methanol.
11.	SPA	(−)-1-dimethylamine-1,2-diphenylethane.

[1] The names printed in capitals in the left hand column are the International Nonproprietary Names (INN). With 1 exception ((+)-LYSERGIDE), other nonproprietary or trival names are given only where no INN has yet been proposed.

EXHIBIT NO. 6

92D CONGRESS
2D SESSION

S. 3118

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 1972

Mr. HRUSKA (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to discharge obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation, of psychotropic substances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Psychotropic Substances Act of 1972".

SEC. 2. Subsection (d) of section 201 of the Controlled Substances Act (21 U.S.C. 811 (d)) is amended by adding "(1)" after "(d)" and inserting the following new paragraphs at the end thereof:

"(2) If control is required by United States obligations under the original schedules of the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971, the Attorney General shall issue an order controlling the drug or other substance under the least restrictive schedule meeting such obligations, without regard to the findings required by subsection (a) of this section or section 202 (b) and without regard to the procedures prescribed by subsections (a) and (b) of this section.

"(3) (A) When the United States receives notification pursuant to article 2 of the Convention on Psychotropic Substances that a drug or other substance has been added or transferred to the schedule specified in the notification, the Attorney General shall, unless such drug or other substance is already subject to legal controls which meet the requirements of the schedule specified in the notification, initiate proceedings for control in accordance with subsections (a) and (b) of this section.

"(B) If the Attorney General determines, in view of exceptional circumstances, that the United States will not be in a position to give effect to all of the provisions of the Convention on Psychotropic Substances applicable to that drug or substance, he shall transmit notice of his determination and the reasons therefor to the Secretary of State for transmittal to the Secretary General of the United Nations

within the time required by the convention. Concurrently with the transmittal of such notice, the Attorney General shall, unless the drug or substance is already controlled under this title or unless the proceedings for control are completed, issue an order controlling the drug or substance under schedule IV or V, whichever is most appropriate to carry out the United States obligations under article 2, paragraph 7, of the convention, without regard to the findings required by subsection (a) of this section or section 202 (b) and without regard to the procedures prescribed by subsections (a) and (b) of this section. As a part of such order, the Attorney General shall by regulation except such drug or substance from the application of any provisions of part C of this title which he finds is not required to carry out the United States obligations under article 2, paragraph 7, of the convention.

"(C) Upon completion of proceedings for control in accordance with subsections (a) and (b) of this section, the Attorney General shall issue a final order controlling the drug or substance under the appropriate schedule as determined by such proceedings: *Provided*, That if the Secretary recommends that such drug or substance not be controlled the Attorney General shall continue control of the drug or substance under schedule IV or V in accordance with paragraph (3) (B) of this subsection."

SEC. 3. Subsection (d) of section 202 of the Controlled Substances Act (21 U.S.C. 812 (d)) is amended by adding the following before the period at the end thereof: ", and (3) such exception does not conflict with United States obligations under the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971".

SEC. 4. Subsection (d) of section 307 of the Controlled Substances Act (21 U.S.C. 827 (d)) is amended by adding "(1)" after "(d)" the first time it appears, and adding the following at the end of the subsection:

"(2) Every manufacturer registered under section 303 shall, at such time or times and in such form as the Attorney General may require, make periodic reports to the Attorney General with respect to nonnarcotic controlled substances which are psychotropic substances subject to the Convention on Psychotropic Substances, signed in Vienna, February 21, 1971. These reports shall include the quantities used in the manufacture of substances either not listed in any schedule or listed in a schedule but excepted from certain controls under section 201 (d) (3) (B) or section 202 (d), and the stocks of these controlled substances held by the manufacturer."

SEC. 5. Part C of the Controlled Substances Act is amended by adding the following new section:

"SEC. 310. The Attorney General may, by regulation, prescribe restrictions on the advertising to the general pub-

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lic concerning any controlled substance which is a psychotropic substance subject to the Convention on Psychotropic Substances, signed at Vienna, February 21, 1971."

SEC. 6. Subsection (a) of section 402 of the Controlled Substances Act (21 U.S.C. 842 (a)) is amended—

(a) by striking out "or" at the end of paragraph (7);

(b) by striking out the period at the end of paragraph (8) and inserting in lieu thereof "; or"; and

(c) by adding the following new paragraph:

"(9) to advertise to the general public any controlled substance in violation of regulations issued pursuant to section 310."

SEC. 7. Subsection (b) of section 1002 of the Controlled Substances Import and Export Act (21 U.S.C. 952) is amended by adding the following sentence to paragraph (2): "*Provided, however*, That if a nonnarcotic controlled substance is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements as the Attorney General may by regulation prescribe."

SEC. 8. Subsection (e) of section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953) is amended—

(a) by striking out ", and" at the end of paragraph (2) and inserting in lieu thereof ";";

(b) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(c) by adding the following new paragraph:

"(4) in any case when a nonnarcotic substance in schedule III, IV or V is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements as the Attorney General may by regulation prescribe, instead of the invoice required by subparagraphs (e) (2) and (e) (3) above."

Senator BAYH. Our first witness this morning is Mr. John R. Bartels, Jr., the Administrator of the Drug Enforcement Administration of the U.S. Department of Justice. Mr. Bartels, it is a privilege to have you with us this morning, and I would appreciate it if you will identify Mr. Miller and the other witnesses with you this morning.

STATEMENT OF JOHN R. BARTELS, JR., ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE; ACCOMPANIED BY DONALD E. MILLER, CHIEF COUNSEL; GEORGE FRANGULLIE, SPECIAL AGENT; AND GENE HAISLIP, CHIEF, CONGRESSIONAL AFFAIRS

Mr. BARTELS. Mr. Chairman. On my left is Mr. Donald Miller, the chief counsel of the Drug Enforcement Administration. On my immediate right, is Special Agent George Frangullie, who is now stationed in Chili. And on his right is Mr. Gene Haislip of the Congressional Relations Section of the DEA.

Mr. Chairman, I wish to thank you for this opportunity to testify in connection with S. 2544, a bill supported by the administration for the purpose of implementing the international Convention on Psychotropic Substances. This treaty, which is now before the Senate for advice and consent, provides new controls over many important drugs of abuse. These are drugs which, for the most part, are the product of legitimate manufacture. Yet, when abused in the street, they can inflict damage comparable to that of heroin.

Addiction to barbiturates, for example, is often times so severe that abrupt withdrawal has been known to result in death. The abuse of amphetamines and methamphetamines creates a psychic dependence which is as difficult to break as any addition. Other drugs to which the treaty applies include LSD and methaqualone—the abuse of which reached near epidemic proportions within the span of a year before being brought under the controls which we administer.

Much has been done to halt the illicit flow of these drugs from sources within the United States, but the problem can never be solved as long as diversion from international sources continues.

This new treaty, which the United States assumed leadership in negotiating, will provide the necessary legal basis on which the governments of the world can act. I have just returned from the Geneva session of the International Commission on Narcotic Drugs and can assure you, on the basis of personal conversations with the representatives of many other nations, that they are awaiting the leadership of the United States. The opium producing nations, whom we have asked to accept more stringent controls, are particularly anxious to see if the United States is willing to accept similar controls over the drugs which it manufactures.

The bill itself embodies a number of technical changes in our own Federal drug control laws which are necessary to insure that the United States will be able to fulfill its obligations when the treaty is ratified. Although these changes of law are relatively minor, the treaty, from which they will enable us to benefit, is of great importance.

I recognize, however, that many scientific and medical groups are vitally concerned in any issue which appears to affect the balance of authority between the Attorney General and the Secretary of Health, Education, and Welfare, in the area of drug control. During the passage of the Controlled Substances Act of 1970, now administered by DEA, great care was taken to insure that the interests of science and medicine in access to, and utilization of, controlled drugs were protected.

S. 2544 will not upset this balance and will grant no additional powers to the Justice Department relative to those of the Department of Health, Education, and Welfare. Its provisions are designed exclusively for the purpose of answering the minimum requirements of U.S. membership in the Convention on Psychotropic Substances.

This treaty, like all other international agreements, does require some minimal surrender of sovereign power. For example, if the international body should decide to bring a drug under control, or to increase existing controls over a drug, the decision might require some additional legal action to be taken within the United States. S. 2544 intentionally gives the Secretary of Health, Education, and Welfare the prerogative of deciding what additional controls, if any, may be required in such a case and under what statute they must be imposed. It is only if the Secretary determines such a necessity that a change would be made in the status of the drug with regard to the Controlled Substances Act which DEA administers. By the same token, it is the Secretary who will determine the negotiating position of the United States with regard to deliberations of the international body on drug control questions.

The effects of S. 2544 and the Psychotropic treaty on existing law is an intricate and highly technical matter. In order to ally fears that the treaty would restrict research alter the power of the Congress to change existing drug penalties, or impose additional controls on physicians, we have provided reassurances by expressly setting forth matters into which neither the treaty nor the act will extend. I have appended to my statement a more detailed legal analysis of these considerations. I will, or Mr. Miller will, also be pleased to respond to any additional questions you have in this area at the close of my statement. At this point, I would like to turn my attention to the situation which we hope S. 2544 and the Convention on Psychotropic Substances will help resolve.

For many years, beginning with the Opium Convention of 1912, various international controls have been applied to the legitimate commerce in narcotic drugs. I shall not mention each of the individual treaties which have governed narcotic drugs, but it is important to note that in all this time, the legitimate commerce in these narcotics has never constituted a significant source within the illicit traffic. This is due to the international controls which have been applied through these treaties and the passage of national laws which they have required.

Many people are surprised to learn that this is not the case with regard to the medically useful but nonetheless non-narcotic substances referred to in international terminology as "psychotropic" substances. These include the hallucinogens such as LSD, the barbiturates, and various tranquilizers. Indeed, there are at present no inter-

national controls governing commerce in this category of drugs. Lack of international controls is merely another unfortunate example of the kind of double standard with which drug abuse is often regarded. It is the kind of double standard which views heroin addiction with horror, but is willing to overlook barbiturate addiction, or dependence on amphetamines as a different and less harmful sort of thing. This is an outdated notion which should be unequivocally rejected.

The toll of human damage resulting from the abuse of these drugs is often equal to and sometimes may exceed that associated with heroin. It is our firm adherence to this principle which has led us to seek the imposition of international controls in this area comparable to those applied to narcotic drugs. In our view, there can be no excuse for accepting the one and rejecting the other. This is the important principle involved in the issue before you today.

I would next like to deal with some of the practicalities of the Convention. In all probability, no nation stands to benefit more from the terms of the Convention on Psychotropic Substances than the United States. In all categories of drug abuse, our Nation is perhaps the most seriously affected; and this is no less true in the case of the drugs which would be controlled under this treaty.

In the last 2 or 3 years, there has been a great deal of attention focused on the problem of diversion of dangerous drugs within the United States. The Congress has provided new laws with which to attack such diversion, and the DEA has applied these laws with dramatic results. Although the problem is far from being solved, there is no disputing the fact that great progress has been made. But the diversion of drugs is not only a problem within the United States. It is equally a problem in many foreign nations and particularly so in the case of international commerce.

What is needed is an enactment of international law comparable to that which the Congress has enacted domestically. This is precisely the purpose for which the Psychotropic treaty has been designed. The United States, despite its own strong legislation, is a victim of the current international inadequacies, and I would like to provide you with a few statistics and examples of the extent of the ilicit traffic which has resulted.

The accumulating evidence has shown that the U.S.-Mexican border area has become the locus of many clandestine operations using barbiturate and amphetamine powders diverted from legitimate international commerce. Seizures continue to escalate at a rapid pace. In 1971, some 8 million illicit amphetamine tablets believed to be of clandestine Mexican manufacture were confiscated by U.S. enforcement agencies in the United States. In 1972, approximately 13 million tablets were seized, and in 1973, the total exceeded 26 million tablets. Recent intelligence suggests that a group of violators have ordered amphetamine sulphate powder from European firms sufficient to manufacture an additional 50 million tablets.

Senator BAYH. Let me interrupt just a moment. I think that last sentence answered my question about the so-called Mexican reds. Is there any evidence that the Mexicans themselves are manufacturing the basic substance, or is this brought in from Europe, as was mentioned, and then capsulized?

Mr. BARTELS. It is the latter, Mr. Chairman.

Senator BAYH. It is the latter?

Mr. BARTELS. Yes, sir.

In April of 1972, we testified before this commtitee concerning a new initiative aimed at attacking a growing traffic in illicitly produced secobarbital capsules known throughout the Southwestern United States as "Mexican reds." A review of our records revealed that no substantial quantities of secobarbital powder had been shipped from the United States to Mexico since 1969, and further that there were no known manufacturers of the powder within Mexico itself. In August 1972, visits to European firms disclosed that at least 6,750 kilograms of bulk secobarbital powder had been shipped to fill Mexican orders in an 18-month period.

Much progress has been made to reduce these problems, particularly in Mexico. Beginning in January of 1972, the Mexican Government, in cooperation with DEA agents stationed there, closed down a major drug firm in Mexico City which was responsible indirectly for the diversion of millions of dosage units of amphetamines. Simultaneously, we revoked the export permit of a major U.S. firm which was carelessly supplying bulk amphetamine powder to Mexican sources who were in turn diverting it. Finally, the Mexican Government, at our request, imposed tighter controls on the importation of both amphetamines and barbiturates.

In spite of this and other enforcement successes, the situation, nevertheless, continues to be serious. No doubt other Latin American countries as well as Mexico are being used as points of diversion. Intelligence has also been recently developed which suggests that the drug methaqualone, recently brought under schedule II controls in the United States, is being smuggled into the country from Canada. At this time, it is not known whether the drug has been illicitly manufactured or diverted from some other foreign source.

One of our first major investigations that brought this problem to our attention concerned the clandestine operations of a Dr. Joseph O'Connor and his coconspirators in Atlanta, Ga. In early 1969, by means of applying the principles of scientific ballistic examination to tables seized from the illicit traffic, our chemists were able to ascertain that millions of black market amphetamine tablets found throughout Georgia, South Carolina, Alabama, and Tennessee were issuing from a single source. It was at first assumed that not only the pills but the amphetamine powder from which they were made were being clandestinely manufactured somewhere within the area.

As the investigation evolved and suspects were identified, Federal agents discovered that the violators were operating a highly sophisticated 16-stage tableting machine capable of producing a half million tablets for each day of operation. To our surprise, they discovered that the amphetamine powder from which the tablets were made was being obtained from legitimate firms in Milan, Italy, and Lucerne, Switzerland. Apparently, the violators were ordering the drugs under a fictitious company name and at some point mislabeling the containers and shipping them into the United States either through Atlanta; Charleston, South Carolina; or Niagara Falls, New York.

Just prior to the arrest of the suspects in December of 1969, agents were able to monitor a shipment of two drums, each containing ap-

proximately 100 kilograms of amphetamine sulphate powder from a legitimate firm in Milan, Italy, to Antwerp, Belgium, where the containers were mislabeled as antibiotics. The drugs were then shipped to Freeport in the Bahamas for smuggling into the United States.

Following arrest, Dr. Joseph O'Connor posted a bond of $20,000 and is still a fugitive from justice believed to be residing in another country. Regrettably, the arrest of the other six coconspirators in this enterprise resulted in the imposition of but two 6-month sentences.

This case has proven to be a prototype of many others which we have subsequently developed, particularly along the U.S.-Mexican border. Today, I have asked Mr. George Frangullie, now the Special Agent in Charge in Santiago, Chile, to give this subcommittee a brief account of an investigation involving drugs diverted from international commerce. It will establish for you more clearly than any generalities both the size and intricacy of the criminal activity with which we are concerned.

This case involves the arrest of a group of violators who were responsible for the manufacture and movement of millions of illicitly produced red secobarbital capsules known as "red devils," and black amphetamine capsules known as "black beauties." They not only diverted these drugs through a string of pharmacies which operated in the U.S.-Mexican border area but maintained an illicit laboratory furnished with modern equipment utilizing barbiturate and amphetamine sulphate powder imported from European firms. Had the treaty been in force at the time, it is unlikely that these violator would have been able to obtain the necessary raw materials in such volume. The system of registration, recordkeeping, inspection, and import-export permits would have required too great a deception.

We believe these examples, and particularly the narrative of Special Agent Frangullie, who was then stationed in Monterrey, Mexico, provide ample indication of the gravity of the current situation and the need for enactment of S. 2544. We must have the legal foundation provided by this treaty if the law enforcement efforts which we have stimulated around the world are to stop the diversion of dangerous drugs.

Thank you, Mr. Chairman.

Senator BAYH. Thank you, Mr. Bartels.

I note that our distinguished colleague from Nebraska, Senator Hruska, is here and has a conflict with the Agricultural Appropriations Subcommittee. Senator Hruska, do you care to comment now? I understand that you are going to have to return to the other session.

Senator HRUSKA. Thank you very much, Mr. Chairman.

With your permission, I have a few questions of Mr. Bartels, who I welcome here to the committee once again.

Mr. BARTELS. Thank you, Senator.

Senator HRUSKA. We always look forward to his testimony.

Mr. Chairman, I have an opening statement which I have prepared after going over some of the material that you and your staff so obligingly accumulated, and also after going over some of the statements that have been submitted in advance, pursuant to rule, I

should like to, with your permission, to have that statement inserted in the appropriate place.

Senator BAYH. Without objection, it will be placed in the record at this point.

[Senator Hruska's prepared statement was marked "Exhibit No. 7" and is as follows:]

EXHIBIT No. 7

PREPARED STATEMENT OF SENATOR ROMAN L. HRUSKA

MR. CHAIRMAN. The hearing today has been called to receive testimony in connection with S. 2544 and S. 1646, both of which are entitled the "Psychotropic Substances Act of 1973."

Along with the distinguished Chairman of this Subcommittee and several other of my colleagues on the Judiciary Committee, I introduced S. 2544 as proposed by the Administration on October 8 of last year. The purpose of S. 2544 is to make the necessary adjustments in federal law so as to permit the United States to become a member of a new treaty, the Convention of Psychotropic Substances, which will impose increased controls on the international commerce in certain dangerous drugs.

S. 1646, introduced earlier by Senator Bayh, offers an alternative means of accomplishing this objective.

The Convention on Psychotropic Substances was negotiated in Vienna in 1971. The purpose of this convention is to improve the international control of substances that are not included under any of the existing multilateral drug treaties covering opium and other narcotics. It is designed to govern the so-called psychotropic or mind-altering substances, such as hallucinogens, amphetamines, barbiturates and tranquilizers, and limit the manufacture, distribution and use of these substances to medical and scientific purposes.

Because psychotropic substances are relatively new to both licit and illicit channels, they have never been subjected to similar treaties and regulations. This is an oversight with the United States, in the exercise of its international leadership, sought to cure in the negotiation of the present Convention.

The Convention was transmitted on June 28, 1971, to the Senate for its advice and consent on ratification. Since that time, it has been pending before the Committee on Foreign Relations. President Nixon in his recent State of the Union Message called upon Congress to act promptly to take the necessary steps for completion of the treaty process so that the United States can become a member of this important Convention. It is in order, therefore, that implementing legislation such as S. 2544 receive our full attention at this time to insure that this important treaty can be brought before the full Senate for consideration at an early date.

For the most part, S. 2544 is concerned only with making the minimum technical adjustments in our laws to insure that the United States can become a good faith member of the Convention. Nearly all of the requirements of membership in this Convention are already met by existing federal law. Therefore, although the impact of this measure would be highly important for international drug control, it will require little change in the procedures now followed to restrict the use and availability of these substances in the United States. This, in my view, is a small price to pay for such a significant improvement in the control of dangerous drugs worldwide.

It is essential that the United States assert its proper authority into the area of international agreements for the control of dangerous drugs. This measure, S. 2544, would further that goal and allow this country to maintain its leadership in the fight against drug abuse. Furthermore, it would encourage other nations to become members of the Convention on Psychotropic Substances and thereby insure the success of this important treaty.

I commend Senator Bayh as Chairman of this Subcommittee for his diligent leadership in conducting a series of extensive hearings during the past few years on the domestic abuse and diversion of barbiturates, amphetamines, methaqualone and methadone. I am confident that this hearing will properly focus upon another critical problem, that of international drug abuse.

I note that among our scheduled list of witnesses three federal agencies vitally concerned with this matter are represented—the Drug Enforcement Administration of the Department of Justice, the Department of Health, Education and Welfare, and the Department of State. Additionally, representatives from the Drug Abuse Council are on hand to provide the Subcommittee with a full understanding of the impact which this legislation may have as well as insights into the merits of the international Convention itself.

I look forward to hearing the testimony of these distinguished witnesses.

If there is no objection, Mr. Chairman, I ask that a full text of S. 2544 and the letter of transmittal from the Attorney General be placed in the record at this time.

[Refer to "Exhibit No. 4" for the above mentioned documents.]

Senator HRUSKA. Thank you very much.

Mr. Bartels, on page 10 of your statement, you outline an instance of a seizure and arrest in December 1969 resulting in the imposition of some criminal sentences against the law violators. May I ask you in what court those proceedings were held? Why was Dr. Joseph O'Connor allowed to post bond of $20,000 and then forfeit the bond and never return?

Mr. BARTELS. It was in Federal Court, Senator Hruska, and I believe it was in the Federal Court of Georgia.

Senator HRUSKA. Federal Court of Georgia?

Mr. BARTELS. Yes, sir.

Senator HRUSKA. Is he still at large, a fugitive from justice?

Mr. BARTELS. Yes, sir.

Senator HRUSKA. Is the offense with which he was charged considered a serious offense?

Mr. BARTELS. It certainly was by us, Senator. Yes, sir.

Senator HRUSKA. What are the penalties in the event guilt was determined and conviction followed?

Mr. BARTELS. Zero to 5 years on each count.

Senator HRUSKA. How much?

Mr. BARTELS. Up to a 5 year maximum on each count.

Senator HRUSKA. And how many counts were there against Dr. O'Connor?

Mr. BARTELS. I would have to supply that for the record, Senator. But, I believe it was a multicount indictment.

Senator HRUSKA. Will you please supply that for the record?

The six coconspirators received two 6-month sentences is that correct? Were they to run concurrently?

Mr. BARTELS. No, sir. No, sir. They were to run concurrently. There were no consecutive sentences.

Senator HRUSKA. They were to run concurrently, not consecutively?

Mr. BARTELS. Yes, Senator.

Senator HRUSKA. What was the recommendation of the Government in that prosecution with reference to sentencing?

Mr. BARTELS. I would have to supply that for the record.

Senator HRUSKA. I wish you would.

Mr. BARTELS. I shall.

[The information subsequently provided on April 3, 1974 is as follows:]

SUMMARY OF THE CHARGES AND DISPOSITIONS OF THE CASE AGAINST JOSEPH RAU O'CONNOR ET AL

1. Criminal indictment No. A26383 of the United States District Court, Northern District of Georgia named seven defendants and set forth nine counts. Count No. 1 consisted of the conspiracy which cited 29 overt acts. All seven defendants were named in count No. 1. The remaining eight counts consisted of substantive violations. The following is a breakdown by defendant and the counts with which each were charged

Joseph Rau O'CONNOR—Counts 1, 7, 8, and 9. Total of four counts.
Betty Sims O'CONNOR—Counts 1, 8, and 9. Total of three counts.
Lawson B. MANOUS—Counts 1, 8, and 9. Total of three counts.
Milton O. BLANKENSHIP, Jr.—Counts, 1, 2, 3, 8, and 9. Total of five counts.
Hubert L. HESTER—Count No. 1.
Stanley E. CHARLES—Counts 1, 4, 5, and 6. Total of four counts.
Joseph H. CHURCH—Counts 1, 8, and 9. Total of three counts.

2. Headquarters file does not reflect any recommendations made on the part of the prosecuting US Attorney with regard to sentencing of the aforementioned defendants.

3. Arrest warrant for Joseph Rau O'CONNOR was obtained from US Commissioner Robert D. Feagin, III, of the US District Court for the Northern District of Georgia. At the time the arrest warrant was obtained, the US Commissioner was advised by the agents of Mr. O'CONNOR's intentions to flee the United States (this information was obtained by an undercover agent who was conversing with O'CONNOR) and the agent requested that no bond be set. It was only after lengthy discussion with the US Commissioner, that he agreed to set a $20,000 secured bond.

4. The nine count indictment set forth eight violations of illegal sale of amphetamine and one charging conspiracy to violate said law. The penalties were provided for in the DACA Amendment of 1965.

5. The results of the court action are as follows:

Joseph Rau O'CONNOR is a fugitive, the $20,000 bond which was posted by two neighbors was forfeited to the court.

Milton O. BLANKENSHIP, Jr. pled nolo contendere and received six months and one day on each of counts 1, 2, 3, 8, and 9 to run concurrent or a total of six months.

Stanley E. CHARLES pled nolo contendere and received a sentence of six months and one day on counts 1, 4, 5, and 6 to run concurrent or a total of six months.

Lawson B. MANOUS pled nolo contendere and received a sentence of one year on each of counts 1, 8, and 9 which was suspended and the defendant was placed on two years probation.

Betty Sims O'CONNOR pled nolo contendere and received one year on each of counts 1, 8, and 9 which was suspended and she was given two years probation.

Joseph A. CHURCH and Hubert L. HESTER pleaded not guilty. The US Attorney decided not to prosecute CHURCH and HESTER because the key conspirator, Joseph Rau O'CONNOR remained a fugitive. Charges were dismissed against CHURCH and HESTER.

6. This activity took place in the United States District Court for the Northern District of Georgia in Atlanta, Georgia.

Senator HRUSKA. We are asked to legislate against some very serious offenses and provide severe sentences for violations of these laws. It appears, however, that the judiciary sometimes takes a lighter view of the seriousness of the offenses, than we do.

At one time, several years ago, this situation was so bad the Congress resorted to mandatory penalties, which are anathema in the minds of many penologists and many legislators, including myself. We hope that there will not develop such a pattern among the judiciary, that we may have to resort again to mandatory sentences for serious offenses. After all, when you pick up 100 kilograms of am-

phetamine sulphate powder, that means a great deal in terms of sidewalk trade, does it not?

Mr. BARTELS. Yes indeed.

Senator HRUSKA. And the fate of many human beings, especially young people. If we are to get at this type of activity we ought to get at it seriously and not with 6-month sentences. This does little more than give the violator some resting time, in most cases, to plan his next campaign. Is there not a high recidivism rate among these offenders?

Mr. BARTELS. Most certainly it is, Senator.

Senator HRUSKA. In many instances, is it not true that that is the only way these persons have earned a living is through illicit drug activity; and that their activity is just suspended while they are doing time? They go right back to it upon release, don't they?

Mr. BARTELS. That is 100 percent correct.

Senator HRUSKA. Mr. Bartels, another witness who will testify later has indicated in his prepared statement that there is some question as to whether international abuse and drug trafficking is substantial. Is there any question in your mind as to substantial abuse and to the great volume of international drug trafficking?

Mr. BARTELS. There is absolutely none, Senator. Anyone who has been along that Southwest border in recent months, indeed, in recent years, is faced with the obvious fact of the smuggling of these psychotropic substances across that border in ever-increasing quantities.

Senator HRUSKA. In your prepared statement again, do you not touch on that point on page 7 in discussing the accumulating evidence of drug activity on the United States-Mexican border areas. Many of the seizures which you testified escalate at a rapid pace.

Mr. BARTELS. That is correct.

Senator HRUSKA. In light of this evidence is there any necessity to even doubt that there is a substantial abuse in international trafficking in these substances?

Mr. BARTELS. There has never been on our part.

Senator HRUSKA. There is no doubt in my mind. Do your records substantiate what you say?

Mr. BARTELS. Yes, Senator, they do.

Senator HRUSKA. Now, the Congress has formed a national policy in that regard, has it not?

Mr. BARTELS. Yes, sir.

Senator HRUSKA. In 1970 we enacted the Controlled Substances Act. Is that not a determination by the Congress of a national policy which is based upon the proposition that there is great traffic, great abuse, and a necessity for legislation to control this activity with severe sanctions for those who violate that law?

Mr. BARTELS. Yes, Senator.

Senator HRUSKA. Unless we want to reverse the national policy in narcotics legislation, we must go forth on the basis, we must not that there is great abuse, and that there is a great deal of trafficking both domestically internationally?

Mr. BARTELS. That is correct, Senator. Even in 1965, the Commission on Narcotic Drugs of the United Nations raised this trafficking on an international scale, as well as in the United States, and

has been raised every year since then that the Commission has met, so this is not a new problem.

Senator HRUSKA. And for 50 years, we have had a policy like that with reference to narcotics, have we not?

Mr. BARTELS. That is correct.

Senator HRUSKA. More than 50 years.

Mr. BARTELS. More than 50 years.

Senator HRUSKA. The witness of whom I have spoken will also contend that our experience with the Single Convention on Narcotic Drugs, which has done little to halt illicit traffic in narcotics. What would be your comment on the contribution of the Single Convention on Narcotic Drugs with reference to efforts to halt or at least substantially reduce illicit traffic in narcotics?

Mr. BARTELS. Senator, since that convention, there has not been an illicit problem from legally produced narcotics. The ban on the Turkish opium cultivation was a result of article 22 of that treaty which requires countries to prohibit production if they cannot control it. Prohibition of narcotic production in Laos was as a result of that treaty. As a result of that convention Napal has announced its intention to adhere to the Single Convention regarding cannabis.

The South American countries, specifically Ecuador and Peru, have announced their intention to do more to live up to their convention responsibility as regards the cocaine traffic.

Lebanon in turn has banned the cultivation of cannabis based on its being a signatory to that convention.

France, in turn, has greatly expanded its law enforcement efforts, specifically in the Marseilles area, based on its being a signatury and a member of that convention.

India has maintained rigid controls and limited the diversion of its licit production of opium based on that convention.

Thailand, in reliance on that convention, and its being a participant in it, has a sound program under way for the control of illicit opium production.

Senator HRUSKA. And that is one of the big sources?

Mr. BARTELS. That is one of the big potential sources, that is right, Senator.

There is a control program going on in Afghanistan which is beginning now based upon that country's being a signatory to the convention.

Pakistan in turn has started efforts recently, based on its being a signatory, so that the entire effort of the Convention on Narcotic Drugs and the International Narcotic Control Board, and the power of world opinion as expressed by those groups has had a significant, indeed, an overwhelming impact on controlling the diversion of licitly produced narcotics into the illicit market; and for this reason it is not a significant problem.

Senator HRUSKA. Now, the National Commission on Marihuana and Drug Abuse is cited as concluding in its report of March 1973, that to date international treaties have had no major or continuing impact on illegal trafficking. You would differ with that conclusion would you not?

Mr. BARTELS. This is correct, Senator.

Senator HRUSKA. What is the general feeling among authorities active in this particular field about the conclusion reached by the National Commission on Marihuana and Drug Abuse?

Mr. BARTELS. I would say the general feeling is very much in disagreement with it.

Senator HRUSKA. They are very much in disagreement?

Mr. BARTELS. This is correct, Senator.

Senator HRUSKA. In due time we will ask for documentation of that.

Some would want us to conclude that these conventions and international treaties have had little impact, and that we should think of alternatives. One alternative, I understand, would be to denounce these treaties and refuse to engage in any further efforts on international drug control. What would be the result, then, Mr. Bartels?

Mr. BARTELS. Well, it would be catastrophic, Senator. We would have an impossible time controlling the narcotic traffic, because we would have no leverage to control those countries which grow opium, or to put any pressure on them. Also we would have far less effect in our bilateral efforts in engaging the efforts of other countries to assist us in stopping this traffic. So, both on a multilateral and bilateral level, it would be very deleterious.

Senator HRUSKA. If we do not continue to participate with other nations, we would be without information when illegal drug shipments were to arrive in this country. There would be little effort made to stop these shipments before they start in another country. And when they hit these shores, if we can spot them, then we will be faced with the necessity of trying to deal with that contraband material unless we want to discard the national policy of declaring the use of such materials as illegal. That would involve the repeal of all of the laws that control the use of narcotics within this country, would it not?

Mr. BARTELS. That is correct.

Senator HRUSKA. Now, I understand from your statement, that if we are to maintain these international steps with regard to narcotics we need to get busy and provide a similar counterpart for psychotropic substances, is that not correct?

Mr. BARTELS. This is exactly the point. That is the heart of it, Senator.

Senator HRUSKA. So as to avoid that double standard to which reference has been made?

Mr. BARTELS. That is correct.

Senator HRUSKA. Now, then, there is some opposition to this legislation, S. 2544, and to the treaty which it will implement. It is suggested that there should be a thorough evaluation of the work of this convention and also of this bill. We have been evaluating the matter for a long time, have we not?

Mr. BARTELS. At least 3 years.

Senator HRUSKA. Recital has already been made of some of the things done by Congress in other treaties. If we decided to have a thorough evaluation, what purpose would it serve? What matter would such an evaluation partake of?

Mr. BARTELS. I am frankly at a loss as to what it could partake of. I know what the effect would be on law enforcement, and on our

international efforts to secure the additional assistance of other countries, and that is that it would be regarded as reluctance on our part to regulate our own manufacturers, while at the same time insisting upon stringent regulation by the less developed nations of the world, when much of the opium we receive illicitly is grown.

Senator BAYH. Would the Senator yield just a moment? I have difficulty following that rationale. I am a supporter of the convention, but we must not ignore the rather significant progress we have made in this area. Myself and other members of this committee have been very insistent, including the introduction of legislation, that steps be taken to properly control our manufacturers, and after some reluctance, you folks at Justice have done an admirable job on the administrative end. I often remember the initial testimony several years ago that this could not be accomplished, and on reflection, some minds were changed. You moved on the amphetamines, Ritalin® and Preludin®, some barbiturates, and methaqualone. We have done a rather credible job of controlling some of our manufacturers. How in the world, then, can anyone in Turkey or France claim that they should not cooperate with us because we have not controlled our own manufacturers? We are accomplishing this under our domestic law. We do not need a convention to control our own people, do we? I just want to make sure that our argument is on target.

Mr. BARTELS. They regard the failure or any reluctance to go along with the psychotropic treaty as a reluctance to impose self-control. I agree with you, we have done an outstanding job on controlling our own manufacturers.

Senator BAYH. I want to persue what additional things we might do. You have done an incredible job, and I compliment you for it! But some view this as reluctance?

Mr. BARTELS. As a reluctance to impose self-control.

Senator BAYH. Well, self-control, relative to our own domestic statutes and administrative regulations, has been forthcoming, and is now being implemented.

Mr. BARTELS. Well, if it is an imaginary increase of self-control, they still regard it as a reluctance.

Senator BAYH. Well, is it imaginary that amphetamine production has been cut back by 92 percent since this committee began its inquiry in 1971? Perhaps even more; what is your current estimate?

Mr. BARTELS. Perhaps I misspoke. If the additional burdens of this convention are imaginary or are not substantive, our failure to adopt them is regarded by many countries as nonetheless a reluctance to impose self-control.

Senator BAYH. Well. I think that is a cop-out. I think, however, it is important to ratify the convention so we can establish international controls. As the Senator from Nebraska pointed out, it is much easier to deal with these problems at the sources long before they reach our borders and ports. But, I do not see how any nation can honestly suggest that out wanting to impose international controls on all, is a sign that we are unwilling to control our own manufacturers. We are doing that and will continue to do so.

Excuse me for interrupting, Senator.

Senator HRUSKA. That is a very timely contribution, Senator Bayh, and I am grateful to you for it. The record will be all the better for your interposition of those questions.

I have no more questions at this time, Mr. Chairman. I want to commend Mr. Bartels and his agency. I can say without attempting to forecast the exact decision of the Congress upon this bill or the Convention, that, generally speaking, this Congress has already taken the position that this approach is the right one; that we must control illicit drug traffic within the domestic area, imposing criminal sanctions where necessary, and also engaging in international efforts of some kind if the efforts within our country are going to be effective. Therefore, among those of us in the Congress, I think you will find sympathetic consideration for proposals such as the Convention and S. 2544, the implementing legislation.

I take it your agency has had a good deal of input into the language of this bill. Am I correct?

Mr. BARTELS. Yes, sir.

Senator HRUSKA. And you have drawn upon your field efforts?

Mr. BARTELS. Yes, sir.

Senator HRUSKA. That did not commence with the career of John Bartels in the agency.

Mr. BARTELS. Long before that.

Senator HRUSKA. It goes way back.

Mr. BARTELS. Yes, sir.

Senator HRUSKA. There is a long history. A lot of statistics, many reports, many experiences.

Mr. BARTELS. Yes, sir.

Senator HRUSKA. Thank you very much. Thank you, Mr. Chairman.

Mr. BARTELS. Thank you.

Senator BAYH. Thank you, Senator Hruska. I know how busy you are, and I appreciate your presence as well as your active interest and your leadership in this matter.

If there are no objections, I think that we should permit Mr. Frangullie to proceed with his testimony, and then if there are other remarks from the panel, fine. I prefer to wait and address my questions to the body as a whole, if I might.

Mr. BARTELS. Fine, Mr. Chairman.

Senator BAYH. Do you have any objection, Senator Hruska?

Senator HRUSKA. That is a splendid idea.

Mr. FRANGULLIE. Mr. Chairman and distinguished members of the subcommittee, I appreciate this opportunity to appear before you today in connection with an investigation in which I was involved during my recent service in Mexico.

The case against Gustavo Garcia Trevino begins before I was, myself, aware of his activities. In the fall and winter of 1971, a Federal task force was attempting to discover the source of large quantities of legitimately produced black amphetamine capsules which were appearing throughout the Southwestern United States. Ultimately it was found that these druge were being manufactured by a Mexican subsidiary of Strasenburgh Pharmaceuticals of New York and were somehow being diverted in hundreds of thousands.

As a result of intelligence gathered from various arrests on and near the Texas border, Garcia was identified as a prime suspect. It was learned that pharmacies operated by him in Piedras Negras and Ciudad Acuna had, in fact, received large shipments of the black amphetmines which he in turn was diverting into the illicit traffic. In December 1971, one of the defendants arrested in possession of many of these capsules stated that he acquired the drugs from Garcia who was now planning to close the pharmacies and move to Monterrey, Mexico.

Soon thereafter, action was taken to revoke the amphetamine export permit of Strasenburgh; and the Mexican Government terminated the amphetamine production of Strasenburgh's subsidiary in Mexico. It was learned that Garcia intended to continue his operation by manufacturing his own amphetamine and secobarbital capsules, samples of which were obtained from an informant. Examination of the samples by DEA laboratories disclosed that the capsules had been "spot sealed" which was subsequently to become an important identifying characteristic.

Several months later in April of 1972, as the informant had predicted, the "spot sealed" capsules began to turn up in large quantities in the illicit traffic. In the next few months, more than 700,000 capsules of the same manufacture were seized in, or enroute, to cities in Texas, Louisiana, Georgia, Oklahoma, Tennessee, Virginia, Alabama, Illinois, Mississippi, North Carolina and Ohio. Invariably, the criminal intelligence derived from these arrests led back to the Texas border, to Monterrey, or Mexico City, and specifically to Gustavo Garcia-Trevino. It was at this time that our headquarters in Washington classified Garcia as one of the most important individual targets in Mexico and informed me that I should devote all of my efforts to his apprehension.

At this point, I had virtually no further information to go on other than the man's name. It was known only that he had abandoned his previous method of operating through drug stores and moved to Monterrey, a city with a population in excess of 1 million persons.

Using the Monterrey telephone directory, I located a listing in the suspect's name and a business address. I conducted a discrete surveillance at the identified address and found it to consist of a two-room establishment for the assembly of small items of furniture and sale of jewelry. I felt it premature to suggest that the Mexican authorities undertake an investigation at this point and, instead, requested a list of recent telephone tolls which had been made under this number. When these were received, I quickly discovered numerous calls to Piedras Negras and Ciudad Acuna, the locations of the previously mentioned pharmacies, and to Mexico City. The pattern of calls suggested that the subject was the individual whom I was seeking.

At this point, it became necessary to attempt some direct contact with Garcia for the purpose of making a verification of his identity. I was, myself, too well known in Monterrey to make such an attempt, and I therefore asked that Special Agent Arthur Medina be detailed from Mexico City for this purpose. Shortly after his arrival in Monterrey, he introduced himself to Garcia and his lieutenant, Her-

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culino Rivero, under an appropriate cover story to the effect that mutual acquaintances in Texas advised that Garcia could assist him in his illicit drug activities. Medina was at first received with great caution; but after several meetings, he was taken into their confidence. We then learned for the first time that this was, in fact, the same Garcia-Trevino who had been pre-selected by our headquarters as one of the most important violators operating in Mexico.

At this point, I went directly to the Federal Prosecutor for the State of Nuevo Leon, Mr. Raul Tradd. I advised him in detail of our suspicions and of the manner in which we had confirmed them and asked that he and the Mexican Federal Police initiate an active investigation aimed at immobilizing these suspects. I had for many months worked closely with Mr. Tradd and knew of his determination to combat the illicit drug traffic, which was a mandate given to him directly by the Attorney General of Mexico. Tradd immediately agreed, and assigned five Mexican Federal Police to the case under orders to cooperate closely with the Americans and to utilize their intelligence to successfully arrest these traffickers. Thereafter, Garcia and his associates, Rivero, were subjected to surveillance by the Mexican police while Medina continued to learn as much as possible of their operation.

Within a matter of days, Garcia and Rivero were observed to be in negotiations with another individual which suggested that a large sale of drugs might soon take place. Medina now well within the confidence of the violator, learned that such a transfer was planned to take place on the night of October 25 in the Monterrey Holiday Inn. I accompanied Mexican Federal Police officers to the Holiday Inn where the manager informed us of the room previously rented by the suspects and cooperated by providing adjacent quarters from which the suspects' activity could be placed under surveillance. Other Mexican officers set up a surveillance in the Holiday Inn parking lot to be prepared for their arrival. This would then be signaled by walkie-talkie to the officers above.

At approximately 12:30 a.m. on October 26, Garcia and Rivero arrived in the parking lot. Garcia immediately went to the room previously rented in the Holiday Inn; and a few minutes later Mexican officers observed Rivero and another individual to be removing large packages of suspected contraband from Garcia's automobile. At this point, the Mexican police closed in and effected the arrest of Rivero while simultaneously the other Mexican officers, whom I had accompanied, arrested Garcia in his room after a brief struggle. A total of approximately 100,000 gelatin capsules containing amphetamine sulphate and an additional 100,000 capsules of sodium secobarbital were seized in the parking lot.

Faced with this evidence, Garcia readily confessed and pleaded that he wished to avoid publicity which would embarrass his family. After conferring with the Mexican officers, he was advised that his interests could best be served by cooperating with the police and informing us of the whereabouts of the clandestine facility used in the manufacture of these illicit capsules. Garcia agreed; and within hours, still on the morning of October 26, Garcia and all of the evidence seized, proceeded in the custody of Mexican officers, accompanied by myself, to Mexico City by the earliest flight. Just prior to departure, the Attorney General of Mexico was advised of these developments and that we were proceeding immediately to seize this laboratory facility and arrest the individuals operating it.

When we arrived in Mexico City one and one half hours later, we were greeted by three carloads of Mexican Federal Police who were prepared to conduct the planned raid. Garcia directed us to an unpretentious house in the suburbs of Mexico City alleged to be the site of the illicit facility. Upon entering the residence, a sophisticated laboratory was discovered occupying one of the inner rooms. It consisted of a commercial encapsulating machine, a homemade mixer, a grinder, scales, chemicals, and various packaging and processing materials. Also arrested on the premises were the two violators who actually operated the machinery. Within the hour, while police were still in the process of inventorying the seized machinery, another of the alleged owners of the illicit laboratory, unaware of what had happened, arrived at the residence and was immediately arrested by the Mexican Federal Judicial Police.

This enforcement action taken by Mexican authorities in cooperation with resident DEA agents terminated illicit activity which had pumped literally millions of amphetamines and secobarbital capsules into the United States. Not long thereafter, this type of capsule with its identifying "burn-spot seal" disappeared completely from the traffic. On December 15, Garcia posted a bond of $160,000 and returned to Monterrey. On January 30, Federal Prosecutor Raul Tradd, aware of Garcia's return, issued warrants seizing lands and properties belonging to Garcia on the basis of taxes due from unexplained income. On this occasion, Garcia would not voluntarily leave his residence and Federal police were forced to use tear gas to flush him from the house. He was rearrested on minor charges and released several days later. At the present time, he has become a fugitive and his whereabouts are unknown.

This concludes my statement of a case which had great impact for the United States. The successful elimination of this criminal enterprise was only made possible by the cooperation of Attorney General Pedro Ojeda-Paullada of Mexico; Mr. Raul Tradd, the Federal Prosecutor for the State of Nuevo Leon; and the Mexican Federal Officers who worked closely with myself and other DEA agents stationed in Mexico.

Thank you, Mr. Chairman.

Mr. BARTELS. Mr. Chairman, Mr. Haislip, and Agent Frangullie have some exhibits which they would offer for the record.

Senator BAYH. Fine. Are those the pictures of the tableting machine?

Mr. BARTELS. Yes, Mr. Chairman.

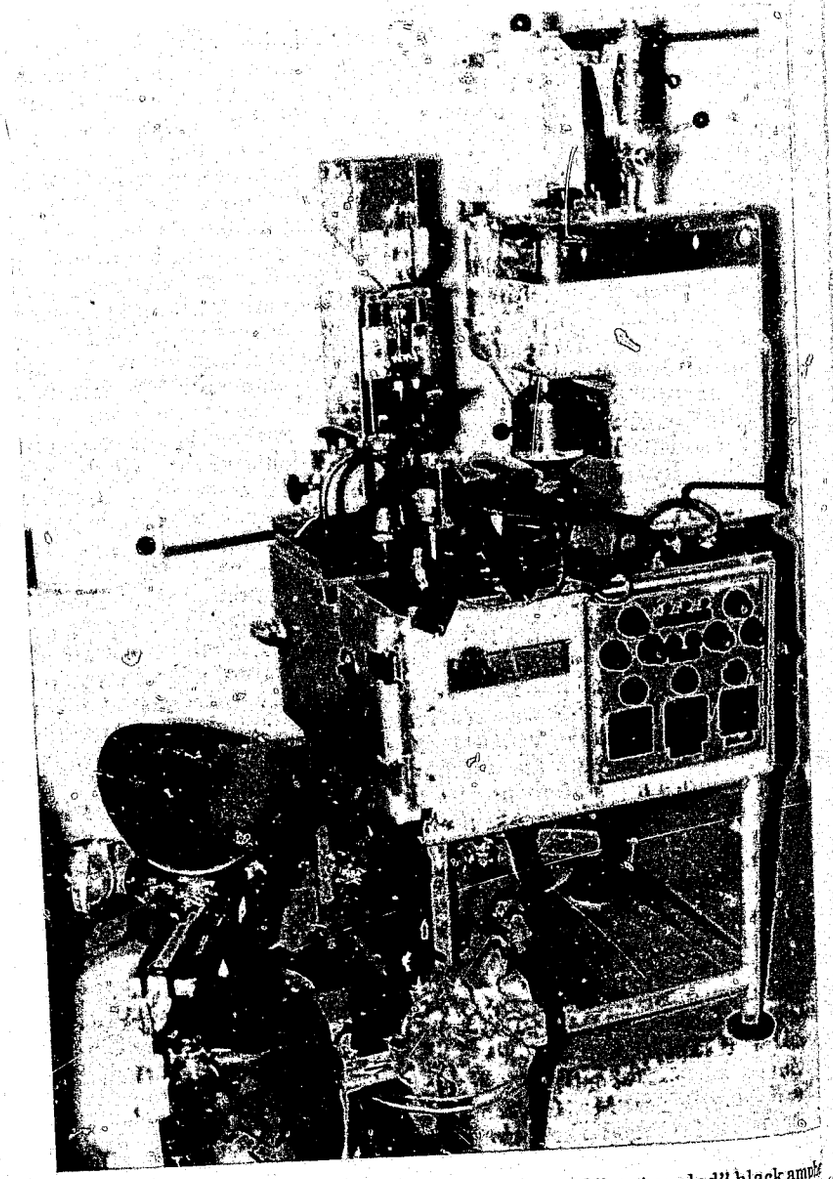
Senator BAYH. And the portrait of Mr. Garcia?

Mr. BARTELS. Yes, sir.

Senator BAYH. We will ask that they be entered in the record.

[The photographs were marked "Exhibit No. 8" and are as follows:]

EXHIBIT NO. 8



Encapsulating machine used in the manufacture of "spot sealed" black amphetamine and red secobarbital capsules.

Gustavo Garcia-Trevino, the suspected prime illicit manufacturer.

Mr. HAISLIP. Mr. Chairman, in addition we have samples of products produced by Garcia's facilities. These are only laboratory samples but we have brought them for you to see today.

Senator BAYH. Those are similar to the pictures?

Mr. HAISLIP. They are identical.

Senator BAYH. It is easier to put a picture in the record than real live samples. We will do that, and you keep custsody of the samples. I do not think that any members of the committee require the evidence and we will take your word for it.

Senator HRUSKA. The labels on those bottles are evidence labels prepared by your laboratory, am I correct?

Mr. HAISLIP. Yes, sir.

Senator BAYH. I appreciate that very much, Mr. Haislip. I thank you for the very excellent work you and the others did, which I think is to be commended. I certainly want to add my thanks to the commendations that I am sure you have already received for your work.

[The photographs were marked "Exhibit No. 9" and are as follows:

EXHIBIT NO. 9

DEA laboratory samples of "spot sealed" black amphetamine and red secobarbital capsules.

DEA laboratory samples of "spot sealed" black amphetamine and red secobarbital capsules.

Senator BAYH. Now, if it is alright I have some questions that I would like to address to you, Mr. Bartels?

Mr. BARTELS. Yes, sir.

Senator BAYH. Is it still accurate that the bulk of the amphetamines and barbiturates seized in this country in illicit traffic are nevertheless made by legitimate manufacturers?

Mr. BARTELS. Yes, sir.

Senator BAYH. Would that suggest, then, that the Garcia operation is an exception even though the raw or bulk material was produced in legitimate channels?

Mr. BARTELS. In cases of this sort most of the raw material is being made in legitimate channels and transshipped to Mexico and encapsulated.

Senator BAYH. All right. In this Mexican operation, you had the legitimate manufacturer of the raw or bulk material, illegitimate manufacturer of the capsules or tablets and illegitimate distribution. What I want to know is whether that is the exception or the rule as to those amphetamines and barbiturates that reach the United States? When we started these hearings, in early 1971, the assessment of most of the experts, including those at Justice and HEW, was that a great percentage of this, not only the raw material but the capsules themselves as capsulated, came from legitimate manufacturers through diversion by theft, by prescription, hijacking and similar activities. What is the situation now?

Mr. BARTELS. We see a shift away from that, away from the theft toward the transshipment of what has been licitly manufactured in Europe and then smuggled or transshipped into other countries for illicit encapsulating and smuggling into the United States.

Senator BAYH. Have you gotten to the point, Mr. Bartels, where you can tell us now that the majority of the barbs and amphetamines that reach the streets of America come in that way. How does it break down?

Mr. BARTELS. Mr. Haislip advised me to defer, and I will supply such information as we have for the record.

Senator BAYH. I would say from the tone of your voice in answering the question that I would take Mr. Haislip's advice, if I might suggest, and find out for sure, unless you know more about it. I do not have the current figures, and I am sure that this is a question that you do not have to deal with every day. I would like to know. I think it helps our committee record if we know, because such a shift would have some, probably direct, relationship to the success or failure of our rescheduling efforts in the United States. If you cut back production by 90 percent and the majority of the capsules reaching the street are still legal manufacturers through an illicit distribution channel, then you have to wonder whether the cutback really did the job.

Mr. BARTELS. Yes, sir.

[The information subsequently provided on April 3, 1974 is as follows:]

"On the basis of existing information derived from analysis of criminal intelligence and examination of DEA laboratory statistics, it appears that the rescheduling of amphetamines and the subsequent cuts in production have

radically decreased the quantities of these drugs being diverted into the illicit traffic from domestic legitimate sources. Nearly all of the amphetamines currently found in the illicit traffic are believed to be the product of clandestine manufacture or foreign diversions. Recent developments have suggested that large-scale clandestine manufacture of these drugs is occurring in border areas adjacent to the Continental United States.

Unlike amphetamines, the barbiturates found in the illicit traffic are believed to derive principally from legitimate sources within the United States. It is too early to assess the impact of recent decisions placing certain barbiturate compounds into a higher schedule of control. However, most of the continuing diversion is believed to be occurring at the pharmacist and practitioner level. Successful enforcement operations aimed at Mexican sources of supply, such as the case involving Gustavo Garcia-Trevino, have resulted in a decline of barbiturates entering the United States from abroad."

Senator BAYH. I think it has. You discussed the Turkey situation, and the impact that this convention will have relative to our ability to persuade other nations to cooperate.

You know I am a supporter of the convention. Can you tell me more about recent reports that I have read indicating that Turkey is preparing to once again start the growing and cultivating of opium poppies?

Mr. BARTELS. I have read those reports too. When I was in Geneva, I spoke both with our Ambassador on narcotics matters, Ambassador Vance, and to the Turkish delegate, and it is my understanding those reports, were somewhat erroneous in that they implied that a decision had been made on the part of the Turks to go back into opium production. That is erroneous, according to both of those sources. It is one matter which will be discussed, along with some 30 or 40 other items, when the new Turkish Foreign Minister meets the Ambassador.

Senator BAYH. I certainly hope you will let us know what we can do to voice a very strong concern about this in the Congress. I think the Congress would be very disturbed about the alleged development. We were very heartened by the decisions of our friends and allies to cease and desist. But, if instead we are stepping back again, this would be a matter of some concern. I not only read the articles, but I remember seeing a rather lengthy news discussion of this, live, in full color, with cameras in the poppy fields. Now, we do not know what growing season this was, of course, but is there anything that this committee can do to enforce your position or those who are negotiating?

Mr. BARTELS. We will be happy to find out and notify you on this.

Senator BAYH. I wish you would. Could you tell us how the passage of this convention would prevent or deter the type of activities involved in the O'Connor case?

Mr. BARTELS. Well, there were such substantial sums and amounts of drug powder that were transshipped in that case. We feel both the licensing, the export-import regulations, and the prescription regulations would have served as a serious impediment to the wholesale transshipment of such large amounts. But, what we are seeing now is substantial shipments of bulk powder from European countries to Latin American countries, especially into Mexico. Those are not now controlled by any international export-import restrictions.

Senator BAYH. Would the European firms have a duty to investigate prospective purchasers?

Mr. BARTELS. Let me defer that to Mr. Miller.

Mr. MILLER. Mr. Chairman, if the convention had been in force, and assuming the parties, the countries responsible had been parties to the convention, the system of import-export controls would have been in force. The exporting country would have been required to have issued an export permit before it could leave, before the amphtamine powder could leave its country. And they could issue the expert permit only on the condition that the country of destination had issued an import certificate for it to come in. And after the amphetamines would have come in to that country, then the government of that country would have been officially accountable for the amphetamine powder and the company that got it would have been under the regulations of the country. The probability of violators being able to mislabel the drums and ship them out of the country as antibiotics would have been a whole lot less likely than it was at the time, and it now still is.

Senator BAYH. There has been a great deal said recently regarding the alleged involvement of high level government officials in heroin and cocaine trafficking in Panama. Is there any evidence of this kind of thing in the Garcia operation or other similar operations in South America?

Mr. FRANGULLIE. No, sir, not that I know of, sir.

Senator BAYH. Pardon me?

Mr. FRANGULLIE. Not that I know of, Senator. I was unaware of any corruption in that investigation.

Senator BAYH. Do you have any knowledge about the problem?

Mr. BARTELS. Specifically, as far as the Mexican situation is concerned, I have noticed a tremendous improvement over the past several years.

Senator BAYH. What about other South American nations?

Mr. BARTELS. No, we have no knowledge. The Panamanian situation has improved and we are getting very good cooperation there. There are some areas where we wish we had more manpower, more efforts, but as far as high level corruption, we do not have that information.

Senator BAYH. Well, have you made a request for more investigators?

Mr. BARTELS. Yes, and we are getting it, but it is a matter of time. We are training, getting equipment and new laws. We are also seeing that in Colombia, Peru, and Ecuador, an attempt is being made to attract attention to this problem, which affects us more than it does those countries.

Senator BAYH. The Senator from Nebraska and I are both on the Appropriations Committee, and I am sure that you would find us more than willing to cooperate with any funds you feel are necessary in this area. Are you satisfied with the amount of moneys that are presently being allocated for enforcement in this area?

Mr. BARTELS. Yes. It is not solely our funds. It is a matter of getting the South American country to divert manpower and experience and trained manpower away from one law enforcement priority in that country to a law enforcement priority which affects us; and we are seeing it, but it takes time.

Senator BAYH. Since you are here, and we are all busy, may I ask you to give me the benefit of your thinking relative to this whole barbiturate matter? As you know, the committee started back in 1971 looking into the amphetamine and barbiturate problems. I believe it was in the spring of 1972 we were told by BNDD and FDA that there was not adequate information available for rescheduling. Then in November of 1972, with a rather extensive report, about half of which was citing information which had been developed in our hearings, BNDD recommended that nine of the barbiturates be rescheduled. In March of 1973, the FDA agreed to the rescheduling of the nine. And finally in May, BNDD published the necessary material in the Federal Register.

Some of us felt that the struggle was over, that since all of the powers that be downtown had recognized the need to reschedule, that this would go forth and there was not any need for us to move ahead with our legislation.

But, nothing happened until November when 3 of the 9 were rescheduled. Just to keep the record consistent, so others who read it will know what we are talking about, the three were secobarbital, pentobarbital, and amobarbital. The other six were not.

I wrote a letter seeking an explanation and you wrote back. I would like to put those letters in the record at this point.

[The documents were marked "Exhibit No. 10 and 11" and are as follows:]

EXHIBIT No. 10

NOVEMBER 19, 1973.

Hon. ROBERT H. BORK,
Acting Attorney General,
U.S. Department of Justice,
Washington, D.C.

DEAR MR. ACTING ATTORNEY GENERAL: The purpose of this letter is to comment on the announcement of Tuesday, November 13, 1973, by Mr. John R. Bartels, Jr., Administrator for the Drug Enforcement Administration, that the Department of Justice had transferred three barbiturates—secobarbital, pentobarbital and amobarbital—from Schedule III to Schedule II of the Controlled Substances Act of 1970. I have urged this action for two years, but I have grave reservations about the Department's failure to take similar action with regard to other barbiturates with the same potential for abuse.

The country is all too familiar with the problems associated with illicitly produced drugs, such as heroin and cocaine, that are smuggled across our borders, but the source of supply for growing legions of addicts and drug dependent persons is a domestic one. These are not drugs illicitly grown in Turkey and refined in France, nor are they drugs grown and refined in Asia's Golden Triangle. They are dangerous drugs produced legitimately within our own borders, including barbiturates, amphetamines, methadone and methaqualone. A primary purpose of the 1970 Act was to provide a more careful monitoring of the manufacture and distribution of these and other legitimately produced drugs and thereby curb illicit diversion, traffic and abuse.

As Chairman of the Subcommittee to Investigate Juvenile Delinquency, one of my responsibilities is to determine whether the Controlled Substances Act is being enforced and implemented in a manner consistent with the Congressional finding that the illegal diversion, distribution and abuse of these drugs has a substantial and detrimental effect on the health and general welfare of the American people. In fulfillment of that responsibility, in December 1971, I began an investigation of the adequacy of Federal controls on the production and distribution of barbiturates.

The investigation and the hearings conducted by the Subcommittee revealed barbiturate abuse to be both a substantial public health problem and an ever-increasing concern of law enforcement officials. The extent of abuse,

the high incidence of diversion and the clear potential for even greater abuse have been documented in the Subcommittee report and the many hundreds of pages of testimony in our record. It was our finding that current Federal controls on the production and distribution of shorter-acting barbiturates are not adequate to curb the diversion and abuse of these drugs which are highly dangerous when taken without proper medical supervision.

In both the 92d and 93d Congress I introduced a bill to transfer the most commonly abused barbiturates from Schedule III to Schedule II. This transfer would directly reduce diversion and illicit traffic by establishing production quotas, stricter, more secure distribution controls, and more stringent import and export regulations. These measures were strongly supported in the Senate, with nearly 30 cosponsors.

One year ago the U.S. Bureau of Narcotics and Dangerous Drugs released a report recommending the rescheduling of nine barbiturates, including those covered by my bill. This action was acknowledged by the Bureau to be based, in part, on testimony before the Subcommittee which focused nationwide attention on the escalating problem of barbiturate abuse. The corroboration of the Subcommittee's findings by the Bureau was significant, particularly in light of the Bureau's previous position. In May 1972, that adequate information was not available to support barbiturate rescheduling.

The report, entitled, "A Study on Current Abuse and Abuse Potential of The Sedative-Hypnotic Derivatives of Barbiturate Acid with Control Recommendations," after reviewing findings explained the rationale for the Department's decision to transfer the nine barbiturates, in part, as follows:

"This information is sufficient to justify concluding that amobarbital, butabarbital, cyclobarbital, heptabarbital, pentobarbital, probarbital, secobarbital, talbutal and vinbarital have essentially the same abuse potential and it is recommended that they be transferred to Schedule II where additional controls to attack this segment of drug abuse may be brought to bear."

Five months later, the Department of Health, Education and Welfare concurred in your Department's recommendation that the nine barbiturates be transferred to Schedule II. In explanation of this decision, Dr. Charles C. Edwards, Assistant Secretary for Health, informed BNDD on April 27, 1973 that "We find there is a substantial risk to the public health due to the potential for abuse of these drugs as they are currently controlled."

The limited scope of this decision on barbiturate controls is strikingly similar to the Department's initial decision in 1971 not to transfer Ritalin® (methylphenidate) and Preludin® (phenmetrazine) to Schedule II, I, like others concerned about the overproduction, diversion and abuse of stimulants was amazed at the insensitivity or naivete of the Department in this matter. If these drugs remained in Schedule III, while plain amphetamines and methamphetamines were shifted to Schedule II, it was predictable that they, with equal potential for abuse, would become the subject of increasing abuse and might, in fact, become stimulant abusers' drugs of choice.

I took strong exception to this position, and was particularly gratified several months later when the Department reversed its decision and transferred these two stimulants to Schedule II. I believe it instructive to review the rationale for the Department's decision to reschedule these drugs. The September 17, 1971 order explained the action, in part, as follows:

"Based upon the investigations of the Bureau of Narcotics and Dangerous Drugs and upon the scientific and medical evaluation and recommendation of the Secretary of Health, Education, and Welfare, received pursuant to section 201(b) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(b)), the Director of the Bureau of Narcotics and Dangerous Drugs, in view of the order transferring amphetamines and methamphetamine to Schedule II published in the Federal Register of July 7, 1971 (36 F.R. 12734), and the resulting strict production and distribution controls imposed upon amphetamines and methamphetamine by this transfer finds that persons disposed to abuse amphetamines and methamphetamine now may direct their attention to methylphenidate and phenmetrazine, drugs which presently are not known to be the subject of substantial abuse in the United States. Further, there is no evidence to indicate that there is any abuse of methylphenidate and phenmetrazine when administered with proper medical supervision."

I find the failure to move against the six lesser known barbiturates, with abuse potential equal to the three transferred, nothing short of folly—an invitation to further tragedy of the sort associated with the abuse of secobarbital, pentobarbital and amobarbital. Unless your Department has discovered some heretofore unreported information refuting your earlier finding, and those of the Department of Health, Education and Welfare, regarding the abuse potential, of these drugs, I urge you to reconsider your decision in this matter.

Before we ever "turn the corner on drug abuse," those of us whose mandate it is to protect the health and welfare of the American people must see to it that very precaution is taken to prevent diversion, traffic and abuse of these and other legitimately produced drugs.

After the Department reversed its decision on the amphetamine-like drugs in 1971, I received a letter from the Director of BNDD, which said, in part: "The continuing concern expressed by members of Congress over the proper scheduling of various drugs has, in no small measure, aided this Bureau in its endeavors." Since 1971, our combined efforts to curb diversion and to limit production to a level sufficient for legitimate needs, have reduced amphetamine production by more than 90 percent. I know that you appreciate the significance of this accomplishment.

I hope that my expression of concern, regarding controls for the production and distribution of barbiturates, will have a similar salutary result. If, however, the Department is wedded to an approach that requires a "body count" before action is taken, I will be forced to seek a legislative remedy.

Sincerely,

BIRCH BAYH,
Chairman.

EXHIBIT No. 11

U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
Washington, D.C., November 30, 1973.

Hon. BIRCH BAYH,
Chairman, Subcommittee to Investigate Juvenile Delinquency, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN BAYH: Acting Attorney General Bork has asked me to reply to your letter of November 19, 1973, concerning DEA's transfer of secobarbital, pentobarbital, and amobarbital from Schedule III to Schedule II of the Controlled Substances Act. Your letter expresses concern that six other derivatives of barbituric acid were not included in the order which appeared in the Federal Register on November 13.

Two things should be made clear at the outset. First, I share your concern that the placement of any drug in Schedule II could lead to abuse of similar drugs being manufactured and distributed under less rigorous controls. Second, my initial decision to move only against the three derivatives of barbituric acid which are the most highly abused does not preclude moving against the six others should that be necessary. In fact, as to five of the six, it would take only the time needed to prepare and forward an order to the Federal Register. As to the sixth—butabarbital—a hearing under the Administrative Procedure Act would be required.

I turn now to the situation concerning the derivatives of barbituric acid of which I became aware after becoming Acting DEA Administrator earlier this year. The attorneys, who had successfully negotiated the transfer of amphetamines, methamphetamine, methylphenidate, and phenmetrazine into Schedule II without the necessity for hearings and who, on behalf of DEA, had conducted the precedent-making administrative hearing which resulted in controlling methaqualone in Schedule II, advised me it was their opinion there was insufficient medical and scientific support to justify rescheduling six of the nine derivatives. They stated that material submitted by McNeil Laboratories, Inc., in connection with that company's request for a hearing on control of butabarbital, was extremely strong and that we lacked sufficient evidence to overcome it. I requested an opinion from DEA's Office of Scientific Support and was informed of their agreement.

Since only the manufacturer of butabarbital had requested a hearing, and the time for entering such a request had expired, it would have been possible to place all but butabarbital in Schedule II at that time. However, the DEA attorneys and scientists concerned were fearful that should McNeil prevail at a hearing, manufacturers of barbiturate derivatives moved into Schedule II would press for rescheduling back to Schedule III. Except for secobarbital, pentobarbital, and amobarbital, they doubted we could prevail.

At this point the time for discussion was ended and a decision had to be made. I therefore decided that the three barbiturate derivative drugs which are overwhelmingly the drugs of abuse in this area be placed immediately in Schedule II. I requested that negotiations with McNeil Laboratories, Inc. be conducted to the end that the company would supply us with information permitting the closest monitoring by DEA of the production, sales, and distribution of butabarbital. I am now able to advise you that McNeil had agreed in writing to supply DEA on a regular basis with sales and production figures for their product, Butisol Sodium. These figures will be compared with sales and production figures for a suitable past period to provide base-line or reference information. Most important, McNeil has written that, should this information reveal significant abuse of butabarbital, they would no longer contend that their product, which has been marketed for over thirty years, does not merit Schedule II controls. McNeil has further agreed to advertise and promote butabarbital without taking advantage of the current scheduling scheme.

Negotiations are now being carried on with manufacturers of other barbiturate derivatives not listed in my order of November 13, 1973. I have every reason to believe they will be concluded successfully.

In summary, my decision to act promptly on three major drugs of abuse was based on the information presented to me. If this information was in error or if the facts change, be assured there will again be prompt action. I do not consider my initial decision to have been written in stone. It can be changed and, if necessary, it will be.

Sincerely,

JOHN R. BARTELS, *Jr.*,
Administrator.

Senator BAYH. Do you have anything further to add at this time?

We had an earlier discussion on Preludin® and Ritalin®, we did not have a case history as long as your arm, but there was evidence that would lead us to believe these were dangerous and indeed you agree. We had the British experience, we had the Seattle experience, and these were the drugs of, second, third and fourth choice. So when you plug up one loophole, abusers who were looking for this type of drug would try to find another one. You very wisely rescheduled those. It seems to me that it would be wise, if we are going to reschedule, and thus limit the production of those three most prominent of barbiturates, that we take the steps now to keep those that are fourth and fifth and sixth on the line from becoming one, two and three. Now, could you give us your thoughts on that, particularly when you say you have five that can be rescheduled merely by publishing the necessary documents in the record? Why do we not do this before there is an epidemic, instead of after, and if these McNeil people want to be obstinate about it, then let us start the action now necessary to plug up the holes on their product. I do not see why we should be deterred because one company makes butabarbital.

Now, would you elaborate upon your explanation in this letter? I think we have a substantial amount of information, and I am prepared to ask our subcommittee to move legislatively on these six. We have had such good relationship here in the past. When we have made recommendations, we got action down town, which is a lot

easier than getting a bill through Congress. Now a considerable amount of time has elapsed and we have not had action on the six. We have gotten action on the three, and I salute you for that.

Mr. BARTELS. Well, I am reluctant not to be in a position to be acting on the six, having acted on three. However, we did so based on our evaluation, particularly an evaluation which we made of the extent of abuse and the potential of abuse. And the records which were in our files, as well as in the files of HEW formed the basis of our conclusion. We could demonstrate that the three deserved immediate action, amo, seco, and pento barbital, based on their potential for abuse; but based on records within our own file, we could not demonstrate that potential as to the others. We felt that if we went ahead with this hearing on the other six, without watching for some new evidence of the potential for abuse, we would not be acting consistently with the use of those drugs in the medical practice, and with the availability of the drugs in the United States. As you know, four of them are not listed in the physician's desk reference. And we found after the initial decision, that we were unable to demonstrate that potential at that time.

Rather than enter into a hearing, which I was advised would be an unsuccessful one, we are watching the other six, and I can assure you we are watching them very closely. We will be moving on them as soon as we see any potential.

Senator BAYH. All right. Here again, I am sure you concur that if you can see somebody who is mentally deranged with a firearm, and he has had a case history of shooting people, you do not wait until he shoots somebody else before you try to apprehend him. And in your recommendation of November 1972, where you recommend the rescheduling of the nine, you concluded that all nine had the same properties, which is accurate. I mean, in our evidence, as well as yours.

Mr. BARTELS. That is accurate.

Senator BAYH. Butabarbital and secobarbital have the same impact, the same effect. That is accurate, is it not?

Mr. BARTELS. That is accurate.

Senator BAYH. And as I recall, and correct me if my memory is wrong, that is the same sort of argument that was presented to this committee when I became chairman, about Preludin® and Ritalin®, and yet, and I compliment you for it, you did finally decide to reschedule because you could see the potential for abuse.

Mr. BARTELS. The difference, Mr. Chairman, is that I was advised by my staff, and was informed that that opinion was concurred in by members of the staff of HEW, that evidence from our own files indicated there was at this time no clearly established potential for abuse. Therefore, if we chose to go after those six at this time, we would end up with running the risk of an adverse legal precedent which might affect all our future dealings. At his point, we are in the position of watching all six of those, particularly butabarbital, which is the only one that I am informed has even a significant place in the medical practices of the United States.

Senator BAYH. Well, that is right, but let me say that as chairman of this committee, subcommittee, I have been very heartened with

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the cooperative spirit of the manufacturers of these drugs. You know, drug companies are not saints. They have done some things that are inexcusable, and I do not want to get involved in discussing things that I have not had any relationship with. But, let me say after an immediate sort of a shock, defensive reaction, that oh, it could not be us, it is something else, all of them are Mexican reds, it could not be domestically produced drugs, these drug companies have come here and testified, as you know, saying all right, if that is what is necessary, we will cooperate. We urge the Government and the Congress to take steps in this area to stop this problem. And it seems to be patently unfair to say you have three of the major producers of these drugs that have said, all right, we will cooperate, you limit the production, and so the Government goes ahead and in secobarbital, pentobarbital, and amobarbital, the three major makes, that you are going to limit the production of those, and you leave butabarbital, number four, free. What do you suppose is going to happen as far as the demand for butabarbital?

Mr. BARTELS. The three which we have rescheduled, as I am informed, have a significant production. The other has a less significant production, but we will of course be watching for any change.

Senator BAYH. What happened in Great Britain when the drugs of choice, as far as amphetamines were concerned, what happened to Preludin® and Ritalin®?

Mr. BARTELS. Well, they slowly came about.

Senator BAYH. Well, slowly? It was a rather dramatic increase in both Great Britain and Sweden, and it was because of that that the Department of Justice decided that they were not going to wait for that to happen in the United States, so they rescheduled them.

Mr. BARTELS. There we have some evidence of abuse, but without this evidence of abuse, I am informed, that we cannot now demonstrate a case for the scheduling as to butabarbital.

Senator BAYH. Well, as I recall, the court order and the judge's decision in the methaqualone case, which is not totally unrelated, talked about the statute being preventive, prophylatic.

Mr. BARTELS. That is right. And I don't want to lose that precedent. I think it is an outstanding precedent, but it does not mean that we can schedule anything just become somebody else may take it, as I read that case. I will be happy to submit an analysis.

Senator BAYH. Well, how can we reasonably look at four products, all identical in nature, all having the same impact, and say three of them are dangerous, and one of them is not?

Mr. BARTELS. Because of the potential of abuse which we are now measuring, three of them are being significantly abused.

Senator BAYH. Well, wait a minute. Wait a minute, now. Let us be sure we know what we are talking about. If you take butabarbital and put it in a secobarbital tablet, is it going to be any less dangerous than if it is secobarbital?

Mr. BARTELS. No, sir.

Senator BAYH. So, when you talk about potential of abuse, you are not talking about the scientific properties of butabarbital being less dangerous than secobarbital. O.K.?

Mr. BARTELS. That is correct, sir.

Senator BAYH. The only reason that you say it has less abuse potential is that there is not as much of it on the market now.

Mr. BARTELS. That is correct.

Senator BAYH. Right?

Mr. BAYH. And there has not been the indication of that shift of which you have mentioned. In other words, I am informed that there is no transfer now from one to the other.

Senator BAYH. Well, now how much time have we had to judge this?

Mr. BARTELS. Three months.

Senator BAYH. I hope that you will look at this again, because I feel very strongly from two standpoints. First of all, the danger to people. Second, if three companies have the market pretty well dominated, which was the case, and you say to them zap, we are going to cut back your production, it is only reasonable to assume that the fourth, uncontrolled company, is going to move in and take up the old demand. I do not know how we can treat one manufacturer of the various barbiturate families differently than we do the others solely because they are not the best producer, and the recognized producer of the drug, whereas another firm that does not have the kind of reputation is not punished.

Mr. BARTELS. This is not exactly the basis of our decision. I do not think the scheduling is a punishment. Scheduling refers both to the medical——

Senator BAYH. You are not a drug manufacturer.

Mr. BARTELS. Well, I am in the position of trying to schedule drugs.

Senator BAYH. That was a bad choice of words, but they look at it as being a punishment.

Mr. BARTELS. Yes; Mr. Chairman, but, I am informed to keep this prophylactic statute we have to have some substantial evidence of the potential for abuse. Now, I was informed after this initial decision was made that we not only have no substantial evidence of potential for abuse, but we, indeed, had evidence that it was not being significantly abused. We are watching that as closely as possible. While you are 100 percent correct, that it is reasonable to expect that there might be a shift, the traffic and the patterns of drug abuse and the choices of drugs do not always follow reason. Thank God the methaqualone rescheduling has not resulted in as strong a search for other drugs of choice which one might think would follow. I am informed, by people who know this statute better than I do, that mere reason, given the record of absence of abuse, is not sufficient to start a hearing and to win it. Indeed, we would run a substantial risk of destroying what heretofore has been a very good and a very helpful phophylactic precedent in the methaquaone case.

Senator BAYH. Can you tell me, Mr. Bartels, why one conclusion was reached in November 1972 and a different conclusion reached in November 1973?

Mr. BARTELS. Yes, sir, I can, because of their—there were new facts and new documents and new testimony which were brought forth in preparation for those hearings. As to the extent of the abuse.

Senator BAYH. You mean inadequate material was present, and that this was a wrong decision made in November 1972?

Mr. BARTELS. It was a decision which we were not able to substantiate given the subsequent experience.

Senator BAYH. Why was the recommendation made then?

Mr. BARTELS. Excuse me. I was not quite finished.

Senator BAYH. I'm sorry. Please conclude.

Mr. BARTELS. As I understand it, after the recommendation made in 1972, evidence was brought forward between 1972 and 1973 which revealed, from our own records, an absence of substantial potential for abuse.

Senator BAYH. What I am suggesting to you, I do not want to play games, and I hope you are not playing with me——

Mr. BARTELS. I was not playing games.

Senator BAYH. We want to accomplish the same thing. But, you know, unless something happened—like the evidence disappeared?

Mr. BARTELS. It did not disappear, Senator. It changed, and what I am concerned about, and equally as concerned as you are, is that we not lose this precedent. I want to allow it to be a prophylactic, I want to work in that sense, and if we go forward and fall on our face because we come to a hearing, put forth testimony, and have to reveal testimony of our own doctors, our own witnesses and our own experience which has come into that file from the time of the original decision, that shows there is no substantial potential for abuse, and there has not been that potential for abuse, and then we merely look silly. I think we run the risk of destroying much of the work that we have come forward with in succeeding in getting methaqualone. That was the argument that was made to me, and I must say it was made somewhat persuasively since it was made jointly by both staff, and that evidence, as I understood it, came forward after the initial decision.

Senator BAYH. And if this subcommitte is to look at the evidence and reach conclusions, that certainly does not hinder what you are doing then, does it?

Mr. BARTELS. No, sir.

Senator HRUSKA. Would the Senator yield somewhere along this line of questioning?

Senator BAYH. Yes.

Senator HRUSKA. When you have finished.

Senator BAYH. I did not intend to go as far on this as I have. But it seemed to me that either there was evidence in November of 1973 that these other six were the subject of abuse, or there was not. If there was not, nevertheless, it could well have been a meritorious decision because of the direct similarity in properties, almost identical properties.

Mr. BARTELS. That was awfully persuasive of me, too. This came up to me sometime I believe in September. It may have been August and we had a meeting on this. But, it was shortly after the new administration was formed, and the opinion from the scientific, legal staffs came together and said look, since this original decision was made, we have joined together, and we have gone through this file and we have seen the new evidence on which that original decision was made, on the logic which you stated so accurately; but that now we have within our own files evidence to the contrary, and if we go forward with this, we are going to lose that methaqualone precedent.

I asked if that recommendation had been gone over with members of the staff of FDA and was informed that it had, and there was concurrence. But, there was instead evidence that these other six were not available, and that the potential for abuse was far less, and that they had not been substantially abused, and indeed, based upon that evidence which was discovered after the original decision, that we stood a substantial chance of not only losing the particular butabarbital hearing, but of having a new, and different standard put forth as to rescheduling.

Senator BAYH. Well, let us, all of us, look at the precedent again. I come to one conclusion and you come to another, and what really concerns me is that if we look at Ritalin® and Preludin®, we really did not have much of a history in this country at all, but there was a clear track record. There is a rather clear pattern that when one drug is foreclosed, it is just like taking your finger out of a balloon or pushing it in. It will move that air someplace else. And we should not wait until we have an epidemic of butabarbital abuse before we move in.

Now, maybe the way for us to do this is to move from the statutory standpoint, if you are concerned about that methaqualone precedent. I do not want to destroy that, but I do want to take out a little insurance policy against the kind of abuse neither you or I want of these other six.

Mr. BARTELS. I know exactly what you are saying, and I am not sitting here too happy with that decision, not only because I do not like sitting and waiting for an epidemic myself, but I am concerned, at least having so testified as I have here today, there be abuse of butabarbital. I want that statute to be exercised in a prophylactic manner, and I am watching that as closely as I can.

Senator BAYH. I am sorry. I did not mean to ask this many questions.

Just having been involved in this for so long, I sort of got carried along.

I am advised that Dr. Egeberg has a plane to catch, so I will yield to my friend from Nebraska.

Senator HRUSKA. Thank you, Mr. Chairman.

You were correct in your original and preliminary observation on this subject made in your colloquy with Mr. Bartels. It does not properly relate to the subject of these hearings insofar as it is a subject removed from the implementing legislation. By that I do not mean, however, to criticize the chairman for bringing it up, because it is a very important point. In the interest of saving time, or requiring another hearing the chairman used good judgment in bringing it up at this time.

Let me suggest that this whole subject is reminiscent of our experience in 1969 when the Controlled Substances Act was being formulated. At that time a great deal of effort went into placing narcotics, and other dangerous substances into a succession of five schedules. Almost arbitrarily the Congress decided which drugs belonged on each schedule.

That congressional action froze those substances by legislation into particular schedules. Provision was made for rescheduling these substances, from a lower level to a higher level as the occasion might

arise. Certain evidence, however, must be available to justify a court decision which would permit one of the lower scheduled items to advance to a higher schedule.

In November of 1972 the request of your Agency to reschedule some of the barbitals was not granted. As I understand your position, at that time you did not have enough evidence to satisfy the statutory requirements if the rescheduling had been challenged in court.

But, between November 1972 and 1973, you did get your "ducks in order." You were prepared then to defend your rescheduling in court and you therefore proceeded with rescheduling.

Have I described that situation correctly?

Mr. BARTELS. This is correct, Senator.

Senator HRUSKA. Now, then, with reference to item No. 4, did you at that time, or do you now have the necessary evidenciary background and foundation to go forward with rescheduling at this time?

Mr. BARTELS. I am informed that we do not have the evidence to prove that butabarbital has a high potential for abuse.

Senator HRUSKA. You do not yet have it?

Mr. BARTELS. That is right.

Senator HRUSKA. How far along the line are you? When will you have such evidence?

Mr. BARTELS. Well, first I hope it never happens, that we never have the evidence. I hope it never is abused, but I hope more so than if it is abused——

Senator HRUSKA. Does the law permit you to go forward with rescheduling based upon an anticipatory and conjectural foundation?

Mr. BARTELS. Not on mere conjecture.

Senator HRUSKA. It would not be in compliance of the law for a judge to allow a rescheduling based upon such conjectives, would it?

Mr. BARTELS. I do not believe so.

Senator HRUSKA. Is that not your bind?

Mr. BARTELS. That is right.

Senator HRUSKA. Some of us in the business sometimes become a little impatient and I want to be a jump ahead instead of two jumps behind, but, the law, after all, is pretty much binding on you, is it not?

Mr. BARTELS. That is right.

Senator HRUSKA. And if you do not believe it, the court will tell you so in due time if you proceed upon anticipatory or conjectural judgments.

Does that make sense?

Mr. BARTELS. Yes, sir.

Senator HRUSKA. What if you go in there prematurely, and do not have the scientific evidence to back up your requests for rescheduling? What is the result of a premature and an untimely proposal in that regard?

Mr. BARTELS. Well, it is two-fold. First of all, the drug would not be scheduled, and secondly, you would have perhaps a different standard as to what that phrase "potential for abuse" means.

Senator HRUSKA. There would be a judicial finding, would there not?

Mr. BARTELS. Yes, there would.

Senator HRUSKA. That there is no abuse. There would be a judicial finding that a substance is not now entitled to rescheduled. And would not the impact of it be to declare it legal instead of holding it in abeyance until such time as you are able to provide the necessary legally sufficient evidence?

Mr. BARTELS. It would certainly make it more difficult for us at a subsequent time to come forward and reschedule it.

Senator HRUSKA. Is that not what you are confronted with?

Mr. BARTELS. That is correct.

Senator HRUSKA. I do not think that there is any difference in objective here between your way and our way of thinking. Sometimes we do get a little impatient, but this Senator is not a scientist. Nor am I able to determine the sufficiency of evidence needed to satisfy a judge who would determine whether a drug had been properly rescheduled. But, I do believe that inasmuch as the statue prescribed certain procedures with which you must comply, that we ought to respect that, or in the alternative, amend the law so that the Attorney General can arbitrarily and without certain evidence go ahead and reschedule. We ought to do one of the two things.

Do you have any comment on that?

Mr. BARTELS. Just that I want to assure this committee that we are as concerned with the adequacy of our drug abuse warning network, and the measurement of this drug and its potential for abuse so that we are watching it on a monthly basis with the view towards rescheduling as soon as we get any evidence.

Senator HRUSKA. I do believe that some of the hearings so splendidly led by the Senator from Indiana have sometimes provided an incentive to be a little more expeditious in your treatment of these things. To that extent, I have always supported his efforts, and I shall continue to do so.

I would not, however, want to take a position of urging something or insisting upon something that would be untimely, premature, and something that probably would not be within the confines of the legislative mandate by which your agency is governed. Although the Senator from Indiana, might not agree with me competely on this matter I think perhaps he would agree there is some merit to this type of approach.

I thank you, Mr. Chairman, for your patience.

Senator BAYH. Well, I appreciate the comments of the Senator from Nebraska. I just want to make sure that we know what the dimension of a disagreement is here. We understand that it is an agreement as far as qualitative use is concerned, butabarbital versus secobarbital and the other three. We agree that that has the same propensity to addict and all of the other things, there is no question about that, is that right?

Mr. BARTELS. That is correct, Mr. Chairman.

Senator BAYH. You are waiting for quantitative evidence, that enough of these tablets are out in the communities and they are being actually used and abused before you feel you can act.

Is that what we are really talking about?

Mr. BARTELS. That there is at least some potential for abuse, that is correct.

Senator BAYH. Well, here again, it is quantitative, not qualitative!

Mr. BARTELS. That is correct.

Senator BAYH. Thank you very much, gentlemen.

Mr. BARTELS. Thank you very much, Mr. Chairman.

Senator BAYH. It seemed to me, let me say to my distinguished colleague from Nebraska, inasmuch as this matter of other countries looking at trying to use this Convention as evidence or lack of it that we were not being firm in dealing with this domestically, that, indeed, the way we dealt with the barbiturate problem here, in my judgment, is a lot more to the point than whether we ratify a convention and impose that on an international basis. And I appreciate the time, and certainly the perceptive interrogatories of my distinguished colleague from Nebraska.

[Mr. Bartels' prepared statement and attachment is as follows:]

PREPARED STATEMENT OF JOHN R. BARTELS, JR., ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. Chairman and distinguished Members of the Subcommittee: I wish to thank you for this opportunity to testify in connection with S. 2544, a bill supported by the Administration for the purpose of implementing the international Convention on Psychotropic Substances. This treaty, which is now before the Senate for advice and consent, provides new controls over many important drugs of abuse. These are drugs which, for the most part are the product of legitimate manufacture. Yet, when abused in the street they can inflict damage comparable to that of heroin.

Addiction to barbiturates, for example, is often times so severe that abrupt withdrawal has been known to result in death. The abuse of amphetamines and methamphetamines creates a psychic dependence which is as difficult to break as any addiction. Other drugs to which the treaty applies include LSD and methaqualone—the abuse of which reached near epidemic proportions within the span of a year before being brought under the controls which we administer.

Much has been done to halt the illicit flow of these drugs from sources within the United States, but the problem can never be solved as long as diversion from international sources continues.

This new treaty, which the United States assumed leadership in negotiating, will provide the necessary legal basis on which the governments of the world can act. I have just returned from the Geneva session of the International Commission on Narcotic Drugs and can assure you, on the basis of personal conversations with the representatives of other nations that they are awaiting the leadership of the United States. The opium producing nations, whom we have asked to accept more stringent controls, are particularly anxious to see if the United States is willing to accept similar controls over the drugs which it manufactures.

The bill itself embodies a number of technical changes in our own Federal drug control laws which are necessary to insure that the United States will be able to fulfill its obligations when the treaty is ratified. Although these changes of law are relatively minor, the treaty, from which they will enable us to benefit, is of great importance.

I recognize, however, that many scientific and medical groups are vitally concerned in any issue which appears to affect the balance of authority between the Attorney General and the Secretary of Health, Education and Welfare in the area of drug control. During the passage of the Controlled Substances Act in 1970, now administered by DEA, great care was taken to insure that the interests of science and medicine in access to, and utilization of, controlled drugs were protected.

S. 2544 will not upset this balance and will grant no additional powers to the Justice Department relative to those of the Department of Health, Education, and Welfare. Its provisions are designed exclusively for the purpose of answering the minimum requirements of United States membership in the Convention on Psychotropic Substances.

This treaty, like all other international agreements, does require some minimal surrender of sovereign power. For example, if the international body should decide to bring a drug under control, or to increase existing controls over a drug, the decision might require some additional legal action to be taken within the United States. S. 2544 intentionally gives the Secretary of Health, Education, and Welfare the prerogative of deciding what additional controls, if any, may be required in such a case and under what statute they must be imposed. It is only if the Secretary determines such a necessity that a change would be made in the status of the drug with regard to the Controlled Substances Act which DEA administers. By the same token, it is the Secretary who will determine the negotiating position of the United States with regard to deliberations of the international body on drug control questions.

The effects of S. 2544 and the Psychotropic treaty on existing law is an intricate and highly technical matter. In order to ally fears that the treaty would restrict research, after the power of the Congress to change existing drug penalties, or impose additional controls on physicians, we have provided reassurances by expressly setting forth matters into which neither the treaty nor the Act will extend. I have appended to my statement a more detailed legal analysis of these considerations. I will also be pleased to respond to any additional questions you have in this area at the close of my statement.

At this point, I would like to turn my attention to the situation which we hope S. 2544 and the Convention on Psychotropic Substances will help resolve.

For many years, beginning with the Opium Convention of 1912, various international controls have been applied to the legitimate commerce in narcotic drugs. I shall not mention each of the individual treaties which have governed narcotic drugs, but it is important to note that in all of this time the legitimate commerce in these narcotics has never constituted a significant source within the illicit traffic. This is due to the international controls which have been applied through these treaties and the passage of national laws which they have required.

Many people are surprised to learn that this is not the case with regard to the medically useful but none the less non-narcotic substances referred to in international terminology as "psychotropic" substances. These include the hallucinogens such as LSD, the amphetamines, the barbiturates, and various tranquilizers. Indeed, there are at present no international controls governing commerce in this category of drugs. Lack of international controls is merely another unfortunate example of the kind of double standard with which drug abuse is often regarded. It is the kind of double standard which views heroin addiction with horror, but is willing to overlook barbiturate addiction, or dependence on amphetamines as a different and less harmful sort of thing. This is an outdated notion which should be unequivocally rejected.

The toll of human damage resulting from the abuse of these drugs is often equal to and sometimes may exceed that associated with heroin. It is our firm adherence to this principle which has led us to seek the imposition of international controls in this area comparable to those applied to narcotic drugs. In our view, there can be no excuse for accepting the one and rejecting the other. This is the important principle involved in the issue before you today.

I would next like to deal with some of the practicalities. In all probability, no nation stands to benefit more from the terms of the Convention on Psychotropic Substances than the United States. In all categories of drug abuse, our nation is perhaps the most seriously affected; and this is no less true in the case of the drugs which would be controlled under this treaty.

In the last two or three years, there has been a great deal of attention focused on the problem of diversion of dangerous drugs within the United States. The Congress has provided new laws with which to attack such diversion, and the DEA has applied these laws with dramatic results. Although the problem is far from being solved, there is no disputing the fact that great progress has been made. But, the diversion of drugs is not only a problem within the United States. It is equally a problem in many foreign nations and particularly so in the case of international commerce.

What is needed is an enactment of international law comparable to that which the Congress has enacted domestically. This is precisely the purpose for which the Psychotropic treaty has been designed. The United States,

despite its own strong legislation, is a victim of the current international inadequacies, and I would like to provide you with a few statistics and examples of the extent of the illicit traffic which has resulted.

The accumulating evidence has shown that the U.S./Mexican border area has become the locus of many clandestine operations using barbiturate and amphetamine powders diverted from legitimate international commerce. Seizures continue to escalate at a rapid pace. In 1971, some 8 million illicit amphetamine tablets believed to be of clandestine Mexican manufacture were confiscated by U.S. enforcement agencies. In 1972, approximately 1 million tablets were seized, and in 1973, the total exceeded 26 million tablets. Recent intelligence suggests that a group of violators have ordered amphetamine sulphate powder from European firms sufficient to manufacture an additional 50 million tablets.

In April of 1972, we testified before this committee concerning a new initiative aimed at attacking a growing traffic in illicitly produced secobarbital capsules known throughout the southwestern United States as "Mexican reds". A review of our records revealed that no substantial quantities of secobarbital powder had been shipped from the United States to Mexico since 1969 and further that there were no known manufacturers of the powder within Mexico itself. In August, 1972, visits to European firms disclosed that at least 6,750 kilograms of bulk secobarbital powder had been shipped to fill Mexican orders in a 18-month period.

Much progress has been made to reduce these problems, particularly in Mexico. Beginning in January of 1972, the Mexican Government, in cooperation with DEA agents stationed there, closed down a major drug firm in Mexico City which was responsible indirectly for the diversion of millions of dosage units of amphetamines. Simultaneously, we revoked the export permit of a major U.S. firm which was carelessly supplying bulk amphetamine powder to Mexican sources who were in turn diverting it. Finally, the Mexican Government, at out request, imposed tighter controls on the importation of both amphetamines and barbiturates.

In spite of this and other enforcement successes, the situation, nevertheless, continues to be serious. No doubt other Latin American countries as well as Mexico are being used as points of diversion. Intelligence has also been recently developed which suggests that the drug methaqualone, recently brought under Schedule II controls in the United States, is being smuggled into the country from Canada. At this time, it is not known whether the drug has been illictly manufactured or diverted from some other foreign source.

One of the first major investigations that brought this problem to our attention concerned the clandestine operations of a Dr. Joseph O'Connor and his co-conspirators in Atlanta, Georgia. In early 1969, by means of applying the principles of scientific ballistic examination to tablets seized from the illicit traffic, our chemists were able to ascertain that millions of black market amphetamine tablets found throughout Georgia, South Carolina, Alabama, and Tennessee were issuing from a sing'e source. It was at first assumed that not only the pills but the amphetamine powder from which they were made were being clandestinely manufactured somewhere within the area.

As the investigation evolved and suspects were identified, Federal agents discovered that the violators were operating a highly sophisticated 16-stage tableting machine capable of producing a half million tablets for each day of operation. To our surprise, they discovered that the amphetamine powder from which the tablets were made was being obtained from legitimate firms in Milan, Italy, and Lucerne, Switzerland. Apparently, the violators were ordering the drugs under a fictitious company name and at some point mislabeling the containers and shipping them into the United States either through Atlanta; Charleston, South Carolina; or Niagara Falls, New York.

Just prior to the arrest of the suspects in December of 1969, agents were able to monitor a shipment of two drums, each containing approximately 100 kilograms of amphetamine sulphate powder from a legitimate firm in Milan, Italy, to Antwerp, Belgium, where the containers were mislabeled as antibiotics. The drugs were then shipped to Freeport in the Bahamas for smuggling into the United States. Following arrest, Dr. Joseph O'Connor posted a bond of $20,000 and is still a fugitive from justice believed to be residing in another country. Regrettably, the arrest of the other six co-conspirators in this enterprise resulted in the imposition of but two six-month sentences.

This case has proven to be a prototype of many others which we have subsequently developed, particularly along the U.S./Mexican border. Today, I have asked Mr. George Frangullie, now the Special Agent in Charge in Santiago, Chile, to give this Subcommittee a brief account of an investigation involving drugs diverted from international commerce. It will establish for you more clearly than any generalities, both the size and intricacy of the criminal activity with which we are concerned.

This case involves the arrest of a group of violators who were responsible for the manufacture and movement of millions of illicitly produced red secobarbital capsules known as "red devils", and black amphetamine capsules known as "black beauties". They not only diverted these drugs through a string of pharmacies which operated in the U.S./Mexican border area but maintained an illicit laboratory furnished with modern equipment utilizing barbiturate and emphetamine sulphate powder imported from European firms. Had the treaty been in force at the time, it is unlikely that these violators would have been able to obtain the necessary raw materials in such volume. The system of registration, record-keeping, inspection, and import-export permits would have required too great a deception.

We believe these examples, and particularly the narrative of Special Agent Frangullie, who was then stationed in Monterrey, Mexico, provide ample indication of the gravity of the current situation and the need for enactment of S. 2544. We must have the legal foundation provided by this treaty if the law enforcement efforts which we have stimulated around the world are to stop the diversion of dangerous drugs.

Convention on Psychotropic Drugs—A Discussion of the Convention Adopted at Vienna, February 21, 1971

Structure of the Convention

The structure of the Convention on Psychotropic Substances is similar to the provisions of P.L. 91-513, the "Comprehensive Drug Abuse Prevention and Control Act of 1970." The aim of the Convention is to limit to medical and scientific purposes the manufacture, distribution, and use of psychotropic substances. The Convention has four schedules of substances; it lists 32 substances in those schedules depending on the extent of their abuse, their potential for abuse, and their therapeutic usefulness; it provides a procedure for adding new substances to the schedules, moving substances between schedules, and deleting them from control; and it provides gradations of controls, with the most stringent controls applied to Schedule I substances such as LSD, mescaline, and the tetrahydracannibanols. Most of the control provisions apply measures similar to those used to control narcotic drugs in other treaties.

The Convention requires that manufacturers and distributors be licensed; that the use of Schedule I substances be restricted to scientific and very limited medical purposes by unduly authorized persons; that substances be supplied to consumers pursuant to medical prescriptions; that records be maintained by manufacturers, distributors, importers, and exporters; that warnings be on labels or accompanying leaflets; that parties employ a system of controlling importations and exportations; that parties make certain reports to the International Narcotics Control Board; that parties take action against the illicit traffic and apply penal provisions; and where possible, parties establish programs of drug abuse prevention, treatment, and rehabilitation.

Domestic Legislation

The specific control measures which the Convention requires each Party to implement are largely satisfied by the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Food, Drug, and Cosmetic Act. For example, under the Convention, each Party must license manufacturers and distributors of psychotropic substances; Sections 301 to 304 of the 1970 Act provide for registration of these persons. Each Party must restrict the use of Schedule I (hallucinogenic) substances to scientific and very limited medical purposes; Section 303 of the Controlled Substances Act

(Title II of the Comprehensive Act) limits access to such substances to qualified researchers. Psychotropic substances must be dispensed only upon a physician's prescription; all are subject to prescription requirements under the Federal Food, Drug, and Cosmetic Act. Each Party must require all handlers of psychotropic substances to keep records of all drugs manufactured distributed or dispensed; Section 307 of the Act already imposes such record-keeping requirements. Importation and exportation of psychotropic substances must be controlled in a manner similar to the requirements imposed by the Controlled Substances Import and Export Act, which is Title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

Although the Controlled Substances Act and the Controlled Substances Import and Export Act provide most of the mechanisms to fulfill United States obligations under the Convention on Psychotropic Substances, new legislation will be required to satisfy all commitments under the Convention. The proposed "Psychotropic Substances Act of 1973" would serve to satisfy these commitments.

SUBSTANCES SUBJECT TO CONTROL

Psychotropic substances are those which produce central nervous system stimulation, depression, or which cause hallucinations or disturbances in perception, thinking, mood, and behavior. In general, narcotic drugs also have psychotropic properties; for example, opium is a depressant, cocaine is a stimulant, and cannabis is a hallucinogen. However, "narcotic drug" is a term of art used to describe substances controlled under the Single Convention on Narcotic Drugs, 1961, which includes opium and its derivatives, cocaine and marihuana, and which are not controlled under the Convention on Psychotropic Substances. "Psychotropic substances" include only those substances that are specifically included in the Convention on Psychotropic Substances.

Psychotropic substances may be classified, in a general way, into three categories according to the effects which they produce:

(a) stimulants—such as amphetamines;
(b) depressants—such as barbiturates and tranquilizers:
(c) hallucinogens—such as LSD and mescaline.

Three substances, amfepramone, pipradrol, and SPA are listed in Schedule IV of the Convention, but are not controlled under the "Comprehensive Drug Abuse Prevention and Control Act of 1970." The potential for abuse, dependence producing liability, and therapeutic usefulness of amfepramone, pipradrol, and SPA are presently being studied, and there is a substantial likelihood that the Attorney General will propose that these substances be controlled in the very near future.

ACTION TO CONTROL A SUBSTANCE

Article 2 of the Convention provides a procedure for applying controls to substances not previously controlled under the Convention, as well as transferring a substance from one schedule to another, and deleting a substance from the schedules. For the sake of clarity the discussion that follows deals only with the addition of a substance not previously controlled; however, similar procedures are equally applicable to the other two aforementioned situations.

A Party to the Convention or the World Health Organization may initiate an action to apply controls to a substance by notifying the Secretary-General and providing information in support of the notification. The Secretary-General transmits this notification and accompanying information "to the Parties to the Commission and, when the notification is made by a Party, to the World Health Organization." The World Health Organization is responsible for making an assessment of the substance according to the criteria set forth in Article 2, paragraph 4, and then notifying the Commission on Narcotic Drugs of its assessment. According to Article 2, paragraph 5, the World Health Organization's assessment is "determinative as to medical and scientific matters." The Commission on Narcotic Drugs is charged with the responsibility of determining whether or not a substance is to be added to Schedules I, II, III, or IV. This decision is made according to a two-thirds vote of the Commission, and is based upon the assessment provided by the World Health Organization and economic, social, legal, and administrative

factors, as well as any other factors which the Commission may consider to be relevant.

The Convention, in Article 2, paragraph 4, provides the World Health Organization with a formula for assessing substances not yet subject to international control. Before communicating an assessment of a particular substance to the Commission on Narcotic Drugs, the World Health Organization makes the following findings:

(a) that the substance has the capacity to produce
  (i) (1) a state of dependence, and
    (2) central nervous system stimulation or depression, resulting in hallucinations or disturbances in motor function or thinking or behavior or perception or mood, or
  (ii) similar abuse and similar ill effects as a substance in Schedule I, II, III, IV, and
(b) that there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control.

The Convention, then, does offer adequate guidelines to assist a responsible international body such as the World Health Organization in making a proper assessment.

There has been some criticism raised that because the Commission on Narcotic Drugs is responsible for making a drug control decision, the Convention has relegated the World Health Organization to an undesirable secondary role in the decisionmaking process. However, such criticism is unwarranted; the Convention retains a significant role for the World Health Organization in the decision-making process.

The prevalent view at the Vienna Conference was that although, traditionally, WHO had been relied upon to make drug control determinations, many countries now had a technological potential similar to WHO, and they would not accept a control procedure which would exclude independent review by representatives of their governments. It was not a matter of distrust; rather this mood was dictated by the fact that health officials in many countries desired to have an input in the decision-making process. Numerous new substances are being developed which can be abused, but which also may be indispensable for the medical treatment of millions of people. Therefore, a decision to control a psychotropic substance would be likely to have a substantial, world-wide impact. Health officials in other countries are no different than the interested health officials in the United States. Universally, these officials want to have an input into a decision-making process having the potential to significantly affect the health and welfare of their populations.

Article 2 does provide WHO with a degree of authority which is compelling, if not absolute. Pursuant to Article 2, paragraph 4, WHO is entirely responsible for preparing a medical and scientific assessment of a substance which is being considered for control; and paragraph 5 specifies that these "assessments shall be determinative as to medical and scientific matters." Although the Commission on Narcotic Drugs may take into account "economic, social, legal, administrative and other factors," as well as the WHO assessment, in arriving at a decision, it is unthinkable that the responsible representatives of the thirty States comprising the Commission would ignore the scientific and medical findings of WHO.

Assuming the Commission on Narcotic Drugs has voted to add a substance to the Convention's schedules, the Convention provides, in Article 2, paragraph 7, a procedure for a Party to accept with qualifications the Commission's decision. According to Article 2, paragraph 7, the decision of the Commission becomes fully effective as to the Parties except for any Party which transmits to the Secretary-General a written notice that, in view of "exceptional circumstances," it is not in a position to give effect with respect to that substance to all of the provisions of the Convention applicable to substances in that Schedule. Notwithstanding its notice, however, each Party must apply, as a minimum, certain control measures listed in Article 2.

Finally, Article 2, paragraph 8 of the Convention provides for review of a Commission decision by the Economic and Social Council. Any Party to the Convention may request that a review be made within 180 days after receiving notification of the decision. In conducting its review, the Economic and

Social Council has the assistance of comments submitted by the Commission on Narcotic Drugs, the World Health Organization, and any interested Party to the Convention. Article 2, paragraph 8, specifically authorizes the Economic and Social Council to "confirm, alter, or reverse the decision of the Commission."

The "Psychotropic Substances Act of 1978" contains a complete statutory scheme to allow the United States to respond to the initiation of the Convention's drug control procedures, as well as react to a decision of the Commission. The "Act" recognizes the obligations which the United States would incur under the Convention in regard to the control of psychotropic substances and retains a careful balance between the extent to which control decisions should be based upon law enforcement criteria, and the extent to which such discussions should be based on medical and scientific determinations. As the following section-by-section analysis indicates, the "Act" assigns a leading role to the Secretary of the Department of Health, Education and Welfare in control decisions to be made pursuant to U.S. obligations incurred under the Convention.

Section 3 of the proposed bill would amend Section 201 of the Controlled Substances Act (21 U.S.C. 811) to authorize and direct the Attorney General and the Secretary of Health, Education, and Welfare to take steps to control substances under the Convention and to prescribe applicable controls on psychotropic substances which are required by United States obligations under the Convention.

Paragraph (2) of Section 3 provides that whenever notice is received that the World Health Organization is considering a drug or substance for control under the Convention, the Secretary of Health, Education, and Welfare shall be authorized to comment on the matter to the World Health Organization.

Paragraph (3) of Section 3 specifies that in all matters relating to a decision to control a drug or substance by the United Nations Commission on Narcotic Drugs, the recommendations of the Secretary of Health, Education, and Welfare shall be binding on the United States representative, and if the Secretary recommends that a drug or substance should not be controlled in the manner proposed, the United States representative shall vote against such control.

Paragraph (4)(A) of Section 3 requires that when notice is received from the Secretary-General of the United Nations that a substance has been designated for control under the Convention, the Secretary of Health, Education, and Welfare shall decide in consultation with the Attorney General whether existing controls in the United States are adequate to meet the treaty obligations. Even if existing controls adequately meet the requirements of the Convention, the Secretary may recommend to the Attorney General that he initiate proceedings in the usual way in accordance with subsections (a) and (b) of Section 201 of the Controlled Substances Act (21 U.S.C. 811).

If existing controls in the United States do not meet the obligations of the Convention, and if the Secretary does not concur in the scheduling decision of the international organization, he shall (1) apply the controls applicable to new drugs, pursuant to Section 505 of the Federal Food, Drug, and Cosmetic Act, or (2) if these controls are not adequate to protect the public health and safety, recommend to the Attorney General that he initiate proceedings under subsections (a) and (b) of Section 201 (21 U.S.C. 811).

Also, whenever the Secretary of Health, Education, and Welfare does not concur in the scheduling decision of the international organizations, the Secretary shall request the Secretary of State to transmit to the Secretary-General of the United States a notice of qualified acceptance and request the Secretary of State to institute proceedings to review the decision by the Economic and Social Council of the United Nations.

Paragraph (4)(B) of Section 3 provides that if the regular control procedures of subsections (a) and (b) of Section 201 (21 U.S.C. 811) will not be completed within the time limit of 180 days specified in the Convention the Attorney General after consultation with the Secretary of Health, Education, and Welfare, shall, unless the substance is already controlled under the Controlled Substances Act, issue a temporary order controlling the substance under either Schedule IV or V, whichever is most appropriate. Also,

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the Attorney General after consultation with the Secretary, shall except the substance from such controls of the Controlled Substances Act as he finds are not necessary to carry out United States obligations under the Convention.

Paragraph (4) (C) of Section 3 provides that if the Economic and Social Council reverses the scheduling decision of the international organizations, the Attorney General shall vacate the temporary control order. If the decision is affirmed, the Attorney General after consultation with the Secretary, shall, unless subsequent action has been taken to control the substance, issue a final order controlling the substance under Schedule IV or V.

Paragraph (4) (D) allows both the Attorney General and the Secretary of Health, Education, and Welfare to request through the Secretary of State a review by the international organizations of the scheduling decisions based on new or additional information.

The attached charts graphically illustrate the various means provided by the "Act" for United States participation in the drug control deliberations and United States reaction to an international control decision.

PHYSICIANS RESEARCH WITH SCHEDULE I SUBSTANCES

Article 7 of the Convention requires that all research with Schedule I substances be done "by duly authorized persons in medical or scientific establishments which are directly under the control of their governments or specifically approved by them." There is no requirement inherent in this language that the establishment be a laboratory, a hospital, a university, or an institution. In fact, the term "institution" was considered and expressly discarded at the Vienna Conference because it would have placed an undesirable premium on size. Article 7 is not concerned with the size of an establishment; it merely requires that research be done in a medical or scientific establishment which has been approved by a control agency of the Party.

The position taken by the United States Deegation at the Conference should clarify further the interpretation to be given the term "establishment." On February 4, 1971, the United States Alternate Representative, Donald E. Miller, made the following intervention:

> "Mr. Miller (United States of America) said that his delegation was firmly of the opinion that the term "establishment" referred to any place where medical and scientific work was being done. There was no need to specify its size, the type of installation or the number of staff employed. The establishment must be directly under the control of the government or specifically approved by it. Governments could be depended upon to interpret the clause judiciously and were not likely to abuse it. The wording of the Artic'e was flexible enough to cover future research techniques and establishments which might later be regarded as appropriate and it would be unwise to restrict it to the types of institutions recognized at the present time as suitable. No more detailed definition of the term "establishment" should be attempted." (E/CONF. 58/SR. 10).

Subsequently, the Representative of the Federal Republic of Germany took note of this intervention, and no other delegation intervened in opposition to this position.

Flexibility, then, is an important attribute of Article 7. The term "establishment" was not meant to be synonymous with an institution, and it should not be so considered. Neither the size of a facility nor the number of staff employed in the facility was thought to be of overriding importance; therefore, Article 7 would not prohibit individual physicians from conducting research in their private offices after securing the requisite governmental approval.

Although Article 7 would not restrict individual physicians from conducting such research, we recognize that such concern does exist. Therefore, the "Psychotropic Substances Act of 1973" contains the following provision to amend Section 303 of the Controlled Substances Act (P.L. 91–513; 84 Stat. 1236; 21 U.S.C. 823).

> "Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this title."

This section clarifies the issue and should allay the concerns of the research community. Article 7 of the Convention will not be construed as imposing any registration requirements on research in addition to those now provided in Section 303 of the Controlled Substances Act.

RECORDKEEPING

Article 11 of the Convention provides that records are to be maintained for "each acquisition and disposal" of Schedule II substances by "institutions for hospitalization and care and scientific institutions," among others, and these institutions must have information "readily available" regarding the acquisition and disposal of Schedule III substances. However, Article 11 does not require burdensome record-keeping by individual practitioners in connection with Schedule II, III, and IV substances.

The United States delegation participated in the work of the Ad Hoc Working Group concerned with Article 11, and cooperated extensively with the representative of the United Kingdom who was an instrumental force in drafting and obtaining concurrence in the final language. The United States representatives in our delegation recall that paragraphs 3 and 4 of Article 11 were never discussed or considered as applying to individual practitioners. The language of the Convention itself amply supports this recollection.

As has been previously demonstrated, the delegates to the Conference clearly differentiated between the terms "institutions" and "establishments." It should be recalled that in the final drafting of the Article 7 provision concerning the permissibility of a physician conducting Schedule I research in a private office, the delegates discarded the term "institutions" because of the general consensus that this terminology would exclude the private practitioner working in his own office. In its place, the delegates agreed upon the broad term "establishments" which would cover the single practitioner as well. It is noteworthy, that in its final form, Article 11, paragraphs 3 and 4, provide for record-keeping by "institutions" and not "establishments." This language is purposeful and not a mere accident. The delegates did not intend to burden physicians with unnecessary record-keeping in connection with Schedule II, III and IV substances, and they clearly drafted the Convention to conform to that intention. Therefore, the Convention does not require private practitioners to compile and maintain records for the acquisition and disposal of Schedule II, III and IV substances.

Furthermore, assuming there is no doubt as to the interpretation of Article 11, the drafters of the legislation implementing the Convention have included the following provision to amend Section 307(c) of the Controlled Substances Act:

> "Nothing in the Convention of Psychotropic Substances shall be construed as in any way affecting, modifying, repealing, or superseding the provisions" [of this section relating to record-keeping by practitioners].

This section clarifies the issue, and should allay the concerns that physicians would be subjected to new, burdensome record-keeping requirements.

Articles 7 and 11 of the Convention require manufacturers, possessors and users of psychotropic substances to maintain various records. Concern has been expressed, that when coupled with these record-keeping provisions, the Convention's Article 15 inspection provisions would seriously undermine the confidential nature of the physician-patient relationship. Although Article 15 provides that each party shall maintain a system for inspecting records, there is no language anywhere in the agreement requiring parties to abrogate domestic laws or customs regarding the confidentiality of the physician-patient relationship.

The United States has long recognized the importance of generally maintaining a confidential relationship between physician and patient. The confidential nature of this relationship has also enjoyed a long tradition among European nations either through custom or written law. Although the Convention is silent on this issue, this silence should not be construed as giving inspection agencies a carte blanche to encroach upon this confidential relationship. In fact, a far different intent may be attributed to the delegates.

In view of their strong domestic commitments to a confidential physician-patient relationship, the delegates simply did not contemplate that the inspection procedures would violate the privacy to be accorded patient's medical records. Brief reference to the Conference is most informative on this point.

The United States Representative, John E. Ingersoll, stated very clearly in an intervention on February 9, 1971, at the Vienna Conference (document E/CONF. 58/SR. 11) that the United States did not consider Article 15 (previously Article 13) as an encroachment on the confidentiality of physicians' records. His statement was as follows:

> Mr. Ingersoll (United States) believes that it must be clearly stated that scientific researchers and doctors are not obligated, under the provisions of this article, to violate the professional secret which the legislature of numerous countries recognize as their right. According to the United States interpretation, neither of the provisions of Article 13 nor any of the provisions of the protocol must prevent one of the Parties from authorizing the scientific researchers and doctors to preserve the secret of the name and identity of persons undergoing treatment or participating in research projects, or to compel them to maintain this secrecy.

Notably, immediatly following the conclusion of Mr. Ingersoll's statement, the article was adopted unanimously and without further comment. This language clearly expressed the United States' understanding of the scope of the inspection provisions. Moreover, the absence of further comment and the subsequent unanimous vote indicates that Mr. Ingersoll's statement accurately reflected the perception and mood of all delegations present. It is clear, then, that the Convention poses no threat to our domestic commitment to a confidential physician-patient relationship.

However, in order to reassure the medical and research community, the drafters of the "Psychotropic Substances Act of 1973" have included the following language in the "Act" to amend Section 502 of the Controlled Substances Act (21 U.S.C. 872) and Section 303 of the Public Health Service Act (42 U.S.C. 242(a)).

> Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances or other international treaties or agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State or local enactment or regulation.

PENAL SANCTIONS, TREATMENT, AND REHABILITATION

When read in conjunction with a number of related provisions in the Convention, Article 22 clearly provides flexibility in the handling of drug offenders, especially illicit possessors and users of psychotropic substances, in recognition of the need to differentiate between the various forms of drug offenses.

Article 22 1(a) provides:

> Subject to its constitutional limitations, each Party shall treat as a punishable offense, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offenses shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty.

In interpreting Article 22, careful attention must be paid to the phrase "any action contrary to a law of regulation adopted in pursuance of its obligations under this Convention." This phrase indicates that in order to establish whether the Parties are bound to make the personal use of drugs a punishable offense, the Parties' obligations in respect to the personal use of drugs under the Convention must first be determined.

This determination must necessarily be made outside the parameters of Article 22 through recourse to related provisions in the Convention. Article 5, paragraph 3, serves as an important, though incomplete, guide to a conclusion. It provides, "It is desirable that the Parties do not permit the possession of substances in Schedule II, III and IV except under legal authority." The opening phrase, "[i]t is desirable," is crucial to an understanding of what this Article was designed to accomplish.

At the Conference in Vienna there was considerable discussion concerning the original draft of Article 5, paragraph 3, which required that the Parties

"shall not permit the possession of [psychotropic] substances except under legal authority." The Canadian and United Kingdom Delegations both expressed the opinion that although their existing laws had proscriptions against unlawful possession, their Governments now had the matter under study and did not favor inclusion of a feature in the treaty that would preclude them from considering whether possession of substances for one's own use must be handled by criminal laws. The position of the United States Delegation was similar to that of Canada and the United Kingdom. The result was that the conference decided to add the words "it is desirable that" preceding the words "the Parties do not permit the possession of substances in Schedules II, III, and IV except under legal authority."

Therefore, the phrase "[i]t is desirable" can hardly be interpreted as a binding obligation to forever retain criminal sanctions against the personal use of drugs. Article 5, paragraph 3, expresses the delegates' feelings that if the prevailing conditions in a country dictate that restrictions in relation to the personal use of such drugs are the most appropriate means of protecting the public health and welfare, the country should not permit their use except for medical and scientific purposes.

In its final form, Article 5, paragraph 3, does not deal with a Party's obligations regarding the personal use of a Schedule I substance. Article 7 specifies only that in connection with Schedule I substances the Parties shall "prohibit all use except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their governments or specifically approved by them."

Unquestionably, Article 7 imposes a greater obligation regarding Schedule I substances than does Article 5 regarding Schedule II, III, and IV substances. Parties must prohibit the personal use of Schedule I substances outside the bounds of medical and scientific purposes. However, in order to determine how a Party may prohibit such usage, recourse must be had, once again, to the penal provisions of Article 22.

Under the first part of Article 22, paragraph 1(a), a Party would be obligated to treat the personal possession and usage of a Schedule I substance for other than an approved scientific or medical purpose "as a punishable offense." However, it need not be treated as a serious offense, thereby obligating a Party to ensure that the drug offender is "liable to adquate punishment" such as incarceration. Instead, the personal possession and usage of a Schedule I substance for other than an approved scientific or medical purpose should be considered as subject to Article 22, paragraph 1(b) which provides:

> Notwithstanding the preceding sub-paragraph, when abusers of psychotropic substances have committed such offenses, the Parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintigration in conformity with paragraph 1 of Article 20.

The Psychotropic Convention is the result of the Parties' concern for "the health and welfare of mankind." Article 22, paragraph 1(b) indicates the Parties' awareness that the confinement of unlawful users of psychotropic substances in prisons may not, as a rule, contribute positively to the "health and welfare of mankind." Therefore, although the personal possession and/or usage of a Schedule I substance is considered as a "punishable offense" under Article 22, Article 22 also provides a flexible mechanism to treat and rehabilitate drug offenders. Each Party is free to apply its own interpretation to the term "punishable."

The "Psychotropic Substances Act of 1973" further buttresses this interpretation of Article 22. Section 8 of the "Act" would amend the Controlled Substances Act (21 U.S.C. 841, et seq.) by adding a new section:

> Section 412. Nothing in the Single Convention on Narcotic Drugs, the Convention of Psychotropic Substances, or other international treaties or agreements shall be construed to require a specific punishment for offenses involving narcotic drugs or psychotropic substances or to limit the provision of such treatment, education, after-care, rehabilitation and social reintegration as alternatives to conviction or punishment for such offenses as may be authorized by Title I of the Comprehensive Drug Abuse Prevention and Control Act of 1970 or by any other Act of Congress.

This Section ensures that the Convention cannot be construed to require a particular punishment or limit or forbid the provision of treatment alternatives to criminal prosecution and punishment for offenses related to psychotropic substances, if such alternatives are permitted in existing law.

CONCLUSION

Since the 1909 International Opium Conference in Shanghai, drug abuse has been recognized as an international problem incapable of purely national solution. Nations know that drug abuse has no boundaries and that drug smuggling ignores domestic borders. This concern has continued, and there has been a steady demand for a treaty approach regulating the traffic in drugs. The successive treaties in 1912, 1925 (two), 1931 (two), 1936, 1946, 1948, 1953, and 1961 led to today's interrelated international and domestic regulatory regimes, which attempt to limit the availability of drugs to medical and scientific purposes.

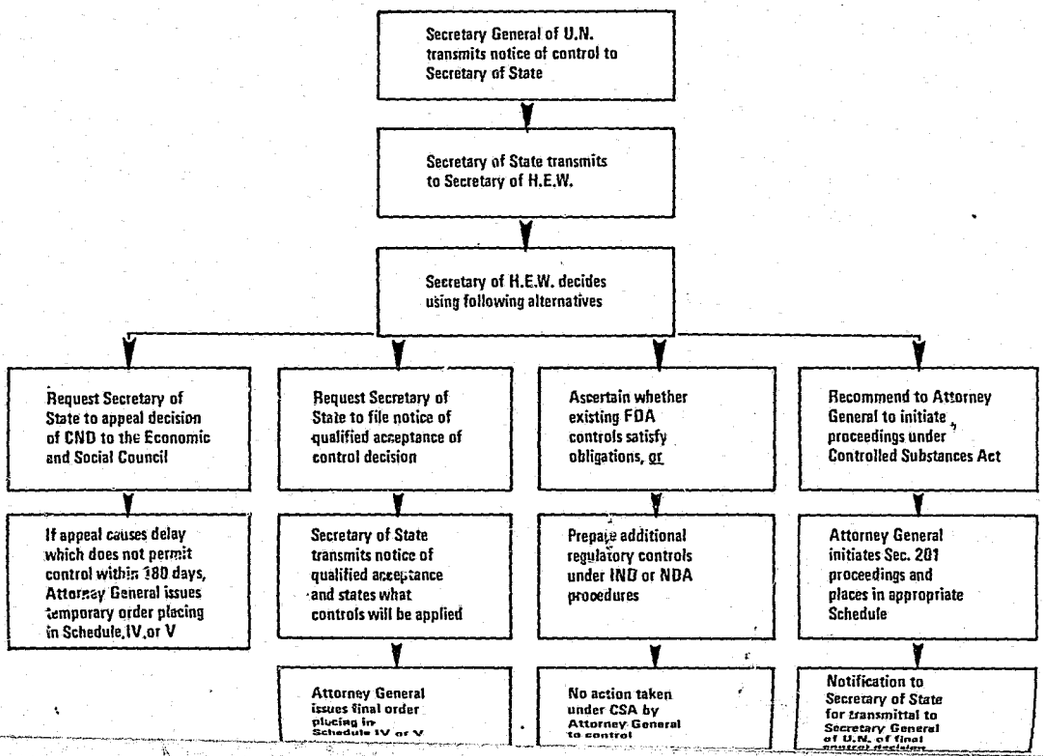
The year 1965 marked the beginning of a trend toward the recognition of a need for international controls over psychotropic substances. A resolution adopted that year by the World Health Assembly requested the Director-General of the organization "to study the feasibility of international measures for control of sedatives and stimulants." Following their consideration of this resolution, and recommendations by the Expert Committee on Addiction-Producing Drugs, the Commission on Narcotic Drugs agreed in 19[illegible] that an international agreement on the control of psychotropic substances was essential. A resolution adopted unanimously by the General Assembly of the United Nations in 1968 requested the Economic and Social Council to call upon the Commission on Narcotic Drugs to give urgent attention to the problem of the abuse of psychotropic substances, including the placing of such substances under international control. The ensuing consideration of the problem by the Council, the Commission, the World Health Organization and various governments led to the convening in early 1971 of the Conference in Vienna which adopted the new Convention.

With only a minimal sacrifice of national sovereignty, United States ratification of the Convention would: (1) strengthen our leadership in international drug abuse control; (2) further our efforts to reduce the diversion of psychotropic substances, as well as reduce the supply of, the demand for, and the trafficking in illicit narcotics and psychotropic substances; and (3) increase our credibility as a nation willing to apply effective controls at home in order to cooperate in preventing illicit trafficking in other countries.

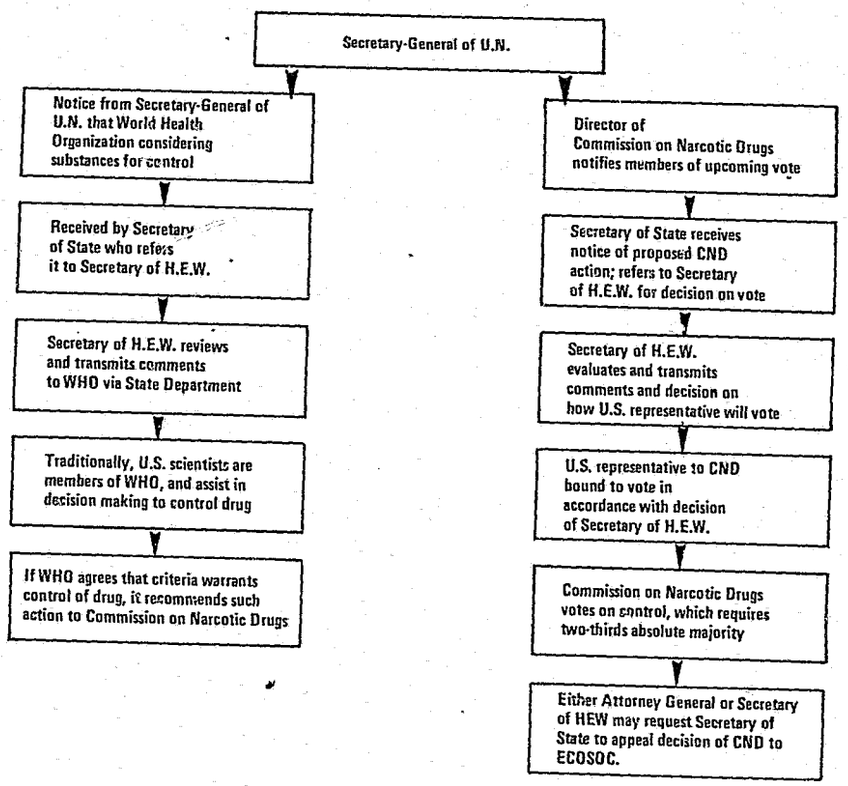
Conversely, our failure to ratify the Convention could prove to prejudice our efforts to suppress the illicit traffic in narcotics and to eliminate illicit and uncontrolled opium production. Inaction on our part would only serve to further buttress the fallacious argument that the major manufacturing countries want to eliminate drug abuse of the narcotic type only to replace it with the economically profitable abuse of psychotropic substances.

If the United States fails to ratify the Convention, we will compromise our attempts to convince other governments that we are serious about doing anything beyond trying to control our own herion addition problem. Success in the curbing of all forms of drug abuse in the United States must be predicated on more than a commitment to domestic improvements; there must also be a willingness to cooperate on an international scale.

U.S. Alternatives after International Control Decision



U.S. Participation in International Considerations



Senator BAYH. At this point I wish to insert in the record the De-
partment of Justice, Drug Enforcement Administration "Comments
on the Recommendations of the Commission on Marihuana and
Dangerous Drugs Relating to the Convention on Psychotropic Sub-
stances," dated September 7, 1973.

[The comments were marked "Exhibit No. 12" and are as follows:]

EXHIBIT No. 12

COMMENTS OF THE DRUG ENFORCEMENT ADMINISTRATION ON THE RECOMMENDATIONS OF THE COMMISSION ON MARIHUANA AND DRUG ABUSE REGARDING THE CONVENTION ON PSYCHOTROPIC SUBSTANCES

GENERAL OBSERVATION

In the Second Report of the Commission on Marihuana and Drug Abuse entitled "Drug Use in America: Problem in Perspective", the Commission dealt with the role of international agreements and action in the drug control area. In general, the Commission took a negative position as to the achievements of multilateral drug control agreements and specifically recommended against ratification by the United States of the Convention on Psychotropic Substances. See pages 230–235.

The Drug Enforcement Administration is in full accord with many of the Commission's recommendations. After careful study, however, it has come to different conclusions as to a few of them, particularly regarding the necessity for multilateral agreements and for ratification of the Convention on Psychotropic Substances.

PROGRESS OF RATIFICATION

On June 29, 1971, when President Richard M. Nixon transmitted a copy of the Convention to the Senate, he stated that "The Convention will close an important gap which now exists in international drug regulations," and urged the Senate to give its advice and consent to ratification. On February 2 and 3, 1972, legislation was introduced in the House of Representatives (H.R. 12572) and in the Senate (S. 3118). On February 4, 1972, the Committee on Foreign Relations held hearings and decided to hold the matter in abeyance pending progress on the implementing legislation. The ninety-second Congress took no further action on the legislation.

Since then, extensive discussions have been held between the Department of Health, Education, and Welfare, the Special Action Office for Drug Abuse Prevention, the Department of State, and the Drug Enforcement Administration of the Department of Justice. Several features have been added to the proposed legislation for the purpose of making certain that the Convention will not be used as a basis for imposing undue restrictions on medical treatment and research in connection with psychotropic substances, and that the role of the medical and scientific community in making decisions under the Convention shall be significant. In general, the proposed legislation has been drafted in such a way as to either allay the objections of the Commission or render them moot.

SUMMARY OF CONVENTION PROVISIONS

The Convention lists 32 substances in four schedules depending on the extent of their abuse, their potential for abuse and their therapeutic usefulness. The Convention contains a procedure for adding new substances to schedules, moving them among schedules and deleting them from the schedules. It provides gradations of controls, with the most stringent controls applied to Schedule I substances (such as LSD, mescaline and the tetrahydrocannabinols) and lesser restrictions on substances in Schedules II, III and IV. Most of the control provisions are similar to the control of narcotic drugs by other treaties, such as the Single Convention on Narcotic Drugs, 1961.

The Convention has provisions requiring that manufacturers and distributors must be licensed; that the use of Schedule I substances be restricted to scientific and very limited medical purposes by duly authorized persons;

that substances be supplied to consumers pursuant to medical prescriptions; that records be maintained by manufacturers, distributors, importers, and exporters; that warnings must be on labels or accompanying leaflets; that advertisement may not be aimed at the general public; that parties must employ a system of controlling importations and exportations; that parties must establish programs of drug abuse prevention, treatment, and rehabilitation.

DISCUSSION

On page 234, the Commission states that the Convention "has a number of important defects and should not be ratified in its present form." The principal points of contention gleaned from the report are as follows:

1. The Convention places undue restrictions on research.
2. The Convention demeans the role of the World Health Organization.
3. The Convention interferes improperly with domestic law in regard to—
   (a) imposing record-keeping requirements not required by our law; and
   (b) placing drugs under control without the approval of the Secretary of Health, Education, and Welfare.
4. The Convention intrudes upon national sovereignty—the international control system should not dictate how participating nations deal with the use of drugs within their own borders.

Each of these points are discussed below.

DOES THE CONVENTION PLACE UNDUE RESTRICTIONS UPON RESEARCH?

The controversy surrounding Article 7 of the Convention has centered on the requirement that all research with schedule I substances be done "by duly authorized persons in medical or scientific establishments which are directly under the control of their governments or specifically approved by them." There is no requirement inherent in this language that the establishment be a laboratory, a hospital, a university, or an institution. In fact, the term "institution" was considered and expressly discarded at the Vienna Conference because it would have placed an undesirable premium on size. Article 7 is not concerned with the size of an establishment; it merely requires that research be done in a medical or scientific establishment which has been approved by a control agency of the Party.

The position taken by the United States Delegation at the Conference should clarify the present confusion concerning the interpretation to be given the term "establishment." On February 4, 1971, the United States Alternate Representative, Donald E. Miller, made the following intervention:

> "Mr. Miller (United States of America) said that his delegation was firmly of the opinion that the term "establishment" referred to any place where medical and scientific work was being done. There was no need to specify its size, the type of installation or the number of staff employed. The establishment must be directly under the control of the government or specifically approved by it. Governments could be depended upon to interpret the clause judiciously and were not likely to abuse it. The wording of the Article was flexible enough to cover future research techniques and establishments which might later be regarded as appropriate and it would be unwise to restrict it to the types of institutions recognized at the present time as suitable. No more detailed definition of the term "establishment" should be attempted. (E/CONF. 58/SR. 10).

Subsequently, the Representative of the Federal Republic of Germany took note of this intervention, and no other delegation intervend in opposition to this position.

Flexibility, then, is an important attribute of Article 7. The term "establishment" was not meant to be synonymous with an institution, and it should not now be so considered. Since neither the size of a facility nor the number of staff employed in the facility was thought to be of overriding importance, there should not now be cause for concern that Article 7 would place "undue restrictions" on research done in the United States by prohibiting individual physicians from conducting research in their private offices after securing the requisite governmental approval.

Although we are convinced that the Convention is not overly restrictive, we recognize that such concern does exist. Therefore, to reassure the research community, the drafters of the legislative proposal implementing the treaty

have included the following provision to amend Section 303 of the Controlled Substances Act (P.L. 91-513; 84 Stat. 1236; 21 U.S.C. 823).

"Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this title."

This section clarifies the issue and should allay the concerns of the research community. Article 7 of the Convention will not be construed as imposing any registration requirements on research in addition to those now provided in Section 303 of the Controlled Substances Act.

DOES THE CONVENTION DEMEAN THE ROLE OF THE WORLD HEALTH ORGANIZATION?

It is factually inaccurate to allege that the Convention on Psychotropic Substances would demean the role of the World Health Organization by providing that the Commission on Narcotic Drugs could ignore the advice of WHO in making scheduling decisions. Although the Convention on Psychotropic Substances assigns the final responsibility on scheduling matters to the CND, WHO will continue to play a significant role in the decision-making process.

The prevalent view at the Vienna Conference was that although, traditionally, WHO had been relied upon to make drug control determinations, many countries now had a technological potential similar to WHO, and they would not accept a control procedure which would exclude independent review by representatives of their governments. It was not a matter of distrust; rather this mood was dictated by the fact that health officials in these countries desired to have an input in the decision-making process. Numerous new substances are being developed which can be abused, but which also may be indispensable for the medical treatment of millions of people. Therefore, a decision to control a psychotropic substance would be likely to have a substantial, world-wide impact. Health officials in other countries are no different than the interested health officials in the United States. Universally, these officials want to have an input into a decision-making process having the potential to significantly affect the health and welfare of their populations.

Although the Convention does not give the World Health Organization authority to veto a Commission decision, Article 2 does provide WHO with a degree of practical power which is compelling, if not absolute. Under Article 2, paragraph 4, WHO is wholly responsible for making a medical and scientific assessment of a substance which is being considered for international control; and paragraph 5 specifies that these "assessments shall be determinative as to medical and scientific matters." Although the Commission on Narcotic Drugs may take into account "economic, social, legal, administrative and other factors" as well as the WHO assessment in arriving at its conclusion, it is unthinkable that the responsible representatives of the 30 States members of the Commission would virtually ignore the scientific and medical findings of WHO.

The other representatives on the Commission are no less sincere, conscientious, and dedicated than our own representatives. They rely as much on their good-faith experiences in their own countries and the advice of health officials in formulating their positions, as the United States representatives rely on our experiences and advice in formulating ours. Therefore, it would be most illogical to conclude that a two-thirds majority of the 30 members of the Commission would disregard the findings and recommendations of the World Health Organization and proceed to take an improvident course of action.

DOES THE CONVENTION INTERFERE IMPROPERLY WITH DOMESTIC LAW IN REGARD TO RECORD-KEEPING REQUIREMENTS?

Article II of the Convention provides that records are to be maintained for "each acquisition and disposal" of schedule II substances by "institutions for hospitalization and care and scientific institutions," among others, and these institutions must have information "readily available" regarding the acquisition and disposal of schedule III substances. The Commission has misconstrued Article 11. Article 11 does not require burdensome record-

keeping by individual practitioners in connection with schedule II, III and IV substances.

The United States delegation participated in the work of the Ad Hoc Working Group concerned with Article 11, and cooperated extensively with the representative of the United Kingdom who was an instrumental force in drafting and obtaining concurrence in our final language. The United States representatives in our delegation recall that paragraphs 3 and 4 of Article 1 were never discussed or considered as applying to individual practitioners. The language of the Convention itself amply supports this recollection.

As has been previously demonstrated, the delegates to the Conference clearly differentiated between the terms "institutions" and "establishments". It should be recalled that in the final drafting of the Article 7 provision concerning the permissibility of a physician conducting schedule I research in a private office, the delegates discarded the term "institutions" because of the general consensus that this terminology would exclude the private practitioner working in his own office. In its place, the delegates agreed upon the broad term "establishments" which would cover the single practitioner as well. It is noteworthy, that in its final form, Article 11, paragraphs 3 and 4, provides for record-keeping by "institutions" and not "establishments". This language is purposeful and not a mere accident. The delegates did not intend to burden physicians with unnecessary record-keeping in connection with schedule II, III and IV substances, and they clearly drafted the Convention to conform to that intention. Therefore, the Convention does not require private practitioners to compile and maintain records for the acquisition and disposal of schedule II, III and IV substances.

Furthermore, even assuming there is doubt as to the interpretation of Article 11, the drafters of the legislation implementing the Convention have included the following provision to amend section 307(c) of the Controlled Substances Act:

"Nothing in the Convention on Psychotropic Substances shall be construed as in any way affecting, modifying, repealing, or superseding the provisions [of this section relating to record-keeping by practitioners]."

This section makes certain that no other interpretation will be given to Article 11 of the Convention by United States agencies. Even assuming the Commission is correct (and we do not believe it is), the implementing legislation should lay to rest any claims that we will be compelled to enact new record-keeping measures.

DOES THE CONVENTION INTERFERE IMPROPERLY WITH DOMESTIC LAW IN REGARD TO PLACING DRUGS UNDER CONTROL WITHOUT THE APPROVAL OF THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE?

The Convention on Psychotropic Substances is not a self-executing treaty; implementing legislation is needed for the United States to fulfill the obligations assumed under the Convention. The Drug Enforcement Administration, the Department of Health, Education, and Welfare, the Department of State, and the Special Action Office for Drug Abuse Prevention have engaged in extensive discussions concerning the required legislation. As a result of these discussions, the "Psychotropic Substances Act of 1973" was drafted.

In the Comprehensive Drug Abuse Prevention and Control Act of 1970, Congress carefully established a procedure for future determinations as to drugs and substances to be subject to the controls of the Act. So far as possible, the proposed bill will retain a balance between the extent to which control decisions should be based upon law enforcement criteria, and the extent to which such decisions should be based on medical and scientific determinations. The proposed bill provides that all scientific and medical determinations shall be made by the Secretary of Health, Education, and Welfare, and that these determinations shall be binding on the Attorney General and the Secretary of State during all international discussions and negotiations in regard to scheduling a drug or substance for control under the Convention.

Section 3 of the proposed bill would amend section 201 of the Controlled Substances Act (21 U.S.C. 811) to authorize and direct the Attorney Gen-

eral and the Secretary of Health, Education, and Welfare to take steps to control substances under the Convention and to prescribe applicable controls on psychotropic substances which are required by United States obligations under the Convention.

Paragraph (2) of section 3 provides that whenever notice is received that the World Health Organization is considering a drug or substance for control under the Convention, the Secretary of Health, Education, and Welfare shall be authorized to comment on the matter to the World Health Organization.

Paragraph (3) of section 3 specifies that in all matters relating to a decision to control a drug or substance by the United Nations Commission on Narcotic Drugs, the recommendations of the Secretary of Health, Education, and Welfare shall be binding on the United States representative, and if the Secretary recommends that a drug or substance should not be controlled in the manner proposed, the United States representative shall vote against such control.

Paragraph (4)(A) of section 3 requires that when notice is received from the Secretary-General of the United Nations that a substance has been designated for control under the Convention, the Secretary of Health, Education, and Welfare shall decide in consultation with the Attorney General whether existing controls in the United States are adequate to meet the treaty obligations. Even if existing controls adequately meet the requirements of the Convention, the Secretary may recommend to the Attorney General that he initiate proceedings in the usual way in accordance with subsections (a) and (b) of section 201 of the Controlled Substances Act (21 U.S.C. 811).

If existing controls in the United States do not meet the obligations of the Convention, and if the Secretary does not concur in the scheduling decision of the international organization, he shall (1) apply the controls applicable to new drugs, pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, or (2) if these controls are not adequate to protect the public health and safety, recommend to the Attorney General that he initiate proceedings under subsections (a) and (b) of section 201 (21 U.S.C. 811).

Also, whenever the Secretary of Health, Education, and Welfare does not concur in the scheduling decision of the international organizations, the Secretary shall request the Secretary of State to transmit to the Secretary-General of the United Nations a notice of qualified acceptance; and request the Secretary of State to institute proceedings to review the decision by the Economic and Social Council of the United Nations.

Paragraph (4)(B) of section 3 provides that if the regular control procedures of subsections (a) and (b) of section 201 (21 U.S.C. 811) will not be completed within the time limit of 180 days specified in the Convention, the Attorney General after consultation with the Secretary of Health, Education, and Welfare, shall, unless the substance is already controlled under the Controlled Substances Act, issue a temporary order controlling the substance under either schedule IV or V, whichever is most appropriate. Also, the Attorney General after consultation with the Secretary, shall except the substance from such controls of the Controlled Substances Act as he finds are not necessary to carry out United States obligations under the Convention.

Paragraph (4)(C) of section 3 provides that if the Economic and Social Council reverses the scheduling decision of the international organizations, the Attorney General shall vacate the temporary control order. If the decision is affirmed, the Attorney General after consultation with the Secretary shall, unless subsequent action has been taken to control the substance, issue a final order controlling the substance under schedule IV or V.

Paragraph (4)(D) allows both the Attorney General and the Secretary of Health, Education, and Welfare to request through the Secretary of State a review by the international organizations of the scheduling decision based on new or additional information.

In view of this extensive decision-making responsibility, it is hardly accurate to claim that the United States will be required to control drugs under the Convention without the approval of the Secretary of Health, Education and Welfare.

SHOULD THE TREATY INTRUDE UPON NATIONAL SOVEREIGNTY AND DICTATE HOW THE UNITED STATES SHALL DEAL WITH THE USE OF DRUGS WITHIN ITS OWN BORDERS?

International concern about drug abuse first brought nations together 65 years ago to plan international measures designed to limit certain drugs to medical and scientific uses. This spirit of cooperation has led to the development of many treaties and international organizations which have played a significant role in drug abuse control. In the general interest of mankind, more than 100 governments around the world have consented to limit their sovereign rights and enact domestic legislation to regulate legitimate commerce and suppress illicit traffic in drugs.

There certainly is nothing new or novel in the concept that countries may rightfully insist that international controls be established as a preventative measure before it effects them. They may insist that all governments establish a system of universally applied controls which are humanitarian, with less concern for economic or financial factors. This concern has led to a variety of concessions in regard to national sovereignty such as nuclear test bans, non-proliferation of atomic weapons, protection of copyrights, ban on obscene publications, protection of migratory birds, and prohibition of traffic in women and children.

The fallout from atomic explosions within one country can effect other nations; slavery of any kind within the confines of one country should be the concern of all nations; and in order to protect migratory birds and copyrights, it is fundamental that countries agree to apply adequate domestic controls.

We have learned in the United States that little can be accomplished by applying tight controls in one State if it is easy to obtain the desired drugs in surrounding States. A uniform system of control and sanctions on domestic uses of drugs are fundamental to the protection of all countries.

CONCLUSION

Since the 1909 International Opium Conference in Shanghai, drug abuse has been recognized as an international problem incapable of purely national solution. Nations know that drug abuse has no boundaries and that drug smuggling ignores domestic borders. This concern has continued, and there has been a steady demand for a treaty approach regulating the traffic in drugs. The successive treaties in 1912, 1925 (two), 1931 (two), 1936, 1946, 1948, 1953, and 1961 led to today's interrelated international and domestic regulatory regimes, which attempt to limit the availability of drugs to medical and scientific purposes.

The year 1965 marked the beginning of a trend toward the recognition of a need for international controls over psychotropic substances. A resolution adopted that year by the World Health Assembly requested the Director-General of the organization "to study the feasibility of international measures for control of sedatives and stimulants." Following their consideration of this resolution, and recommendations by the Expert Committee on Addiction-Producing Drugs, the Commission on Narcotic Drugs agreed in 1966 that an international agreement on the control of psychotropic substances was essential. A resolution adopted unanimously by the General Assembly of the United Nations in 1968 requested the Economic and Social Council to call upon the Commission on Narcotic Drugs to give urgent attention to the problem of the abuse of psychotropic substances, including the placing of such substances under international control. The ensuing consideration of the problem by the Council, the Commission, the World Health Organization and various governments led to the convening in early 1971 of the Conference in Vienna which adopted the new Convention.

With only a minimal sacrifice of national sovereignty, United States ratification of the Convention would: (1) strengthen our leadership in international drug abuse control; (2) further our efforts to reduce the supply of, the demand for, and the trafficking in illicit narcotics and psychotropic substances; and (3) increase our credibility as a nation willing to apply effective controls at home in order to cooperate in preventing illicit trafficking in other countries.

Conversely, our failure to ratify the Convention could prove to prejudice our efforts to suppress the illicit traffic in narcotics and to eliminate illicit and uncontrolled opium production. Inaction on our part would only serve to further buttress the fallacious argument that the major manufacturing countries want to eliminate drug abuse of the narcotic type only to replace it with the economically profitable abuse of psychotropic substances.

If the United States fails to ratify the Convention, we will compromise our attempts to convince other governments that we are serious about doing anything beyond trying to control our own heroin addiction problem. Success in the curbing of all forms of drug abuse must be predicated on more than commitment to domestic improvements, there must also be a willingness to limit our own freedom of action and to give account of our activities to international organs.

On balance, we believe that the positive features of the Convention on Psychotropic Substances, coupled with the urgency of the growing problem of drug abuse in many countries as a result of the lack of adequate domestic and international controls, outweigh the considerations discussed by the Commission on Marihuana and Drug Abuse, and that the interest of the United States would be best served by early ratification of the treaty.

U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
Washington, D.C., March 7, 1974.

HON. BIRCH BAYH,
Chairman, Subcommittee to Investigate Juvenile Delinquency,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR BAYH: This is in response to your letter of March 1, 1974, concerning my recent appearance before your Subcommittee. I am pleased to have had the opportunity of testifying in connection with legislation to implement the Psychotropic Convention.

I am very much aware of the important role which you and your Subcommittee have played in past drug control decisions. Please be assured that I am anxious that your interests and activities continue. I believe such minor differences of opinion as we may occasionally have with regard to specific decisions are far outweighed by the broad areas of agreement through which our continued cooperation can help to serve the nation.

Sincerely,

JOHN R. BARTELS, Jr.,
Administrator.

Senator BAYH. Our next witness is Dr. Roger Egeberg. Dr. Egeberg, I understand you have to catch a plane, thus we will dispense with the normal niceties and you may proceed in any manner that you see fit. Rest assured that your prepared statement will be included in the record in its entirety at the close of your remarks.

STATEMENT OF DR. ROGER O. EGEBERG, INTERIM ADMINISTRATOR, ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION AND WELFARE; ACCOMPANIED BY PETER BARTON HUTT, ASSISTANT GENERAL COUNSEL, FOOD AND DRUG ADMINISTRATION; AND DR. JOHN JENNINGS, ASSOCIATE COMMISSIONER FOR MEDICAL AFFAIRS, FOOD AND DRUG ADMINISTRATION

Dr. EGEBERG. Mr. Chairman, as you said, I do have a plane to catch. However, I have a little leeway by not changing pants. [Laughter.] You know I am sure, Mr. Peter Hutt, who is Assistant General Counsel for the Food and Drug Administration in HEW.

Senator BAYH. Yes.

Dr. EGEBERG. And Dr. John Jennings, who is Associate Commissioner for Medical Affairs of the Food and Drug Administration. He was at the Vienna Conference.

I want to thank you for the opportunity to appear before you today. I am here to speak in favor of S. 2544, a bill to discharge the United States obligations under the Convention on Psychotropic Substances by amending the Comprehensive Drug Abuse and Control Act of 1970 and other laws.

BACKGROUND

The background of this Convention is well known. Early in 1971 representatives of the concerned departments of the executive branch and several distinguished members of the Congress met in Vienna with representatives of many other nations to draft an agreement to aid all nations in the control of the abuse of psychotropic drugs. This agreement was signed in Vienna on February 21, 1971. On June 29, 1971, President Nixon transmitted the Convention to the Senate for its advice and consent to ratification. Early in 1972, hearings were held in the Senate Committee on Foreign Relations where consideration for ratification was deferred pending the enactment of implementing legislation. This legislation before you today was drafted by the Department of Justice, with active participation and substantial assistance from the Department of Health, Education, and Welfare, and transmitted to the Congress on September 19, 1973.

I would like to direct my comments to the Convention itself as well as the bill before us. The broad purpose of the Convention is to establish a formal mechanism whereby countries may directly collaborate in their mutilateral efforts to limit stimulant, depressant and hallucinogenic drugs to medical and scientific purposes. In stating a common international goal accepted by Parties to the Convention, nations recognize that psychotropic drugs are just as much a matter of concern as narcotics. The United States certainly has public health problems with both classes of drugs; so do many other countries. The rate and speed with which drugs move around the world make it essential that a common denominator among countries be found and followed in our efforts to prevent drug problems. The only means of achieving some degree of consistency in the approach followed by many countries is an international agreement such as this.

Let me now turn from general remarks on the need for this international agreement to the implementing legislation itself. In conjunction with hearings on the Convention held by the Senate Committee on Foreign Relations on February 4, 1972, the Department of Health, Education, and Welfare submitted a statement for the record. That statement set forth the Department's understanding of articles of the Convention which involve health and scientific considerations. Legislation designed to implement the Convention was prepared by the Department of Justice, with the cooperation of DHEW and introduced in the 92d Congress as S. 3118. Similar legislation was introduced early in the 93d Congress by the chairman of this subcommitee as S. 1646. Following further review by the two Departments, their proposal was extensively revised and reintroduced in the 93d Congress as S. 2544. I would like to elaborate on the

changes made in the bill which will provide additional protection to the American scientific and health communities. It is these changes which, we feel, are responsive to the concerns previously voiced by several groups at the hearings of the Senate Foreign Relations Committee.

CONTROL OF DRUGS

First, let me discuss what is perhaps the most complex issue in this bill. It is the procedures proposed for controlling psychotropic drugs. Under the terms of the Convention, either a party to the Convention or the World Health Organization may notify the Secretary General of the United Nations of the need to control a specific drug. In either case, the WHO makes a determinative finding concerning medical and scientific matters. The U.N. Commission on Narcotic Drugs then decides on the control and scheduling of the drug, with the Secretary General notifying all parties and organizations concerned. In regard to the organization which makes the decision to control, the Convention differs from the procedures established in our existing domestic law. However, the implementing legislation for the Convention makes this process follow the procedures of Public Law 91–513 as closely as possible in the following specific ways.

One, whenever the World Health Organization is considering a drug for control under the Convention, the Secretary of Health, Education, and Welfare is directed to comment on the issues to the WHO, thus ensuring that any information and opinions gathered by medical practitioners and scientists in the United States will be considered by the WHO.

Two, the position of the U.S. Representative to the Commission on Narcotic Drugs meetings where control of drugs is considered will be based and determined by the finding of the Secretary of HEW. With the amount of research in this country on the abuse of drugs we expect that the U.S. position will carry an influence in the Commission beyond the single vote that we cast out of the thirty-member countries.

You recall that to control a drug in the Commission, a two-third vote is needed. The other side of this coin is that one-third plus 1 or 11 votes will stop a drug from being controlled. With adequate health representation on the U.S. Delegation to Commission meetings, we should be able to gain more influence in support of the United States' position with other countries. We already have.

Three, if in spite of the first two measures the vote of the Commission goes against the U.S. position, the Secretary of HEW is directed by this legislation to request the Secretary of State to ask for a review of the scheduling decision of the Commission by the Economic and Social Council of the United Nations. That is the Council under whose authority the Commission operates. This presents a third opportunity for the United States to present its position to an international body together with all relevant information upon which the request for review is based.

Four, if these procedures are not successful in reversing a decision of the Commission, the United States still has the right of qualified acceptance of the decision which means that we do not need to invoke the stringent controls of schedules I through III of the Comprehensive Drug Abuse Prevention and Control Act but may use its schedule IV or V to establish minimal control measures thus allowing us flexibility at home in meeting our international obligations.

Five, further protection of U.S. interests is provided in the use of the Federal Food, Drug and Cosmetic Act. If the United States disagrees with a control or scheduling decision of the Commission, the new-drug controls already in existence in the FD&C Act may be sufficient to meet U.S. obligations. Since the convention does not require any country to schedule a drug, but only makes it necessary that countries invoke certain measures to limit its use, the United States is free to employ any appropriate congressional authority to establish these controls. The FD&C Act provides machinery which may be used to meet international obligations. This act requires: Licensing of new drugs and limiting all drugs to proven medical purposes. The act enables the restriction of any potentially harmful drug to prescription status when this is necessary to insure safe use and requires adequate warnings on all drug labeling. Records and reports must be submitted by industry on all new drugs. It permits inspection of facilities and records for all prescription drugs and establishes total import-export controls over new drugs and strong import controls over all other drugs. Criminal as well as civil sanctions are permitted. Each drug will be considered separately to determine whether these requirements meet U.S. obligations under the treaty.

Taken together, these five safeguards insure that medical and scientific information will continue to be the basis of U.S. opinions on the control of drugs. They make it highly unlikely that the medical and scientific recommendations of the Secretary of the Department of Health, Education, and Welfare will be overruled under this treaty.

The foregoing seeks to take into account the legitimate concerns voiced by representatives of the health community with respect to the impact of this bill on the control of drugs. Other issues that have been of equal concern are the wide latitude of interpretation of provisions of the convention concerning research on controlled drugs, requirements for recordkeeping, penalties for unauthorized possession and distribution, and protection of confidentiality of records and identifying characteristics of patients and research subjects. In each of these areas, the bill clarifies any ambiguity and essentially precludes interpretation of the convention which would require addition legislation to meet our obligations.

Research: Concerning research, section 10 of the bill says that article 7 of the convention:

> Shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this title.

This means that existing controls on medical researchers under section 505(i) of the Federal Food, Drug and Cosmetic Act as well as the registration requirements of section 303 of the Controlled Substances Act—Title II of Public Law 91–513—are adequate and that

any scientist or individual practitioner who is qualified to conduct research will not have restrictions placed on him as a result of the U.S. ratification of the convention.

Recordkeeping: New recordkeeping obligations of the United States under the convention apply solely to manufacturers of psychotropic drugs. Section 5 of the bill states that manufacturers registered under section 303 of the Controlled Substances Act may be required to make periodic reports on psychotropic substances to the Attorney General to comply with article 16 of the convention. These reports from the manufacturers are necessary for the United States to supply to the International Narcotics Control Board information concerning: quantities of controlled drugs manufactured; quantities exported and imported; stocks held; and quantities used for manufacture of other substances—depending upon the particular schedule in which the substance is located. Reports to the Secretary General will be made on an annual basis on illicit traffic and abuse of controlled psychotropic drugs.

No additional recordkeeping is necessary by research scientists or individual practitioners to meet our obligations under the Convention. This is assured by Section 11 of the bill, which in effect provides that present provisions of Section 307 of the Controlled Substances Act satisfy all recordkeeping requirements of the Convention insofar as such persons are concerned.

Confidentiality: The records of patients in treatment and subjects participating in research projects are protected by section 9 of this bill. This protection extends beyond the Convention on Psychotropic Substances to include other international treaties or agreements, specifically prohibiting any interpretation of them that might conceivably alter any Federal, State, or local legislative or regulatory protection or confidentiality. To avoid any questions about the intent of this language, identical amendments are made to the Controlled Substances Act—section 502—and to the Public Health Service Act—Section 303.

Penalties: Section 8 of the bill amends part D of the Controlled Substances Act, to make certain that no provision of international treaties or agreements, including article 22 of the Psychotropic Convention, shall be interpreted to require a particular punishment for offenses involving psychotropic or other controlled drugs. This is intended to indicate that the United States, in carrying out its international agreements to limit the use of drugs to legally authorized individuals, will follow congressional enactments which define drug offenses and related penalties. Section 8 also insures that international treaties and agreements are not construed to limit or forbid the provision of treatment, education, and other alternatives to criminal prosecution and punishment for drug offenses, which is another way of saying that we feel we must have flexibility in making domestic policy and that this convention has sufficient latitude to accommodate varying alternative responses to drug abuse.

If I have concentrated on those features of the bill which assure adequate consideration of the legitimate concerns of the U.S. medical and scientific community. The bill is intended to be precise about what the United States is and is not obligated to do under the convention, in the hope that this will be of assistance in the Senate's review of the legislation and of the convention.

In closing, may I say that this legislation meets the objections raised at previous hearings concerning ratification of the Convention on Psychotropic Substances. The implementing legislation clearly specifies what the obligations of the United States are, thus preventing future problems of interpretation. The Congress is well informed on the need for the United States to cooperate with other nations in establishing effective controls over international traffic in psychotropic drugs, as has been done for narcotic drugs. We urge your favorable consideration of this bill.

This concludes my statement, Mr. Chairman.

Mr. Hutt and Dr. Jennings and I will be pleased to answer any questions for another 10 minutes that you and your subcommittee members may have, and I hope you will forgive me if I do leave in 10 minutes because I do have to catch a plane to go to Geneva for meetings of the Commission on Narcotic Drugs.

Senator BAYH. I appreciate your significant contribution, Dr. Egeberg. I have some questions that I am sure can be answered in writing, because of the brevity of time.

There are two or three areas where, as you know, concern has been expressed from those in the medical community, researchers and the like. I just wondered how much flexibility we have regarding medical definitions, the concerns expressed by the researchers, and the matter of confidentiality.

Dr. EGEBERG. S. 2544 has been worded so that it fits with Public Law 91-513. Accordingly, any person that the Secretary of Health, Education, and Welfare or his delegates consider appropriate to accomplish psychotropic substances research, and who has gotten the approal of DEA so far as safeguarding the drugs, can carry out such research. Such person may be an individual scientist or practitioners; it does not have to be a group or medical school, or a big laboratory.

Senator BAYH. Yes. Well, there seems to be some ambiguity relative to the term "sound medical practice."

Who is going to define that term? How will that be defined?

Dr. EGEBERG. Well, I would hope HEW would do that. Would you like to talk to that, Mr. Hutt?

Mr. HUTT. I believe that section 4 of the Comprehensive Drug Abuse and Prevention and Control Act of 1970 provides that the Secretary of HEW shall set standards of professional practice with respect to any medical treatment of narcotic addicts.

Senator BAYH. Well, inasmuch as we are making some legislative history now, would it be your interpretation that this same provision would apply to the provisions of the treaty?

Mr. HUTT. Well, I would certainly so interpret it. I notice, Senator, that in your bill, section 11 would add a provision that explicitly provides that the issue of how to interpret sound medical practice would rest with the Secretary, after consultation with the Attorney General. We viewed that as unnecessary, and I did discuss this with DEA. It is their interpretation that this is the way it would be anyway, even without your provision.

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Senator BAYH. Fine. Senator Hruska do you have any questions?

Senator HRUSKA. Thank you, Mr. Chairman.

I do have some questions, Mr. Chairman, that I would like to submit to Dr. Egeberg for reply. I will take advantage of this opportunity to suggest, Mr. Chairman, that Dr. Egeberg's precedents in this work are very notable. My own recollection is that you testified was it in 1969 on the Controlled Substances Act, before our committee?

Dr. EGEBERG. I believe I did, sir.

Senator HRUSKA. I believe Senator Dodd was still here presiding.

Senator BAYH. Yes, he was.

Senator HRUSKA. And I recall well you had only shortly before that made an appearance on the national scene in this regard. We were quite heartened when you stuck it out and stayed. We are gratified at the record that you have made in this field and the expertise which you have added. I make that observation, Mr. Chairman, because this is a continuing process and has a longer legislative history. If we are to move forward by way of a convention and this implementing legislation, then we have to draw on that earlier experience.

It is in that sense and for that reason that I make these observations.

Mr. Chairman, I will present Dr. Egeberg with some questions to which he may furnish replies for the record at a later time.

Dr. EGEBERG. Thank you, sir.

Senator BAYH. I also have some questions and if you do not mind, perhaps we could coordinate with our staffs and send a joint letter to Dr. Egeberg.

Senator HRUSKA. That would be fine.

Senator BAYH. We will permit you to take your leave. I hate to have you come up here with all of this expertise and not spend any more time, but if it does not offend you unnecessarily, we will just say, "Head for Europe."

Dr. EGEBERG. Well, we have a few arguments ahead of us over there, as I think you are aware.

Senator BAYH. I am sure we will be well represented.

Mr. HUTT. We will be happy to answer those questions for the record, Senator.

Senator BAYH. All right. Thank you.

Mr. HUTT. Thank you.

Senator BAYH. Mr. Hutt and Dr. Jennings, we appreciate your being here also.

Dr. EGEBERG. Thank you, sir.

[Dr. Egeberg's biographical sketch and prepared statement is as follows:]

ROGER O. EGEBERG, M.D., SPECIAL ASSISTANT FOR HEALTH POLICY, SPECIAL CONSULTANT TO THE PRESIDENT ON HEALTH AFFAIRS

Dr. Roger O. Egeberg was designated July 1, 1971 by President Nixon to be Special Consultant to the President on Health Affairs and Special Assistant to the HEW Secretary for Health Policy.

In his dual role Dr. Egeberg's responsibilities focus upon presenting the Administration's health initiatives to the Nation and relating those to the long-term health requirements of the country.

Prior to his assumption of these duties Dr. Egeberg served as Assistant Secretary for Health and Scientific Affairs from July 18, 1969.

Dr. Egeberg was born in Chicago, Illinois, November 13, 1903. He attended elementary and secondary schools in Chicago, Oslo, Norway and Gary. He received his B.A. degree from Cornell University, Ithaca, New York in 1925, and his M.D. from Northwestern University, Evanston, Illinois, in 1929.

Dr. Egeberg served in the U.S. Army Medical Corps from 1942 to 1946 (Major-Colonel) and was personal physician and aide-de-camp to General of the Army Douglas MacArthur, 1944–45.

Following post-graduate training he practiced medicine, specializing in internal medicine in Cleveland, Ohio from 1932–42.

He was Chief of Medical Services, VA Hospital, Los Angeles, California 1946–56; and Medical Director, Los Angeles County Hospital 1956–58. Professor of Medicine, University of California at Los Angeles, 1948–64; and the College of Medical Evangelists (now Loma Linda University School of Medicine) Loma Linda, California 1956–64. He was a Professor of Medicine, University of Southern California, 1956–69 and Dean of the School of Medicine, USC, 1964–1969.

Dr. Egeberg served as a member of the President's Advisory Commission on Narcotic and Drug Abuse. He was a member of the National Advisory Cancer Council, 1964–1968; the Special Medical Advisory Group to the Veterans Administration, 1965–69, and Chairman 1968–69; and the California Board of Public Health President 1963–68. He was Chairman of the Governor's Committee for the Study of Medical Care and Health in California from 1959–1960, and Chairman of the California Committee on Regional Medical Programs, 1967–69.

He is a Diplomate, American Board of Internal Medicine; a Fellow of the American College of Physicians and member of the American Medical Association.

Dr. Egeberg has published numerous articles in professional medical and scientific journals, his particular field of interest being the deep mycoses.

He is married to the former Margaret McEchron Chahoon and they have three daughters, Dagny, Sarah, and Karen and one son Roger Olaf.

Oct. 2, 1973, appointed Interim Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

PREPARED STATEMENT OF DR. ROGER O. EGEBERG, INTERIM ADMINISTRATOR, ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman, and members of the Subcommittee, thank you for the opportunity to appear before you today. I am here to speak in favor of S. 2544, a bill to discharge U.S. obligations under the Convention on Psychotropic Substances by amending the Comprehensive Drug Abuse and Control Act of 1970 and other laws.

BACKGROUND

The background of this Convention is well known. Early in 1971 representatives of the concerned departments of the Executive Branch and several distinguished members of the Congress met in Vienna with representatives of many othr nations to draft an agreement to aid all nations in the control of the abuse of psychotropic drugs. This agreement was signed in Vienna on February 21, 1971. On June 29, 1971, President Nixon transmitted the Convention to the Senate for its advice and consent to ratification. Early in 1972, hearings were held in the Senate Committee on Foreign Relations where consideration for ratification was deferred pending the enactment of implementing legislation. This legislation before you today was drafted by the Department of Justice, with active participation and substantial assistance from the Department of Health, Education, and Welfare, and transmitted to the Congress on September 19, 1973.

I would like to direct my comments to the Convention itself as well as the bill before us. The broad purpose of the Convention is to establish a formal mechanism whereby countries may directly collaborate in their multilateral efforts to limit stimulant, depressant and hallucinogenic drugs to medical and

scientific purposes. In stating a common international goal accepted by Parties to the Convention, nations recognize that psychotropic drugs are just as much a matter of concern as narcotics. The United States certainly has public health problems with both classes of drugs; so do many other countries. The rate and speed with which drugs move around the world make it essential that a common denominator among countries be found and followed in our efforts to prevent drug problems. The only means of achieving some degree of consistency in the approach followed by many countries is an international agreement such as this.

Let me now turn from general remarks on the need for this international agreement to the implementing legislation itself. In conjunction with hearings on the Convention held by the Senate Committee on Foreign Relations on February 4, 1972, the Department of Health, Education, and Welfare submitted a statement for the record. That statement set forth the Department's understanding of articles of the Convention which involve health and scientific considerations. Legislation designed to implement the Convention was prepared by the Department of Justice, with the cooperation of DHEW and introduced in the 92d Congress as S. 3118. Similar legislation was introduced early in the 93d Congress by the Chairman of this Subcommittee as S. 1646. Following further review by the two Departments, their proposal was extensively revised and reintroduced in the 93d Congress as S. 2544. I would like to elaborate on the changes made in the bill which will provide additional protection to the American scientific and health communities. It is these changes which, we feel, are responsive to the concerns previously voiced by several groups at the hearings of the Senate Foreign Relations Committee.

CONTROL OF DRUGS

First let me discuss what is perhaps the most complex issue in this bill. It is the procedures proposed for controlling psychotropic drugs. Under the terms of the Convention, either a party to the Convention or the World Health Organization may notify the Secretary-General of the United Nations of the need to control a specific drug. In either case, the WHO makes a determinative finding concerning medical and scientific matters. The U.N. Commission on Narcotic Drugs then decides on the control and scheduling of the drug, with the Secretary-General notifying all parties and organizations concerned. In regard to the organization which makes the decision to control, the Convention differs from the procedures established in our existing domestic law. However, the implementing legislation for the Convention makes this process follow the procedures of P.L. 91–513 as closely as possible in the following specific ways: One, whenever the WHO is considering a drug for control under the Convention, the Secretary of Health, Education, and Welfare is directed to comment on the issues to the WHO, thus ensuring that any information and opinions gathered by medical practitioners and scientists in the United States will be considered by the WHO.

Two, the position of the U.S. Representative to the CND meetings where control of drugs is considered will be based on and determined by the finding of the Secretary of HEW. With the amount of research in this country on the abuse of drugs, we expect that the U.S. position will carry an influence in the Commission beyond the single vote that we cast out of the thirty-member countries.

You recall that to control a drug in the Commission, a two-thirds vote is needed. The other side of this coin is that one third plus one, or eleven votes will stop a drug from being controlled. With adequate health representation on the U.S. Delegation to Commission meetings, we should be able to gain more influence in support of the United States' position with other countries.

Three, if, in spite of the first two measures, the vote of the Commission goes against the U.S. position, the Secretary of HEW is directed by this legislation to request the Secretary of State to ask for a review of the scheduling decision of the Commission by the Economic and Social Council of the United Nations. This presents a third opportunity for the United States to present its position to an international body together with all relevant information upon which the request for review is based.

Four, if these procedures are not successful in reversing a decision of the Commission, the U.S. still has the right of qualified acceptance of the decision which means that we do not need to invoke the stringent controls of Schedules I through III of the Comprehensive Drug Abuse Prevention and Control Act but may use its Schedule IV or V to establish minimal control measures thus allowing us flexibility at home in meeting our international obligations.

Five, further protection of U.S. interests is provided in the use of the Federal Food, Drug and Cosmetic Act. If the U.S. disagrees with a control or scheduling decision of the Commission, the new drug controls already in existence in the FD&C Act may be sufficient to meet U.S. obligations. Since the Convention does not require any country to schedule a drug, but only makes it necessary that countries invoke certain measures to limit its use, the U.S. is free to employ any appropriate Congressional authority to establish these controls. The FD&C Act provides machinery which may be used to meet international obligations. This Act requires: licensing of new drugs and limiting all drugs to proven medical purposes. The Act enables the restriction of any potentially harmful drug to prescription status when this is necessary to ensure safe use and requires adequate warnings on all drug labelling. Records and reports must be submitted by industry on all new drugs. It permits inspection of facilities and records for all prescription drugs and establishes total import-export controls over new drugs and strong import controls over all other drugs. Criminal as well as civil sanctions are permitted. Each drug will be considered separately to determine whether these requirements meet U.S. obligations under the Treaty.

Taken together, these five safeguards insure that medical and scientific information will continue to be the basis of United States' opinions on the control of drugs. They make it highly unlikely that the medical and scientific recommendations of the Secretary of the Department of Health, Education, and Welfare will be overruled under this Treaty.

The foregoing seeks to take into account the legitimate concerns voiced by representatives of the health community with respect to the impact of this bill on the control of drugs. Other issues that have been of equal concern are the wide latitude of interpretation of provisions of the Convention concerning research on controlled drugs, requirements for recordkeeping, penalties for unauthorized possession and distribution, and protection of confidentiality of records and identifying characteristics of patients and research subjects. In each of these areas, the bill clarifies any ambiguity and essentially precludes interpretation of the Convention which would require additional legislation to meet our obligations.

RESEARCH

Concerning research, Section 10 of the bill says that Article 7 of the Convention "shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this title". This means that existing controls on medical researchers under Section 505(i) of the Federal Food, Drug and Cosmetic Act as well as the registration requirements of Section 303 of the Controlled Substances Act (Title II of P.L. 91–513) are adequate and that any scientist or individual practitioner who is qualified to conduct research will not have restrictions placed on him as a result of U.S. ratification of the Convention.

RECORDKEEPING

New recordkeeping obligations of the U.S. under the Convention apply solely to manufacturers of psychotropic drugs. Section 5 of the bill states that manufacturers registered under Section 303 of the Controlled Substances Act may be required to make periodic reports on psychotropic substances to the Attorney General to comply with Article 16 of the Convention. These reports from the manufacturers are necessary for the U.S. to supply to the International Narcotics Control Board information concerning: quantities of controlled drugs manufactured; quantities exported and imported; stocks held; and quantities used for manufacture of other substances (depending upon the particular schedule in which the substance is located). Reports to the Secretary-General will be made on an annual basis on illicit traffic and abuse of controlled psychotropic drugs.

No additional recordkeeping is necessary by research scientists or individual practitioners to meet our obligations under the Convention. This is assured by Section 11 of the bill, which in effect provides that present provisions of Section 307 of the Controlled Substances Act satisfy all recordkeeping requirements of the Convention insofar as such persons are concerned.

CONFIDENTIALITY

The records of patients in treatment and subjects participating in research projects are protected by Section 9 of the bill. This protection extends beyond the Convention on Psychotropic Substances to include other international treaties or agreements, specifically prohibiting any interpretation of them that might conceivably alter any Federal, state or local legislative or regulatory protection of confidentiality. To avoid any questions about the intent of this language, identical amendments are made to the Controlled Substances Act (Section 502) and to the Public Health Service Act (Section 303).

PENALTIES

Section 8 of the bill amends Part D of the Controlled Substances Act, to make certain that no provision of international treaties or agreements, including Article 22 of the Psychotropic Convention, shall be interpreted to require a particular punishment for offenses involving psychotropic or other controlled drugs. This is intended to indicate that the U.S., in carrying out its international agreements to limit the use of drugs to legally authorized individuals, will follow Congressional enactments which define drug offenses and related penalties. Section 8 also ensures that international treaties and agreements are not construed to limit or forbid the provision of treatment, education, and other alternatives to criminal prosecution and punishment for drug offenses, which is another way of saying that we feel we must have flexibility in making domestic policy and that this Convention has sufficient latitude to accommodate varying alternative responses to drug abuse.

I have concentrated on those features of the bill which assure adequate consideration of the legitimate concerns of the United States' medical and scientific community. The bill is intended to be precise about what the United States is and is not obigated to do under the Convention, in the hope that this will be of assistance in the Senate's review of the legislation and the Convention.

In closing, may I say that this legislation meets the objections raised at previous hearings concerning ratification of the Convention on Psychotropic Substances. The implementing legislation clearly specifies what the obligations of the U.S. are, thus preventing future problems of interpretation. The Congress is well informed on the need for the United States to cooperate with other nations in establishing effective controls over international traffic in psychotropic drugs, as has been done for narcotic drugs. We urge your favorable consideration of this bill.

This concludes my statement, Mr. Chairman. Mr. Hutt and I will be pleased to answer any questions you and your Subcommittee members may have.

(Subsequently, a joint letter was sent to Dr. Roger O. Egeberg from Senators Roman L. Hruska and Birch Bayh regarding issues pertinent to S. 1646 and S. 2544, dated March 11, 1974.)

(The letter and response was marked "Exhibit No. 13" and is as follows:)

EXHIBIT NO. 13

MARCH 11, 1974.

ROGER O. EGEBERG, M.D.,
Administrator, Alcohol, Drug Abuse and Mental Health Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md.

DEAR DR. EGEBERG: As you recall, on February 25, 1974, at the Subcommittee's hearing on S. 1646 and S. 2544, it was agreed that we would submit several additional inquiries regarding issues pertinent to these measures. We would appreciate your expeditious response to the following questions:

1. If the World Health Organization (WHO) *does not* make the requisite findings under Article 4 of the Psychotropic Convention, regarding dependence and abuse potential, is the Commission on Narcotic Drugs (CND) prohibited from taking further action?

2. Please explain Mr. Hutt's position that the Secretary of Health, Education and Welfare under the terms of the Comprehensive Drug Abuse Prevention and Control Act of 1970 has been designated as the Interpreter of definitions such as "sound medical practice" and "limited medical use" for the purpose of domestic compliance with control decisions made pursuant to the Convention.

3. Explain the nature and scope of the Secretary's veto authority regarding control decisions under P.L. 91-513.

4. Explain the P.L. 91-513 procedures for decontrolling a substance.

5. Since the enactment of P.L. 91-513 in 1970 how many times and with what results has the Secretary:

(i) exercised the veto authority or;

(ii) initiated the decontrol process?

6. What impact, if any, would the Convention or the enabling legislation have on the Secretary's responsibilities regarding the advertising of prescription drugs?

7. Explain the nature and extent of current domestic controls imposed on those who conduct research with psychotropic drugs with no medical use and questionable abuse potential.

Would the Convention or the enabling legislation alter this situation? Please explain.

8. P.L. 91-513 excepted from consideration all scientific and medical recommendations made by the Secretary when control is required by United States obligations under their existing international treaties. Please elaborate on our experience regarding such treaty decisions since 1970.

9. You indicate that U.S. medical and scientific concerns will be fully represented at every stage of international proceedings under the Convention. Will the representatives of other nations represent similar interests?

10. Is the Attorney General bound under P.L. 91-513 by the Secretary's control recommendations on questions relating to the manner in which a drug presently in one of the schedules should be controlled? Please explain.

11. Are any new powers given to the Secretary of HEW under S. 2544 or S. 1646 that would be contrary to the provisions and intent of the 1970 Controlled Substances Act?

12. Apparently S. 2544 (Section 3) assumes that the Secretary has the authority to satisfy the minimal international controls required for scheduling drugs namely:

(i) licensing for manufacture, sale and distribution;

(ii) security measures to curb diversion; and

(iii) import-export restrictions to monitor commerce and to curb diversion.

(a) Under what circumstances might the provisions of the Food, Drug and Cosmetic Act be sufficient to meet these minimum obligations under the Convention?

(b) Who would determine whether or not the Food, Drug and Cosmetic Act was sufficient? When would the provisions of schedule IV and V under the Controlled Substances Act be utilized?

(c) What portion(s) of the controls currently applicable to new drugs authorize these law enforcement functions?

(d) If such authority exists, would not its exercise duplicate the efforts of the Attorney General who is presently assigned these domestic law enforcement responsibilities?

(e) Is the Secretary equipped to monitor commerce and enforce these controls for law enforcement purposes? Please explain.

Once again we would like to express our appreciation for your cooperation in this matter. If you have any questions, please refer them to Mr. John M. Rector, Staff Director and Chief Counsel at 225-2951.

Sincerely,

ROMAN L. HRUSKA,
Ranking Minority Member,
Committee on the Judiciary.
BIRCH BAYH,
Chairman, Subcommittee to Investigate Juvenile Delinquency.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
PUBLIC HEALTH SERVICE,
ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION,
Rockville, Md., May 13, 1974.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: Thank you for your letter of March 11 in conjunction with Senator Hruska regarding the Department of Health, Education, and Wel-

fare testimony on February 25, concerning S. 2544, "The Psychotropic Substances Act of 1973," and the Convention on Psychotropic Substances. Please pardon the delay in replying to you.

I appreciated the opportunity to appear before your Subcommittee on Juvenile Delinquency. The followup questions you have raised are extremely important. For this reason, our response to them goes into some detail.

Enclosed you will find a statement of questions and answers on the Convention on Psychotropic Substances and implementing legislation. This statement lists each question and then presents the Department's reply.

If you have further questions, please do not hesitate to contact me.

Sincerely yours,

ROGER O. EGEBERG, M.D.,
Interim Administrator.

Enclosure.

STATEMENT OF QUESTIONS AND ANSWERS ON THE CONVENTION ON PSYCHOTROPIC SUBSTANCES AND IMPLEMENTING LEGISLATION

1. *Q.* If the World Health Organization (WHO) does not make the requisite findings under Article 2 of the Psychotropic Convention, regarding dependence and abuse potential, is the Commission on Narcotic Drugs (CND) prohibited from taking further action?

Yes. Before the Commission considers the question of bringing any psychotropic substance under international control, the WHO is required, according to the Convention, to carry out a medical and scientific evaluation of the drug and to present its findings and recommendations to the Commission. The assessment of the WHO must be included in Commission deliberations and is determinative as to all medical and scientific matters.

Although the Commission also may take into account economic, social, legal, administrative and other factors in arriving at a decision, it is important to remember that the WHO assessment is guided by criteria set forth in the Convention which state the finding necessary for a recommendation to control a drug. Only in the health and scientific field does the Convention state specifically the findings that are relevant to and binding on the Commission. Under these circumstances, it is extremely unlikely that the Commission would control a drug against the recommendation of the WHO.

2. *Q.* Please explain Mr. Hutt's position that the Secretary of Health, Education, and Welfare under the terms of the Comprehensive Drug Abuse Prevention and Control Act of 1970 has been designated as the interpreter of definitions such as "sound medical practice" and "limited medical use" for the purpose of domestic compliance with control decisions made pursuant to the Convention.

The Secretary of health, Education, and Welfare is responsible for determining whether new drugs in general have been proven safe and effective under the Federal Food, Drug, and Cosmetic Act. This is closely related to the broader responsibilities of the Secretary as the primary spokesman in the Federal Government on issues of national health policy including efforts to establish guidelines on certain medical practices through Professional Standards Review Organizations and other programs. Specifically, the Secretary is also responsible under the Federal Food, Drug, and Cosmetic Act for assuring that any drug, including any controlled substance having legitimate medical uses, is available only on prescription if this is necessary to assure safe use. The Comprehensive Drug Abuse Prevention and Control Act of 1970 also recognizes these responsibilities of the Secretary and the Department's expertise with respect to medical and scientific questions in the use of controlled substances—e.g., in the making of recommendations as to scheduling and rescheduling of substances under the Controlled Substances Act, deciding what drugs should be dispensed only upon prescription, and determining annual U.S. scientific and medical needs to aid the Attorney General in establishing schedule II production quotas and importation requirements.

Furthermore, as explained by Mr. Hutt at the hearing, section 4 of P.L. 91-513 gives the Secretary explicit responsibility for determining appropriate methods of professional practice in medical treatment of narcotic addicts.

S. 2544 is designed to assure that procedures to implement the Convention conform as closely as possible to regulatory procedures under the Federal Food, Drug, and Cosmetic Act and P.L. 91-513. Thus, in view of present controls, it is unnecessary for the legislation to contain a provision such as section 11 of S. 1688 assuring that prescriptions for controlled drugs are issued in accordance with "sound medical practice."

3. *Q.* Explain the nature and scope of the Secretary's veto authority regarding control decisions under P.L. 91-513.

Under P.L. 91-513 the recommendations of the Secretary of Health, Education, and Welfare are binding as to scientific and medical matters Also, if the Secretary recommends that a substance not be controlled, the Attorney General shall not control the substance.

4. *Q.* Explain the P.L. 91-513 procedures for decontrolling a substance.

Under P.L. 91-513 a proceeding to decontrol a substance may be initiated by the Attorney General on his own motion, on that of the Secretary of Health, Education, and Welfare, or on petition of an interested party including a manufacturer and requires a finding that the substance does not meet the requirements for the schedule in which it was placed or of any other schedule in P.L. 91-513. The procedure is similar to that which is followed in controlling or rescheduling a substance.

If the Attorney General accepts the petition, he is required, before proceeding with decontrol, to obtain a scientific and medical evaluation and recommendations from the Secretary. Recommendations of the Secretary as to scientific and medical matters are binding and if the Secretary recommends no control, this recommendation is binding. If the Attorney General then determines there exists substantial evidence that a drug should be removed from the schedules, he shall initiate proceedings for removal, by rule made on the record after opportunity for a hearing pursuant to the rulemaking procedures of 5 U.S.C. 551 *et. seq.*

5. *Q.* Since the enactment of P.L. 91-513 in 1970 how many times and with what results has the Secretary: exercised the veto authority or initiated the decontrol process?

With respect to every substance considered to date in which data have been submitted by the Attorney General for medical and scientific review, the Secretary has recommended that controls be implemented. There have been two instances in which the Secretary has initiated the decontrol process. In one case, the recommendation was implemented and the drug was decontrolled. Interagency discussions are still underway with respect to the other drug which the Secretary has recommended be decontrolled.

6. *Q.* What impact, if any, would the Convention or the enabling legislation have on the Secretary's responsibilities regarding the advertising of prescription drugs?

The Convention and the enabling legislation will have minimal impact on the Secretary's responsibilities regarding the advertising of prescription drugs. Advertising of prescription drugs is regulated by the Secretary under section 502(n) of the Federal Food, Drug, and Cosmetic Act. This Act enables the Department to prohibit advertising of prescription drugs to consumers. However, the Department of HEW has recognized that consumers should have available more information on prices of prescription drugs, and we have therefore developed regulations to facilitate posting of prescription drug prices in pharmacies. In order to assure that the Convention would not proscribe this program, section 12 of S. 2544 would amend section 502 of the Act to provide that nothing in the Convention on Psychotropic Substances shall be construed to prevent drug price communications to the public.

7. *Q.* Explain the nature and extent of current domestic controls imposed on those who conduct research with psychotropic drugs with no medical use and questionable abuse potential.

Certain controls apply to all drugs undergoing investigational studies in humans. Under section 505(i) of the Federal Food, Drug, and Cosmetic Act, the manufacturer must submit to the FDA a Notice of Claimed Investigational Exemption for a New Drug (IND) prior to shipping the unapproved drug for use in clinical trials. This IND contains, among other information, protocols for the proposed human drug trials. The FDA, in reviewing the IND, makes a determination whether there is any apparent reason to deny the exemption. After a 30-day delay period, unless a manufacturer is told by FDA not to proceed with the study, the study may proceed.

As part of a surveillance procedure, our medical staff may encounter situations which suggest the need for direct inspection of a manufacturer or a clinical investigator. For example, the facilities, methods and records of an investigator who has become involved in a large volume of drug testing may be inspected by FDA to determine if the IND commitments are being met. The attached pamphlet, "Clinical Testing for Safe and Effective Drugs" describes our investigational drug procedures in more detail.

CLINICAL TESTING FOR SAFE AND EFFECTIVE DRUGS

INVESTIGATIONAL DRUG PROCEDURES

Before 1962, there was no requirement that the Food and Drug Administration be notified that drugs were being tested on humans.

The 1962 Kefauver-Harris Amendments to the Federal Food, Drug, and Cosmetic Act greatly strengthened the Government's authority over clinical (human) testing of new drugs.

With this new regulatory authority, the Food and Drug Administration has taken steps to:

1. Provide added safeguards for those on whom drugs are tested.
2. Improve reports by drug investigators.
3. Establish investigative procedures to supply substantial scientific evidence that a drug is safe and effective.

First Steps

Before a new drug may be tested on humans, the sponsor (usually a pharmaceutical firm, sometimes a physician) must give the FDA the information specified as a "Notice of Claimed Investigational Exemption for a New Drug" (Forms FD 1571, 1572, and 1573), known as an "IND." Copies of these IND forms may be obtained from:

Document Control
Bureau of Drugs
Food and Drug Administration
5600 Fishers Lane
Rockville, Maryland 20852

The IND should include the following information:

a) Complete composition of the drug, its source, and manufacturing data, to show that appropriate standards exist to insure safety.

b) Results of all preclinical investigations, including animal studies. Initially, these should be directed toward defining the drug's safety, rather than its efficacy. The data must demonstrate that there will not be unreasonable hazard in initiating studies in humans. Further animal studies may be conducted concurrently with clinical studies. The Bureau of Drugs will, on request, comment on the adequacy of proposed animal studies. The FDA generally requires as a minimum that acute toxicity be determined in two species of animals; that results of administration of the drug for two to four weeks be observed in at least two species, and that the route of administration be that which will be used in the human trials. Additional animal studies are frequently necessary.

c) A detailed outline (protocol) of the planned investigation.

d) Information regarding training and experience of the investigators. (See "Qualifications of Investigators.") Investigators are responsible to the sponsor and are required to submit, to the sponsor (not the FDA), either Form FD 1572 for clinical pharmacology or Form FD 1573 for clinical trials.

e) Copies of all informational material supplied to each investigator. (The type of information is listed in Form FD 1571.)

f) An agreement from the sponsor to notify the FDA and all investigators if any adverse effects arise during either the animal or human tests.

g) The investigator's agreement to obtain the consent of the person on whom the drug is to be tested before the test is made.

h) Agreement to submit annual progress reports and commitments regarding disposal of the drug when studies are discontinued.

Physician-Sponsored IND

When an investigator wishes to act as sponsor for the use of a drug solely as a research tool or for early clinical investigation of a drug of therapeutic or diagnostic potential (clinical pharmacology—phases 1 and 2), a simpler abbreviated form of submission is acceptable. An example would be the study of a drug that no manufacturer is interested in sponsoring. An outline of such a study should provide the following information:

1. The identity of the compound or compounds, together with the facts that satisfy the investigator that the agent may be justifiably administered to man as intended.

2. The purpose of the use and the general protocol.
3. Appropriate background information, including a brief statement of the investigator's scientific training and experience and the nature of the facilities available to him.

The physician sponsoring this form of IND deals directly with the FDA. The FDA has no authority over the practice of medicine and cannot require a physician to prescribe or not to prescribe a drug for a particular illness. But physicians are encouraged to submit an IND when they use a drug for purposes other than those approved by the FDA, when the drug was marketed. This enables the FDA to accumulate data on the safety and efficacy of the drug for that kind of treatment and to share the information with other physicians.

The Clinical Investigation

The kind and extent of the investigational drug tests are crucial to producing the substantial scientific evidence of safety and effectiveness needed to approve the drug for marketing. This evidence is obtained in three phases:

Phase I

Pharmacology studies are used to determine toxicity, metabolism absorption and elimination, and other pharmacological actions; preferred route of administration, and safe dosage range. These studies involve a small number of persons and are conducted under carefully controlled circumstances by persons trained in clinical pharmacology.

Phase II

Initial trials are conducted on a limited number of patients for a specific disease treatment or prevention. Additional pharmacological studies performed concurrently on animals may be necessary to indicate safety.

Phase III

Proposals for this phase, involving extensive clinical trials, are in order if the information obtained in the first two phases demonstrates reasonable assurance of safety and effectiveness, or suggests that the drug may have a potential value outweighing possible hazards. The phase III studies are intended to assess the drug's safety, effectiveness and most desirable dosage in treating a specific disease in a large group of subjects. The studies should be carefully monitored, no matter how extensive.

The FDA receives constant reports on the progress of each phase. If the continuation of the studies appears to present an unwarranted hazard to the patients, the sponsor may be requested to modify or discontinue clinical testing until further preclinical work has been done.

30-Day Delay

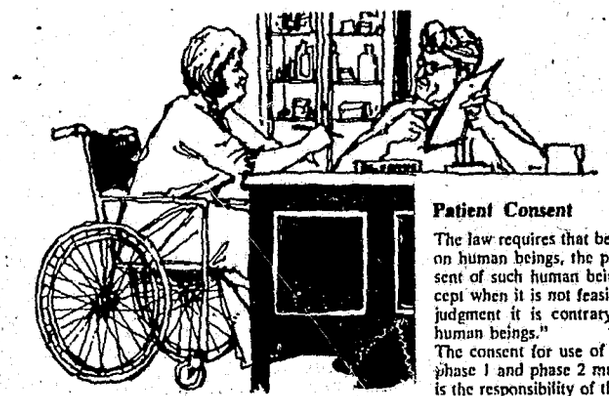
After the sponsor submits his IND, he must wait 30 days before beginning clinical tests. This delay enables the FDA to review the protocol to make certain it contains all of the necessary information and to assure that patients are not exposed to unwarranted risks. The 30-day period may be extended if the FDA feels additional time is needed for the sponsor to correct deficiencies in the protocol. The FDA also may waive the delay requirement if it feels such action is justified.

Sponsors may discuss their protocols at any time either before or during the tests with the Office of Scientific Evaluation, Bureau of Drugs.

Tests in Institutions

Drug tests on persons in hospitals, prisons, research facilities, and other institutions must be carefully supervised by institutional review committees.

The committees must be composed of persons with various backgrounds, such as lawyers, clergymen or laymen, as well as scientists. They are appointed by the institution involved in the study. The FDA inspects the institutions periodically to determine if the committees are operating properly.



Qualifications of Investigators

The sponsor of an investigational new drug (usually the manufacturer) will ask the clinical investigator to supply the following information on Form FD 1572 (for the clinical pharmacologist engaged in phase 1 or 2 trials) or Form FD 1573 (for the physician engaged in phase 3 clinical trials):

1. A statement of his education, training and experience.
2. Information regarding the hospital or other medical institution where the investigations will be conducted; special equipment and other facilities.

The training and experience needed will vary, depending upon the kind of drug and the nature of the investigation. In phase 1, the investigator must be able to evaluate human toxicology and pharmacology. In phase 2, the clinicians should be familiar with the conditions to be treated, the drugs used in these conditions and the methods of their evaluation. In phase 3, in addition to experienced clinical investigators, physicians not regarded as specialists in any particular field of medicine may serve as investigators. At this stage, a large number of patients may be treated by different physicians to get a broad background of experience.

Obligations of Investigators

The investigator must keep careful records of his study and retain them for at least two years after the NDA is approved. The records must be made available promptly to the drug sponsor and to the FDA when required. Regular progress reports must be sent to the sponsor.

Reports must be sent to the sponsor immediately when dangerous adverse effects are observed, so the FDA and the other investigators can be notified, and the study stopped if the hazard warrants.

The regulations regarding consent of human beings given investigational drugs must be observed.

Patient Consent

The law requires that before using investigational drugs on human beings, the physician must "obtain the consent of such human beings or their representatives except when it is not feasible or when in his professional judgment it is contrary to the best interest of such human beings."

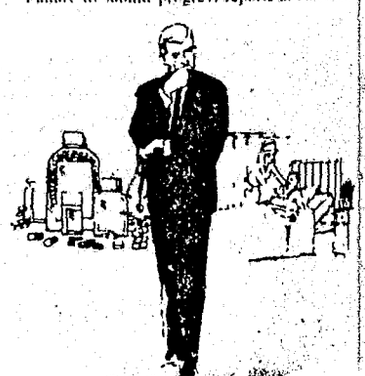
The consent for use of an investigational new drug in phase 1 and phase 2 must be in writing. In phase 3, it is the responsibility of the investigator, taking into consideration the physical and mental state of the patient, to decide when it is necessary or preferable to obtain consent in other than written form.

If written consent is not obtained, the investigator must obtain oral consent except as provided above, and record that fact in the medical record of the person receiving the drug.

Causes for Termination of Investigation

The FDA may direct the sponsor to terminate an investigation at any stage under certain conditions. These include:

Evidence of significant hazard.
Convincing evidence that the drug is ineffective.
Submission of false data.
Omission of material information.
Unsatisfactory manufacturing practices.
Failure to conduct the investigation in accordance with the plan submitted by the sponsor and approved by the FDA.
Commercialization of the drug. The IND regulations are not intended to provide a way of marketing a drug for profit without an approved NDA.
Failure to submit progress reports at intervals not exceeding one year.
Failure to report serious or potentially serious adverse reactions.
Failure to meet requirements for patient consent.



The Commissioner may notify the sponsor of any of the above conditions and invite immediate correction. A conference may be arranged. If the corrections are not effected immediately, the Commissioner may require the sponsor to terminate the investigation and recall unused supplies of the drug. The drug in question may not be reintroduced into clinical testing in man until additional data have been submitted to the FDA and the Commissioner has approved the proposed resumption of the study.

The Investigator and "Promotion"

The regulations forbid manufacturers or any persons acting for or on their behalf to disseminate any promotional material concerning a new drug prior to completion of the investigation.

This is not intended to restrict the full exchange of scientific findings in scientific or other communications media. Its purpose is to restrict promotional claims by the sponsor until the safety and effectiveness of the investigational drug have been established. Violation of the regulations by an investigator may result in FDA action to deny him further supplies of the drug. The manufacturer may also jeopardize his right to sponsor the investigation.

Special preclearance before Human Trials

Before starting an investigation in any of the following categories, FDA approval is required:

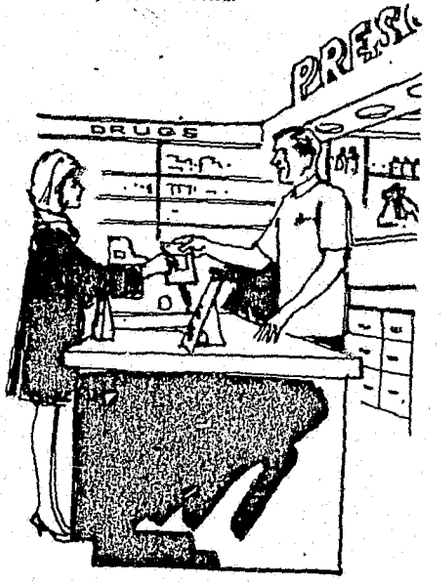
a) Investigations of hallucinogenic drugs, such as LSD.
b) Investigations of drugs so toxic that their use may be justified only under special conditions.
c) Reinstitution of drug investigations which had been terminated by the Commissioner.

Use of Drugs for Laboratory Procedures

New drugs used only for studies in vitro (test tubes) or in laboratory animals are exempted from the new-drug provisions of the Act provided they are labeled "Caution—Contains a new drug for investigational use only in laboratory research animals, or for tests in vitro. Not for use in humans."

The exemption does not apply, however, for a new drug used in vitro when this use will influence the diagnosis or treatment of disease in a human patient—for example, discs to determine the sensitivity to antibiotics of bacteria in culture, or a stick or strip of paper incorporating a reagent to test for sugar in the urine. Apparent ineffectiveness of an antibiotic sensitivity disc or a false negative test for glycosuria might well lead to an incorrect diagnosis and deprive the patient of appropriate treatment.

Before such a preparation can be marketed there must be certification (in the case of antibiotics) or approval of a New Drug Application (in the case of other drugs). For that reason, it is necessary to submit adequate proof of the effectiveness of these preparations before they can be marketed.



U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service
FOOD & DRUG ADMINISTRATION
5600 Fishers Lane
Rockville, Md. 20852

September 1971 (FDA) 72-3014

If the investigative drug is scheduled in Schedule I of P.L. 91–513 the investigator must also obtain a Schedule I research registration from the Drug Enforcement Administration. Clinical studies with Schedule I drugs are given special review by the Drug Abuse Research Advisory Committee, which is a joint committee of the Food and Drug Administration and the National Institute on Drug Abuse. If the investigational drug is controlled by statute in some schedule other than Schedule I, the drug would be subject to the same restrictions placed on other substances in that schedule in addition to IND controls.

Q. Would the Convention or the enabling legislation alter this situation? Please explain.

No. Dr. Egeberg's testimony includes an explanation of the relationship between the Convention (and the enabling legislation) and existing controls on research involving psychotropic drugs.

8. *Q.* P.L. 91–513 excepted from consideration all scientific and medical recommendations made by the Secretary when control is required by United States obligations under their existing international treaties. Please elaborate on your experience regarding such treaty decisions since 1970.

It should be noted at the outset that the P.L. 91–513 exception of U.S. control obligations under international treaties from the requirement of HEW primacy on scientific and medical matters *only* applies with respect to treaties in effect on the effective date of Part B of the Controlled Substances Act (October 27, 1970). Under these prior treaties, particularly the Single Convention on Narcotic Drugs (1961), control measures are required, but the Secretary is not required to provide findings on scientific and medical questions. Also, the Attorney General decides on the schedule for the substance.

We believe that it is always desirable and appropriate to have a scientific and medical review of the need for controls, whether such questions are being considered at the domestic or international level. The need for considering scientific and medical aspects of drug control is recognized in the ordinary scheduling processes of P.L. 91–513 and under the legislation to implement the Convention on Psychotropic Substances. We believe the same reasoning supports obtaining scientific and medical review of scheduling decisions under conventions in existence at the time P.L. 91–513 became law, i.e., the Single Convention on Narcotics.

Such review would be particularly important in assuring that schedule I controls are not imposed, except where appropriate, for drugs which are potentially useful, but which are still undergoing clinical trials and which have potential for abuse.

Certain potentially abusable drugs are investigated or marketed in foreign countries prior to investigation or marketing in the United States, and it would be desirable to assure that scheduling decisions by the United States under the Single Convention do not result in disproportionate controls which could stifle useful research concerning potentially valuable drugs.

Two substances—propriam and drotebanol—were placed in Schedule I of P.L. 91–513. These actions were taken pursuant to section 201(d) of P.L. 91–513 without medical and scientific review by the Department of Health, Education, and Welfare.

9. *Q.* You indicate that U.S. medical and scientific concerns will be fully represented at every stage of international proceedings under the Convention. Will the representatives of other nations represent similar interests?

The delegations sent to the Commission on Narcotic Drugs are chosen by their governments to represent their interests in achieving effective international controls. Composition of future delegations to the Commission is entirely a matter for individual countries to decide. The best indication of what the 30 country delegations will be like is their makeup at previous conferences.

In the past, delegations to Commission meetings have had strong health representation. At the Third Special Session of the Commission in February and March 1974, more than one-third of the individuals from member countries were from ministries of health. At the previous meeting in 1973, an even greater proportion of individuals on the official list of participants were from health ministries.

This means that health interests have been adequately represented at the Commission. It does not mean that a body of opinion exists representing the international health community that is similar to or in agreement with the positions taken by major health spokesmen in the U.S. In most countries of the world differences between health and law enforcement approaches to drug abuse prevention are not as noticeable as they are in the U.S. An additional consideration is the greater size and higher output of the U.S. scientific community for more areas of the drug abuse field. For this reason, one should not expect the same balance of opinions from other countries that we find in the U.S.

10. *Q.* Is the Attorney General bound under P.L. 91–513 by the Secretary's control recommendations on questions relating to the manner in which a drug presently in one of the schedules should be controlled? Please explain.

Yes. Under section 201 of P.L. 91–513, the recommendations of the Secretary are binding as to scientific and medical matters as to rescheduling or decontrol of substances already listed in schedules as well as to initial placement of substances into schedules.

11. *Q.* Are any new powers given to the Secretary of HEW under S. 2544 or S. 1646 that would be contrary to the provisions and intent of the 1970 Controlled Substances Act?

No. These bills do not grant any powers to the Secretary contrary to the Controlled Substances Act. One of the specific goals in drafting the Administration bill, S. 2544, was to ensure that the Convention on Psychotropic Substances would be implemented in the U.S. in a manner consistent with previous congressional enactments.

12. *Q.* Apparently S. 2544 (Section 3) assumes that the Secretary has the authority to satisfy the minimal international controls required for scheduling drugs namely: (i) licensing for manufacture, sale and distribution; (ii) security measures to curb diversion; and (iii) import-export restrictions to monitor commerce and to curb diversion.

(a) Under what circumstances might the provisions of the Food, Drug, and Cosmetic Act be sufficient to meet these minimum obligations under the Convention?

Under S. 2544, the Food, Drug, and Cosmetic Act may be utilized in those situations where the United States does not agree with the scheduling decision under the Convention. S. 2544 makes certain, by reference to section 505 of the Federal Food, Drug, and Cosmetic Act, that the balance achieved under present U.S. laws between law enforcement considerations and medical-scientific considerations will not be upset if the Convention is adopted. Under Article 2, section 7, of the Convention, if the United States disagrees with control measures adopted under the Convention it must nevertheless institute certain minimum controls. The controls available for new drugs under the Federal Food, Drug, and Cosmetic Act would, so far as we can determine, be sufficient to meet these requirements.

Since existing United States legal controls over drugs are more stringent than the laws of any other nation, it is not surprising that the controls established for some of the schedules under the Convention on Psychotropic Substances are fully satisfied by existing laws, principally the provisions of the Federal Food, Drug, and Cosmetic Act and P.L. 91–513.

The Federal Food, Drug, and Cosmetic Act (1) requires licensing of new drugs (21 U.S.C. 355) and registration of manufacturers (21 U.S.C. 360), (2) requires limiting all drugs to proven medical purposes (21 U.S.C. 352, 355), (3) restricts any potentially harmful drug to prescription status (21 U.S.C. 353), (4) requires adequate warnings in all drug labeling (21 U.S.C. 352, 355), (5) requires submission of records and reports by industry on all new drugs (21 U.S.C. 355), (6) permits inspection of facilities and records for all prescription drugs (21 U.S.C. 374), (7) establishes total import-export controls over new drugs and strong import controls over all other drugs (21 U.S.C. 355, 381), (8) permits imposition of criminal as well as civil sanctions (21 U.S.C. 301 *et seq.*), and (9) permits restriction of channels of distribution of new drugs (21 U.S.C. 355).

The provisions of the statute are sufficient, without additional requirements, to satisfy all of the minimum requirements of the Psychotropic Convention relating to licensing, security measures to control diversion, and import-export restrictions.

(1) *Licensing*

The Department of Health, Education, and Welfare, acting through the Food and Drug Administration, licenses new drugs under section 505 of the Federal Food, Drug, and Cosmetic Act and registers manufacturers of all drugs under section 510 of the Act. Approval of a new drug application (NDA) under section 505 is based upon proof that the drug is safe and effective for its intended uses. A drug's potential for abuse is considered by FDA as one aspect of safety in its decision whether to approve an NDA. In fact, FDA has a specific responsibility under P.L. 91–513 to inform the Department of Justice of new drugs having a potential for abuse.

FDA can set conditions for a new drug approval requiring compliance with specified conditions by manufacturers, distributors and others who handle drugs if necessary to assure the safe and effective use of the drug. Similarly, FDA can withdraw approval of a new drug already on the market unless specified conditions are met.

For example, a drug with legitimate medical uses but having a potential for abuse may require certain restrictions not always applied when NDAs are approved. One example of this is the closed distribution system for methadone for use in maintenance treatment and the additional controls imposed to reduce problems of diversion of this substance. It should be noted that the enabling authority to impose conditions on NDA approval is not limited to drugs having potential for abuse. For example, we could limit use of a potent drug which has a potential for misuse (e.g., administration in minor disease conditions in which risks of the drug far outweigh any benefits) to dispensing by qualified specialists, and have done so in the case of investigational drugs pursuant to section 505(i). Several powerful drugs have been limited to use in hospitalized patients only. Certain drugs, including methadone and L-dopa (an anti-parkinson drug), were approved for marketing on the condition that the sponsor continue research on the drug and make reports thereon.

(2) *Security Measures to Control Diversion*

If necessary to ensure that a drug is used safely, FDA can require compliance with security measures as a condition to NDE approval. This can include security measures—such as requiring locks on drug storage areas, limiting access to stocks, recordkeeping requirements to help detect diversion—and medical requirements such as urinalysis. We would want to coordinate such security requirements to the maximum extent possible with those of the Department of Justice. For example, our methadone regulations (21 C.F.R. 130.44) require compliance with the security standards for the distribution and storage of controlled substances required by the Department of Justice.

(3) *Import-Export Restrictions*

The Federal Food, Drug, and Cosmetic Act establishes total import-export control over new drugs and strong import controls over all other drugs. (As noted above, the Department does not know of any drugs which would be subject to the Convention on Psychotropic Substances which would not be subject to the new drug provisions of section 505 of the Act.)

FDA can condition entry into the country of any drug upon compliance with all applicable rqeuirements under the Act including requiring import permit for or notification of importation.

Under section 801(d) of the Act, drugs which are not new drugs may not be exported unless certain requirements are met, including a requirement that they are not in conflict with the laws of the country to which they are intended for export. More stringent controls apply to the export of new drugs: these may not be exported unless all of the requirements under section 505 have been met. This authority is intended to assure that only safe and effective drugs are exported. Assurance of safety includes controls aimed at preventing drug diversion and abuse. The Act therefore permits the imposition of whatever export controls are necessary to assure full compliance with the treaty.

Q. (b) Who would determine whether or not the Food, Drug, and Cosmetic Act was sufficient? When would the provisions of schedule IV and V under the Controlled Substances Act be utilized?

Where the United States disagres with a scheduling decision under the Convention, the Secretary of HEW would determine whether controls under the Federal Food, Drug, and Cosmetic Act are sufficient to meet U.S. obligations under the Convention. If the Secretary decides that controls under the Food, Drug, and Cosmetic Act are not adequate, the Secretary shall recommend to the Attorney General the initiation of a proceeding under P.L. 91–513 to schedule a substance. Schedules IV or V of P.L. 91–513 could be utilized temporarily or permanently to satisfy the minimal controls required to satisfy our international obligations.

Q. (c) What portion(s) of the controls currently applicable to new drugs authorize these law enforcement functions?

See (a) above. The sections of the Federal Food, Drug, and Cosmetic Act applicable to all drugs, and particularly new drugs, permit regulations to assure that drugs are used properly and that their use is not abused. Whether or not this authority is characterized as "law enforcement," it should be recognized that FDA has possessed this regulatory power for a long period of time and that this

authority applies to *all* drugs and not just controlled substances. This authority was not reduced by enactment of P.L. 91–513. Indeed, section 707 of P.L. 91–513 specifically provides that the Controlled Substances Act, with minor exceptions, shall not be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act.

Q. (d) If such authority exists, would not its exercise duplicate the efforts of the Attorney General who is presently assigned these domestic law enforcement responsibilities?

Not at all. The Secretary's authority under the new drug and other pertinent provisions of the Federal Food, Drug, and Cosmetic Act is designed to assure that all drugs, including controlled substances, are safe and effective for their intended uses.

This authority is a necessary adjunct to the Department's responsibility for the safety of drugs and is thus a matter of scientific and medical judgment. We believe there is under existing law a suitable balance between these scientific and medical determinations, in which HEW has the requisite expertise, and the truly non-medical law enforcement concerns of the Department of Justice.

Q. (e) Is the Secretary equipped to monitor commerce and enforce these controls for law enforcement purposes? Please explain.

Yes. Through its regulatory programs, the Department maintains close surveillance over the drug industry to assure compliance with our regulations. In the case of controlled substances, HEW has worked with Justice to ensure coordination of our programs with their drug abuse law enforcement responsibility. The Food and Drug Administration has regional and district offices all over the U.S., and investigators working out of these offices initiate enforcement actions in cases where our requirements are not observed. We are assisted by the Department of the Treasury in maintaining surveillance over imported goods.

Senator BAYH. Our next witness this afternoon is Mr. Charles I. Bevans, Assistant Legal Adviser for Treaty Affairs of the Department of State.

Mr. Bevans, we appreciate your presence. I do not know how one would prove this, but I would suppose you know as much or more about treaties than anybody else in the world.

STATEMENT OF CHARLES I. BEVANS, ASSISTANT LEGAL ADVISER FOR TREATY AFFAIRS, DEPARTMENT OF STATE; ACCOMPANIED BY DONNA GREEN, CONGRESSIONAL RELATIONS DEPARTMENT

Mr. BEVANS. I have been working at them a long time, about 40 years, Senator.

Senator HRUSKA. About how long, Mr. Bevans, have you been working on this subject in the field of treaties?

Mr. BEVANS. Treaties themselves beginning in 1934.

Senator HRUSKA. Is it a permanent position that you occupy? [Laughter.]

Mr. BEVANS. It has been rather permanent for me. I do not intend to stay at it indefinitely, though.

Senator HRUSKA. I am trying to be somewhat facetious. The tenure of your service would testify greatly not only to the importance of your testimony here today, but to your consistent record.

Mr. BEVANS. Thank you, Mr. Senator. I am very grateful to you, and I feel highly honored to have an opportunity to appear before you gentlemen today on this subject, particularly. I have followed this subject for some years and I find it an extremely important one.

I would like to introduce Ms. Donna Green from our congressional relations office who is with me today.

Senator BAYH. We appreciate having congressional relations being so ably represented, as well as the treaty expertise.

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Mr. BEVANS. Thank you, sir.

As I have said, I welcome the opportunity to appear before your committee in support of the Psychotropic Substances Act of 1971 as set forth in S. 2544.

The Department of State is very much interested in this legislation and the Convention on Psychotropic Substances which the legislation is designed to implement. Enactment of this legislation will pave the way for ratification of the convention by the United States and cooperation with other countries in establishing effective controls over international traffic in psychotropic substances.

The convention is the first international agreement on the control of psychotropic substances. We have had over 60 years of experience in international cooperation in efforts to limit the use of narcotic drugs to medical and scientific purposes, primarily by preventing illicit traffic in those drugs.

We have had no experience under international agreements for the control of psychotropic substances. Accordingly, long and careful study was given to the subject before the Convention on Psychotropic Substances was formulated. In 1954, the World Health Organization's Expert Committee on Addiction Producing Drugs recommended that governments permit the dispensation of amphetamines and their derivatives only on prescription. In 1957, that committee recommended national controls over tranquilizers. The United Nations Commission on Narcotics Drugs adopted two resolutions on the basis of the committee's 1957 report. Those recommendations were that governments take measures to prevent the abuse of barbiturates and keep a watch for the abuse of tranquilizers. A resolution adopted in 1965 by the World Health Assembly requested the Director-General of the World Health Organization "to study the feasibility of international measures for control of sedatives and stimulants." Pursuant to that resolution and recommendations by the Expert Committee on Addiction Producing Drugs, the Commission on Narcotic Drugs agreed in 1966 that an international agreement on the control of psychotropic substances was essential. A unanimous resolution by the General Assembly of the United Nations in 1968 requested the Economic and Social Council to call upon the Commission on Narcotic Drugs to give urgent attention to the abuse of psychotropic substances and to the placing of such substances under control.

These considerations and subsequent consideration of the problem of psychotropic substances by the Economic and Social Council, the Commission on Narcotic Drugs, the World Health Organization, and governments led to the convening of the 1971 conference is Vienna at which the convention was adopted.

Special efforts were made before and during the conference convened in Vienna to formulate an agreement that would provide effective international controls over psychotropic substances and at the same time assure that the availability of those substances and their use for medical and scientific purposes would not be unduly restricted.

The Department of State is confident that these efforts at the Vienna conference were successful, that the best interests of the United States will be served by ratification of the convention by

United States, and that the proposed legislation under consideration will permit fulfillment of all the provisions of the convention and assure the protection of U.S. interests.

The Department of State considers it highly important that the Convention on Psychotropic Substances be ratified by the United States. The convention would be a helpful instrument in the prevention of the smuggling of psychotropic substances into the United States. It would be helpful in preventing the illegal smuggling into other countries of substances produced in the United States. Our ratification would be assurance to the world community that the United States will cooperate in the control of manufactured drugs as well as insisting upon international control over drugs produced from the opium poppy and the coca bush. For over 60 years the United States has taken the lead in urging effective controls over the narcotic drugs produced from those plants. A failure on our part, as one of the largest manufacturers of psychotropic substances, to cooperate on international controls over those substances might unfortunately lead to relaxation of efforts by other countries to prevent the illicit production and traffic in the narcotic drugs. We feel confident that ratification of the Convention by the United States will encourage many other countries to ratify it.

The Department of State has submitted to the committee written statements in answer to a number of questions that have been raised regarding the Convention on Psychotropic Substances. I shall be glad to endeavor to answer any questions which you or any other members of this committee may have regarding those statements or other questions regarding the Convention.

Mr. Chairman and other members of the committee, I thank you.

And if I cannot answer these questions today, I will be glad to give you a written reply to them.

Thank you, sir.

Senator BAYH. Mr. Bevans, I have already addressed to you some supplemental questions which you have most kindly answered, and they provide an answer to most of the questions. Let me just throw two or three at you additionally, and then perhaps my colleague from Nebraska will have others.

Would you explain the role of the World Health Organization under the 1961 Single Convention on Narcotics and contrast it with the World Health Organization's role under this convention so we have a direct comparison?

Mr. BEVANS. The Expert Drug Committee under the World Health Organization prepares recommendations and an assessment of what the characteristics are of a given drug, and what level of control they think should be applied to that drug, schedule 1, 2, 3, or 4, as the case may be, schedule 1 being the schedule under which the highest level of controls are applied to drugs.

Now, under the 1961 convention when the World Health Organization makes that recommendation to the Commission on Narcotic Drugs, the Commission has only one choice, either to accept the recommendation that a particular drug be included in the schedule that is recommended by the World Health Organization or not to control it at all. The Commission cannot shift the drug from one

schedule to another. It must follow the recommendation of the World Health Organization or turn it down completely. They cannot give a drug a different level of control from that recommended by the Organization.

Under the psychotropic convention, the role of the World Health Organization I feel is still just as strong, so far as medical and scientific matters are concerned. The convention requires that the utmost weight shall be given to the assessment made by the World Health Organization. And the World Health Organization not only takes into account the medical and scientific aspects of the drug, but the public health and social effect that it may have and it communicates its assessment to the Commission on Narcotic Drugs. The Commission on Narcotic Drugs must consider these scientific and medical findings of the World Health Organization as practically as being controlling. The word "binding' in the convention is not used in this connection but the convention does provide that the Oragnization's assessments as to medical and scientific matters shall be "determinative."

But then the Commission on Narcotic Drugs has other things to consider. It has to consider whether or not a particular drug could be controlled in, say, schedue 1 or schedule 2. The Commission may find that the economic, social, legal, administrative and other factors are such that the drug recommended for schedule 1 should be controlled in schedule 2, which the Commission may be likely to decide.

Now, there is that difference. Under the 1961 convention, the Commission on Narcotic Drugs must decide to control the drug in the schedule recommended by the WHO, or decide not control it at all.

Senator BAYH. The key question is what happens if the World Health Organization makes no recommendation and the CND feels that controls need to be levied. Who prevails under those circumstances? Does CND need to wait for WHO recommendations or may it ask on its own?

Mr. BEVANS. Under the procedures set forth in the convention, they do not move, they could not do anything. The World Health Organization must first present an assessment. If the Organization does not present that assessment or recommends against controlling a new drug, the Commission on Narcotic Drugs would be unable to impose controls. The World Health Organization is an essential part of the process of scheduling new drugs and there is no indication in the convention as to how the CND could act without an assessment from that Organization. That is a part of the process.

Senator BAYH. Thank you. The Controlled Substances Act of 19[illegible] excepted from consideration, scientific and medical factors, where control was required by U.S. obligation under international treaties. Could you give the committee a review of the experience in regard to this particular provision since the passage of the 1970 act.

Mr. BEVANS. No, sir. I have not had any particular experience along that line. Most of my work has been in following recommendations for scheduling of drugs under the 1961 convention. They have been scheduled and they have been applied in this country. I have

never known of any problems with any of that scheduling, except some questions regarding propoxyphene a few years ago. But I have not had any experience with the provisions to which you refer. I am satisfied that our new law, as S. 2544, will effectively protect research work in the United States.

Senator BAYH. How many countries have to ratify it before this becomes law, and how many have done so to date, please?

Mr. BEVANS. Well the convention requires that 40 countries ratify or accede. Seventeen have either ratified or acceded, both actions have the same effect. Seventeen have given their consent to be bound so far and can be counted toward the 40 required to bring the convention into force.

Senator BAYH. Is it possible for Congress to make relatively minor revisions without negating our action on this? Can we ratify with exceptions?

Mr. BEVANS. Yes. There is provision for reservations in the convention, but we must consider the political impact of any such reservations as well as the effect upon our legal obligations. As I have mentioned before, we have been a leader in the matter of international controls and international cooperation on narcotic drugs for some 60 years, and it was not long before other nations looked to us for leadership on this Convention on Psychotropic Substances. We have been the leader in imposing controls on the natural substances like the poppy plant and the cocoa bush, and other nations have said now you are the largest manufacturer and let us see you take some leadership in this matter of controlling the manufacturers and imposing controls on your own processes where you are competing with our natural products. So that for us to make a reservation which would seriously detract from our obligations, or exempt us, for example, from controlling a given substance completely, I feel it would have serious political effects and may lead to deterioration of the cooperation that we are now getting from other countries in controlling narcotic drugs.

Senator BAYH. I was not really thinking of any dramatic change. Perhaps there would be none, but I was wondering if, as Congress works its will, just how much flexibility we have? I think your point about leadership, and that historical position is well taken.

Mr. BEVANS. Well, when you speak of a reservation, Senator, it depends a lot upon the character of the reservation and the like.

Senator BAYH. Right.

Mr. BEVANS. So, I was speaking in general terms addressed to, well, something that would seriously limit our obligations. That is the kind of reservation that I was addressing my remarks to.

Senator BAYH. Thank you.

Senator Hruska?

Senator HRUSKA. Have any of the 17 nations who have given their consent expressed reservations?

Mr. BEVANS. I have not seen any.

Senator HRUSKA. You have not?

Mr. BEVANS. No, sir, I have not.

Senator HRUSKA. If you want to verify that, you can supply that information for the record.

Mr. BEVANS. I shall be glad to. My information is that 17 had ratified, or otherwise given their consent to be bound but I shall be glad to send you a written statement on that.

[The information referred to was marked "Exhibit No. 14" and is as follows:]

EXHIBIT No. 14

RESERVATIONS TO THE CONVENTION ON PSYCHOTROPIC SUBSTANCES, DONE AT VIENNA, FEBRUARY 21, 1971

All thirty-six signatures to the Convention on Psychotropic Substances were affixed subject to ratification.

Reservations were made by the following States at the time they signed, ratified or acceded to the Convention:

ARGENTINA

(Translation) "With a reservation concerning the effects of the application of the Convention to non-metropolitan Territories whose sovereignty is in dispute, as indicated in our vote on article 27."

BRAZIL

"With reservation to Article 19, paragraphs 1 and 2; Articles 27 and 31.

(Note: Article 19 relates to measures by the International Narcotics Control Board to ensure execution of provisions of the Convention. Article 27 relates to territorial application of the Convention and Article 31 relates to the settlement of disputes.)

BULGARIA

(Translation) "The People's Republic of Bulgaria does not consider itself bound by the decisions of the International Court on cases that have been brought before it, pursuant to Article 31 of the Convention, without the consent of the People's Republic of Bulgaria."

BYELORUSSIAN S. S. R.

(Translation) "The Byelorussian Soviet Socialist Republic will not consider itself bound by the provisions of Article 19, paragraphs 1 and 2, of the Convention on Psychotropic Substances of 1971 as applied to States not entitled to become Parties to the Convention on the basis of the procedure provided for in article 25 of that Convention.

"The Byelorussian Soviet Socialist Republic does not consider itself bound by the provisions of article 31 of the Convention concerning the referral to the International Court of Justice of a dispute relating to the interpretation or application of the Convention at the request of any one of the Parties to the dispute and declares that the referral of any such dispute to the International Court of Justice shall in each case require the consent of all Parties to the dispute."

EGYPT

"The United Arab Republic reserves its position on Article 19, Para 1 (Concerning Measures by the Board to ensure the execution of the provisions of the Convention and its right of contestation).

"The UAR reserves its position on article 27 (concerning the existence of territories or colonies pertaining to certain states).

"The UAR reserves its position on article 31 (concerning the method of settlement of disputes between members)."

HUNGARY

"The Hungarian Government avails itself of the possibility accorded to it in paragraph 2 of article 32 and makes reservations in respect of article 19, paragraphs 1 and 2; article 27 and article 31 of the present convention."

POLAND

"The Government of the Polish People's Republic wishes to make reservations concerning the following provisions:

(1) Paragraphs 1 and 2 of Article 19 of the above said Convention as applicable to states deprived of the opportunities of becoming Parties to the Convention in view of the procedure provided for in Article 25 of the Convention.

In the considered opinion of the Government of the Polish People's Republic the provisions of Article 25 of the Convention on Psychotropic Substances of 1971 are of discriminatory character. In this connection the Government of the Polish People's Republic reiterates its firm position that the above-said Convention, in accordance with the principle of sovereign equality of states, should be open to all interested states without any discrimination.

(2) Paragraph 2 of Article 31 of the Convention which provides that disputes which cannot be settled by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice, shall be referred, at the request of any one of the parties to the dispute, to the International Court of Justice for decision. In this connection the Government of the Polish People's Republic wishes to state that a submission of a dispute to the International Court of Justice, for its decision can be made only with full consent to such a procedure by all parties to the dispute and not at the request of one or some of them."

SOUTH AFRICA

"The Government of the Republic of South Africa deem it advisable to accede to the Convention on Psychotropic Substances, subject to reservations in respect of Article 19 paragraphs 1 and 2, Article 27 and Article 31 as provided for in article 32 paragraph 2 of the Convention."

TURKEY

(Translation) "With a reservation to the second paragraph of Article 31."

UKRAINIAN S. S. R.

(Translation) "The Ukrainian Soviet Socialist Republic will not consider itself bound by the provisions of article 19, paragraphs 1 and 2, of the Convention on Psychotropic Substances of 1971 as applied to State not entitled to become Parties to the Convention on the basis of the procedure provided for in article 25 of that Convention.

"The Ukrainian Soviet Socialist Republic does not consider itself bound by the provisions of article 31 of the Convention concerning the referral to the International Court of Justice of a dispute relating to the interpretation or application of the Convention at the request of any one of the Parties to the dispute and declares that the referral of any such dispute to the International Court of Justice shall in each case require the consent of all Parties to the dispute."

UNION OF SOVIET SOCIALIST REPUBLICS

(Translation) "The Union of Soviet Socialist Republics will not consider itself bound by the provisions of article 19, paragraphs 1 and 2, of the Convention on Psychotropic Substances of 1971 as applied to States not entitled to become Parties to the Convention on the basis of the procedure provided for in article 25 of that Convention.

"The Union of Soviet Socialist Republics does not consider itself bound by the provisions of article 31 of the Convention concerning the referral to the

International Court of Justice of a dispute relating to the interpretation or application of the Convention at the request of any one of the Parties to the dispute and declares that the referral of any such dispute to the International Court of Justice shall in each case require the consent of all Parties to the dispute."

YUGOSLAVIA

(Translation) "Subject to a reservation to Article 27 of the Convention."

ASSISTANT LEGAL ADVISER FOR TREATY AFFAIRS,
OFFICE OF THE LEGAL ADVISER,
DEPARTMENT OF STATE,
Washington, March 6, 1971.

Senator HRUSKA. You have been in the Department and concerned with this general subject of treaties for roughly a third of a century, have you not?

Mr. BEVANS. I have.

Senator HRUSKA. Have you had previous work on the Single Convention on Narcotics?

Mr. BEVANS. Yes, sir. I worked on all three drafts of that convention before the conference was held in New York in 1961. I participated in that conference.

Senator HRUSKA. That is about 12 or 13 years ago.

Mr. BEVANS. Yes, sir.

Senator HRUSKA. In your statement you have detailed the evolution of the convention with which we are concerned with here today.

Mr. BEVANS. Yes, sir.

Senator HRUSKA. Since 1971 when this convention was formulated you have had a hand in commenting on or helping to formulate the implementing bill with which we are concerned today, is that not correct?

Mr. BEVANS. Yes; Mr. Senator. I believe I have been over it about 10 times, different drafts, and including the most recent ones.

Senator HRUSKA. With that background in mind, let me ask you this question: There is some thinking that we ought not to hurry into the business of ratifying this convention but that we ought to go through a process of thorough evaluation as to its worth before we take such a step.

Mr. BEVANS. Yes, sir.

Senator HRUSKA. If that were adopted as the official position of either this committee or the Foreign Relations or of the Senate what would you suggest by way of a further evaluation of this subject?

Mr. BEVANS. Well, Mr. Senator, I am a little bit at a loss as to what to suggest, because this has been a rather severely criticized and severely questioned convention, which I believe is a healthful thing, and I think that the questions and the criticism have been completely answered, at least I feel they have been answered.

Now, as for the analysis of the convention, I believe those criticisms and questions have resulted in a fairly complete analysis, if not a thorough one, particularly after listening to Dr. Egeberg speaking this morning and pointing out how this new legislation we have be-

fore us now has been formulated with a view to meeting all of these criticisms and interests that should be taken care of in this country.

I also believe that we should be very thorough about understanding what a treaty provides and what it is going to do. And I think the psychotropic one has been one of the most thoroughly considered that we have had, especially since way back in 1955 or thereabouts when the World Health Organization began to consider this subject, and as a matter of fact, at the 1961 conference on narcotic drugs, some consideration was given to including the psychotropic substances in the convention on narcotic drugs.

But the consensus at that time was that we did not yet know enough about those substances to include them with narcotic drugs. The negotiators thought they had enough to do to control the narcotic drugs at the time anyhow. And they did not want to get beyond that field, so we have moved into this convention as a process of growing up and developing. I believe we must have some experience under the convention to know more about it. That is my feeling.

Senator HRUSKA. I thank you very much. There may be other questions, Mr. Chairman, but if so we can resort to the same procedure that we agreed upon as to Dr. Egeberg.

Only one other suggestion. Could you supply us with a list of the 17 nations who have consented to the treaty for incorporation into the record at this point.

Mr. BEVANS. I have a list of those.

Senator HRUSKA. Mr. Chairman, I suggest that the list be incorporated in the record.

Senator BAYH. Without objection, we will incorporate it at this point.

[The document referred to was marked "Exhibit No. 15" and is as follows:]

EXHIBIT NO. 15

PSYCHOTROPICS CONVENTION—STATUS REPORT

According to the records of the Department of State, the following 17 countries have deposited instruments of ratification or accession to the Convention:

Brazil
Bulgaria
Chile
Cyprus
Dahomey
Ecuador
Egypt
Finland
Mauritius
Nicaragua
Panama
Paraguay
South Africa
Spain
Sweden
Venezuela
Yugoslavia

The following States signed the Convention:

United States
Argentina
Australia
Brazil
Byelorussian SSR
Chile
China
Costa Rica
Denmark
Egypt
Finland
France
Germany, Fed. Rep.
Ghana
Greece
Guyana
Holy See
Hungary
Iran
Japan
Lebanon
Liberia
Monaco
New Zealand
Paraguay
Poland
Rwanda
Sweden
Togo
Trinidad & Tobago
Turkey
United Kingdom
Ukrainian SSR
USSR
Venezuela
Yugoslavia

The following countries are known or believed to manufacture psychotropic substances or are transit countries for psychotropics:

Country	Intends to ratify	Status of preparations
Austria	Undecided	Not signatory; no plans to sign. Will consider accession when Convention enters into force.
Belgium	Yes	Coordinating with other EEC partners.
Canada	Yes	Will ratify as soon as drug control regulations conform. Will give status report at CND meeting.
Czechoslovakia	No	Narcotics not a problem.
France	Yes	Ratification process underway—simply "a matter of time."
Germany	Yes	Beginning study of German narcotics regulations—spring 1974 introduce enabling legislation—fall 1974 hopefully.
Guyana	Yes	Under consideration—confident of ratification very shortly.
Hungary	Yes	Expected first half of 1974. Will await a few more ratifications (USSR) first.
India		
Indonesia	Yes	Under active consideration—no indication GOI intends to request ratification by current session legislature.
Israel	Yes	Under consideration by legal experts in Ministries of Health and Justice—ratification not imminent.
Italy	Undecided	Will await accession by other EEC partners.
Japan	Yes	Present to Diet session beginning December 1974 but more probably December 1975.
Korea	Undecided	Foresee not problem with eventual ratification. Will decide as additional countries ratify.
Lebanon	Yes	Info not available. Mission will send more later.
Luxembourg	Undecided	Will probably take action in concert with EEC.
Malaysia	Yes	Convention "under study" and will be ratified "in future" but bureaucratic inertia has slowed action thus far.
Mexico	Yes	Senate ratified but awaiting promulgation in official gazette.
Netherlands	Undecided	Under study. No problems with principles of Convention but "overly bureaucratic" control procedures of Annexes 3 and 4.
Philippines	Undecided	Still under consideration.
Poland		
Romania		Responsible GOR official on vacation. Will report later.
Surinam		Ratification will be done at The Hague if at all.
Switzerland	Yes	Must revise existing legislation on controls—ratification will be some years yet.
Thailand	Yes	Enabling legislation passed; awaiting formal Cabinet decision—several months.
USSR	Yes implied	Question under consideration. No action taken yet. No date.
UK	No	Objects to regulation of barbiturates. Will comply with other provisions.

Senator BAYH. Thank you very much.

Mr. BEVANS. Thank you, gentlemen, I am very grateful for the opportunity to appear before you.

Senator BAYH. We appreciate your contribution.

Mr. BEVANS. Thank you, sir.

[Mr. Bevans' biographical sketch and prepared statement is as follows:]

BIOGRAPHIC SUMMARY

Bevans, Charles Irving
Born Grantsville, Maryland, September 21, 1908.

Education:

George Washington University 1926, pre-legal course.
Washington College of Law, 1929–1932, J.D.
Member D.C. Bar since 1932.

Professional Organization Membership:

Member American Society of International Law, Member of Society's Study Groups on the Law of Treaties and on State Succession.

Experience:

Assistant teller in bank 1925–1926; clerk U.S. Veterans Administration 1927–1928; clerk Department of State May 1929–August 1934 when became member Treaty Division; alternate Department representative on Fisheries Commission, War Production Board 1942; Assistant on Fisheries to Assistant Secretary Long 1943; Assistant Chief Treaty Branch, Division of Research and Publication May 1, 1944; Assistant for Treaty Affairs August 31, 1950; Assistant Legal Adviser for Treaty Affairs May 23, 1954.

Participation in Conferences on Treaty Negotiations:

Alternate representative to United Nations Conferences on Narcotic Drugs, New York; Law or Treaties, Psychotropic Substances, Vienna; and Amendment of Narcotics Convention, Geneva.

Member U.S. delegations as treaty adviser to conferences and meetings, such as those regarding the Danube River, Belgrade; fur seals and fisheries, Ottawa and Montreal; Northwest Atlantic Fisheries, Washington; quarantine regulations, Geneva; Inter-American copyright protection and COMSAT agreements, Washington, meetings of International Whaling Commission, load lines for ships, and amendments to Safety of Life at Sea Convention, London; tonnage measurement conference, London.

Award:

Department of State Distinguished Honor Award 1972.

PREPARED STATEMENT OF CHARLES I. BEVANS, ASSISTANT LEGAL ADVISER FOR TREATY AFFAIRS, OFFICE OF THE LEGAL ADVISER, DEPARTMENT OF STATE

Mr. Chairman, my name is Charles I. Bevans, Assistant Legal Adviser for Treaty Affairs in the Office of the Legal Adviser, Department of State.

I welcome the opportunity to appear before your Committee in support of the Psychotropic Substances Act of 1973 as set forth in S. 2544.

The Department of State is very much interested in this legislation, and the Convention on Psychotropic Substances which the legislation is designed to implement. Enactment of this legislation will pave the way for ratification of the Convention by the United States and cooperation with other countries in establishing effective controls over international traffic in psychotropic substances.

The Convention is the first international agreement on the control of psychotropic substances. We have had over sixty years experience in international cooperation in efforts to limit the use of narcotic drugs to medical and scientific purposes, primarily by preventing illicit traffic in those drugs.

We have had no experience under international agreements for the control of psychotropic substances. Accordingly, long and careful study was given to the subject before the Convention on Psychotropic Substances was formulated. In 1954 the World Health Organization's Expert Committee on Addiction Producing Drugs recommended that governments permit the dispensation of amphetamines and their derivatives only on prescription. In 1957 that Committee recommended national controls over tranquilizers. The United Nations Commission on Narcotic Drugs adopted two resolutions on the basis of the Committee's 1957 report. Those recommendations were that governments take measures to prevent the abuse of barbiturates and keep a watch for the abuse of tranquilizers. A resolution adopted in 1965 by the World Health Assembly requested the Director-General of the World Health Organization "to study the feasibility of international measures for control of sedatives and stimulents." Pursuant to that resolution and recommendations by the Expert Committee on Addiction Producing Drugs, the Commission on Narcotic Drugs agreed in 1966 that an international agreement on the control of psychotropic substances was essential. A unanimous resolution by the General Assembly of the United Nations in 1968 requested the Economic and Social Council to call upon the Commission on Narcotic Drugs to give urgent attention to the abuse of psychotropic substances and to the placing of such substances under control.

These considerations and subsequent consideration of the problem of psychotropic substances by the Economic and Social Council, the Commission on Narcotic Drugs, the World Health Organization, and governments led to the convening of the 1971 Conference in Vienna at which the Convention was adopted.

Special efforts were made before and during the conference convened in Vienna to formulate an agreement that would provide effective international controls over psychotropic substances and the same time assure that the

availability of those substances and their use for medical and scientific purposes would not be unduly restricted.

The Department of State is confident that these efforts at the Vienna Conference were successful, that the best interests of the United States will be served by ratification of the Convention by the United States, and that the proposed legislation under consideration will permit fulfillment of all the provisions of the Convention and assure the protection of United States interests.

The Department of State considers it highly important that the Convention on Psychotropic Substances be ratified by the United States. The Convention would be a helpful instrument in the prevention of the smuggling of psychotropic substances into the United States. It would be helpful in preventing the illegal smuggling into other countries of substances produced in the United States. Our ratification would be assurance to the world community that the United States will cooperate in the control of manufactured drugs as well as insisting upon international control over drugs produced from the opium poppy and the coca bush. For over sixty years the United States has taken the lead in urging effective controls over the narcotic drugs produced from those plants. A failure on our part, as one of the largest manufacturers of psychotropic substances, to cooperate on international controls over those substances might unfortunately lead to relaxation of efforts by other countries to prevent the illicit production and traffic in the narcotic drugs. We feel confident that ratification of the Convention by the United States will encourage many other countries to ratify it.

The Department of State has submitted to the Committee written statements in answer to a number of questions that have been raised regarding the Convention on Psychotropic Substances. I shall be glad to endeavor to answer any questions which you or any other members of this Committee may have regarding those statements or other questions regarding the Convention.

Mr. Chairman and other members of the Committee, I thank you.

Senator BAYH. I wish to include in the record at this point specific background information on the control of substances under the Convention on Psychotropic Substances supplied by Mr. Bevans. Also, Mr. Harvey R. Wellman, Special Assistant to the Secretary for Narcotics Matters of the Department of State has supplied John M. Rector, my Staff Director and Chief Counsel with information relevant to these hearings which will be found in the record at this point.

[The documents were marked "Exhibit No's. 16 thru 18" and are as follows:]

EXHIBIT No. 16

CONTROLS AND RESEARCH ACTIVITIES IN THE UNITED STATES UNDER THE CONVENTION ON PSYCHOTROPIC SUBSTANCES

Concern has been expressed that the Convention on Psychotropic Substances would place the use of drugs, as well as research activities involving drugs, under the control of regulatory agencies beyond the direct control of either our States or our Federal Government. There appears, however, to be adequate safeguards in the provisions of the Convention and in pending legislation in the Congress to remove any basis for such concern.

As for the matter of direct controls, there may be a misapprehension arising from the fact that under the Convention on Psychotropic Substances the International Narcotics Commission decides whether a given substance shall be placed under the controls specified in the Convention. However, the Commission cannot initiate the control procedure. Under Article 2 of the Convention a party to the Convention or the World Health Organization must first give notification to the Secretary-General of the United Nations that it has information which, in its opinion, may require controls over a substance, the Secretary-General must communicate that notification to all parties, the Commission and the World Health Organization, an assessment must be made with respect to that substance by the World Health Organization, and that assessment communicated to the Commission before the Commission can proceed. Even after the Commission decides upon a given level of control by determining that the substance shall be placed in Schedule I, II, III, or IV annexed to the Convention, the United States and other parties may give notification that it is not in a position to give effect to all the provisions of the Convention applicable to the substances in the Schedule decided upon by the Commission. There is also a procedure for review of the Commission's decision by the Economic and Social Council.

The intent of the Congress that the application in the United States of the Convention on Psychotropic Substances shall be in accordance with legislation is made clear in pending legislation in three bills, H.R. 10365, S. 2544, and H.R. 10900, to implement the Convention. Those three bills are identical in substance. Section 2 of each of those bills, which sets forth findings and declarations by the Congress, includes the following:

"The Convention is not self-executing, and the obligations of the United States therefore must be performed pursuant to appropriate legislation. It is the intent of Congress that the provisions of this Act will satisfy all obligations of the United States under the Convention not already met by existing law and that no further legislation is necessary."

Attention is also invited to other findings and declarations in Section 2 regarding the intent of the Congress that implementation of the Convention should be accomplished within the framework of the procedures and criteria for classification of substances under existing legislation and that "nothing in the Convention shall interfere with bona fide research activities".

Section 10 of the pending legislation would amend subsection (f) of Section 303 of the Controlled Substances Act (21 U.S.C. 823(f)) by adding a sentence at the end thereof reading as follows:

"Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the Convention which is conducted in conformity with this subsection and other applicable provisions of this title."

Although the United States Food and Drug Administration is not specifically mentioned in the pending legislation, under Section 3 of that legislation the Secretary of Health, Education and Welfare is given a prominent and vital part in the application of the Convention in the United States. His participation is required in all actions involving the establishment of controls over new psychotropic substances in the United States or the changing of those controls.

Under the Single Convention on Narcotic Drugs, the Commission on Narcotic Drugs may adopt a recommendation by the World Health Organization regarding the controls to be placed on a given drug or reject the recommendation in its entirety. Under the Convention on Psychotropic Substances the Commission may place a psychotropic substance in a higher or lower level of controls than that recommended by the World Health Organization. However, the World Health Organization will perform a prominent and vital role in the procedures for determining whether a substance will be controlled under the Convention on Psychotropic Substances. No new substance can be brought under control or existing controls on a substance changed by the Commission without its having first received an assessment thereon by the World Health Organization. With respect to the role of that organization in the application of the Convention on Psychotropic Substances, attention is invited to the statements made on pages 4 and 5 of the publication of the Department of Justice, Drug Enforcement Administration, entitled "Convention on Psychotropic Drugs", a discussion of the Convention adopted at Vienna, February 21, 1971.

ASSISTANT LEGAL ADVISER FOR TREATY AFFAIRS,
OFFICE OF LEGAL ADVISER,
DEPARTMENT OF STATE,
Washington, December 4, 1973.

EXHIBIT No. 17

CONTROL OF SUBSTANCES UNDER THE CONVENTION ON PSYCHOTROPIC SUBSTANCES

Two suggestions made regarding the Convention on Psychotropic Substances are as follows:

1. That the scheduling of psychotropic substances by the United States take place only in accordance with United States legislation as set forth in

Section 202 of PL 91-513, the "Comprehensive Drug Abuse Prevention and Control Act of 1970" (21 U.S.C. 811), and

2. That any decision by the Commission on Narcotic Drugs to schedule a psychotropic substance contrary to a recommendation by the World Health Organization shall not be binding upon the United States.

Each of these suggestions proposes a procedure which appears to be neither necessary nor desirable.

I

As for the first suggestion, there are various safeguards embodied in the Convention on Psychotropic Substances and in proposed legislation which appear to make such a procedure unnecessary.

The safeguards in the Convention, those proposed in legislation (H.R. 10365, S. 2544 and H.R. 10900) and other safeguards seem to make it inconceivable that any substance would be scheduled contrary to United States views. Those safeguards include the significant participation by the United States in the World Health Organization Expert Committee on Drug Dependency by highly qualified doctors, the findings required by the World Health Organization (WHO) (Art. 2, para. 4 of the Convention) before it can recommend that a substance be controlled, the lack of authority on the part of the Commission on Narcotic Drugs to make any determination on the scheduling of a substance without assessments by WHO (Art. 2, paras. 5 and 6), the time lag of 180 days before any decision by the Commission becomes binding (Art. 2, para. 7), the right of any party to the Convention to give notice that it is not in a position to give effect to all the provisions of the Convention with respect to a given substance (Art. 2, para. 7), the provisions of the Convention for the review of decisions of the Commission by the Economic and Social Council (Art. 2, para. 8), the requirement that decisions of the Commission regarding the scheduling of substances shall be by a two-thirds majority of the members thereof (Art. 17, para. 2), and the requirement in proposed legislation that a recommendation by the Secretary of Health, Education and Welfare regarding drugs or other substances under consideration shall be binding on the representative of the United States in discussions and negotiations relating to the action.

However, even if in spite of all these safeguards there were some possibility that a drug or substance would be scheduled contrary to the views of the United States, the exception suggested may be far more damaging to the United States than the scheduling of one or two drugs with which it disagreed. The exception would be contrary not only to the basic objective of the international scheduling procedure specified in the Psychotropics Convention but also contrary to the international practice followed since 1933 with respect to narcotic drugs. After some ten years of experience under the 1912 Opium Convention the world community recognized that international cooperation for the suppression of the abuse of drugs requires far more than prohibitions in a treaty and domestic legislation. The principal shortcoming of the 1912 convention was that it did not provide any international machinery to facilitate its application. Such machinery was established by the 1925 Geneva convention but under that convention international determinations on the control of new drugs merely had the status of recommendations which each party was free to adopt or to ignore. The Convention for limiting the manufacture and regulating the distribution of narcotic drugs adopted in 1931, and which entered into force for the United States in 1933, provided that narcotic drugs determined by the international organs to be habit forming and dangerous were required to be controlled immediately in each of the States party. The same procedure was continued in a 1948 protocol bringing under international control drugs outside the scope of the Convention of 1931, and in the Single Convention on Narcotic Drugs, 1961, to which 90 countries are parties.

A determination by United States that it alone should decide what drugs or substances it would control would be a turning back to the 1925 Convention where the control of new drugs was purely voluntary, a position abandoned in 1933 with the entry into force of the 1931 Convention. Such a position could serious detract from leadership the United States has taken for over sixty years in urging strong international cooperation in the control of drugs. Such a position could also result in a relaxation by other countries of their efforts to apply effective international controls for the suppression

of illicit traffic in narcotic drugs as well as give rise to a reluctance to cooperate in applying proposed controls on psychotropic substances.

Whether it would be possible to let each country in the world determine by its own legislation the domestic uses that it would allow for controlled substances and at the same time effectively prevent diversion, exportation, and production for illegal use in other countries is unknown at the present time. All the narcotics treaties, beginning with the 1912 Convention, have attempted to limit the internationally controlled drugs to medical and scientific uses, reflecting the consensus of the world community for over sixty years that such control is necessary. There may be a better and simpler way of international cooperation in the control of drugs and other substances susceptible to abuse, but until such a way is found it would seem highly desirable to continue the present system of control.

II

With respect to the second suggestion, it should be noted that, unlike the Single Convention on Narcotic Drugs, the provisions of the Convention on Psychotropic Substances would not permit the Commission on Narcotic Drugs to place any new substance under control or change the controls on any drug already in a schedule in the absence of an assessment thereon as to medical and scientific matters by the World Health Organization.

Under the Single Convention the Commission may, by a decision of its own, without awaiting a World Health Organization assessment, require the parties to apply provisionally to a narcotic drug all of the strongest controls specified in the Single Convention (Art. 3, para. 3, (ii)). The Convention on Psychotropic Substances requires, pending an assessment by the World Health Organization and a formal decision by the Commission, only that the parties examine, on the basis of information available to them, the possibility of the provisional application to a substance of measures of control.

Under the provisions of paragraph 4 of Article 2 of the Psychotropics Convention there are set forth the criteria to be followed by the World Health Organization in determining whether or not a recommendation should be made that a given drug be controlled. Earlier treaties which provided for the bringing of new drugs under control, such as the 1925 Convention, the 1948 Protocol, and the 1961 Single Convention, required only a finding that the new drug is liable to similar abuse and similar ill effects as the substances named in those instruments or in the schedules annexed thereto. This requirement is included as an alternative, in subparagraph (a) (ii) of paragraph 4 of Article 2 of the Convention on Psychotropic Substances but is coupled with an additional requirement in subparagraph (b), as shown in the text of the paragraph, which reads as follows:

4. If the World Health Organization finds:

(a) that the substance has the capacity to produce

(i) (1) a state of dependence, and

(2) central nervous system stimulation or depression, resulting in hallucinations or disturbances in motor function or thinking or behavior or perception or mood, or

(ii) similar abuse and similar ill effects as a substance in Schedule I, II, III or IV, and

(b) that there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control,

the World Health Organization shall communicate to the Commission an assessment of the substance, including the extent or likelihood of abuse, the degree of seriousness of the public health and social problem and the degree of usefulness of the substance in medical therapy, together with recommendations on control measures, if any, that would be appropriate in the light of its assessment.

Under these provisions the World Health Organization has the authority and the responsibility to make an assessment not only of the effects of a substance upon an individual but also whether "there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control." The Organization is also authorized to make recommendations to the Commission on the control measures that it considers appropriate in the light of its assessment.

Under these provisions the World Health Organization must make a positive finding not only under subparagraph (a)(i) or (a)(ii) but also under subparagraph (b) before it has a basis for communicating an assessment of the substance to the Commission. Accordingly, unless the World Health Organization makes those two positive findings there would be no likelihood of its transmitting to the Commission any assessment recommending that a substance be brought under control.

As paragraph 5 of Article 2 provides that the Commission shall take into account the communication from the World Health Organization and that the Organization's "assessments shall be determinative as to medical and scientific matters", it is impossible for the Commission on Narcotic Drugs to place any new substance under control without having first received the assessments of the Organization on those matters.

However, the Convention on Psychotropic Substances does not require that the Commission on Narcotic Drugs follow the recommendations of the World Health Organization as to the level of controls to be applied to a given substance.

Paragraph 5 of Article 2 of the Convention on Psychotropic Substances provides as follows with respect to action by the Commission on a new substance:

"5. The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources."

Under these provisions the Commission must not only take into account the communication from the World Health Organization, "whose assessments shall be determinative as to medical and scientific matters", but must also make its own decision, in the light also of "the economic, social, legal, administrative and other factors", as to the controls to be applied to a substance under consideration. The Commission is therefore required to take into account in addition to the assessment by the World Health Organization, the economic, legal, administrative and other factors it may consider relevant. The consideration of all these factors may result in the Commission's deciding that no controls should be applied to the substance involved. This would seem to be a remote probability but it could result either from a consensus by the Commission that no controls should be applied or the failure of a proposal to receive the two-thirds vote necessary to place controls on the substance. A more remote probability would be a decision by the Commission to place the substance in a schedule imposing more rigid controls, such as Schedule I, than were recommended by the World Health Organization such as a recommendation that the substance be placed in Schedule II. The required two-thirds vote for such a decision, contrary to the recommendation of the World Health Organization, would be extremely difficult to obtain. In addition, the decision would be at a considerable disadvantage if an appeal were made to the Economic and Social Council by any party pursuant to paragraph 8 of Article 2 of the Convention on Psychotropic Substances.

If the Commission on Narcotic Drugs were not inclined to follow a recommendation of the World Health Organization that given substance be placed in a specified Schedule, the most likely Schedule which the Commission would decide upon would be a Schedule that imposed less controls upon the substance. Such a decision might well be made by the Commission on the basis that the administration of the higher controls recommended with respect to a given substance would be administratively impractical or impossible, that the economic impact of recommended controls would unduly overshadow the practical benefits that would flow from their application and, possibly also, that the public health and social problem presented by the substance did not justify the imposition of the controls recommended.

This discretion on the part of the Commission on Narcotic Drugs seems far more appropriate than requiring that the Commission have only the authority to follow a recommendation made by the World Health Organization regarding the controls to be imposed upon a given subject or to reject completely the proposal that the substance be controlled.

The prevailing view at the Vienna Conference at which the Psychotropic Convention was adopted was that even though the World Health Organization traditionally has been relied upon to make drug control determinations, many countries now have a technological potential similar to that of the Organization and they should not adopt an international procedure for the determination of controls that did not permit independent review by representatives of their governments. The health officials of those countries also wanted an input in the decision making process which can significantly affect the health and welfare of their people.

An examination of the list of participants in the Twenty-fifth Session of the Commission on Narcotic Drugs shows strong representation thereon of health agencies throughout the world. That list, a copy of which is attached, shows that representatives or alternate representatives of twenty-three of the twenty-nine countries participating were either directors of national health offices or high officials in those offices.

These considerations, it is believed show that there is not only no need to seek to change the functions of the Commission on Narcotic Drugs under the Convention but that it would be undesirable to do so.

Attachment: List of Participants.

COMMISSION ON NARCOTIC DRUGS, TWENTY-FIFTH SESSION—22 JANUARY-9 FEBRUARY 1973—LIST OF PARTICIPANTS

	Members	Geneva address
Argentina:		
Representative	D. Lorenzo A. Olivieri, Consejero de Embajada, Permanent Mission of Argentina to the United Nations, Geneva.	Permanent mission, 34.18.00.
Alternates	Doctor Humberto Mesones, Director Instituto Nacional de Salud, Mental—Barracas 489—Buenos Aires.	
	Teniente Coronel D. Anibal Pastor, Jefe de Inteligencia de la Administracion, Nacional de Aduanas Azopardo 350, Buenos Aires.	
Australia:		
Representative	Mr. J. C. O'Connor, Assistant Comptroller-General, Department of Customs and Excise, Canberra.	Hotel California, 32.44.04.
Alternates	Mr. D. W. Murdoch, Director, Drugs of Dependence Section, Department of Health, Canberra.	Do.
	Mr. R. M. Peek, Second Secretary, Permanent Mission of Australia to the United Nations, Geneva.	Permanent mission, 34.62.00.
Brazil:		
Representative	Dr. Wantuyl Corrêa Cunha, Directeur du Service National de Contrôle de la Médecine et de la Pharmacie, Ministère de la Santé, rua Coelho e Castro, 6 (9ème étage) Rio de Janeiro-GB.	Hotel Cornavin, 32.21.00.
Alternate	M. Antonio Amaral de Sampaio, Premier Secrétaire d'ambassade Délégation permanente du Brésil à Genève.	Permanent mission, 33.31.50.
Canada:		
Representative	Dr. R. A. Chapman,[1] Director-General, International Health Services, Department of National Health and Welfare, Ottawa.	Hotel California, 32.44.04.
Alternates	Mr. W. M. Weekes, Director, Legal Services, Department of National Health and Welfare, Ottawa.	Do.
	Mr. R. T. McKim, Director, Bureau of Dangerous Drugs, Department of National Health and Welfare, Ottawa.	Do.
	Dr. D. M. Smith, Senior Scientist, International Health Services, Department of National Health and Welfare, Ottawa.	Do.
Advisers	Mr. G. P. Wilson, Counsellor, Permanent Mission of Canada to United Nations, Geneva.	Permanent mission 34.19.50.
	Mr. L. H. J. Legault, First Secretary and Consul, Permanent Mission of Canada to United Nations, Geneva.	Do.
	Mr. R. D. Auger, Second Secretary and Vice-Consul, Permanent Mission of Canada to United Nations, Geneva.	Do.
	Inspector G. L. Tomalty, Royal Canadian Mounted Police.	

See footnote at end of table.

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COMMISSION ON NARCOTIC DRUGS, TWENTY-FIFTH SESSION—22 JANUARY-9 FEBRUARY 1973—LIST OF PARTICIPANTS—Continued

	Members	Geneva address
Chile:		
Representative	Mr. Victor Cereceva (arr. 27/1/73), Chef de la Laboratoire chimique pharmaceutique du Ministere de la Sante.	Permanent mission, 34.51.30.
Alternate	Mme Eliana Bucchi de Yépez, Att ché, Mission permanente du Chili suprès de l'Office des Nations, Unies.	Do.
Egypt, Arab Republic of:		
Representative	Dr. Hamdy H. Elhakim, Director-General, Pharmacy Organization, Ministry of Health, Cairo.	Hotel Longchamp, 31.92.28.
Alternates	Gen. Abdel Hamid El Saghir, Director, AntiNarcotics Department, Ministry of Interior, Cairo.	Hotel Pacific, 32.64.67.
	Dr. Helmi Abdel Messih, General Director of Khanka Mental Hospital, Khanka, Egypt.	Do.
	Dr. Zakaria El Cherif, Administration of Pharmacy, Ministry of Health, Cairo.	Do.
	Mrs. S. Abou Steit, Third Secretary, Ministry of Foreign Affairs, Egypt.	Hotel Ascot, 31.76.04.
France:		
Representative	M. Charles Vaille, Inspecteur général do la Sante, 69 Boulevard de Beausé jour, Paris, 16ème.	Hotel Cornavin, 32.21.00.
Alternates	Mme Germaine Hirlemann, Secretaire d'ambassade a la Mission permanente de la France à Genève.	Permanent mission, 58.15.12.
	M. F. Le Mouel, Divisionnaire, Chef de l'Office central pour la repression illicite des stupefiants a la Direction centrale de la Police Judiciaire du Ministere de l'Interieur.	
	M. Henri Nargeotet, Chef du Service central de la pharmacie et des medicaments au Ministere de la Sante publique.	Hotel Cornavin, 32.21.00.
Germany, Federal Republic of:		
Representative	Dr. H. Danner, Senior Counsellor, Federal Ministry of Youth, Family Affairs and Health, Bonn—Bad Godesberg.	Hotel Windsor, 31.71.30.
Alternates	Mrs. Renate Jost, Pharmacist, Ministry of Youth, Family Affairs and Health, Bonn—Bad Godesberg.	Do.
	Mr. Erich Strass, Counsellor at the Federal Office for Criminal Investigation, Bonn.	
	Dr. Eckehard Schober, First Secretary, Office of the Permanent Observer of the Federal Republic of Germany to the United Nations, Geneva.	Office of the Permanent Observer, 32.03.80.
	Dr. Alexander Petri, Attache, Office of the Permanent Observer of the Federal Republic of Germany to the United Nations, Geneva.	Do.
Hungary:		
Representative	Dr. Bela Bolcs, Head of the Pharmaceutical Section, Ministry of Health, Budapest.	Hotel de Longchamp, 31.92.28.
Alternates	Dr. Janes Somogyvari, Deputy Director-General, Hungarian Customs Office, Budapest.	Do.
	Dr. L. Kopetti, Head of Department, Ministry of Interior, Budapest.	Do.
	Mr. Tamas Foldeak Third Secretary, Ministry Foreign Affairs, Budapest.	Do.
India:		
Representative	Mr. Jasjit Singh (from 27.1.73), Additional Secretary, Ministry of Finance (Revenue Department).	Hotel du Rhones, 31.98.31.
Alternates	Mr. B. S. Chawla, Narcotics Commissioner to the Government of India.	Do.
	Mr. N. N. Jha, Director, United Nations Division, Ministry of External Affairs, New Delhi.	31/7/3 Avenue du Bude, 33.12.61.
	Mr. Gauri Shankar, Counsellor, Permanent Mission of India to United Nations, Geneva.	Permanent mission, 35.20.20.
	Mr. V. R. Sonalkar, Deputy Secretary, Ministry of Finance, Government of India Narcotics Commissioner-designate.	Hotel du Rhone, 31.98.31.
Indonesia:		
Representative	Mr. E. Sibarani, Colonel of Police, Director of Police Crime Laboratory, Indonesian National Police Headquarters.	Permanent mission, 34.16.03.
Adviser	Miss P. M. Luhuiima, First Secretary, Permanent Mission of Indonesia to the United Nations, General.	Do.

See footnote at end of table.

COMMISSION ON NARCOTIC DRUGS, TWENTY-FIFTH SESSION—22 JANUARY-9 FEBRUARY 1973—LIST OF PARTICIPANTS—Continued

	Members	Geneva address
Jamaica:		
Representative	H. E. Mr. H. S. Walker,[1] Ambassador, Permanent Representative of Jamaica to the United Nations, Geneva.	Permanent mission, 31.57.80.
Alternates	Dr. A. C. Ellington, Government Chemist, Ministry of Health and Environmental Control.	Hotel Intercontinental, 34.60.91.
	Miss F. M. Shilletto, Third Secretary, Permanent Mission of Jamaica to the United Nations, Geneva.	Permanent mission, 31.57.80.
Japan:		
Representative	Dr. Tsytomu Shimomura, Deputy Director-General, National Institute of Hygienic Sciences, 18-1, 1 Chome Kamiyoga, Setagaya-ku, Tokyo.	Hotel de Berne, 31.60.00.
Alternate	Dr. Nobuo Motohashi, Head, Narcotics Division, Pharmaceutical Affairs Bureau, Ministry of Health and Welfare, 2-2, 1 Chome Kasumigaseki, Chiyoda-ku, Tokyo.	Do.
Adviser	Mr. Osamu Watanabe,[1] First Secretary, Permanent Mission of Japan to the United Nations, Geneva.	Permanent mission, 34.84.00.
Kenya:		
Representative	Mr. A. A. Duma, Chief Inspector of Drugs, Ministry of Health, P.O. Box 30016, Nairobi.	Hotel Bali, 32.14.40.
Alternate	Mr. A. O. Tago, Senior Assistant-Secretary, Ministry of Foreign Affairs, Kenya.	Do.
Lebanon:		
Representative	H. E. Mr. Mahmoud Banna, Ambassador, Permanent Representative, Permanent Mission of Lebanon to the United Nations, Geneva.	Permanent mission, 33.81.40.
Alternate	Capitaine Antoine Saadeh,[1] Chef du Service Technique de l'Etat-Major du FSI.	Hotel Mon Repos, 32.80.10.
Advisers	Mr. Samir Chamma.	
	Mme. Ruby Homsy, First Secretary, Permanent Mission of Lebanon to the United Nations, Geneva.	Permanent mission, 33.81.40.
Mexico:		
Representative	Embajador Fernando Castro y Castro, Director en Jefe de la Secretaria de Relaciones Exteriores de México.	Hotel Intercontinental, 34.60.91.
Alternates	Lic. Juan Barona Lobato,[1] Consul General del Servicio, Exterior Mexicano.	Hotel de Longchamps, 31.92.28.
	Lic. Rodolfo Chávaz, Jefe del Departamento de Control de Procesos de la Procuraduria General de la República.	Hotel Alba, 32.56.00.
	Dr. Adán Pumaro Rondanini,[1] Jefe del Departamento Técnico de la Sub-dirección General de Control de Medicamentos de la Secretaria de Salubridad y Asistencia.	Do.
Morocco:		
Representative	Mr. Abdellah Lahlou Filali, Chef du Service central de la Pharmacie, Ministère Sante publique (adresse privee, 7 rue d'Alger, Rabat).	
Nigeria:		
Representative	Mr. A. A. Olowole, Chief Pharmacist, Federal Ministry of Health, Lagos.	Hotel Mon Repos, 32.80.10.
Alternate	Mr. A. A. Ajayi, Acting Principal Pharmacist, Federal Ministry of Health, Lagos.	Do.
Pakistan:		
Representative	Mr. Naseem Mirza,[1] Counsellor, Permanent Mission of Pakistan to the United Nations, Geneva.	Permanent mission, 34.77.60.
Adviser	Mr. Muhammed Javed Khan, Third Secretary, Permanent Mission of Pakistan to the United Nations, Geneva.	Do.
Peru:		
Representative	Mr. Octavio Sarango, Inspector Superior de la Policia de Investigaciones del Peru, 1032 Avenida Arequipa, Lima, 1.	Hotel Montana, 32.08.40.
Adviser	Mr. Luis Solari-Tudela, Counsellor, Permanent Mission of Peru to the United Nations, Geneva.	Permanent mission, 25.55.22.
Romania:		
Representative	Mr. Dumitru Dobrescu, Doyen de la Faculté de Pharmacie de Bucarest.	Permanent mission, 52.10.90.
Adviser	M. Ion Mateescu (from 29.1.73), Permanent Mission of Romania to the United Nations, Geneva.	Do.

See footnote at end of table.

COMMISSION ON NARCOTIC DRUGS, TWENTY-FIFTH SESSION—22 JANUARY–9 FEBRUARY 1973—LIST OF PARTICIPANTS—Continued

	Members	Geneva address
Sweden:		
Representative	Prof. Bror Rexed, Director-General of the National Board of Health and Welfare, Stockholm.	Hotel d'Allèves, 32.15.30.
Alternates	Mr. Carl-Edward Sturkell, Head of Legal Department, Ministry of Health and Social Affairs, Stockholm.	Do.
	Mr. Stig Brattström,[1] Counsellor of Embassy, Permanent Mission of Sweden to the United Nations, Geneva.	Permanent mission, 34.36.00.
Advisers	Dr. Björn-Erik Roos,[1] Assistant Professor at the University of Gothenburg.	Hotel d'Allèves, 32.15.30.
	Mr. Gunnar Krook, Court Apothecary, National Board of Health and Welfare, Stockholm.	Do.
	Mr. Esbjörn Esbjörnson, Head of Division, National Police Board, Stockholm.	Do.
	Mr. Lars Hultstrand, Legal Adviser, Ministry of Health and Social Affairs, Stockholm.	Do.
	Mr. Ingemar Stjonberg, Head of Section, Ministry for Foreign Affairs, Stockholm.	
Switzerland:		
Representative	Dr. J. P. Bertschinger, Chef de la Section pharmaceutique du Service fédéral de l'Hygiène publique, 11, Falkenplatz, Berne.	Hotel Windsor, 31.71.30.
Alternate	M. T. Kemény	
Advisers	M. J. Benoit	
	M. J. Schneeberger	
Thailand:		
Representative	Mr. Chitra Posayanonda, General Counsel and Chairman of the Subcommittee, Bureau of Narcotics, Bangkok.	Hotel Suisse 32.66.30.
Alternates	Mr. Nirut Chaikool, Deputy Director-General of Public Welfare Department, Bangkok.	Do.
	Dr. Somsong Kanchanahuta, Director of Nanyarak Hospital and Rehabilitation Centre of Thailand.	Do.
	Police Col. Chavalit Yodmani, Deputy Chief of Foreign Affairs Division, Police Department, Bangkok.	Do.
	Mr. Sakthip Krairiksh, Hill Tribe Welfare Division, Public Welfare Department, Bangkok.	Do.
Togo:		
Representative	Dr. F. Johnson-Romuald, Directeur de la Division de la Pharmacie, Ministère de la Santé publique, Lome.	Hotel Bel[illegible]4.40.
Turkey:		
Representative	H. E. Mr. Coskun Kirca,[1] Ambassador, Permanent Representative of Turkey to the United Nations Office at Geneva.	Permanent mission, 34.39.30.
Alternates	Mr. Resat Arim,[1] Deputy Permanent Representative, Permanent Mission of Turkey to the United Nations Office at Geneva.	Do.
	Dr. Tevfik Alan, Director-General, Department of External Relations of the Ministry of Health and Social Assistance, Ankara.	Hotel Moderne, 32.81.00.
	Mr. Adem Karaelmas,[1] Director-General of the State Soil Products Office, Ankara.	Hotel Ascot, 31.76.04.
Alternates	Mr. Refet Ergin, Assistant Director-General, Department of Agriculture, Ministry of Agriculture, Ankara.	Do.
	Col. Muhlis Aksan, Head of Narcotics Division, General Command of Gendarmery, Ministry of Interior, Ankara.	24 rue Amat, 31.68.50.
	Mr. Turhan Firat, Chief of Section, Department of International Organizations, Ministry of Foreign Affairs, Ankara.	Permanent mission, 34.39.31.
	Mr. Abdullah Pektas, Chief of Narcotics Division, Directorate General of Public Security, Ministry of Interior, Ankara.	24 rue Amat, 31.68.50.
	Mr. Eyub Babacan, Chief of the Interpol, National Central Bureau of the Turkish Police, Ministry of Interior, Ankara.	Do.
	Mr. Aydemir Erman, Second Secretary, Permanent Mission of Turkey to the United Nations Office at Geneva.	Permanent mission, 34.39.30.
Union of Soviet Socialist Republics:		
Representative	Prof. E. Babaian, Head of Department, Ministry of Health, Moscow.	Permanent mission, 33.18.70.
Adviser	Mr. E. Sviridov, Third Secretary, Ministry of Foreign Affairs, Moscow.	Do.

See footnote at end of table.

COMMISSION ON NARCOTIC DRUGS, TWENTY-FIFTH SESSION—22 JANUARY–9 FEBRUARY 1973—LIST OF PARTICIPANTS—Continued

	Members	Geneva address
United Kingdom:		
Representative	Mr. C. J. Train Chief Home Office Drugs Branch London.	Hotel Phenicia, 44.01.50.
Alternates	Mr. R. Kendall, Home Office Drugs Branch, London.	
	Mr. A. J. Hawkes, Second Secretary, Permanent Mission of the United Kingdom to the United Nations at Geneva.	Permanent mission, 34.38.00.
United States of America:		
Representative	Mr. John E. Ingersoll, Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C.	Hotel Intercontinental, 34.60.91.
Alternates	Mr. Harvey R. Wellman, Special Assistant to the Secretary for Narcotics Matters, Department of State, Washington, D.C.	Do.
	Mr Roger O. Egeberg, M.D.,[1] Special Assistant to the Secretary for Health Policy, Department of Health, Education, and Welfare, Washington, D.C.	Hotel California, 31.55.50.
Advisers	Mr. Morton Bach, Special Assistant for International Affairs, Department of the Treasury, Washington, D.C.	Permanent mission, 32.70.20.
	Mr. Betty C. Gough, First Secretary, Permanent Mission of the United States to the United Nations, Geneva.	Do.
	Mr. Melvyn H. Greenberg,[1] Assistant Chief Counsel, Bureau of Customs, Department of the Treasury, Washington, D.C.	Hotel Longchamp, 31.92.28.
	Mr. Lawrence H. Hoover, Jr., Attorney, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C.	Hotel de Longchamp, 31.92.28.
	Mr. Stephen H. McClintic, Office of International Affairs, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C.	Permanent mission, 34.60.91.
	Mr. Edward Nozigila, Agency Director for Health and Drugs Control, Department of State, Washington, D.C.	Do.
	Mr. James A. Rosen, Attorney, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C.	Hotel Longchamp, 31.92.28.
	Mr. Joan Paul Smith, M.D., Department of Health, Education, and Welfare, Washington, D.C.	Drake Hotel, 31.67.50.
	Miss Candace L. Cowan, Assistant General Counsel, Special Action Office for Drug Prevention, Executive Office of the President, Washington, D.C.	Hotel Longchamp, 31.92.28.
	Miss Sheila Cody, Department of Justice, Washington, D.C.	Hotel Intercontinental, 34.60.91.
	Mrs. Gerry Troulx, Permanent Mission of the United States to the United Nations, Geneva.	Permanent mission, 32.70.20.
Yugoslavia:		
Representative	Mr. Dragan Nikolic, Deputy Head of Department, Federal Secretariat for Foreign Trade, Belgrade.	Hotel Suisse, 32.66.30.

[1] Accompanied by spouse.

EXHIBIT No. 18

DEPARTMENT OF STATE,
Washington, D.C., February 11, 1974.

MR. JOHN RECTOR,
Chief Counsel,
Senate Judiciary Subcommittee on Juvenile Delinquency,
New Senate Office Building Annex,
Washington, D.C.

DEAR MR. RECTOR: I refer to the hearing of the Subcommittee scheduled for February 25 to consider legislation designed to supplement existing laws to the extent necessary to fulfill commitments the US would assume upon ratification of the Convention on Psychotropic Substances.

The International Narcotics Control Board has recently issued to governments its Report for 1973, which will be made public after its submission to the United Nations Commission on Narcotic Drugs on February 25, 1974. I am enclosing an excerpt from the Report which refers to psychotropic sub-

stances and to the Convention. The Board, which is the treaty organ under the narcotics convention and would perform similar functions under the Psychotropics Convention, has called upon countries to implement the provisions of the Psychotropics Convention to the extent possible even before ratification. In response to the Board's invitation, 83 countries have responded with statistics on international trade in these substances.

As you will see from the enclosed excerpt from the 1973 Report, the Board, after commenting on the manufacture and trade of psychotropic substances, finds evidence that their abuse is not diminishing but rather spreading. It concludes with the following:

"The situation should not be allowed to drift further and the Board trusts that all governments which have not already done so will urgently consider ratifying the 1971 Convention, remembering that abstention by a single country trading in the substances may result in evasion of internal control in other countries."

It is hoped the Board's information and views may be of assistance to the Subcommittee in its deliberations. We shall send you a copy of the complete Report as soon as it is available.

Sincerely yours,

HARVEY R. WELLMAN,
Special Assistant to the Secretary for Narcotics Matters.

Enclosure: Excerpt from INCB Report 1973.

Excerpt from International Narcotics Control Board Report 1973.

"*Psychotropic substances*

"55. Over the past two decades the central nervous system stimulants and depressants and, more recently, powerful hallucinogens have aroused increasing concern as an element in the spectrum of drug abuse. The onset of this new development was immediately perceived, being masked by the rapidly extending use of these substances in medical practice. In 1956 the Commission on Narcotic Drugs [4] called public attention to the dangers inherent in overindulgence in amphetamines and recommended governments to bring them under control, and in 1965 the World Health Assembly [5] gave similar warning in regard to the abuse of sedatives which it observed was approaching epidemic growth among young people in certain countries.

"56. The Board also in the course of its annual commentaries on the international situation referred to the danger [6] that addicts deprived of narcotic substances may turn to those uncontrolled drugs.

"57. By 1965, as indicated in the Board's report for that year, the countries more directly affected had enacted legislation on the lines recommended by the international organs. But the checks imposed by these enactments proved inadequate and in 1966 the Commission on Narcotic Drugs unanimously recommended that national controls of dangerous psychotropic substances should be made mandatory by international agreement. This recommendation, which naturally had the full support of the Board, was fulfilled in 1971 by the adoption at the Vienna Conference of the Convention on Psychotropic Substances.

"58. Thus the challenge presented by the new development has been progressively met by defensive measures, first on the national, then on the international plane. It should be added, however, that while less than three years have elapsed since the Vienna Conference, nevertheless it is nearly twenty years since the dangers of addictive resort to such drugs first became apparent to international bodies; yet by the end of 1973 only fifteen countries have formally ratified or acceded to the international legislation which has by common consent been found necessary. Making due allowance for the problems entailed for governments in adhering to so complex an agreement as the 1971 Convention a more expeditious response is surely called for.

"59. No doubt in the countries immediately affected by abuse of these substances internal measures have for some time past been introduced to meet the domestic situation, but in the absence of international legislation these have not sufficed to prevent invasion by supplies from other countries.

[4] Document E/2891—E/CN.7/315, para. 328.
[5] 18th World Health Assembly, May 1965, resolution 47.
[6] Documents E/OB/21, para. 164 and E/OB/19, para. 34.

"60. It has also to be acknowledged that a large number of countries are complying in advance with the provisions in the Convention which require the supply of statistical information. No less than 83 countries have responded to a questionnaire issued by the Board in 1971 in pursuance of Resolution I of the Vienna Conference and Resolution 1576 (L) of the Economic and Social Council. Although the statistics so far assembled the still incomplete they nevertheless throw light on international trade in these substances. The fact that importing countries have provided figures more readily than manufacturing countries inevitably entails certain discrepancies in the totals, but these will be reconciled as the Board receives a wider response to its annual calls for information.

"61. From the 1971 figures it is clear that the manufacture in that year of the more dangerous drugs listed in schedule I of the Convention was very small and included D.M.T. (Dimethyltryptamine), Mescaline and Tetrahydrocannabinol. Of these Mescaline was imported by sixteen countries from four exporting countries.

"62. Of the substances listed in Schedule II the most prominent was amphetamine with a total declared manufacture of 47,000 kg evenly divided between two countries; but almost 900 kg of this total was utilized in the manufacture of exempted preparations or of non-psychotropic products. Over 30 countries imported more than 1 kg of this substance from six exporting countries and the total declared exports amounted to 6,500 kg. Six countries exported a total of just over 5,000 kg of dexamphetamine to 25 importing countries. No manufacture of, and trade in, phencyclidine was reported.

"63. Drugs included in Schedule III were imported by more than 30 countries, the most widely distributed substance being amobarbital with a total import of more than 20,000 kg. A similar quantity of glutethimide was manufactured and 70 percent of this was by a single country.

"64. Seven countries reported manufacture of substances listed in Schedule IV and 48 countries imported quantities exceeding 1 kg, the largest total being those of meprobamate at nearly 112,000 kg and phenobarbital at nearly 80,000 kg.

"65. The assembly of these statistics is a useful first step towards surveillance over the movement of drugs which the Vienna Conference scheduled as being of significance in this field. It may be that the figures supplied in respect of the year 1972 will prove to be somewhat ampler and therefore even more informative; but only when all manufacturing and importing countries have unreservedly responded to the Board's initiative will it be possible to present a complete and accure picture of the licit international movement of these substances. It is to be hoped therefore that those countries which have yet to provide figures will do so without avoidable delay and that thereafter all national authorities will cooperate in submitting complete and accurate returns.

"66. But more is required than a statistical survey. Even from the present limited evidence there are clear indications that, taken as a whole, abusive resort to these substances is not diminishing and that it is spreading to more countries, including some in Africa and in Asia. While it would seem that in certain places efficient police action combined with voluntary restraints adopted by doctors and pharmacists may have led to a fall in amphetamine consumption this is by no means a general phenomenon. It may be too that there are now fewer people prepared to incur the dangers of experimenting with LSD. On the other hand there seems little doubt that misuse of barbiturates is on the increase.

"67. The situation should not be allowed to drift further and the Board trusts that all governments which have not already done so will urgently consider ratifying the 1971 Convention, remembering that abstention by a single country trading in these substances may result in evasion of internal controls in other countries."

Senator BAYH. Our last witness today is Dr. Thomas E. Bryant, president of the Drug Abuse Council, Washington, D.C. Mr. Bryant, we appreciate your being with us this morning.

STATEMENT OF DR. THOMAS E. BRYANT, PRESIDENT, DRUG ABUSE COUNCIL, INC., WASHINGTON, D.C.

Dr. BRYANT. Thank you very much, Senator.

In the interest of time, I think that if the Senators have had an opportunity to look through out statement that I have submitted, I could just make a few comments and stress a few of the points, and you could ask your questions that would not take as much time as if I were to read the whole statement.

Senator BAYH. That is fine.

Dr. BRYANT. First let me indicate that there is an important typographical error in the statement so that when we refer specifically to Senate bill 1646, after each time I should also say Senate bill 2544.

I am appearing with some degree of reluctance. I think I am about the only one appearing before you who is going to ask any question and express some reservations this morning. I would like to state that I think that the current legislation before this committee, as I made clear in my statement, is a vast improvement over the legislation we have seen before. In some ways those are some of the concerns I express in my statement, we are getting down to talking about rather than some of the bigger which have clearly been considered and resolved in a workable manner.

I should explain that another one of the reasons that I am reluctant or I have some reluctance about appearing this morning is because I seem to be expressing a sort of devisive note—with the medical and scientific people on the one side and the law-enforcement people on the other side. I think that has been a problem traditionally in this country and from my position in the Drug Abuse Council, we have noticed that those two groups have been coming a bit together more of late. And I do not want to do their coming together any great disservice by emphasizing that basic differences still exist.

However, I think in our conversations with a number of representatives of the medical and scientific community, particularly the research field, they do have some concerns and most of those concerns are expressed either in my statement here or in the analysis of the psychotropic convention that we did last year, and of which we provided several copies to the committee.

I think you have addressed most of those concerns in your questions to the witnesses this morning.

The real thing that I am trying to accomplish by offering you this statement for the record is to make your record complete and comprehensive and to serve a note of caution. In Dr. Egeberg's statement he says it is highly unlikely that the information and the advice of the scientific and medical community would not be controlling on the international scene. My questions are addressed to that "highly unlikely."

I think most members of the medical and research and scientific professions would like to get as much guarantee as they can that the important research necessary to get the kind of knowledge that allows us to react in a responsive manner to changes in the drug scene is available. That is the kind of thing I would like to serve a cautionary note about.

With those remarks, and if there are no specific questions about them, then maybe we could turn to my statement and I will be happy to answer any questions.

Senator BAYH. Let me just address a few quick questions here.

You mention in your statement and in the report here, inconsistencies between the legislation and the Convention and our domestic laws. Do you have any specific recommendations as to how these inconsistencies could be rectified?

Dr. BRYANT. I have spoken with the General Counsel of the Food and Drug Administration, Mr. Hutt, and a number of other people. Let me say as an aside, that I think the people who have been trying to draft this legislation, your staff, and people in the Federal agencies have been forthcoming toward the medical and scientific community. We have had opportunities often to give advice and to indicate how we would like things worded.

In direct answer to your question, we have some specific concerns and thoughts that we would like to sit around a table and discuss. They include more concrete guarantees, specifically in the area of research. Also, in terms of one of the questions you have raised this morning about the definition of medical practice, and what constitutes good medical practice. If we could get wording in the enabling legislation that locked that in, in the nature of guarantees, then I think the medical and scientific community would be happy. We would be glad to work with your staff and submit that wording to you, Senator.

Senator BAYH. You were present in the hearing room, when I addressed a question relative to the authority HEW has on the medical question: the definition? The earlier bill which I introduced did provide this authority to HEW. Mr. Hutt says that it it their judgment that that is no longer necessary because that is the authority presenly provided in the 1970 act.

Having that kind of legislative history, if we could strengthen that as we bring this forward in the debate stages on the floor, would that meet the particular reservation which you have?

Dr. BRYANT. Well, I think it would, realistically, Senator. But, I am sure you are aware that a number of members of the medical profession and scientific community around the country would want to make all of these determinations themselves. Even to guarantee that HEW would be the responsible Federal Agency would not be satisfactory to a number of them.

But, realistically and practically speaking, I think it would and I would urge you to do that.

Senator BAYH. Well, if we were to let that basic proliferation of phylosophies follow, then you would not really have any national standard, would you?

Dr. BRYANT. I agree with you.

Senator BAYH. Even one that would be recognized by a great congress of authority in the medical and scientific community.

Now, let me ask you to look at the 1970 act. You interpret that to prohibit the Attorney General from initiating controls without HEW concurrence?

Dr. BRYANT. Yes. The thrust of my testimony and statement here, and the thrust of the conversations I have had with people around

the country is that an awful lot of sweat, blood, and tears went into the 1970 act, as both of you Senators certainly are aware. It is a good, workable piece of legislation for those of us who are in the field. This leads us to be very cautions about tampering with it.

One of the major precepts and principles in that legislation, as I understand it, and one that was worked out after a great deal of discussion and consideration of interests and people's differing points of view was the important role of the Secretary of HEW as representative of medical and scientific community, and the Attorney General as representative of the law enforcement and criminal justice institutions. A compromise position was worked out so that in terms of input of scientific and medical advice, the Secretary's role is critical, vital and controlling. It seems to me to be a workable compromise.

And as I say in the last paragraph of my statement on page 4, when I call for a thorough evaluation, what I am talking about there is the Controlled Substances Act of 1970. I hesitate to tamper with some of its provisions until we have a thorough evaluation of how that act has worked.

Senator BAYH. Could you be a bit more specific and enumerate for us what flexibility in the 1970 act will be eliminated or superseded by the proposed legislation and ratification of the convention proposal.

Dr. BRYANT. I have tried to be as specific as I can in the statement, Senator.

The point I am trying to make is that the 1970 act sets up a series of procedures that are applicable both to controlling and to decontrolling drugs to changing within different schedules. We think there are reasonable ways and reasonable procedures. The proposed Psychotropic Convention has a number of ways and means and wordings that we think are ways around the 1970 act or could potentially be ways around the 1970 act.

Senator BAYH. Well, what are they?

Dr. BRYANT. They have been addressed with some specificity by Dr. Egeberg in his statement. He enumerated five or six points about how, in controlling drugs, if there is a difference of opinion between the scientific and medical community, domestically or internationally, and the international control mechanisms and organizations; how that difference of opinion is adjudicated; the procedures for appeal; the procedures for getting decisions about whether or not a drug will be controlled domestically different from the way it may be controlled internationally or may be so recommended. These are very complicated. We think there are some procedural guarantees that are necessary. I am quite impressed, and have been in discussions we have had up to now, with the rationale and the strength of the argument that came out of Dr. Egeberg's statement when he made his six points or the kinds of things that have been considered that would make it almost impossible, and "highly unlikely" that the medical and scientific state of knowledge at that point in time would not be considered and controlling. We still think we can improve on these procedures a bit.

Senator BAYH. Well, thank you, Dr. Bryant. Senator Hruska?

Senator HRUSKA. Dr. Bryant, you have indicated a hesitation on the part of yourself and those who hold your views, to tamper with this Convention until a thorough evaluation has been completed. How long a time would you propose to allow for an evaluation?

Dr. BRYANT. Senator, I woud not want to create a misimpression here. In my statement when I talk about a thorough evaluation, I am really referring to thorough evaluation of the 1970 Controlled Substances Act in this country.

Senator HRUSKA. Of what?

Dr. BRYANT. Of the 1970 Controlled Substances Act in this country. Perhaps the wording in my last paragraph is misleading. I am talking about a thorough evaluation of domestic regulation we have now. I am not talking about a thorough investigation of the proposed Psychotropic Convention or the enabling legislation.

But, if I may, to use your question to make a point. I think we are very close to having language that is all wrapped up and tied in a nice package and will prove protective of all interests and all concerns. I do not see any need for a long period of time, whether we call it evaluation or reconsideration or whatever. I do not think there is any need for that.

Senator HRUSKA. We have had this 1970 act for 3 years. What would you envision by way of evaluation? Perhaps a reversal of our national policy regarding dangerous substances? If there is anything that needs to be amended or revised, or modified, Congress is in business 12 months a year. Must we hold everything in abeyance until we decide that everything is letter perfect? That would not be a very practical situation, would it?

Dr. BRYANT. No, I do not think it would at all, Senator. But, I think it behooves all of us to figure out what, if anything, may be wrong with the 1970 act in terms of its application since its passage and to improve it. I certainly accept in good faith your statement that the Congress has indicated that it is more than willing to entertain any suggestion for change or improvement in that act. I am just saying that we have not had a lot of experience in terms of controlling and particularly decontrolling, schedued drugs.

I think we ought to be very cautious before we go and move to do something on the international scenes that will in any significant way alter this 1970 act.

Senator HRUSKA. Well, of course, the attitude and the policy you have declared in your testimony means that we should do nothing by way of Convention because other conventions have been ineffective, they have had little deterrent, and you do not want to do anything further until you evaluate the act of 1970. And you do not want to have us engage in a ratification of this convention. What do you stand for? What affirmative thing is there beyond additional thorough evaluation, more study and so on? What affirmative, positive suggestion do you have?

Dr. BRYANT. Well, Senator, I think that I and our organization stands for many of the same kinds of things you have indicated you stand for. We are not for the widespread use or abuse of these psychotropic drugs.

The unfortunate thing that I find greets me and greets people who hold my point of view in a lot of places we go is that to dare to ask any questions sometimes is interpreted that we are pro-drug or we want people to abuse drugs. Nothing could be further from the truth.

But, on the other hand I do not think that we could escape the responsibility of trying to come up with effective international agreements and effective domestic legislation that works. We have talked to people who have studied it a great deal. I cannot in good conscience tell you or this committee that, for instance, the Single Convention for the Control of Narcotic Drugs has been totally effective in eliminating the use of or the trafficking in illicit drugs in this country or internationally. Therefore, I think we have a responsibility, certainly organizations like ours, to suggest improvements because I think we should try to eliminate the trafficking of illicit drugs internationally and in this country.

Senator HRUSKA. Does the experience, and does the study and evaluation given by the World Health Organization, and our State Department for over the last 20 years, have any significance in your judgment? Does that mean anything?

Dr. BRYANT. Yes, it does, Senator. And I am quite impressed by the statement we had this morning, and I think that has to be taken into consideration. On the other hand, I do not think that we can afford to mislead ourselves that everything is all perfect and that we are controlling illicit drugs in the country.

Senator HRUSKA. When you say we do not want to mislead ourselves by thinking everything is all perfect, do you want to advocate waiting until we reach perfection before going ahead? Shall we wait for the millenium?

Dr. BRYANT. Of course not, Senator.

Senator HRUSKA. It would not work, would it?

Dr. BRYANT. Not to wait for the millenium, no.

Senator HRUSKA. I am a little bit disturbed by your endorsement of the Commission on Marihuana report which belittled the efforts and effectiveness of the Single Convention on Narcotic Drugs. What is your suggestion in that regard? Should we denounce that treaty and just have nothing?

Dr. BRYANT. I do not think that would be a responsible suggestion, Senator.

Senator HRUSKA. What do you have by way of——

Dr. BRYANT. You are referring to the Single Convention?

Senator HRUSKA. Yes. In your testimony, you say that the Single Convention has had little effectiveness, if any. If that is true, the next step would be for us to denounce that treaty and then depend upon our own resources.

Dr. BRYANT. Well, Senator, I think I should make some clarification. The Single Convention for the Control of Narcotics has had a considerable good impact and effect in terms of controlling the flow and the distribution of legal drugs. There is very little argument that the mechanism, the procedures set up are quite effective.

What I was addressing in my testimony, and what I think was the concern of the National Marihuana Commission, is the lack of effects of the Single Convention on illicit or illegal trafficking of drugs.

There was a widespread agreement among people internationally that the Single Convention is a less than perfect instrument for controlling illicit drugs. That is what my remarks are intended to do, to make that point.

Senator HRUSKA. You say, in your prepared statement, "even if it should be revealed that substantial abuse in international trafficking is occurring" and so on. Is there any doubt in your mind, that there is "international trafficking" of substantial proportions?

Dr. BRYANT. No, there is not any doubt.

Senator HRUSKA. Why is your statement couched in that manner? It is kind of mystifying because it has been demonstrated without any question that there is heavy international trafficking. Why do you postulate your statement on that proposition? It has been demonstated, has it not? It is an acknowledge fact.

Dr. BRYANT. Senator, the only thing I can do in defense of that is read the rest of the sentence. I would certainly grant you your point that perhaps it is revealed now. All right, I will take it that it is. The point that I was trying to make in the sentence is that it is not at all clear that convention controls will be an effective deterrent. I do not think they are. I do not think that they will, in time, be. I regret that. I would wish that they would be.

Senator BAYH. Would the Senator yield just a moment?

Senator HRUSKA. Yes.

Senator BAYH. We have a major problem here of many dimensions, when we are talking about drug abuse. I mean, there is no simple solution and one of the concerns I had about the administration's treatment of barbiturates that it was sort of the simplistic feeling that you could put a band aid here and it would not pop out someplace, which is inconsistent with the rest of our knowledge. But, I do not want to get back to that right now. If we look at the whole picture, would it not be easier to control the psychotropic drugs, most of which are manufactured by reputable firms. Would it not be easier to control them by international agreement than it would be to control some of the earlier drugs that still are not quite as significant a problem as heroin and cocaine that are grown out on the mountainside and more difficult to really find and reach? If there is an area where international control would be effective is it not in this area where you have established firms? You know, very little of this stuff is made in the bathtub.

Dr. BRYANT. I agree in part with you, Senator. I think that certainly in terms of controlling production and in terms of importation and exportation that we could be assured we are getting procedures and mechanisms for controlling some of the vast numbers of dosages that travel across international lines.

But, I would have some reservations. A lot of things are made in the bathtub here and internationally, and I think that a lot of things are made in clandestine laboratories that are going to find their way across borders. But, I could see some merit and could find some area of agreement with the point I understand you to be making, that here we are talking about exerting some control over essentially known manufacturers of certain substances. Here we are dealing with known factors as opposed to dealing with essentially unknown factors, like how much opium is grown and how much of it is illicit?

Senator BAYH. I apologize for interrupting here. I have a phone call—but bathtub operations was a bad use of phraseology. I think you know what we mean, usually it is the capsulating operation of raw material that was made by reputable firms.

Now, there may be some marginal use of the other, but the quantities that we are talking about, most of it comes from firms. If you have other evidence I would like to have it. Please excuse the interruption.

Senator HRUSKA. Yes. That is a fine point.

I have only two points, although there are other things which I would like to deal with. In your prepared statement you say "nothing in the convention is self-endorsing. All of those requirements are dependent on the good faith of other nations." Is that not true of all treaties and all conventions?

Dr. BRYANT. Yes, it is, as far as I know.

Senator HRUSKA. Yes, that is it.

You complain on the one hand about loss of sovereignty on the part of the United States and then in the sentence I just read you complain because there is no self-enforcing provision. I do not think these comparable positions. Which do you want? Sovereignty or lack of sovereignty? You speak for both. Which do you choose? Do you want a treaty with self-enforcing provisions? You complain about the lack of self-enforcing provisions. We have to make a choice here. We want your thoughts?

Dr. BRYANT. Well, Senator, let me try to get at that in another fashion. I guess the point that I am trying to make is that in the event, in the likelihood that the convention is ratified, which I think is a very great likelihood, that it is not self-enforcing. In my statement, to put it back in its context, I am trying to make the point that it raises certain difficulties. When I talk of protecting the flexibility of this country, I think that probably is an oversimplification on this issue. I am not aware that I used sovereignty in this context. I am talking about protecting interests. I am talking about protecting the agreement that is represented in the 1970 act, which was arrived at after a great deal of discussion and consideration by all parties concerned and protecting the spirit and, indeed, the workings of that agreement that are now in place.

To equate that with sovereignty would be an overstatement. I am talking about protecting and assuring that we have a chance to work through some of the provisions of the laws that we have enacted already.

Senator HRUSKA. The final point I would like to make or discuss with you is that portion of the bill, as well as of the convention, having to do with research.

Dr. Egeberg discussed section 10 of S. 2544 wihch savs, that article 7 of the convention "shall not be construed to prohibit or impose additional restrictions upon research involving drugs and other substances scheduled under the convention which is being conducted in conformity with this subsection and other applicable provisions of this type."

Does section 10 of S. 2544 bring you any comfort in the field of research and its integrity?

Dr. BRYANT. Yes, if I understand the question, I mean. In terms of Dr. Egeberg's statement about the guarantees for protecting the integrity of research, I think that there have been a number of changes that represent great progress. But on the other hand I should indicate and you certainly are aware, Senator, there are a number of individual researchers around the country who do not agree with my position on that, who still have some concerns.

Senator HRUSKA. Public Law 91–513 takes care of that as much as it can be taken care of, does it not? Have there been any complaints about the provisions or language in that regard?

Dr. BRYANT. I am not aware of them, Senator, but I am aware that there are a number of very prominent individual researchers around the country who seem to feel most strongly about this point and want their concerns answered, and directly.

Senator HRUSKA. Frankly, doctor, I have the lurking suspicion that the position taken by the Drug Abuse Council on this bill, and on the convention is sort of doctrinaire, you had at one time said no. Now the bill has been substantially revised, and we feel it has anticipated and limited the serious objections that have been raised. Yet your answer is still no. There are some people who are going to think that is sort of a doctrinaire position, and come hell or high water, that is just what the Drug Abuse Council is going to maintain.

Is there any foundation for such a suspicion among reasonable people?

Dr. BRYANT. I certainly do not want that to arise, Senator. I think that what we have tried to do is to—and perhaps we overstated it in the testimony—ask a few questions and express some reservations to serve as a cautionary note and to express what we think are very real concerns on the part of some members and institutions and agencies in the scientific and research community.

On the other hand, we went to some lengths to express our pleasure and satisfaction with the progress that has been made in the current bill that is before the committee. We think it is a vast improvement. We think that there are a few small areas that further improvement could be made. I would hate for that to be confused with a doctrinaire position that nothing is ever going to be good enough, because that is certainly not our intention.

Senator HRUSKA. Well, I am glad to hear that. On the other hand this convention has been here now for 2½ years, and it was preceded by about 20 years of international negotiation and study. For 10 years we have been in the Congress here considering various aspects of dangerous substances and have legislated on it extensively. Frankly, ther are some of us, and I know the chairman of this subcommittee is one of them, who become important because we are forever studying and appraising. Maybe we beter go forward sometime.

I hope we do.

I want to thank you for the contribution you have made. You have stated your position clearly and I believe it will add a great deal to the record.

Part of your statement, of course, should be more properly addressed to the Foreign Relations Committee, insofar as it is directed to the convention. It is well, however, to make it here also.

Dr. BRYANT. Thank you, Senator.

Senator BAYH. Well, Dr. Bryant, I think that is all for now. If we have other questions after taking a second look at your statement I am sure you will be glad to respond.

Dr. BRYANT. Certainly, Senator.

Senator BAYH. We appreciate your exploring the many aspects of this whole issue with us.

[Dr. Bryant's prepared statement is as follows:]

PREPARED STATEMENT OF THOMAS E. BRYANT., M.D., PRESIDENT OF THE DRUG ABUSE COUNCIL

Mr. Chairman and members of the committee, I am pleased to be here in response to this committee's invitation to present opinions and recommendations of the Drug Abuse Council on this legislative proposal to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 (the Controlled Substances Act) and other laws to permit the United States to comply with the provisions of the Convention on Psychotropic Substances signed in Vienna on February 21, 1971.

The proposed enabling legislation, specifically S. 1646 and S. 2544 represents a substantial improvement over preceding legislative proposals to ratify the Psychotropic Convention. Nonetheless, the Council believes that ratification, without substantial reservations, would unnecessarily limit the United States' ability to develop sound domestic drug policy.

A number of technical and legal problems could arise as a result of possible inconsistencies between the enabling legislation, the Convention, the Controlled Substances Act, and the Federal Food, Drug and Cosmetic Act. I am sure that your own staff and other witnesses will explore these and other points thoroughly and that a detailed discussion of them would be repetitive. The following comments are limited to the broader difficulties which ratification would present with regard to domestic drug policy.

In the Controlled Substances Act, the Congress established the procedures for imposing federal controls over certain drugs in a way that takes reasonable account of the range of interests affected by such decisions. During the hearings and debate, many difficult questions arose from the fact that many drugs susceptible to abuse have widespread and legitimate medical uses. There was also an awareness that overly rigid laws are dangerously inappropriate to changing medical and social knowledge, and a general concern that the United States retain sufficient flexibility in this difficult area of policy.

The Act as finally passed accounted for these concerns by ensuring that different organizations and interests would be heard in connection with scheduling decisions. It authorizes the Attorney General to add substances to, and transfer substances between, a series of control schedules. The degree of regulatory control imposed over a substance depends upon the schedule in which it is listed. Penalty provisions cutting across the schedules make further distinctions, based on whether the drug is narcotic or non-narcotic. Before controlling or decontrolling a substance, the Attorney General must solicit the views of the Secretary of HEW to obtain his medical and scientific evaluation of the drug and his recommendations as to scheduling. Scientific and medical findings made by the Secretary are binding on the Attorney General, who is not authorized to control a substance which the Secretary has recommended not be control'ed. Once a drug has been controlled the Attorney General retains final authority with regard to scheduling, subject to the provisions of the Administrative Procedures Act, because he can move drugs up and down within schedules administratively, taking into account the Secretary's scientific evaluation of the substance, but he cannot initiate controls over the objections of the Secretary. This approach permits greater responsiveness to changing drug use patterns and evolving scientific and medical understanding, and promotes compromise of the diverse scientific, medical and law enforcement interests affected by the public control of drugs.

Enactment of the proposed enabling bills and ratification of the Convention would effectively do away with this important flexibility.

Participation in the Convention would limit the jurisdiction of the United States Congress to decide whether to control or decontrol a psychotropic substance within its own borders. The Congress would not be able to enact legislation inconsistent with the requirements imposed by the Convention and continue to be a party. Where the United Nations Commission on Narcotic Drugs determines that a psychotropic substance warrants control, rescheduling, or removal from control, each party to the Convention is obligated to conform its internal controls closely to the control decisions reached by the CND. In most cases, the initiation of procedures under the Controlled Substances Act will fulfill this obligation. There are minimum controls, however, that absolutely must be imposed irrespective of the control or decontrol decision arrived at by the Secretary of HEW and the Attorney General in accordance with the Controlled Substances Act.

The enabling legislation proposes that in an instance where the CND decides to control a drug, and the Secretary of HEW disagrees because he believes that no control is warranted, the Secretary will apply at least the controls applicable to new drugs pursuant to Section 505 of the Federal Food, Drug and Cosmetic Act. The enabling bills assume that these New Drug Application controls would satisfy the minimum control requirements expected of parties to the Convention. This assumption is open to serious question. New Drug Application standards are quite different than the minimum control requirements of the Convention, and the ultimate decision may well be that only scheduling under the Controlled Substances Act satisfies the treaty requirements.

In such a situation the Secretary's opinion that the drug should not be controlled at all might or might not be upheld on appeal to the Economic and Social Council of the United Nations. If ECOSOC affirmed the CND scheduling decision, the U.S. would be required to institute at least minimum controls under the Controlled Substances Act. After this, of course, the decision to place a drug in schedules IV or V would be completely within the control of the Attorney General under the Controlled Substances Act.

Very similar problems would arise if the U.S. wanted to decontrol a drug now scheduled under the Controlled Substances Act.

The entire process has the effect of tying domestic control decisions to an international consensus of scientific, medical and law enforcement needs, and realism requires a recognition that, historically, this consensus has been dominated by the law enforcement point of view, not the medical or scientific. The membership of CND in the past has primarily demonstrated a law enforcement orientation and the Convention provides that scheduling recommendations of the World Health Organization are not binding on it. Conforming domestic control decisions to those of United Nations' agencies will limit the ability of the United States to revise its law as understanding of the medical, scientific, and social aspects of drug abuse improves.

As a practical matter, this problem cannot be corrected by reservations or amendments. Reservations to any portion of the Convention dealing with scheduling or control measures would undoubtedly be unacceptable to a third of the parties, and the amendment process to the Convention itself is lengthy, since if any one party to the treaty objects to a revision it can be approved only by a conference similar to the one in Vienna.

Nor do the internal procedures of the Convention provide adequate recourse. Appeal of a CND scheduling decision with which the United States disagrees will be successful only if a two-thirds majority is obtained. Conversely, if the U.S. desires to make a change in internal schedules, it must notify the Secretary General, await WHO findings, and secure a two-thirds majority of the CND. Either process is time-consuming, because the CND presently meets only once every two years for a three-week period. The right of qualified acceptance of a CND scheduling decision does exist under Article 2, but minimum controls must still be applied and Article 2 does not cover drugs on the original schedules of the Convention, which list all the psychotropic drugs of abuse now known.

Nor is there provision in the Convention for periodic update and review of the schedules. The Controlled Substances Act has such a provision, and it is unfortunate that the Convention would emasculate its utility.

The National Commission on Marihuana and Drug Abuse has criticized international agreements which intrude too much on national sovereignty:

> (An) international control system should not dictate how participating nations deal with the use of drugs within their own borders. Too often, treaties and conventions have been consciously utilized as a method of foreclosing policy options at home and circumventing the usual and proper legislative provisions which infringe upon national sovereignty in this manner, and such provisions in present agreements should be removed.

The Council fully supports the Commission's recommendation that:

> (T)he proposed Psychotropic Convention be redrafted to make clear that each nation is free to determine for itself which domestic uses for controlled substances it will allow, provided only that each nation prevent diversion, prohibit exportation and production for exportation for illegal use in other countries.

The Council believes that this nation's own history has demonstrated again and again that flexibility must be maintained if we are to respond sensibly to new information and changing social values affecting drug use and abuse.

Except, perhaps, for increasing data-gathering activity on the use of psychoactive drugs, participation in the Convention will provide minimal benefits. The primary rationale for development of the Convention has been that international cooperation is needed to prevent the growing abuse and illicit trafficking of psychotropic substances. There is a striking lack of evidence in support of this proposition, however, and little hard data has been offered to substantiate the need for the kind of international controls which the Convention contemplates. Even if it should be revealed that substantial abuse and international trafficking is occurring, it is not at all clear that agreement to Convention controls will be an effective deterrent. Nothing in the Convention is self-enforcing; all of its requirements are dependent on the good faith of other nations. Its impact on illicit trafficking is unlikely to be better than our experience with the Single Convention on Narcotic Drugs, which has done relatively little to halt the illicit traffic in narcotics. The National Commission on Marihuana and Drug Abuse also concluded in March of 1973 that to date "international treaties have had no major or continuing impact on illegal trafficking." On the basis of past experience with such agreements, it should be emphasized that once an international agreement is ratified it becomes very difficult for a party to change its position with regard to the treaty. The substantial psychological and political pressures upon a party which later regrets its ratification often make it impossible to adjust official policies to comport with newer findings and political developments.

In the Controlled Substances Act of 1970, Congress devised, after extensive consideration and testimony, an elaborate scheme for the control of psychotropic drugs. A careful weighing of health, research and law enforcement considerations forms the basis of a regulatory framework which should not be superseded and/or complicated further, except after a thorough evaluation of its worth. For these reasons, the Drug Abuse Council is firmly opposed to ratification of the Psychotropic Convention and enabling Bill S. 1646 and S. 2544 as currently drafted.

Senator BAYH. The committee is going to conduct oversight hearings in the spring into the general status of the 1970 Controlled Dangerous Substances Act. We will attempt to discover the weak and strong points of the act with an eye toward correcting the weakness and that is a part of our oversight function.

And as of right now, unless the Senator from Nebraska has any further comment, I am prepared to recess these hearings, pending the possibility of further discussion which I am not aware of, but which is possible.

I will insert in the record a letter from the American Medical Association, requesting a delay in their presentation.

[The letter was marked "Exhibit No. 19" and is as follows:]

EXHIBIT No. 19

AMERICAN MEDICAL ASSOCIATION,
Chicago, Ill., February 25, 1974.

HON. BIRCH BAYH,
Chairman, Subcommittee to Investigate Juvenile Delinquency,
Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAYH: Our Association desires a further review of S. 2544 and S. 1646, as well as the Convention on Psychotropic Substances, and meetings scheduled to take place within the organization during the next three weeks will provide this opportunity. The legislation and the Convention itself are concerned with national and international efforts regarding the production, distribution and usage of psychotropic substances. It is important that adequate provisions be made for appropriate, medical, scientific, and research purposes. It is also important that proper safeguards are created to protect against illicit diversion and improper usage in order to curb the abuse of these substances.

Accordingly, we would like to be able to present our views to you after our additional review of this important subject matter. We trust that our comments will be of assistance to the Committee in its study of this legislation and the Convention itself, and we are most appreciative of your invitation to submit these views to you.

Sincerely,

RICHARD S. WILBUR, M.D.,
Deputy Executive Vice President.

Senator HRUSKA. In that regard, Mr. Chairman, I certainly shall not object. I think the request is a reasonable one. Time, however, does fly by. It is my hope that the American Medical Association will promptly report any official action it may take so that we can go forward with this bill.

After all, it is only upon passage of S. 2544 by both the Senate and House that the Foreign Relations Committee will proceed to consider the Convention.

This is said in a kindly way because I know the timetable of large national bodies and their representative proceedings.

Senator BAYH. Why don't I ask our staff to compose a joint letter for our signatures, and we can send that to the AMA, asking them to be expeditious in sharing their views?

Senator HRUSKA. That will be fine.

[The letter was marked "Exhibit No. 20" and is as follows:]

EXHIBIT No. 20

MARCH 1, 1974.

RICHARD S. WILBUR, M.D.,
Deputy Executive Vice President,
American Medical Association,
535 North Dearborn Street,
Chicago, Ill.

DEAR DR. WILBUR: Your letter of February 25, 1974 has been placed in the hearing record of the Subcommittee to Investigate Juvenile Delinquency on S. 1646 and S. 2544.

Since the Subcommittee will attempt to report a bill on this subject at an early date, we would appreciate your prompt attention to the matter of transmitting the American Medical Association's views on these legislative proposals.

With kind regards,

Sincerely,

BIRCH BAYH,
ROMAN L. HRUSKA.

Senator BAYH. We will recess the hearing pending the call of the Chair.

[Whereupon, at 1:20 p.m. the hearing was recessed, subject to the call of the Chair.]

APPENDIX

[Additional Statements and Articles supplied for the Record.]

APPENDIX I

PHARMACEUTICALS MANUFACTURERS ASSOCIATION,
Washington, D.C., March 18, 1974.

HON. BIRCH E. BAYH,
Chairman, Subcommittee on Juvenile Delinquency, U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR BAYH: The Pharmaceutical Manufacturers Association is a voluntary, nonprofit membership association composed of 110 companies engaged in the development and production of prescription and ethically promoted over-the-counter drugs. Many of the products produced by PMA members are classified as controlled substances under Federal law. Accordingly, we are vitally concerned with the 1971 International Convention on Psychotropic Substances and any domestic legislation, which would implement its recommendations.

On October 8, 1973, S. 2544, the Psychotropic Substances Act of 1973, was introduced. This bill, if enacted, would amend the 1970 Controlled Substances Act and other Federal laws to discharge obligations imposed by the 1971 Convention on Psychotropic Substances. On February 25, 1974, the Juvenile Delinquency Subcommittee of the Senate Judiciary Committee held hearings on the bill.

The PMA submits the following comments with respect to S. 2544 with the request that they be included in the record of the hearings.

The PMA concurs in most of the amendments proposed by S. 2544. These amendments, in our opinion, are necessary if the United States is to ratify the 1971 Convention. However, S. 2544 includes one entirely inappropriate application of the new drug provisions of the Federal Food, Drug, and Cosmetic Act. Section 3 of S. 2544 would amend Section 201(d) of the 1970 Controlled Substances Act by the addition of several paragraphs outlining the procedures to be followed in the event the United States receives notification from the United Nations regarding an international scheduling decision. Thus, subparagraph (4)(A)(3)(i) provides that "the controls applicable to new drugs, pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act" may be invoked to meet international control requirements: (1) if such requirements are not met by existing domestic controls and (2) if the Secretary of HEW does not concur in the United Nations' scheduling decision. The new drug controls would be applied in lieu of the control procedures under the 1970 Controlled Substances Act.

The February 25, 1974, statement by the Department of Health, Education, and Welfare before the Juvenile Delinquency Subcommittee made reference to several aspects of the new drug controls which, in HEW's view, could be used to satisfy international obligations. Upon analysis, however, it is obvious that the new drug controls cannot possibly satisfy the minimum international obligations. Therefore, we strongly urge that S. 2544 be amended to delete any references to the Federal Food, Drug, and Cosmetic Act (other than in Section 12 which is not relevant to the present discussion).

The minimum international control obligations for substances added to Schedule IV of the Convention are: (1) licensure for manufacture, trade, and distribution in accordance with article 8; (2) compliance with the obligations of article 13 in regard to prohibition of and restrictions on export and import; and (3) adoption of penal measures in accordance with article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the Convention.

For substances added to Convention Schedule III, the parties must adopt the above three minimum control measures and also require medical prescriptions. Schedules II I call for additional controls respectively, such as statistical reports.

Article 8—Licenses

As a minimal control, a party to the Convention shall: (a) control any duly authorized persons and enterprises carrying on or engaged in the manufacture, trade, or distribution of scheduled substances; (b) control under licenses or similar control measures, the establishments and premises in which such manufacture, trade, or distribution may take place; and (c) provide that security measures be taken to prevent theft or diversion of stocks.

The February 25 comments of HEW state that drugs, legally classified as new drugs, in effect, are licensed by the FDA under the authority of the Food, Drug, and Cosmetic Act. Such license refers to conditions for safe and effective use, not conditions relating to abuse. Further, the FD&C Act does not authorize licensure of persons, manufacturers, distributors, and retailers as such. Section 510 of the FD&C Act provides that producers of drugs must register annually with the Federal Government. However, simple registration does not constitute licensure, or other similar control measure, as required by article 8 of the Convention. In addition, those pharmacies and practitioners satisfying state requirements are exempted from the Federal registration procedure.

Article 8 of the Convention further requires that parties provide security measures in establishments and premises to prevent theft or diversion. The FD & C Act simply does not authorize or suggest imposition of physical plant security and measures to prevent employee diversion. Thus, the new drug controls will not satisfy even the minimum international requirements of licensure under article 8 of the Convention. Since subparagraph (4) (A) (3) (a) (i) would never be invoked, it is superfluous and should be eliminated from S. 2544. Other related references to the Federal Food, Drug, and Cosmetic Act should also be deleted.

Article 13—Import, Export

Another minimal international control restricts exports to any party that has notified other parties to the Convention that it prohibits the importation of one or more substances. There is a provision by which the second party may authorize import of specific quantities by special import license. Section 801 of the FD & C Act does authorize certain controls over the importation of drugs into the United States so as to prevent introduction of misbranded and adulterated drugs. In addition, a new drug intended for export remains subject to new drug limitations, even though other drugs, which would otherwise be adulterated or misbranded, may be exported. The new drug authority is intended to aid FDA in achieving the objectives of assuring export and import of only safe and effective drugs which are not adulterated or misbranded. This import/export authority is not directed toward the control of international commerce of abuse-type substances so as to curtail illicit traffic. FDA's new drug authority may not be invoked to satisfy the export/import control requirements of article 13 of the 1971 Convention.

Article 22—Penal Provisions

Each party to the Convention must treat as a punishable criminal offense any act taken contrary to a law or regulation adopted pursuant to its Convention obligations. The Convention is concerned with abuse of psychotropic substances and is intended to limit the use of abuse-type drugs to legitimate purposes through effective policing and other control measures over illicit traffic.

The FD&C Act provides for criminal sanctions in the event a person commits certain specific prohibited acts. However, these prohibited acts relate to adulteration or misbranding violations or other actions such as obliteration of food or drug labels, which are contrary to the purposes of the FD&C Act.

We note that pursuant to S. 2544, Part D of the 1970 Controlled Substances Act would not be relevant if new drug controls were applied in lieu of control under the 1970 CSA. In effect then, the United States would not meet its article 22 obligations by adoption of the new drug controls, since neither the FD&C Act nor the 1970 CSA would be applicable. Control under the 1970 CSA is essential.

Finally, the suggestion that new drug authority can be used to achieve drug abuse control is contrary to our domestic system for control of drug abuse. The 1970 CSA was designed by Congress as the proper vehicle by which drug abuse and diversion are to be controlled. The FD&C Act is directed to the legitimate medical use of safe and effective drugs. The 1970 CSA is directed to the enforcement against, and prevention of, illicit drug use. These vital differences in the U.S. regulatory system should not be confused.

In sum, the PMA strongly urges that the new drug control alternative be eliminated and that the several references in S. 2544 (other than in Section 12) to the FD&C Act be stricken from the Bill.

There is one additional area of concern which we would like to call to the Subcommittee's attention. The Convention requires that each party adopt minimum control measures within 180 days of a scheduling decision. Parties do not have the right to reject final U.N. scheduling decisions. Thus, if existing domestic

controls do not satisfy international obligations, changes in our domestic scheduling must be made within 180 days. To some extent this procedure could jeopardize the administrative and judicial guarantees of the 1970 Act, since agency and court review of scheduling decisions may not be completed within the time limitations. These judicial and administrative safeguards would be rendered totally meaningless if the U.S. Government were permitted to initiate international control proceedings—either initial scheduling or movement within schedules—in an attempt to avoid compliance with domestic procedures. The legislative history of S. 2544 should clearly state that our Government may not avoid, circumvent, or otherwise infringe on the administrative and judicial safeguards in our domestic law by either initiating or acquiescing in control decisions under the 1971 Convention. If our Government is of the view that stricter U.S. controls are warranted for a particular substance, the 1970 Act should be invoked. Our Government should not be permitted to initiate or encourage international control decisions without first having fully and finally complied with domestic law and procedures.

Respectfully submitted,

C. JOSEPH STETLER.

APPENDIX 2

TEMPLE UNIVERSITY,
HEALTH SCIENCES CENTER,
Philadelphia, Pa., October 18, 1973.

Hon. BIRCH BAYH,
U.S. Senate,
Washington, D.C.

DEAR SIR: The American Psychiatric Association has asked me to speak for the association with respect to Senate Bill 2544 which is intended to amend the Comprehensive Drug Abuse Prevention and Control Act of 1970, so as to make our laws fit with the International Convention on Psychotropic Substances. We have thoroughly reviewed the Bill and find major problems within it. In its present form we would have to oppose it and strongly urge that formal hearings be conducted on the bill. Our objections to the Bill include the following:

1. If this Bill is passed, the Congress will have surrendered to the Commission on Narcotic Drugs of the United Nations the power to place individual drugs under regulatory control; the clear and wise administrative and judicial procedures developed through the 1970 Act are undercut by the present Bill, since the Commission on Narcotic Drugs can specify which substances must be controlled by the United States. There is no legal or administrative appeal to such decisions possible within the United States which cannot be overridden at the Commission on Narcotic Drugs of the United Nations. At the International level appeal may be fruitless since the Commission is composed of representatives of many nations, some of whom are angry with the United States for a variety of reasons including old grievances concerning the Single Convention on Opiates. The Commission represents chiefly law enforcement interests with little weight being exerted by medical or scientific concerns.

2. Substances without approved medical uses in the United States of research interest and questionable abuse liability simply don't fit at all well under the S-2544. The Bill proposes that they might be handled as investigational New Drugs under FDA law. There is real doubt as to whether FDA regulations can meet the control requirements of the Convention on Psychotropic Substances. If they do not, then a potentially valuable research drug must either be placed in Schedule I with Heroin where existing controls will discourage investigators from using it even in rats or test tubes or it will end up as an anomalous non-marketed during in Schedule IV or V, a status which may well be illegal and certainly has no precedent.

3. The Bill makes no provision for decontrolling drugs. The 1970 Act clearly provides for this—wisely, we feel.

4. If this Bill is passed and the Convention on Psychotropic Substances adopted by the Senate, then the United States will have surrendered a large part of its ability to make independent rational decisions about drug control and will receive very little in exchange. We doubt whether the international trade and shipping provisions of the bill will really affect illicit drug availability in the United States appreciably, although we do not object to these provisions of the Bill or the Convention.

5. The balance between (1) scientific and medical concerns and (2) law enforcement concerns so laboriously worked out in the 1970 Act is vitiated by this Bill.

In conclusion, the American Psychiatric Association wishes to place itself on record as being opposed to S-2544 in its present form and request that public hearings on the bill be held. The Association would like to testify in more detail concerning the bill at that time.

Sincerely yours,

JONATHAN O. COLE, M.D.,
Professor and Chairman, Department of Psychiatry.

APPENDIX 3

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 1485–73

AMERICAN PHARMACEUTICAL ASSOCIATION ET AL.,

PLAINTIFFS,

v.

CASPAR W. WEINBERGER ET AL.,

DEFENDANTS.

OPINION AND ORDER

This is an action for judicial review of a regulation of the Food and Drug Administration (FDA) which restricts the distribution of methadone to certain specified outlets as set forth in the regulation. In effect, it prohibits virtually all licensed pharmacies from dispensing this drug when lawfully prescribed by a physician, despite the fact that methadone was invented and was first used as a safe, useful and effective agent in the treatment of severe pain and for antitussive purposes. Decision is not made easier by the fact that in recent years methadone has become a widely known maintenance agent in the treatment of heroin addicts and there is evidence of serious abuses in the distribution of this drug. In their efforts to control improper distribution of methadone, there are strong public policy arguments on the side of defendants. At the same time, the popularity of methadone for use as a pain killer has declined because of the introduction of effective new drugs, and as recently as 1972 the plaintiff Association formally recommended that FDA withdraw its approval of methadone for its indications as an analgesic and antitussive and expressed its philosophic nondisagreement with a course of regulation which would restrict the distribution and use of methadone to approved methadone treatment programs.

The challenged regulation, while ruling out most so-called community pharmacies in the dispensing of methadone for any purpose, still permits approved hospital pharmacies to dispense methadone for analgesic and antitussive purposes. Stripped of the rhetoric which abounds in the papers before us, this appears to be the basis of plaintiffs' complaint. Whether the FDA has the authority to enact the challenged regulation depends on the interplay and connection between two complementary but distinct statutes, the Food, Drug and Cosmetic Act of 1938 and the Comprehensive Drug Abuse Prevention & Control Act of 1970 and the respective roles assigned by Congress to the agencies which administer these Acts. With this brief background, we proceed to the issues presented.

This cause came on for hearing on defendants' motion to dismiss, or in the alternative, for summary judgment and plaintiffs' cross-motion for summary judgment on May 8, 1974. Plaintiffs challenge the validity of certain provisions of the Food and Drug Administration's methadone regulations, 21 C.F.R. § 130.44 ("Conditions for use of methadone") and § 130.48 ("Drugs that are subjects of approved new-drug applications and that require special studies, records and reports.") [1] Specifically, plaintiffs object to those parts of the regulations which purport to restrict the distribution of methadone to direct shipments from the manufacturer to (a) approved maintenance treatment programs, (b) approved

[1] The Commissioner of Food and Drugs published the notice of proposed rule making on April 6, 1972. 37 Fed. Reg. 6940–46. The final methadone regulations were promulgated on December 15, 1972. 37 Fed. Reg. 26790–26807. Some portions of the regulation became effective on that date and the remainder became effective March 15, 1973.

hospital pharmacies, and (c) in cases where hospital pharmacies are unavailable in a particular area, to selected community pharmacies.[2]

Plaintiffs include the American Pharmaceutical Association (APhA), a professional association of pharmacists with a membership in excess of 50,000, three individual professional pharmacists and an individual physician. They argue that the restrictions imposed on the channels of distribution exceed the limits of FDA's authority, were promulgated on the basis of an inadequate record and, being discriminatory in several respects, violate the due process clause of the Fifth Amendment. Plaintiffs seek declaratory relief holding said restrictions invalid and enjoining defendants from enforcing them.

Defendants are the Secretary of Health, Education and Welfare, the Commissioner of Food and Drugs, the Attorney General and the Acting Administrator of the Drug Enforcement Administration. They counter plaintiffs' contentions by citing FDA's authority under the Federal Food, Drug and Cosmetic Act (the Act), 21 U.S.C. § 301 *et seq.*, to control access to the public market of all new drugs (21 U.S.C. § 335) and to promulgate regulations for the efficient enforcement of the Act (21 U.S.C. § 371(a)) and their authority under the Comprehensive Drug Abuse Prevention & Control Act of 1970 (Pub. L. 91–513, 83 Stat. 1241) "to determine the appropriate methods of professional practice in the medical treatment of . . . narcotic addicts. . . ." (42 U.S.C § 257a).[3] With respect to plaintiffs' contention that the regulations in question constitute arbitrary and capricious action not supported by the administrative record, defendants note what they argue is "ample evidence" to support the regulation's restrictions on methadone distribution. See defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, pp. 22–29. Finally, in answering plaintiffs' due process challenge, defendants urge that they need only demonstrate a rational basis for the regulations in order to satisfy the Constitution and that the classifications in issue are unquestionably rationally based in the purposes of the enabling statute. Since the Court concludes that the regulation exceeds the limits of FDA's statutory authority insofar as it purports to restrict the channels of distribution for a drug which is no deemed solely investigational, the Court need not address plaintiffs' latter two arguments.

I.

The drug methadone, a synthetic substitute for morphine, is a "new" drug within the meaning of section 201(p) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321(p) and, as a new drug, requires FDA's approval of an NDA, filed with the Commissioner of Food and Drugs[4] pursuant to section 505(b) of the Act, 21 U.S.C. § 355(b). The drug was first approved by FDA in the 1950's as safe for use as an analgesic and antitussive agent as well as for short-term detoxification of persons addicted to heroin. Subsequently, investigation of methadone for use in long-term maintenance of narcotic addicts (methadone maintenance) was approved by FDA pursuant to its authority under 21 U.S.C. § 355(i), the investigational-new-drug (IND) exemption. Section 355(i) of the Act empowers FDA to exempt from NDA approval requirements those new drugs "intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs." Final guidelines for long-term maintenance programs were promulgated by FDA in 1971. 36 Fed. Reg. 6075 (1971). A year later FDA determined that "retention of the drug [methadone] solely on an investigational status appears to be no longer warranted" (37 Fed. Reg. 6940) and published a notice of proposed rulemaking which resulted, with certain modifications, in the regulations now in question.

The final regulation gave notice that pursuant to FDA's authority under 21 U.S.C. § 355(c), the Commissioner was withdrawing approval of all outstanding NDA's because of "a lack of substantial evidence that methadone is safe and effective for detoxification, analgesia, or antitussive use under the conditions of use that presently exist." [5] 37 Fed. Reg. 26794 (1972). Having withdrawn all approved NDA's, the Commission's new regulatory scheme is presently the exclusive means of distribution for the drug methadone. The Commissioner has thereby created an admittedly unique classification for methadone since on the one hand he has determined that methadone should not be limited solely to investigational status while at the same time concluding that the new drug is inappropriate for regular NDA approval. As statutory support for this novel solution to the methadone dilemma, defendants rely on an expansive interpretation of the Commissioner's NDA authority under § 355 of the Act.

II.

Under the Federal Food, Drug and Cosmetic Act, the FDA (through the Secretary of HEW) has the responsibility of passing on the merits of NDA's. The grounds upon which an NDA can be denied approval are explicitly stated in subsection (d) of § 355 and the NDA shall be approved "if [FDA] . . . finds that none of the grounds for denying approval . . . applies." 21 U.S.C. § 355(c). The NDA must be supported by "substantial evidence" defined to mean "evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could be fairly and responsibly concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof." 21 U.S.C. § 355(d).

One of the six enumerated grounds for refusing approval of a new drug application (NDA) specifically deals with the "methods" or "controls" used in connection with the proferred drug. Subsection (d)(3) of § 355 reads as follows:

> (d) If the Secretary finds
>
> * * * * * * *
>
> (3) the methods used in, and the facilities and controls used for, the *manufacture, processing,* and *packing* of such drug are inadequate to preserve its identity, strength, quality, and purity;
>
> * * * * * * *
>
> he shall issue an order refusing to approve the application. (Emphasis supplied)

This is the only provision of § 355 which speaks of the Secretary's authority with respect to "controls." The Congress apparently intended that the Secretary, or his delegate, FDA, be responsible for the adequacy of premarketing methods and controls inasmuch as the provision delineates the scope of the provision to the manufacturing, processing and packaging stage of a drug's genesis.

The defendants point out, however, that § 355(d) also gives the Secretary the authority to refuse to approve an NDA where the reports of the investigations submitted do not include adequate tests showing whether the new drug is "safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof." 21 U.S.C. § 355(d)(1). See also 21 U.S.C. § 355(d)(2) and (4). Defendants argue that the term "safe" [6] should be interpreted with reference not only to the inherent qualities of the drug under consideration but also in the sense of the drug's being secure from possible misuse. Such a broad inter-

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[2] 21 C.F.R. § 130.44(f)(4) reads:

Shipments to remote areas. In remote areas or in certain exceptional circumstances where there are no approved hospitals, community pharmacies may be approved by the Food and Drug Administration to receive shipments of methadone for administering or dispensing for analgesia upon the recommendation of the State authority and after consultation with the Bureau of Narcotics and Dangerous Drugs. In addition, community pharmacies are permitted to serve as dispensing facilities for out-patient subjects in connection with approved methadone treatment programs (37 Fed. Reg. 26790) and wholesale pharmacy outlets may in some instances receive and stock methadone for trans-shipment to approved dispensers. 21 C.F.R. § 130.44(j)(1).

[3] At oral argument counsel for the defendants relied solely on FDA's authority under the new drug approval (NDA) provisions of the Act, specifically 21 U.S.C. § 355(d) which lists among the grounds for refusing approval of an NDA a finding that the new drug is either unsafe for use under the conditions prescribed or has not been proven to be safe under such conditions. Accordingly, the Court will not specifically address the position taken by defendants in their memoranda that the challenged portions of the regulation rest on FDA's combined authority under both the NDA and the investigational-new-drug (IND) provisions of the Act set forth in 21 U.S.C. § 355(i).

[4] The functions vested in the Secretary of the Department of Health, Education, and Welfare by the Federal Food, Drug and Cosmetic Act have been delegated to the Commissioner of Food and Drugs. 21 C.F.R. § 2.120.

[5] Although the Commissioner notes a lack of evidence with respect to methadone's effectiveness for the enumerated uses, defendants have relied exclusively on the drug's alleged safety hazard in attempting to justify the challenged restrictions on distribution.

[6] The term "safe" is defined by section 321(u) of the Act as referring to the "health of man or animal." This definition is not directly made applicable to § 355 but because it is made applicable to the definition of "new drug" it would seem to be applicable by implication to § 355. Although the definition is itself ambiguous, in the context of the Act it tends to support the Court's conclusion.

pretation would, according to defendants' theory, serve as the statutory foundation for FDA's exercise of authority in restricting methadone's channels of distribution because FDA's principal rationale for restricting distribution was "to help reduce the likelihood of diversion." 37 Fed. Reg. 26790 (1972).

As a general proposition of statutory construction, a general term should not be construed in isolation but should be interpreted according to the context of the statute within which it is found.[7] As noted above, the term "safe" is used in conjunction with the phrase "for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof." When taken in this context, a determination of whether a drug is "safe" is premised on the drug's use in the "prescribed, recommended, or suggested" manner. Thus the context of the statute indicates that the term "safe" was intended to include only the inherent safety of the drug when used in the manner intended. Moreover, as also noted above, the subject of "controls" is specifically covered in provision (3) of the same subsection (d) wherein the term "safe" appears. Provision (3) extends the Secretary's authority to pass on the adequacy of methods, facilities and controls only with respect to manufacturing, processing and packaging. Under the doctrine of "expressio unius est exclusio alterius" [8] any stage of the drug's genesis not specifically mentioned in provision (3) was presumably intended to be excluded from the Secretary's authority. Thus by examining the term "safe" in the context of those provisions of the Act in which it appears as well as in relationship to the provision of the Act which specifically deals with controls, the Court concludes that the term "safe" was intended to refer to a determination of the inherent safety or lack thereof of the drug under consideration when used for its intended purpose.[9]

Finally, the legislative history of the Act fully supports this conclusion. In enacting the Comprehensive Drug Abuse Prevention and Control Act of 1970, Congress was presented with a conscious decision as to how the lines of authority should be drawn with respect to the regulation of dangerous drugs. Congress decided to continue all control authority over the distribution of dangerous drugs in the Justice Department despite a recommendation of the Prettyman Commission that this function be transferred to HEW.[10] The House Committee on Interstate and Foreign Commerce in their report on the Comprehensive Drug Abuse Prevention and Control Act of 1970 indicated that Title II of that Act, known as the Controlled Substances Act, was designed to "provide authority for the Department of Justice to keep track of all drugs subject to abuse manufactured or distributed in the United States in order to prevent diversion of these drugs from legitimate channels of commerce." [11] Although it is nowhere specifically stated that Congress contemplated that the Justice Department would have exclusive authority to prevent diversion, this result would appear logically to follow from a comparison of the functions delegated to the Secretary of HEW with those assigned to the Attorney General.

III.

In addition to being a "new" drug and thus within the jurisdiction of the FDA, methadone is a controlled substance within Schedule II of the Controlled Substances Act, 21 U.S.C. § 812. Under this Act the Attorney General is made responsible for the registration of any person who manufactures, distributes or dispenses any controlled substance. 21 U.S.C. § 822. An applicant may be refused registration if the Attorney General makes a determination that registering the applicant would be inconsistent with the public interest.[12] Congress has also pro-

[7] *See, e.g.*, Sutherland Statutory Construction 47.01 (Sands, 4th ed. 1973).
[8] *Id.* at § 47.23.
[9] Even if the Court were to agree with defendant's interpretation of the term "safe," this alone would not provide a statutory basis for the regulations challenged herein. At most such an interpretation would authorize FDA to deny or withdraw any methadone NDA based on a finding that the drug could not be "safely" distributed. As outlined in the Court's opinion, FDA's discretion under the Act's NDA provisions is limited to either approving or denying NDA's and nowhere is FDA empowered to approve an NDA upon the condition that the drug be distributed only through specified channels.
[10] Recommendation No. 2, Advisory Commission on Narcotics & Drug Abuse, reprinted in H. Rep. No. 91-1444 (pt. 1), 91st Cong., 2d Sess. 16-20 (1970).
[11] H. Rep. No. 91-1444 (pt. 1), *supra* at 22.
[12] "In determining the public interest, the following factors shall be considered:
(1) The maintenance of effective control against diversion of particular controlled substances into other than legitimate medical, scientific, and industrial channels;
* * * * * * *
(3) Prior conviction record of applicant under Federal or State laws relating to the manufacture, distribution, or dispensing of such substances;
(4) Past experience in the distribution of controlled substances;" (21 U.S.C. § 823(b)).

vided the specific means for revoking or suspending the authority of a registrant to distribute controlled substances. Section 824 of Title 21 enumerates three grounds upon which the Attorney General may act:

> (a) A registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant—
>
> (1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;
>
> (2) has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance; or
>
> (3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances.[13]

In addition, Congress has specified the precise procedure to be followed by the Attorney General in attempting to revoke or suspend a registration. 21 U.S.C. § 824(c).

The Court concludes that Congress intended to create two complementary institutional checks on the production and marketing of new drugs. At the production or pre-marketing stage, the FDA is given the primary responsibility in determining which new drugs should be permitted to enter the flow of commerce. The Commissioner must approve or deny every NDA, or he may determine that a particular new drug qualifies for IND status in order to permit additional experimentation. When an IND exemption is approved, the Commissioner may, of course, severely restrict the distribution of the exempted drug to bona fide researchers and clinicians. But once a drug is cleared for marketing by way of a NDA-approval, for whatever uses the Commissioner deems appropriate, the question of permissible distribution of the drug, when that drug is a controlled substance, is one clearly within the jurisdiction of the Justice Department. The diversion of the particular drug to a use not approved by the Commissioner would be grounds for revocation of the offending distributor's registration.[14] FDA attempts to accomplish preemptorily by way of its challenged regulation, that which could only be accomplished, according to the scheme of the Controlled Substances Act, by way of show-cause proceedings initiated by the Attorney General, i.e., revoking the authority of otherwise duly-registered distributors with respect to the drug methadone. To allow the challenged portions of the methadone regulations to stand, therefore, would be to abrogate the collective judgment of Congress with regard to the appropriate means of controlling unlawful drug diversion.

This is particularly true of the regulations' denial of authority to the plaintiffs at bar. Although the Attorney General generally has discretion to register applicants wishing to distribute or dispense controlled substances, 21 U.S.C. § 823(b), in the case of "practitioners" [15] the Attorney General must register them "if they are authorized to dispense under the law of the State in which they regularly conduct business." 21 U.S.C. § 823(f). Congress has thereby specifically sanctioned the registration of all State-licensed practitioners with the clear intent of permitting them to dispense controlled substances on an equal basis with all other approved distributors. In the face of such clear-cut Congressional intent, it would be anomalous to suggest that an agency, by the mere issuance of a regulation, could modify these mandated channels of distribution. Accordingly, the Court concludes that FDA has overstepped the bounds of its authority in purporting to limit the distribution of methadone in the manner contemplated by its regulations.

IV.

It is undoubtedly true that methadone poses unique problems of medical judgment, law enforcement and public policy but this fact alone cannot justify a federal agency of specifically delimited jurisdiction from implementing equally

[13] 21 U.S.C. § 824(a).
[14] *Id.* Although revocation stemming from unlawful diversion is a somewhat cumbersome process under the current standards of § 824(a), Congress has recently taken the initiative in supplementing DEA's authority in this respect. *See* note 17 *supra*.
[15] 21 U.S.C. § 802(20) defines the term "practitioner" to include, *inter alia*, a physician, scientific investigator, pharmacy or "other person licensed . . . to distribute . . . a controlled substance in the course of professional practice or research."

unique control solutions not authorized by Congress. The problem of unlawful diversion is one presently consigned by the Congress to the Drug Enforcement Administration (DEA, formerly the Bureau of Narcotics and Dangerous Drugs) of the Department of Justice. FDA, on the other hand, has the responsibility of making the initial decision, based on all available medical and scientific data, as to whether a particular new drug is safe and effective for its intended use. While the functions of FDA and DEA are not entirely exclusive of one another,[16] a certain division of authority and responsibility was clearly intended by Congress and must be recognized by this in order to preserve the integrity of the legislative scheme. Under these circumstances, the relative merits of FDA's plan to control the distribution of methadone, a controlled substance, must first be passed by Congress.[17]

Wherefore, for all the foregoing reasons, it is this 5th day of June, 1974,

Ordered, That plaintiffs' motion for summary judgment be, and the same hereby is, granted; and it is

Further *Ordered*, That defendants' motion to dismiss, or in the alternative, for summary judgment be, and the same hereby is, denied.

Order to be settled on notice.

JOHN H. PRATT,
U.S. District Judge.

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[16] For example, the Attorney General, in exercising his authority under 21 U.S.C. § 811(a) to add or remove drugs from the schedules of controlled substances established by the Controlled Substances Act, must first call upon FDA for its recommendation. The recommendations of FDA, insofar as they concern "scientific and medical matters" relating to the "appropriate schedule, if any, under which such drug or substance should be listed" are binding on the Attorney General. 21 U.S.C. § 811(b).

[17] In a related effort to streamline the enforcement authority of DEA, both Houses of Congress recently passed a proposed amendment to the Controlled Substances Act. Specifically, the amendment gives the Attorney General expanded authority to require special registration of those practitioners who dispense or administer narcotic drugs in connection with treatment programs and to preemptorily revoke such registration in the event that a particular registrant fails to comply with the drug security standards imposed by the Attorney General. *See* H. Rep. No. 93-884, 93d Cong., 2d Sess. 11-13 (1974); S. Rep. No. 93-192, 93d Cong., 1st Sess. 21 (1973). This legislation indicates Congress' keen awareness of the problem of diversion and their willingness to consider sound proposals to meet the growing crisis. Again we can only re-emphasize that the merits of that portion of FDA's regulations under challenge here concern legislative issues which must first be addressed to Congress.

APPENDIX 4

THE INTERNATIONAL DRUG CONTROL SYSTEM**

by

Adolph Lande*

CONTENTS

THE NATIONAL INTEREST IN INTERNATIONAL CONTROL OF DANGEROUS DRUGS

It was largely due to the initiative of President Theodore Roosevelt that the International Opium Commission met in Shanghai in 1909 and thus set in motion international efforts which led to the gradual establishment of the present international narcotics regime. Since then the United States of America has undoubtedly been the most important protagonist of international action for the control of "narcotic" drugs[1] and has generally favoured the strictest control measures,[2] including often some provisions which proved to be unacceptable to many other States. For the purpose of determining whether this attitude was justified in the past and what policies our country should adopt in the future in regard to problems of international drug control it may first be appropriate to establish the interest which the United States has in the international drug treaty system, this is to say what advantages it has obtained from this system and what additional benefits it could expect from a more effective functioning of the international drug regime in the future.

Probably the most important factor which induced governments to establish a system of international

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[1] The term "narcotic drugs" is used for referring to those drugs which are subject to the Single Convention on Narcotic Drugs, 1961, while the term "psychotropic substances" is applied to the drugs which would be controlled by the Vienna Convention of 1971 on Psychotropic Substances. If the words "narcotic" and "psychotropic" are used in their normal meaning and not in that employed by these two treaties all drugs falling under the 1961 Convention are psychotropic substances and not all of them are narcotic (e.g. Cocaine). Moreover, many of the substances which would be subject to the 1971 Convention are in this sense narcotic drugs.

[2] The only notable exception was the proposed International Opium Monopoly which would have applied only to

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** From Appendix, "Drug Use in America: Problem in Perspective," Volume III: The Legal System and Drug Control, March 1973, pp. 6-132.

control of narcotic drugs is the ease by which these substances can be smuggled over international borders. This can be illustrated by the fact that one can make from one kilogram [3] of morphine one hundred thousand therapeutic dosages and from one kilogram of heroin two hundred thousand therapeutic dosages.[4] An illicit trafficker who succeeds in smuggling only one kilogram of opium containing about ten percent of morphine is thus able to manufacture nearly ten thousand dosages of morphine and even much more dosages of heroin [5] by a relatively simple process, "which can be carried out even within the resources of a domestic kitchen or bath-room".[6] It follows from this situation that a country, which by effective domestic control measures succeeds in preventing the diversion of narcotic drugs from its legal trade into the illicit traffic supplying its addicts, cannot entirely prevent the illegal importation of such drugs. Its task to prevent such an illicit inflow becomes particularly difficult and virtually impossible if other countries by their lack of or defective control facilitate the diversion of narcotics into illicit channels. The situation of the United States which undoubtedly has a very effective domestic system of control of all phases of its legal narcotics trade is in a particularly difficult position since its thousands of miles of land frontier and maritime coast render it very difficult indeed and even impossible to prevent some smuggling.

If one examines the narcotics treaties one will in fact find that their provisions are actually only intended to prevent or at least to reduce, to the greatest extent possible, the *availability* of drugs for abuse. This aim has to some extent been achieved with respect to manufactured narcotic drugs whether obtained from opium or by fully synthetic processes. However, this picture of partial success of the international narcotics treaties has been obscured by the epidemic-like spread of the abuse of drugs in a number of countries in recent years. It might be useful to recall in this connection that this frightening expansion of drug abuse relates in a large measure to substances other than the internationally controlled manufactured narcotic drugs, although addiction to some of the latter has without any doubt also grown greatly.

Availability or the ease of availability of drugs for abuse is still very widely considered to be an important factor responsible for this social evil; but other causative factors are now generally recognized including: environmental conditions of an economic and social character, which may be responsible for psychological defects, particularly personality weaknesses which lead to antisocial behavior; the effects of quick social change entailing in some countries the dissolution of ancient social ties, such as tribal organization, in the course of rapid urbanization as in some other more developed countries the movement of masses of people from relatively primitive agricultural activities to technologically advanced urban societies; and the possibly favorable attitude of some cultures or subcultures to the drugs which are abused. The international drug regime does not deal with these other factors responsible for drug abuse. Apart from requiring administrative and penal measures affecting the availability of drugs for abuse —to keep the dangerous substances from actual or potential abusers—the international treaties do not impose any obligation on governments as to particular methods which they should employ in combatting the causes of drug abuse or in treating the persons abusing drugs. It may in particular be pointed out that contrary to a rather widely held but erroneous view, the treaty provisions in force regarding limitation of the use of drugs exclusively to medical and scientific purposes and regarding possessions of drugs do not prevent a government from adopting any methods of dealing with its abusers of drugs, as long as it acts in accordance with sound principles of medical science and with the requirements of its particular society.[7]

The fact that the drug treaties deal only with the problem of availability of drugs for abuse and not with the other factors responsible for this social evil and do not prescribe specific methods for the treatment of drug abusers is by no means due to lack of knowledge of these factors and of the need for treating addicts. It is probably true that in the first years of the evolution of the international drug regime there was very little understanding of the causes of drug abuse nor a comprehension of the problem of treatment of drug addicts; but this changed very early as seen by treaty provisions adopted in 1925 [7] and 1931 [8] and from a recommendation passed by an international drug conference in 1931.[9]

In any event some provisions of the recent treaty instruments, i.e. of the Single Convention on Narcotic Drugs, 1961,[10] of the Vienna Convention of 1971 on Psychotropic Substances [11] and of the Geneva Protocol of 1972 amending the Single Convention on Narcotic Drugs, 1961 [12] clearly show that their authors were very well aware of the various elements involved in the etiology of drug abuse as a social problem as well as of the need for early identification, treatment and after-care (rehabilitation and social integration) of abusers of drugs. These early and recent provisions are however rather general and vague and point only to the need for treatment and for knowledge of the dangers of drugs by drug abusers, as well as of a comprehension of the complexity of the problem by persons dealing with drug abusers in their respective professional or vocational capacities. They refer also to the need for training of these persons to enable them to acquire the necessary specialized skills. They are, however, mostly phrased in such a way as to constitute little more than recommendations rather than definite legal obligations. In any case they do not stipulate which medical, social, economic or other measures governments must undertake in dealing with their particular drug abuse problem. They limit themselves to prescribing measures to control the legal drug trade and to fight against the illicit traffic. This omission of the drug treaties is due to the fact that the causes of drug abuse very often differ in different countries and not unfrequently in various groups of the population of the same country. In view of these varying conditions, it would hardly be possible to include in a multilateral treaty, particularly in one which aims at universal acceptance, provisions requiring the adoption of the manifold medical, social or economic measures which would be needed in the campaign against drug abuse in a particular country. These measures may vary from country to country and some of those which would be adequate in one country might be unsuitable and even harmful in another country.[13]

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the legal international trade in opium and would have had no effect whatsoever on the illicit traffic in that drug. The United States was also among those democratic states which manufacture and export important quantities of drugs and which at the Vienna Conference of 1971 and at the preceding sessions of the Commission on Narcotic Drugs were willing to accept the most farreaching measures for the control of psychotropic substances.

[3] About 2.2 pounds.

[4] It is assumed that 10 milligrams represent a normal therapeutic dosage of morphine and 5 milligrams such a dosage of heroin. The dosages which abusers of these drugs may require to prevent withdrawal symptoms and particularly to obtain the euphoria which they crave may be considerably higher, depending on the degree of their addiction.

[5] The conversion of a quantity of morphine into heroin yields a considerably larger amount of the latter drug.

[6] Report of the Permanent Central Narcotics Board on its work in 1965, United Nations document E/OB/21, paragraph 106 (p. XXVI). It has however become more and more the custom of illicit traffickers to convert the opium into morphine near the place where they obtain the opium from uncontrolled or illicit cultivation or by diversion from legal cultivation since morphine—as heroin—is much smaller in bulk and lighter in weight than an equivalent amount of opium and therefore can much more easily be concealed. Not infrequently, the morphine is immediately converted into heroin.

[7] Article VII of the Agreement concerning the Manufacture of, Internal Trade in and Use of Prepared Opium, signed at Geneva on 11 February 1925. The article requires governments to use their utmost efforts by suitable instruction in schools, dissemination of literature and otherwise, to discourage the use of prepared opium, except where a government considers such measures undesirable under its particular conditions.

[8] Article 15 of the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931. This article stipulates that governments should create a special administration *inter alia* for the purpose of "organizing the campaign against drug addiction, by taking all useful steps to *prevent its development* and to suppress the illicit traffic".

[9] Recommendation IX of the Conference which met in Bangkok from 9 November to 27 November 1931 on the Suppression of Opium-smoking. It urged upon governments "the importance of adequate provision being made for the treatment of all persons genuinely desiring to be cured of their addiction, and of governments taking active steps to encourage persons to seek the cure of their addiction, and to promote, or encourage through voluntary effort, the *after-care* of persons who have undergone a cure, with a view to safeguarding them against relapse."

[10] Article 38 in its present form and as it would be amended by the Protocol of 1972, when in force.

[11] Article 20 and article 22, paragraph 1, sub-para.(b)

[12] Article 14 of the Protocol amending article 36, paragraph 1 of the Single Convention and article 15 of the Protocol amending article 38 of the Single Convention.

[13] There is also another important consideration which must be taken into account in appraising the great difficulties and even the virtual impossibility of including in the multilateral drug treaties detailed rules providing for obligations of governments to adopt prescribed specific measures of dealing with drug abusers. The motivation of human behavior is a highly controversial subject if looked upon from a world-wide viewpoint. This problem is in fact a question of the nature of man. Widely different views are held in countries which are governed by different political ideologies, as regards the influence of genetic or environmental causes (including economic and social factors), religion, education, and the effects of penal law. Differences in the national attitude towards particular psychological or psychoanalytical schools of thought and even towards the value of psychoanalysis in general may also be caused by divergent ideologies. All these matters are related to the *principal* contemporary ideological philosophies which influence national policies. Also it can not be denied that a totalitarian country, which has succeeded in building up an effective police apparatus, is capable of controlling the distribution of all medicines and all movements over its borders in such a strict way as to succeed in preventing

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Moreover, seen solely from the viewpoint of combatting drug abuse, the existence of such abuse and the particular medical, social or other approach which a particular country's government chooses with regard to this problem is often of little *international* interest as long as that government succeeds, by exercising effective control, in preventing the illicit movement of drugs from its territory to other countries. Such abuse becomes, however, an important international problem, if it exists—as it generally does—in locations in which uncontrolled or illicit production of opium or coca leaves takes place. The existence of such abuse significantly increases the obstacles to implementation of the economic and social reforms which are required for eliminating production. Any plan to abolish the cultivation of the opium poppy or the coca bush should also include adequate measures for combatting drug abuse —opium smoking, opium eating or coca leaf chewing—which exists in the poppy or coca bush growing districts. But once again the specific measures, which must be taken for the implementation of the needed economic and social measures as well as those which are required for the treatment of drug abusers, may and generally will differ from one country to another country. Therefore, they can hardly be included in the multilateral drug treaties which impose detailed obligations on the countries concerned.[14]

The existence of drug abuse in a country which is not the source of illicit drugs flowing into our country nevertheless may be an important American concern if looked upon in the light of more general political considerations. Such abuse may be an important obstacle in the way of economic and social progress and political stability in a particular country in whose welfare we might have an important national interest. More generally one may maintain that the elimination of drug abuse in all countries is our concern insofar as we must be morally interested in the welfare of all nations:

It may therefore be concluded that the only important advantage which our country can expect from an effective functioning of the international drug control system is the prevention or reduction of the illicit flow of dangerous drugs into our territory. To state it in different words. The drug treaties could to a considerable extent assure that the effectiveness of our administrative and penal measures taken to fight the illicit traffic is not impeded by lack of control or of effective control in other countries. Our drug abuse problem cannot be solved by resort to international treaties alone.

But even this advantage cannot be obtained in a satisfactory measure as long as a number of countries cannot implement the drug treaties by their own unaided efforts. It is in our national interest that such countries *request* and obtain the required foreign assistance either from individual states, including the United States, or under the multilateral aid programmes of the international organizations. The importance of such assistance has found some recognition in a recent treaty provision.[15]

Reference may also be made in this context to article 4, paragraph (b) and article 35, paragraph (b) and (c) of the Single Convention which require parties to co-operate with other states in the execution of the provisions of this Convention and more specifically to assist each other and to co-operate closely with each other and with the competent international organizations of which they are members in the campaign against the illicit traffic. While these provisions can hardly be interpreted so as to establish a legal obligation of a party to render technical or financial assistance or both to another state assisting and requesting it for the purpose of improving its drug control system, it may be held that under the present conditions it is certainly within the spirit of provisions requiring such co-operation and mutual assistance, to grant, within reasonable limits, such aid if requested.

Here again it may be submitted that it would hardly be feasible to include in a multilateral drug treaty provisions specifying in detail the extent and forms of aid which governments would have to render to other governments needing and requesting it. The type and quantity of aid which different countries may need will differ from country to country, depending on the particular reasons for its weaknesses of administration and on the particular political, economic and social conditions responsible for the unsatisfactory drug control situation in the country involved. However, a general obligation to render technical assistance in the field of drug control could theoretically be included in a multilateral drug treaty; but it is suggested that in the present circumstances it would not be in the interest of our country to undertake such a formal legal obligation, which would be accepted by few if any other countries capable of granting such help.

It may also be pointed out that it is very important to see to it that aid granted by intergovernmental organizations in the sphere of drug control, to which we are and probably will remain the largest financial contributors, should in a great measure be guided by the needs of our country in this field, since we are the principal victims of the international drug traffic.

Attention may finally be drawn to another consideration which cannot be overlooked: an examination of the role of an effective control of availability of drugs in combatting drug abuse. The view is widely held that many addicts, who are unable to obtain their particular drug, as a result of effective control, will resort to other drugs, which are not controlled or less strictly controlled, including alcohol.[16] It is suggested, however, that it would be of great advantage to us if, as a result of a more effective operation of the narcotics treaties, the flow of heroin into the United States were reduced to a minimum, even though a part of our heroin addicts would shift to the consumption of other addictive or otherwise harmful drugs.

But what has been just said should not lead to an inclination to underrate the great importance of the multilateral drug treaties for the United States. Any program of dealing with the social problem of drug abuse requires control of the availability of drugs. This applies also to those programs which include temporary or permanent drug maintenance of addicts.[17] No domestic control of the availability of drugs and of the fight against the illicit traffic can be successful without an effective operation of the multilateral drug treaty system.

It may also be mentioned that the United States has an interest in the measures which other governments take in combatting drug abuse. Information on those measures, which are designed to control the availability of drugs and to fight the illicit traffic, are made available to the United States and to other countries under the terms of the narcotics treaties, particularly the Single Convention. Data on the particular methods which governments choose for the treatment of their addicts may also be learned in the course of the implementation of the international reporting system [18] or in the course of discussions of the United Nations Commission on Narcotic Drugs.[19] The information received on such treatment in this way is, however, often not complete and anyway not sufficient. The relevant data which we can obtain on this point by bilateral relations with other concerned governments are generally much more comprehensive. A reasonably complete and accurate knowledge of methods employed by other governments, especially of advanced industrial countries, in the treatment of drug abusers and in fighting the underlying social causes of drug addiction may be of considerable aid in formulating our own policies. The special character of our society, which is differ-

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practically all abuse of controlled drugs. But the serious alcohol problem which one such country has shows that this strict and effective control does not solve the social problem of which drug abuse is merely a symptom. Non-totalitarian countries can hardly adopt such "extreme" control measures.

One must keep in mind that the international drug treaties, in order to be effective, must obtain the adherence of states of different ideological camps. The recognition of the need for controlling the availability of drugs in the fight against drug abuse is not affected by these divergent political philosophies.

[14] Such obligations could however be included in treaties or other agreements between the opium or coca leaf producing country concerned and one or several other countries supplying the required foreign assistance, or in an agreement between the producing country and an international organization furnishing the aid.

[15] See article 7 of the Protocol of 1972 amending the Single Convention on Narcotic Drugs, which will introduce when in force, article 14 into that Convention. Resolutions of United Nations organs have also recognized the importance of aid to governments for drug control as General Assembly resolutions 1395 (XIV) and 2719 (XXV) (the latter welcoming the establishment of a "United Nations Fund for Drug Abuse Control") and resolution 1559 (XLIX) of the Economic and Social Council, also relating to this Fund.

[16] Report of the Permanent Central Opium Board on its work in 1963, paragraph 34 (page XIII) (United Nations document E/OB/12) and Report of the Permanent Central Narcotics Board on its work in 1966, paragraph 126 (page XXIX) (United Nations document E/OB/22). The Board which was established by Chapter VI of the International Opium Convention of 1925 was called "Permanent Central Board" in the treaties referring to it. It took, however, the designation "Permanent Central Opium Board" and from 1965 on that of "Permanent Central Narcotics Board" to indicate the nature of its tasks. It has been replaced by the present International Narcotics Control Board as of 2 March 1968 (Article 45, paragraph 2 of the Single Convention and resolution 1106(XL) of the Economic and Social Council).

[17] It must be emphasized that no program of drug maintenance is advocated here. This would, moreover, be outside the scope of the present paper.

[18] Article 18, paragraph 1, introductory paragraph of the Single Convention on Narcotic Drugs expressly requires parties to furnish to the Secretary General of the United Nations such information as the Commission on Narcotic Drugs may request as being necessary for the performance of its functions. See also Form of Annual Reports on the working of the Single Convention (and other narcotic treaties), Chapter X headed "Abuse of Drugs (Drug Addiction)" Questions 31–37 (United Nations document E/NR. FORM/Rev. 2).

[19] Article 8 of the Single Convention authorized the Commission on Narcotic Drugs to consider all matters pertaining to the aims of this Convention.

ent from that of other industrial countries, must of course be taken into consideration in judging the applicability of foreign methods to our own problems.

THE GRADUAL EVOLUTION OF THE INTERNATIONAL DRUG TREATY SYSTEM

The basic motives of President Theodore Roosevelt's initiative in convening the Shanghai Opium Commission of 1909 was not only a serious domestic narcotics problem [20] and the opium problem in the Philippines, which the United States had acquired as a result of the Spanish-American war; but also the pressures of American missionaries in the Far East, who were concerned about the opium smoking situation in China and in European possessions. There cannot be any doubt that the European powers were not very anxious to institute effective measures of control or prohibition, because they were under the influence of their local colonial administrators, who were under pressure from local groups with vested interests in continuation of opium smoking. This resistance to reform is reflected in the Agreement of 1925 concerning the Manufacture of, Internal Trade in and Use of Prepared Opium [21] and in the Agreement of 1931 for the Control of Opium Smoking in the Far East,[22] whose provisions were very weak and completely inadequate for abolishing opium smoking within a reasonable period of time. This resistance is also mirrored in the weak provisions of the International Opium Convention of 1925 [23] concerning "prepared" or smoking opium. The refusal of the Second Opium Conference of 1924/1925 to adopt stronger provisions was one of the reasons why the American delegation withdrew from the Conference and why the United States never became a party to the Convention.[24] It may be noted in this place that it was one of the important features of American drug policy in the inter-war period to bring pressure to bear on the European powers having Far Eastern possessions to make more rapid progress in abolishing opium smoking in these territories. It was the result of the pressure of the U.S. Government that in 1943 the British and Dutch Governments finally undertook to prohibit opium smoking in their Far Eastern possessions, which were then under Japanese occupation.[25] It was also due to the same influence particularly strong during World War II that the French Committee of National Liberation decided at the same time to adopt the principle of total prohibition of opium smoking in its Japanese occupied territories and undertook to carry out to this effect a program of action after liberation of these possessions.[26]

It may however be mentioned in this context that the prohibition of opium smoking adopted in several territories and countries after the war did not turn out to be a great success everywhere. While opium smoking greatly decreased, heroin addiction became an important social problem in several places where opium smoking previously had been legal. [27]

The present institutions of international drug control evolved gradually. Their history shows that the first international measures were taken only after it had been demonstrated that domestic control had to be supplemented by international action to be effective. It points to the difficulties in the way of a comprehensive international regime which could not immediately be overcome but had to be solved step by step. These difficulties did not consist only of the resistance of vested interests, which undoubtedly represented a serious obstacle. There were certainly powerful groups which were interested in the continuation of opium smoking and coca leaf chewing and which opposed reform by arguing that these centuries old habits could not be abolished within a definite period of time. It is also characteristic that misguided by their selfish interests they denied or belittled the harmful nature of these abuses. It must also be admitted that a system of comprehensive control of agricultural activities is much more difficult to implement than one over industrial enterprises; but such control over the cultivation of the poppy for the production of opium, of the cannabis plant for the production of cannabis drugs, and of the coca bush is indispensable. The gradualism of international narcotics control and drug control is also to some extent explained by the need to respond to scientific progress in the field of chemistry such as the development of new narcotic drugs, the evolution of completely synthetic processes of making narcotic drugs and, in recent years, the growing use of "psychotropic" substances.[28] Finally, it may also be mentioned that the nature of international co-operation in the campaign against drug abuse, although not included in the provisions of the multilateral drug treaties, has undergone a gradual change in consequence of better understanding of the causes of human behavior of the economic, social and cultural factors involved in the phenomenon of drug abuse and of the incapacity of a number of countries to make, without foreign aid, a full contribution to the international efforts. The various stages in the evolution of international drug control law prior to World War II follows:

The International Opium Convention of 1912.[29]

For the first time, narcotics control was made a matter of multilateral treaty law.[30] The 1912 Convention introduced:

- a system of licenses or permits of the making ("manufacture") of and trade in medicinal opium and those manufactured narcotics which it covered. Governments were, however, entitled to require instead only that these manufacturers and traders make to the competent authorities an official declaration that they engage in such manufacture or trade as the case may be;
- a system of licensing of the establishments and premises in which the manufacture of these drugs takes place. Governments were, however, authorized to limit themselves to obtaining information on these establishments and premises and to keep a register of them, instead of requiring the licensing;
- the requirement of keeping records of the quantities of these drugs which were manufactured and of the various transactions of trade in them. This requirement needed not be applied to the retail sale by authorized pharmacists;
- the prohibition, as regards the internal trade, of the delivery of these drugs to unauthorized persons;
- the limitation of the manufacture, sale and use of these drugs to medical and legitimate purposes;[31]
- a system of international reporting by governments consisting of mutual communication, through the intermediary of the Dutch Ministry of Foreign Affairs, of the laws and regulations enacted in implementation of the Convention, and of statistical information on trade.[32]

Governments were also required to "use their best endeavours" to exercise some control over the import and export of the narcotics in (a) above.[33] It may finally be mentioned that governments were bound *to examine the possibility* of making the

[20] This problem was at that time very serious in the United States although perhaps not fully recognized. It is held to have been much graver than after the international narcotics treaties became effective, anyway until recently. See report of the Permanent Central Opium Board on its work in 1963, United Nations document E/OB/19, para. 10 (page X) and the 1966 Report, United Nations document E/OB/22, para. 32 (page XV).

[21] Text in League of Nations Treaty Series, vol. 51, p. 337.

[22] Text in League of Nations Treaty Series, vol. 177, p. 373. No further consideration of the Agreements of 1925 and 1931 appears to be required since both are completely obsolete as a result of the prohibition of opium smoking in the Far Eastern territories after their reconquest from the Japanese and as a result of the provisions of the Protocol of 1953 for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium (Text in United Nations Treaty Series, vol. 456, p. 3) and of those of the Single Convention on Narcotic Drugs, 1961 (Text in United Nations Treaty Series, vol. 520, p. 151).

[23] Text in League of Nations Treaty Series, vol. 81, page 317.

[24] The Chinese delegation also withdrew from the Conference. The memorandum which the American delegation submitted to the Conference to explain its withdrawal pointed to the unwillingness of the Conference to adopt provisions which would lead to the control of the production of opium in such a manner that there would be a surplus available for non-medical and non-scientific purposes. It also stated that the use of opium products for other than medical or scientific purposes was abuse and not legitimate. (The Convention of 1925 did not limit the use of raw or "prepared" opium to medical or scientific purposes). It is also interesting to note that the memorandum stated that the manufactured opium and coca leaf derivatives could not be effectively controlled if the production of raw opium and coca leaves would not be strictly limited to medical and scientific purposes. The memorandum pointed thus to a basic condition of effective international narcotics control which until today has not been fulfilled in a satisfactory manner. It also pointed to a problem whose solution has remained probably the most important task of international efforts in the sphere of drug control, see League of Nations document C.760. M.260. 1924. XI, vol. I, p. 202.

[25] World Peace Foundation, Documents on American Foreign Relations, vol. VI, Boston 1945, pp. 475-476.

[26] The British Government was informed of this First decision on 3 January 1944; League of Nations document C.77. M.77. 1945. XI.

[27] The policy of prohibition of opium smoking adopted by the Chinese Government was also hardly successful before 1949. It appears, however, that the present totalitarian regime has succeeded in oppressing this social evil.

[28] *Supra*, footnote 1.

[29] Text reproduced in the League of Nations Treaty Series, vol. 8, p. 187.

[30] The Shanghai Opium Commission of 1909 had adopted only recommendations which were of course not legally binding.

[31] Article 9, 10, 11 and 14 of the 1912 Convention.

[32] Article 21 of the Convention.

[33] Article 12, 13 and 14, see also the introductory para. of article 10.

illegal possession of raw opium, prepared opium, morphine, cocaine and their respective salts a *penal offense*.[34] As can be seen, the 1912 Convention contained many of the basic principles of control which are still valid, although its provisions on these matters were not always binding and in several instances formulated in more general and vague terms than in the later narcotics treaties. It may also be mentioned that none of its provisions referred to coca leaves or cannabis drugs.[35] The Convention's weak provisions on the control of raw opium and prepared opium are not discussed because they are of no importance for the purposes of the present paper.[36] It may only be recalled that the production of raw opium, the manufacture of prepared (smoking) opium and the trade in and use of these two kinds of opium were not limited to medical and legitimate purposes.

The Covenant of the League of Nations

The covenant, which entered into force on 10 January 1920, provides in its article 23, paragraph (c) that, subject to and in accordance with the provisions of international conventions, the Members of the League will entrust this Organization with the general supervision over execution of agreements dealing with traffic in opium and other dangerous drugs. This provision was very broadly interpreted in the League's practice. It represents a very important step in the evolution of international co-operation in the field of drug control because it entrusted an international worldwide organization of general competence with this function. An organization of this kind is able to deal with many aspects of the drug problem falling within the scope of many different disciplines as an organization having specialized functions would not be able to do. This consideration is probably the reason why after World War II the family of nations entrusted the United Nations with the principal role of drug control and not a specialized organization, such as the Wor Health Organization, despite its importance in th drug field. The Charter of the United Nations do not expressly refer to drug control. It was, however made quite clear at the San Francisco Confere which adopted the Charter that the phrase "int national economic, social, health and related pro lems", for which the United Nations was made co tent,[37] also covered international co-operation in t suppression of the traffic in, and of the abuse o opium, other narcotics and other dangerous drug The parties to the Single Convention on Narco Drugs, moreover, have expressly recognized t competence of the United Nations with respect t the international control of drugs.[39] It is also i portant that this kind of organizational arrange made it possible that not only organs charged ex sively with drug functions could deal with probl of drug abuse but that also such important bo as the past Assembly and Council of the League the General Assembly, Economic and Social Co cil and Trusteeship Council could be called u to include questions of drug abuse in their agen

The League's Assembly, by a resolution adop at its first session on 15 December 1920, establis the League's *"Advisory Committee on Traffic Opium and Other Dangerous Drugs"*, a body co posed of government representatives.[40] The Assem thus created the first international organ of th control. The Committee is the predecessor of t present United Nations Commission on Narc Drugs.

The International Opium Convention of 19

This convention strengthened some of the con rules established by the Convention of 1912. It quired Parties to *limit* exclusively *to medical a scientific purposes* the manufacture, import, s distribution, export and use of medicinal opium

[34] Article 20. It may also be assumed that by the operation of article 14 this provision did not only apply to these expressly mentioned drugs but in addition to the explicitly named raw opium and prepared opium to all the drugs referred to above under (a).

[35] See, however, "voeu" (recommendation) II of the Conference which adopted the Convention. In this "voeu" the Conference considered "it desirable to study the question of Indian hemp (cannabis) from a statistical and scientific point of view, with the object of regulating its abuses, should the necessity thereof be felt, by internal regulation or by an international agreement."

[36] Chapter I and II of the Convention.

[37] Article 55, paragraph (b) of the Charter.

[38] Fifth Report of the Drafting Committee II/3 of the San Francisco Conference, document WD 40/II/3, statements of the Canadian, Chinese, Indian and US representatives in Committee II/3, verbatim minutes of meeting, 4 June 1945.

[39] Article 5 of the Convention.

[40] League of Nations, The Records of the First Assembly, Plenary Meetings (Geneva, 1920) pp. 531-13 Committee had the assistance of "Assessors", indepe experts who participated in its meetings with the rights as Government representatives except that they not be elected officers and were not entitled to vot Committee was often shortly referred to as "Opium Ad Committee."

manufactured narcotic drugs (but not of raw opium, prepared opium, cannabis, cannabis resin and coca leaves).[41]

The *system of permits and licenses* governing manufacture and all phrases of trade in manufactured narcotics and the requirement of *licensing the establishments and premises* in which the manufacture takes place was made mandatory. The requirement of *keeping records* was extended to retail traders (or distributors), who were permitted, however, to file and preserve the medical prescriptions instead.[42]

Parties were not only bound to prohibit, as regards their internal trade, the delivery of the controlled manufactured drugs to unauthorized persons but also the *possession* of these substances by such persons.[43]

The obligation of governments to furnish *statistical information* was defined in detail. The data required [44] were basically very similar to those required under the Single Convention on Narcotic Drugs. They also included information on the production of opium and coca leaves (but not of cannabis or cannabis resin), on the confiscation of illicit import and export of all substances to which any of the Convention's provisions applied, including raw opium, prepared opium, cannabis, cannabis resin and coca leaves, and on the import and export of all these substances.[45]

The Convention of 1925 introduced as a legal obligation the application of the *import certificate and export authorization system* [46] which is nearly the same as that incorporated in the Single Convention.[47] Provision was made for *authority* of an international organ [48] to place under international control additional drugs, which were "liable to similar abuse and productive of similar ill-effects"[49] as the manufactured drugs already controlled by the Convention. These decisions were binding only on those parties which expressly accepted them.

The same organ could also exempt from the control of the Convention preparations of controlled manufactured narcotics which "cannot give rise to the drug habit" because of the medicaments with which the narcotic drugs are compounded and which preclude the recovery of these drugs.[50]

The Convention also established the Permanent Central Board,[16] an organ which was charged with some *semi-judicial functions* and was composed of *independent experts*.[51] The Board was authorized not only to scrutinize the statistical information which it received from governments [52] but also to examine any matter which was drawn to its attention by a party to the Convention and which appeared to require investigation.[53] It was charged with watching continuously the international trade in narcotics.[54]

The Convention also introduced a system of *sanctions*. If information at its disposal led the Board to conclude that excessive quantities of any substances [55] covered by the Convention were accumulating in any country or that there was danger of that country becoming a centre of the illicit traffic, the Board was authorized to ask for an explanation from that country. If no explanation were given within a reasonable period or time if it were unsatisfactory, the Board was granted the right to call to the attention of the Parties to the 1925 Convention and of the Council of the League of Nations that matter and to recommend that no further exports of all or some of the substances covered by the Convention should be made to the offending country until the Board re-

[41] Article 5. Galenical preparations (extracts and tinctures of cannabis) were, however, subjected to this limitation. Neither this Convention nor the Convention of 1912 related to codeine.

[42] Article 6.

[43] Article 7 of the 1925 Convention and article 11 of the 1912 Convention; see, however, article 20 of the 1912 Convention.

[44] Article 22. As regards the obligation of Parties to furnish the laws and regulations enacted to implement the 1925 Convention; see article 30.

[45] As regards "prepared opium" Governments had also to furnish statistical information on manufacture of such smoking opium, on the amount of raw material used for this manufacture and on consumption, article 23 of the 1925 Convention.

[46] Chapter V. The international trade in cannabis and cannabis resin and ordinary preparations of which the resin forms the base were subjected to additional control measures; see article 10 of the 1925 Convention.

[47] Article 31.

[48] The Health Committee of the League of Nations had to submit the question for advice and report to the Permanent Committee of the past "Office international d'Hygiène publique"; article 10 of the 1925 Convention. This authority was transferred to the World Health Organization by the Protocol of 1946.

[49] One will note that the same words are used by the Single Convention in describing the additional drugs which may be placed under control, article 3, paragraph 3, subparagraph (iii) of the Single Convention.

[50] Article 8 of the 1925 Convention; one will note that the same conditions are required by the Single Convention for placing preparations in Schedule III i.e. for exempting them from some measures of control, article 3, paragraph 4 of the Single Convention.

[51] Article 19.

[52] Articles 22 and 23.

[53] Article 25.

[54] Article 24, paragraph 1.

[55] Not only manufactured narcotics, but also raw opium, prepared opium, coca leaves, cannabis or cannabis resin.

ports its satisfaction with the situation.[56] The sanction provisions of the Single Convention [57] follow in part the rules of the sanction system of the 1925 Convention, particularly by granting the present International Narcotics Control Board the right to recommend *inter alia* the discontinuation of the export of narcotic drugs to an offending country or territory. For the purpose of evaluating such a provision, it may be mentioned that in the 1920's the illicit traffic was supplied largely with drugs diverted from the legal trade while at present there is no significant diversion of manufactured narcotic drugs from the legal trade into illicit channels. Even opium, after it has been controlled by the national opium agency, is not diverted in important amounts from the licensed legal trade into the illicit traffic; but rather from the cultivator of the poppy.[58] Therefore, in the 1920's, discontinuation of legal export of narcotic drugs to a country could be an effective means of curbing the illicit traffic.

The Convention of 1925 also expressly authorizes the application of its sanction provisions to *non-parties*.[59] The application of some provisions to non-parties has become an important feature of the international narcotics regime.

The authors of the Convention also recognized the need for *adequate* punishment of illicit traffickers and the desirability of punishing acts committed within their jurisdiction for the purpose of assisting the illicit traffic abroad.[60]

The Convention of 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs.[61]

This established a system of *limiting the amounts of the supplies of manufactured narcotic drugs* [62] *to the quantities needed for medical and scientific purposes*. This system was intended to apply to each country and territory and consequently also to the world as a whole. The limits of narcotics supplies which each country or territory [63] was entitled to obtain by both manufacture and import were computed on the basis of estimates of its narcotics requirements [64] which it had to furnish for each controlled manufactured narcotic drug to the Permanent Central (Opium; Narcotics) Board by 1 August of the year preceding that to which the estimates referred.[65] Each country was entitled to revise its own estimates or those of its territories [63] by supplementary estimates.[66]

A special organ was created for the international administration of this estimate system: the "Supervisory Body" [67] which consisted of four members who were in this capacity not Government representatives.[68] This organ was required to establish, as far as possible, the estimates for any country or territory *whether bound by the 1931 Convention* or not whose government had not furnished them in time. Such estimates established by the Supervisory Body had the same legal effect as those sent by governments; but they could be changed if the governments, which had failed to submit estimates, did not

The Supervisory Body was charged with examining the estimates with a view toward assuring that narcotics supplies were limited to medical and scientific purposes.[70] It had also to keep in mind that the supplies should be sufficient for such needs; this was not expressly stated, but certainly implied, in the Convention. The Supervisory Body was also entitled to require governments to furnish further information [71] and explanations and, *with a government's consent*, to amend any estimate.[72] The Supervisory Body was required to send to governments an annual statement containing the estimates for each country or territory, and an account of the explanations given or required and its observations and critical comments. This statement also enabled the governments to observe their manufacturing and import limits. Supplementary statements were also issued quarterly by the Supervisory Body to show revisions in the estimates.

The Permanent Central Board was given two functions intended to assure that countries or territories [63] do not exceed their narcotics supply limits:

(a) It was bound to order the discontinuation of exports of narcotic drugs to a country or territory, which imported or authorized to import drugs in excess of its import limit.[73]

(b) It was required to prepare a yearly statement showing each country's estimates, and statistical figures [74] to show whether any supply limits had been exceeded. If the statement indicated that a Party had or might have failed to carry out its obligations, the Board was entitled to ask for explanations from such a Party and supply the sanction provisions of article 24, paragraphs 2 to 7 of the 1925 Convention.[75]

Since governments were the masters of their estimates of drug requirements and since they could not be changed without their consent, it follows that the regime of limitation based on estimates, which was introduced by the 1931 Convention, was a system of *voluntary* co-operation subject to suggestions and criticism by the Supervisory Body. In the great majority of cases, however, governments accepted the Supervisory Body's suggestions.

This summary of the estimate and limitation system of the 1931 Convention has been rather extensive because it is basically the same as that incorporated in the Single Convention on Narcotic Drugs, 1961.[76] The latter, however, applies to controlled manufactured narcotic drugs and also opium, cocoa leaves, cannabis and cannabis resin.[77]

The Convention of 1931 advanced the international reporting system by requiring governments (a) to furnish to the Secretary General of the League of Nations an *annual report* on the working of the Convention in accordance with a form drawn by the League's Advisory Committee on Traffic in Opium and Other Dangerous Drugs;[78] (b) to communicate to each other, through the Secretary-General of the League, important cases of the illicit traffic;[79] and

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[56] Article 24, paragraphs 1 and 2.

[57] Article 14.

[58] "Middlemen" who were authorized to collect on behalf of the national opium agency the opium harvest from the cultivators were also responsible for such diversion.

[59] Article 26; the language of the sanction provisions would, by itself, allow such an application.

[60] Articles 28 and 29.

[61] Text reproduced in the League of Nations Treaty Series, vol. 139, p. 301.

[62] Not including the galenical preparations (extracts and tinctures) of cannabis.

[63] "Territory" (not defined in the Convention) is the of a state forming a separate administrative entity for the purpose of applying the narcotics Convention, in a way if it were a separate country. See the definition of term in article 1, paragraph 1, sub-paragraph (y) of the Single Convention for the purposes of this treaty.

[64] Chapter III, specially articles 6, 7 and 12 of the Convention.

[65] Article 2, paragraph 1, Article 4 and Article 5 also above footnote 16.

[66] Article 3 and Article 5, paragraph 3.

[67] Commonly referred to as the "Drug Supervisory Body" to indicate the nature of its work; the Supervisory Body is one of the two organs which were replaced by the present International Narcotics Control Board, the other organ being the Permanent Central Board, see above footnote 16.

[68] Article 5, para. 6. During the League Period the Supervisory Committee on the Traffic in Opium and Other Dangerous Drugs, the Permanent Central Board, the Health Committee of the League of Nations and the Office international d'Hygiène publique were each entitled to appoint one member. Under the terms of the Protocol of [illegible] (see further below) amending the pre-war narcotics [illegible] two members were appointed by the World Health Organization, one by the Commission on Narcotic Drugs and [illegible] by the Permanent Central Board.

[69] Article 2, paragraph 2 and 3.

[70] Article 5 of the 1925 Convention together with [illegible] 13, para. 1 of the 1931 Convention and article 6, [illegible]

Footnote continued on next page.

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sub-para. (a) of the latter treaty. It was also not expressly stated that the quantities of drugs needed for conversion, for export, for addition to reserve stocks and for the maintenance of Government stocks should be limited to such purposes, but this was obviously their aim. No government could be absolutely certain whether the drugs which were exported were used exclusively for medical or scientific purposes. It normally had to rely on assurance given in the import certificate of the importing country. For the text of the import certificate annexed to the 1925 Convention see League of Nations Treaty Series, vol. 81, pp. 354 and 355.

[71] Except in regard to requirements for "Government purposes" (see article 1, para. 4; article 4, para. 2; article 5, para. 2, sub-para. (d) and concluding sub-para. and para. 6, second sub-paragraph).

[72] Article 5, paragraph 6.

[73] Article 14, paragraph 2. The Board acted on the basis of the quarterly import and export statistics which it received under article 22 of the 1925 Convention and of information which it obtained under article 14, paragraph 1 of the 1931 Convention. Article 14, paragraph 1 need not be dealt with here since its substance is obsolete and was therefore not taken over by the Single Convention; article 14, paragraph 2 of the 1931 Convention is basically the same as article 21, paragraph 4 of the Single Convention; but while the 1931 provision imposes an obligation on the Permanent Central Board the Single Convention offers discretionary power on the International Narcotics Control Board. The practice of the Permanent Central Board was, however, to apply article 14, paragraph 2 only in cases it considered desirable to subject to this procedure.

[74] On consumption, manufacture, conversion, imports, exports and use for compounding of "exempted" preparations ("preparations, exports of which do not require export authorizations").

[75] Article 14, paragraph 3 of the 1931 Convention. Exceeding the supply limits in a large measure could also be considered to be a failure to carry out the provisions of the Single Convention so as to endanger seriously the aims of this Convention and thus justify the initiation of the procedure of article 14 of that treaty.

[76] Articles 12, 19 and 21 in connection with articles 13 and 20 of the Single Convention.

[77] The limitation provisions apply only to the import and not to the "manufacture" of these agricultural products since they are not "manufactured." Subject to the temporary exceptions of article 49, parties of the Single Convention are however required to limit exclusively to medical and scientific purposes the production of these agricultural substances (Article 4, para. (c)).

[78] Article 21. This article was amended by the Protocol of 1946 (see footnote 68 above; see also further below) to replace the Secretary General of the League by the Secretary-General of the United Nations and the Advisory Committee by the Commission on Narcotic Drugs.

[79] Article 23; the Protocol of 1946 replaced the Secretary General of the League by the Secretary General of the United Nations.

(c) to notify to the Secretary General of the League the names and addresses of persons or firms authorized to manufacture narcotic drugs and whether the manufacture was permitted for domestic needs only or also for exports.[80]

Furthermore, governments were required to furnish to the Permanent Central Board statistics on the amounts of drugs used by manufacturers and wholesalers for the compounding of exempted preparations, that is, "preparations for the export of which export authorizations are not required." [81]

The information mentioned under (a) and (b) and that on compounding exempted preparations is also expressly required by the Single Convention.[82] The information referred to under (c) is now requested by the Commission on Narcotic Drugs under its authority granted by the Single Convention to require Parties to furnish to the Secretary General of the United Nations such information as it may request as being necessary for the performance of its functions.[83]

The Convention of 1931 also required governments to apply the provisions of the 1925 Convention to drugs they manufactured. In so doing, it distinguished between drugs in Group I [84] and Group II.[85] All these provisions applied to Group I, but only some applied to Group II.[86] The retail trade in group II drugs was exempted from the system of licenses and permits, which applied to manufacturers, wh salers and international traders; but not to r traders, who also were not bound to keep rec of their acquisitions and sales and could supp dispense such drugs without medical prescrip In fact, such retail trade was exempted from the tem of international narcotics control [88] and—as as the 1931 Convention was concerned—an could freely engage in the retail sale of Gro drugs. It may however be mentioned that go ments applied to these drugs a much more regime than was prescribed by their treaty o tions. Many Governments exempted them, ho from the requirement of a medical prescripti they also may do under the Single Conven To some extent, it may be due to this practice Group II drugs did not appear in important tities in the international illicit traffic, although international control continued until the Single vention introduced a more strict regime for Gr drugs and substances of a similar degree of ha ness, listing them in Schedule II.[90]

In accordance with a generally accepted int tation of the relevant provision of the 1931 C

[80] Article 20. The Protocol of 1946 substituted the Secretary General of the United Nations for the one of the League. As regards the obligations to furnish the laws and regulations enacted to implement the 1931 Convention see article 21 of this Convention.

[81] Article 22. This class of preparations was exempted from the application of the 1925 Convention and consequently also from that Convention's import certificate and export authorization system. It corresponds to the category of preparations included in schedule III of the Single Convention which although subject to a more strict control are also not subject to the import certificate and export authorization system.

[82] Article 18, para. 1, sub-paras. (a) and (c) and para. 2, and article 20, paragraph 1, sub-paragraph (b).

[83] Article 18, para. 1, introductory paragraph of the Single Convention; see also Form of Annual Reports on the working of the Single Convention and other conventions, Chapter V, question 13, United Nations doc. E/NR.FORM/Rev. 2; see also annex II of this form.

[84] Drugs corresponding to those in Schedule I of the Single Convention.

[85] Drugs corresponding to those in Schedule II of the Single Convention.

[86] Article 13, paragraph 1 of the 1931 Convention; Article 13 paragraph 2 of the 1931 Convention; "the interpretation of this paragraph presents certain difficulties"; League of Nations. Historical and Technical Study of the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of July 13th, 1931, Lea Nations Document C.191. M. 136. 1937 XI, paragra

[87] By entries in books or retaining medical presc see article 6, para. (c) of the 1925 Convention.

[88] A few other provisions regarding drugs in Gr may also be mentioned. Retailers were not prohibited delivery of these drugs to unauthorized persons and as well as persons other than drug manufacturers, salers and international traders, were not prohibit the unauthorized possession of such substances (Ar of the 1925 Convention in connection with article 2 2 of the 1931 Convention). The manufacture, sale, and international trade in Group II drugs were not limited to medical and scientific purposes (Article 5 1925 Convention in connection with article 13, pa the 1931 Convention). Statistics on the internati in Group II drugs had to be supplied annually terly in contrast to other narcotics (including opi leaves and cannabis drugs) (article 22, para. 2, 1925 Convention in connection with article 13, pa the 1931 Convention). No consumption statistics furnished in respect of Group II; see also article 5, and para. 6 of the 1931 Convention.

[89] Article 2, para. 2 and article 30, para. 6 of t Convention.

[90] Other factors which were undoubtedly res this lack of an illicit traffic were their availability fo from legal trade in many countries, their weak pot the difficulties of converting them into more po in clandestine factories which could easily obtain illicit traffic opium and coca leaves for the illega facture of such potent drugs as morphine, he cocaine.

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tion,[91] preparations of Group II drugs "adopted to a normal therapeutic use" were exempted from the 1925 Convention, that is, from all its administrative controls, including the import certificate and export authorization system.[92]

The *1931 Convention* represented another *advance* in our field, since contrary to earlier narcotics treaties, it applied control measures not only to drugs which were *dangerous*[93] *by themselves*, but also to substances which were *"convertible"*[94] into such drugs. Drugs "capable of producing addiction" were placed in Group I, sub-group (a), while drugs not "capable of producing addiction," but convertible into such drugs, were placed in Group I, sub-group (b) if they were of no or only of limited medical use, and in Group II if they were widely used in medicine.[95] Drugs in sub-group (b) of Group I were subjected to the same strict regime as drugs in sub-group (a). In providing for a lenient regime for drugs in Group II the authors of the 1931 Convention were guided by consideration of the fact that availability of widely employed useful drugs of relatively little abuse liability should not be made too difficult, and that in establishing controls both the need for prevention of abuse and for facilitating legitimate use should be taken into account.

In order to exercise control over the narcotics trade, governments must require participants in this trade to make periodic reports to their domestic control offices. This obligation was already implied in the statistical provisions of the 1912[96] and 1925[97] Conventions because governments would otherwise have not been able to obtain the information which they needed for their international statistical reports. This applies also to the obligation of governments, introduced by the 1931 Convention, to make annual reports on the working of this treaty.[98] The Convention of 1931 also extended this domestic reporting system by imposing upon governments the obligation to require manufacturers of narcotic drugs to submit domestic quarterly reports on the movement and stocks of raw materials[99] and drugs in their factories.[100]

A very important step forward was taken by the authors of the 1931 Convention when they authorized an international organ[101] to place, *with binding effect on parties to the treaty, additional drugs under international control.* This authority was however limited to two chemical groups, namely to products obtained from any of the phenanthrene alkaloids of opium or from the ecognine alkaloids of the coca leaf. Such an international authority has since remained a permanent feature of the international drug regime. The Paris Protocol of 1948[102] extended the right of an international organ, the World Health Organization, to place under international control, with obligatory effect upon governments, additional drugs or substances to any chemical structure which were "liable to the same kind of abuse and productive of the same kind of harmful effects as the drugs

[91] Article 13, paragraph 2 of the 1931 Convention and above footnote 86; see the document referred to in footnote 86, commonly called "Commentary to the 1931 Convention" paragraph 135.

[92] These preparations referred to by the 1931 Convention as "preparations for the export of which export authorizations are not required" or commonly as "exempted preparations" correspond to those included in Schedule III of the Single Convention which, although subject to some measures of control, are exempted from others, including the import certificate and export authorization system.

[93] The Convention referred to these drugs as "capable of producing addiction"; but the word "addiction" was not meant to be limited only to a dependence which was psychological as well as *physical*. The phrase used by the Convention also applied to cocaine and was meant to include morphine-like and cocaine-like drug effects.

[94] The term "convertible" was interpreted to mean "readily convertible" or "convertible with relative ease", see resolution 7.7 of the World Health Assembly (May 1954).

[95] Commentary to the 1931 Convention (above footnote 91) para. 8, pp. 29–30, codeine which is widely used in medicine was included in Group II because it was considered to be convertible into addiction-producing drugs and not because it is itself slightly addiction-producing.

[96] Article 21, paragraph (b).

[97] Articles 22 and 23.

[98] Article 21; The implementation of article 20 requiring Governments to furnish information on drug manufacturing also makes it necessary to obtain some data from the manufacturers.

[99] Raw materials were opium, coca leaves, (cannabis and cannabis resin) and poppy straw in 1931.

[100] Article 17 of the 1931 Convention. A provision like this article was not included in the Single Convention; but parties to this treaty must undoubtedly obtain reports of this kind from manufacturers, in some cases also from international traders and occasionally also from other traders in order to carry out their obligation to limit their narcotics supplies to the quantities needed for medical and scientific purposes and to prevent the excessive accumulation of drugs and poppy straw in the possession of manufacturers and traders; article 21, article 29, paragraph 3 and article 30, paragraph 2 sub-paragraph (a).

[101] The Health Committee of the League of Nations after consulting the Permanent Committee of the Office international d'Hygiène publique on the question; The protocol of 1946 transferred this authority to the World Health Organization acting "on the advice of an expert Committee appointed by it"; see below.

[102] See below.

specified in article 1, paragraph 2" of the 1931 Convention.[103] In other words, the Protocol authorized the World Health Organization to place under the regime of the 1931 Convention and thus under provisions of the 1925 Convention applicable to manufactured drugs,[104] any substance which had morphine-like or cocaine-like effects or which was "convertible" [105] into such a substance. This authority did not apply, however, to raw opium, medicinal opium, coca leaf, cannabis or cannabis like drugs.[106]

The Single Convention on Narcotic Drugs, 1961 transferred the authority of placing additional drugs under international control from the World Health Organization to the Commission on Narcotic Drugs, which in this capacity, however, must either accept or reject, but not modify, the recommendation of the World Health Organization. In placing a drug under international control, modifying the regime of a controlled drug or decontrolling a drug, the Commission must either act "in accordance with the recommendation of the World Health Organization" or not act at all.[107] The authority of the Commission to place under international control additional substances applies to any substance of *any* chemical structure. The Commission may apply this right, however, only to a substance which the World Health Organization has found to be "liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or II" or to be "convertible" [94] into an already controlled drug.[108] Since cannabis and cannabis resin are included in Schedule I,[109] the Commission, contrary to the World Health Organization's authority under the 1948 Protocol, may also place under international control cannabis-like drugs of any chemical structure. As understood by the participants of the Plenipotentiary Conference of 1961, which adopted the Single Convention, this treaty did not grant authority to place under its regime amphetamines, barbiturates and tranquilizers. There appears, however, to be no obstacle to placing under the Single Convention hallucinogens, such as LSD, mescaline, tetrahydro cannabinols or psilocybine.[110]

[103] Article of the Protocol.

[104] The 1931 Convention required the application of provisions of the 1925 Convention governing manufactured drugs; see above.

[105] See above footnote 94.

[106] Article 4 of the Protocol.

[107] Article 3, paragraph 3-6 of the Single Convention.

[108] Article 3, paragraph 3, sub-paragraph (iii).

[109] And in Schedule IV.

[110] See below.

The Vienna Convention of 1971 on Psychotropic Substances [111] would when in force also provide for authority of the Commission on Narcotic Drugs to place additional "psychotropic" substances under international control. This authority would not be limited to particular chemical groups, but would extend to substances of any chemical structure. It would apply to any substance which the World Health Organization finds to be capable of producing dependence and certain types of mind alteration [112] or finds capable of similar abuse and similar ill effects as a substance already controlled by the Vienna Convention. The authority to extend that Convention's control would not apply to a substance already under international control, that is, a substance already controlled by the Single Convention.[113] The Commission would have to take into account the findings and views of the World Health Organization; but in contradistinction to the provisions of the Single Convention, its action would not be limited to acting in accordance with the recommendation of the World Health Organization or of not acting at all. Although the World Health Organization's assessment would be determinative as to medical and scientific matters, the Commission, bearing in mind economic, social, legal, administrative and other factors, could place the substance under a regime which might be different from that recommended by the World Health Organization.[114]

The Commission's decision to place an additional "psychotropic" substance under international control or under a more onerous regime would also have a more limited binding effect on parties than the corresponding decisions of the competent international organs have under the 1931 Convention, the 1948 Protocol or the Single Convention. Parties to the Vienna Convention, by a written notice to the Secretary General, would be able to free themselves from some of the control provisions.[115]

The Convention of 1931 is also the first of the narcotics treaties which provided for *provisional* control of a drug pending the final decision on its control status. It was found that drugs, particularly those which produced physical dependence,[116] were sometimes widely abused prior to their international control and that such a situation was very difficult to correct once it existed. Therefore, the authors of the 1931 Convention subjected automatically to measures of prohibition [117] or of strict control [118] all products obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf which had not yet been included in Group I (sub-group (a) or (b)) [119] or in Group II. Provisional control applied only to substances of two limited chemical groups, which could possess the dangerous properties which the 1931 Convention sought to control. It was later found that the chemical structure of possibly dangerous drugs could not be foreseen and it was recognized *automatic* provisional control on the pattern of the 1931 Convention was infeasible. It is superfluous, therefore, to discuss its details in the present paper.[120]

[111] United Nations document E/CONF. 58/6; see also United Nations Bulletin on Narcotics, vol. XXIII, No. 1

[112] The Convention does not use the terms "mind altering" but the phrase "capacity to produce . . . central nervous system stimulation or depression, resulting in hallucinations or disturbances in motor function or thinking behaviour or perception or mood."

[113] This would literally apply to a substance which must be controlled by any of the earlier narcotics treaties though not by the Single Convention; but all the substances under control by these earlier treaties are at present controlled by the Single Convention. It is theoretically possible, however, that a substance would in the future be placed under the 1948 Protocol but not under the Single Convention, as long as the 1948 Protocol remains in force. It is submitted, however, that the authors of the Vienna Convention considered "international control" to mean "control by the Single Convention." A substance which would be removed from the Schedules of the Single Convention, but would remain subject to an earlier narcotics treaty, therefore could be placed under the Vienna Convention.

[114] Article 2, para. 4, 5 and 6 of the Vienna Convention.

[115] Article 2, para. 7. The obligations to which Parties could be subjected by such decisions of the Commission would also be reduced by their unilateral right to exempt preparations from important control provisions. Such unilateral exemptions could, however, be terminated by the Commission. Article 3 of the Vienna Convention.

[116] I.e. those which are "addiction-producing" as this term is widely used.

[117] Article 11, para. 1, first sub-para.

[118] Article 11, para. 1, second sub-para; the strict control was that applicable to drugs in Group I.

[119] As regard the division of Group I into the two subgroups, see above.

[120] A proposal was made at the United Nations Conference of 1961 for the Adoption of a Single Convention on Narcotic Drugs to include in Schedule I of this Convention the two general groups: "any other product obtained from any phenanthrene alkaloid of opium" and "any other product obtained from the ecgonine alkaloids of the coca leaf" which would thus have been subject to the control regime governing drugs in Schedule I until the product in question would have been removed from control or transferred to Schedule II by operation of article 3 of the Single Convention. This proposal was rejected because it could not obtain the required two-thirds majority, Official Records of the Conference, vol. I, pp. 191 and 193, United Nations document E/CONF. 34/24. A recommendation of the World Health Organization to insert these two general groups in Schedule I was also not accepted by the Commission on Narcotic Drugs, acting under article 3 of the Single Convention; Report of the Commission on its Twenty-first session, U.N. Doc. E/4294, paras. 65–66 and Report of the Commission on its Twenty-second session, United Nations document E/4455, paras. 41–42.

The protocol of 1948 authorized the Commission on Narcotic Drugs to place, with binding effect on governments, provisionally under the regime applicable to drugs in Group I, a substance whose international control status was pending before the World Health Organization.[121] Similarly, the Commission on Narcotic Drugs, under the Single Convention, may decide that the parties must apply *provisionally* to a substance, which has not yet been subjected to the Convention's control, all control measures applicable to drugs in Schedule I pending its decision on the international control status of that substance,[122] that is, pending the World Health Organization's finding on the properties of the substance and its recommendation, which the Commission requires for its final decision.[123] Moreover, the Single Convention obligates parties to examine in the light of all available information the possibility of the provisional application of all control measures governing drugs in Schedule I to a substance whose possible control is the subject of a procedure under article 3 of the Single Convention.[124]

The Vienna Convention on Psychotropic Substances, on the other hand, would *not* provide for a decision of an international organ which would require parties *provisionally* control a substance. However, parties would have to examine, in the light of all information available to them, the possibility of provisional application of the control regime governing substances in Schedule I or II, pending the procedure determining whether a substance should be controlled or if controlled, under which regime it should be placed. The parties would have this obligation of examining the possibility of applying such provisional control if the information transmitted would indicate that the properties of a substance justify its subjection to one of the two more strict regimes [125] of the four control systems which would be introduced by the Convention.[126] It is also important to note that the *Convention of 1931* required governments for the first time to create and maintain

[121] Article 2.

[122] Article 3, paragraph 3, sub-paragraph (ii).

[123] Article 3, paragraph 3, sub-paragraph (iii).

[124] Article 3, paragraph 3, sub-paragraph (i).

[125] The regimes applicable to Schedule I and II.

[126] Article 2, paragraph 3 of the Vienna Convention.

a *"special administration"* for the purpose of applying its provisions, for regulating, supervising and controlling the trade in the controlled drugs, for organizing the campaign against drug addiction by taking all useful steps to prevent its development and to suppress the illicit traffic.[127] It was understood by the participants of the Conference which adopted the Convention that the term "special administration" does not necessarily mean a "single authority".[128] The constitutional, legal and administrative systems of many countries would not allow the establishment of a single authority for the implementation of all the provisions of the international narcotics regime. The Conference recommended, however, that governments consider the desirability of establishing a single authority.[129] In implementing their obligations regarding the maintenance of a "special administration", governments—as they still must under the corresponding provision of the Single Convention [130]—had to make some special administrative arrangements to provide for liaison among their various domestic agencies charged with functions of narcotics control to co-ordinate the work of these agencies, nationally, and internationally.

The Single Convention also requires governments to maintain a "special administration" for the purpose of implementing its provisions.[130] When including this provision in the Convention the delegates to the Conference made it quite clear that they used the term "special administration" in the same sense as the phrase was used in the 1931 Convention.[131]

The Vienna Convention on Psychotropic Drugs would not make it *mandatory* to maintain a "special administration" for the implementation of its provisions. It declares it only to be *desirable* to establish and maintain such an administration. It states that this administration may be the same as or work closely with the special administration.[132] The Conference which adopted the Convention of 1931 was also fully aware of the particularly dangerous character of diacetylmorphine (heroin). The Convention placed the international trade in heroin under particular restrictions [133] which were not taken over, however, by the Single Convention. The Conference also recommended that each government should examine in conjunction with the medical profession the possibility of abolishing or restricting the use of heroin.[134] The principle of discouraging the medical use of drugs, which are held to be very dangerous and of little if any medical value, is found in the Single Convention. This Convention includes such drugs in Schedule IV. It requires parties: [135]

To adopt any special measures which in their opinion are necessary in view of the particularly dangerous properties of the drugs in this Schedule.

If in their opinion the prevailing conditions in their prespective countries render such a measure the most appropriate means of protecting public health and welfare to prohibit the production,[136] manufacture, export and import of, trade in, possession or use of drugs in Schedule IV except for amounts which may be necessary for medical and scientific research only.[137]

[127] Article 15.

[128] Records of the Conference of 1931 for the Limitation of the Manufacture of Narcotic Drugs, League of Nations document C.509. M.214. 1931. XI, vol. I, pp. 186, 201 and 251; see also Model Administrative Codes to the International Opium Conventions of 1925 and 1931, League of Nations document C. 774. M. 365. 1932. XI, p. 7.

[129] Recommendation I, see the Records referred to in the preceding footnote, vol. I, p. 415.

[130] Article 17.

[131] The Records referred to above in footnote 120, vol. I, pp. 36 and 120–122, and vol. II pp. 249–254, p. 278, footnote 87 and p. 289, footnote 56; see also Conference document E/CONF. 34/L. 18, the same Records, vol. II, pp. 63–65. See also article 35, para. (a) of the Single Convention requiring parties, having due regards to their constitutional, legal and administrative systems, to make arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic; see also articles 11 and 12 of the Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs (reproduced in League of Nations Treaty Series, vol. 198, p. 299), requiring Parties, within the framework of their domestic law, to establish a "central office" for the supervision and co-ordination of all operations in the fight against the illicit traffic and for international co-operation in this area.

[132] Article 6 of the Vienna Convention.

[133] Article 10; in contradistinction to the situation in 1931 the legal consumption of heroin for medical purposes has become quite unimportant. Only two countries consumed more than 1 kg. in 1970 (the United Kingdom 2 kg. and Belgium 1 kg.), International Narcotics Control Board, Statistics on Narcotic Drugs for 1970 paragraph 9, United Nations document E/INC. B/15.

[134] Recommendation VI, the Records referred to above in footnote 128, vol. I, p. 417.

[135] Article 2, para. 5 and Schedule IV. Prior to the Single Convention, several recommendations of intergovernmental organs had suggested the discontinuation of the medical use of heroin. Most governments followed these recommendations.

[136] Of the drugs in Schedule IV at present cannabis and cannabis resin are "produced"; see article 1, para. 1, sub-para.(t) of the Single Convention.

[137] The Plenipotentiary Conference rejected the idea of making mandatory the prohibition of the medical use of drugs in Schedule IV; see article 2, para. 1, sub-para. (e) of the Third Draft of the Single Convention on Narcotic Drugs,

The authors of the Vienna Convention on Psychotropic Drugs accepted a similar principle. It would prohibit all use of substances in its Schedule I, such as LSD, mescaline or tetrahydro cannabinols except for scientific and *very limited medical purposes.*[138] Two other provisions of the *Convention of 1931* may still be mentioned because they were modified and adopted by the Single Convention: the requirement that the narcotic drug content be shown on the label under which that drug or any of its preparations is offered for sale [139] and the obligation to prevent the accumulation of quantities of raw material, such as opium, coca leaves and poppy straw, in the possession of manufacturers in excess of those required for the economic conduct of business.[140] The Single Convention obligates governments to prevent such an excessive accumulation of narcotic drugs [141] and poppy straw by drug manufacturers, state enterprises engaged in the drug trade and other drug traders or distributors, This obligation however does not cover the accumulation of excessive quantities of drugs in Schedule II by retail traders or distributors.[142]

The Single Convention on Narcotic Drugs does not impose specific restrictions on the disposal of seized drugs as article 18 of the 1931 Convention does.[143]

The 1936 Convention and the Evolution of Penal Law in the Field of International Drug Law.[144]

The illicit traffic in narcotic drugs is often international and carried on by internationally organized groups. This is particularly true in our country where the illicit traffic in narcotic drugs, other than "marihuana", is nearly exclusively supplied from abroad.

In order to make penal law an effective weapon in the fight against the illicit traffic, several principles must be adopted:

The *penalties* meted out to illicit traffickers must be *adequate* [145] sufficiently *severe* [146] to have the desired deterrent effect; but a penalty which may be adequate in one country may be either too severe or too lenient in another country. However, it is suggested that punishment by imposition of fines would alone never be an adequate punishment for serious crimes of illicit trafficking because the profit which can be derived from it is too great to deter a possible offender by the threat of a fine. Therefore, punishment by imprisonment is prescribed by the Convention of 1936 for the offenses of the illicit traffic.[146] This type of punishment is also required by the Single Convention for *serious* crimes of the illicit traffic.[147] The Vienna Convention on Psychotropic Substances would also obligate parties to so punish serious illicit traffickers, except if they were abusers of psychotropic substances, who could be required to undergo measures of treatment, education, aftercare, rehabilitation and social reintegration, instead of punishment. The Protocol of 1972, amending the Single Convention on Narcotic Drugs, 1961, would also authorize governments to replace punishment by such measures as treatment and rehabilitation for abusers of narcotic drugs.[148]

the Conference Records referred to in footnote 120, vol. II, p. 3; Conf. doc. E/Conf. 34/C.2/L.7, these Conference Records, vol. II, p. 261 and vol. I, p. 65. The Plenipotentiary Conference included in Schedule IV: cannabis and cannabis resin, desomorphine, heroin and ketobemidone. The Commission on Narcotic Drugs, under article 3 of the Single Convention added acetorphine and etorphine, Report of the Commission on its twenty-second session, para. 43, U.N. doc. E/4455,

[138] Article 7, paragraph (a).

[139] Article 19 of the 1931 Convention and article 30, para. 5 together with article 2, para. 3 of the Single Convention. Under the latter treaty this requirement need not apply to a drug or its preparations dispensed to an individual on medical prescriptions; the Vienna Convention on psychotropic drugs would obligate governments to require that where practicable the labels of retail packages of psychotropic drugs and in any case the leaflets accompanying such retail packages should indicate such directions for use, including cautions and warnings, as in their opinion would be necessary for the safety of the user (Article 10, paragraph 1).

[140] Article 16, paragraph 2.

[141] "Drugs" may be raw material for the manufacture of other drugs ("conversion" into other drugs).

[142] Article 29, para. 3 and article 30, para. 2, sub-para. (a) and para. 6 of the Single Convention. The Vienna Convention does not provide for the prevention of the possession of excessive amounts of psychotropic substances by manufacturers or traders except that it requires governments to restrict the amount of drugs in Schedule I supplied to a duly authorized person to the quantity required for his authorized purpose, article 7, paragraph (d).

[143] See, however, article 7 of the 1953 Opium Protocol, see above footnote 22.

[144] Article 20 of the 1912 Convention and articles 28 and 29 of the 1925 Convention; see also article IX of the Agreement of 1925 concerning the Manufacture of, Internal Trade in and Use of Prepared Opium and article II, para. 2 of the Agreement of 1931 for the Control of Opium Smoking in the Far East, footnote 22 above.

[145] Article 36, para. 1 of the Single Convention.

[146] Article 2 of the *Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs* (Text in League of Nations Treaty Series, vol. 198, p. 299).

[147] Article 36, paragraph 1.

[148] Article 22, paragraph 1, see *supra*, footnote 111; Article 14 of the Protocol (Text in U.N. doc. E/Conf. 63/8) containing a revised version of article 36, para. 1 of the Single Convention.

It is also desirable that *all forms of participation* in the illicit traffic, including *accessory acts, conspiracy, preparatory acts* and *attempts*, should be subject to penal sanctions. The 1936 Convention requires the punishment of certain acts of the illicit traffic, including conspiracy and attempts, but it leaves the obligation to punish preparatory acts to national law.[149] The Single Convention is however weaker on this point. It requires each party, subject to constitutional limitations, to punish intentional participation in any of the acts of the illicit traffic, conspiracy and attempts to commit them and preparatory acts. The Vienna Convention on Psychotropic Drugs follows the Single Convention. Both of these treaties mention, however, as a form of participation financial operations in connection with the offenses of the illicit traffic. The Parties to the Vienna Convention would however be entitled to substitute measures of treatment, education, aftercare, rehabilitation and social integration for punishment of intentional participation, conspiracy, attempts or preparatory acts if the offenders would be abusers of psychotropic substances.[150]

It will be noted that illicit "cultivation" and "production" are not included by the 1936 Convention as punishable offenses, while the Single Convention expressly provides that governments should punish them. This is due to the fact that the narcotics treaties in force in 1936 did not yet provide for international control of cultivation and production while the Single Convention does.[151] Article 5 of the 1936 Convention stipulates, however, that governments whose *national* law regulates cultivation and "production" with a view to obtaining narcotic drugs should severely punish contraventions of such law. The Vienna Convention does not enumerate the various acts which should be made punishable, but uses instead a general formula: "any action contrary to a law or regulation adopted in pursuance of its (i.e. the party's) obligations under this Convention." The Convention also does not control cultivation of plants for the production of psychotropic substances. It also does not regulate specifically "production". Such "production" (the separation of controlled psychotropic substances from the plants from which they are obtained) would be "manufacture" according to the Vienna Convention and if illicit, would be a punishable offense under the general formula referred to above.

In contradistinction to the 1936 Convention, the Single Convention supplements its list of acts which a party is required to punish by the following general formula: "and any other action which in the opinion of such Party may be contrary to the provisions of this Convention."

It is also important that heavy crimes of the illicit traffic *do not escape prosecution or punishment on both on the technical ground of lack of local jurisdiction* in the country in which offenders are found. It is necessary, therefore, that serious crimes of illicit traffic should be extraditable and, although committed abroad should be prosecutable in the country in which the offender were found, if extradition could not be accomplished.

The 1936 Convention requires countries which do not extradite their citizens, to prosecute and punish their nationals who have committed offenses of illicit traffic abroad. It also requires countries to prosecute and punish a foreign illicit trafficker, who has committed his offense abroad and whom they find in their territory, provided that his extradition has been requested and could not be granted for a reason independent of the offense itself and that the law of the country of refuge considers *prosecution for offenses committed abroad by foreigners admissible as a general rule*.[152] The 1936 Convention also stipulates that the offenses of the illicit traffic shall be deemed to be included as extradition crimes in any existing or future extradition treaty between parties to that Convention.[153] It requires, in addition, that parties, who do not make extradition conditional on the existence of a treaty or on reciprocity, shall recognize these offenses as extradition crimes.[154]

These provisions concerning prosecution and punishment of crimes committed abroad and the inclusion of the offenses of illicit traffic as extradition crimes in past and future extradition treaties are probably among the principal reasons why the 1936 Convention has been accepted only by a relatively small number of countries. Some countries are not willing and possibly constitutionally unable to limit in this way their treaty making authorities. Moreover a number of states, as a general principle, limit their jurisdiction to crimes committed on their own territories. They are guided by the consideration that the trial of crimes committed abroad would often not be conducive to good administration of justice because it might prevent defendants, for financial or other reasons, from obtaining witnesses or other evidence needed for their exculpation. These considerations explain why the provisions of the Single Convention on prosecution of crimes committed abroad and also on extradition are weaker than those of the 1936 Convention.

The Single Convention requires each party, subject to constitutional limitations and domestic law, to prosecute serious offenses committed abroad if the offender, whether a national or a foreigner, is found in its territory and if his extradition is not acceptable to a country which would have jurisdiction because the offense was committed within its borders or because the offender is its national. The party, in whose territory the offender is found, is also not bound to prosecute if the offender has already been prosecuted and judged in another country.[155] It is suggested, however, that it would be incompatible with the spirit of the Single Convention if a party gives refuge to a trafficker who has been convicted abroad but has not yet served his sentence. A party, subject to constitutional limitations and domestic law, would have to adopt such measures as it could take to prevent such a situation, either by extraditing the fugitive, by trying him or by expelling him. The Vienna Convention contains the same provision as the Single Convention with respect to the prosecution of serious offenses committed abroad.[156]

The provisions of the 1936 Convention regarding extradition were taken over by the Single Convention, but deprived of their obligatory character. The Single Convention only declares it to be *desirable* that the offenses whose punishment it requires be included as extradition crimes in existing and future extradition treaties between its parties, and also that these offenses be recognized as extradition crimes between parties, which do not make extradition conditional on the existence of a treaty or on reciprocity.[157] The Vienna Convention contains the same non-obligatory provision.[158]

The Protocol of 1972, amending the Single Convention on Narcotic Drugs, 1961, would correct this weakness with respect to extradition of illicit traffickers.[159] The Protocol [160] would replace the extradition rules of the Single Convention by stipulating:

- that each of the offenses which are punishable under the terms of the Single Convention shall be deemed to be included as an extraditable offense in any extradition treaty existing between parties and that parties undertake to include these offenses as extraditable offenses in every extradition treaty to be concluded between them;
- that a party which makes extradition conditional on the existence of a treaty may, at its option consider the Single Convention as amended as legal basis for extradition in respect of the above mentioned offenses if it receives a request for extradition from another party with which it has no extradition treaty; and
- that parties which do not make extradition conditional on the existence of a treaty shall recognize those offenses as extraditable offenses among themselves.[161]

The Protocol would authorize a party to refuse extradition if it would consider that the offense in question is not sufficiently serious. The 1936 Convention has the same provision.[162]

It is certainly also of greatest importance that countries make the necessary *administrative arrangements* to coordinate the activities of their various agencies engaged in the fight against the illicit traffic and to facilitate close cooperation and expeditious communications with foreign enforcement authorities. The Convention of 1936 required each party, "within the framework of its domestic law," to establish a "central office" for domestic co-ordination and international cooperation.[163] A country whose government was federal in character, or where the executive authority of the government was distributed between central and local governments, was expressly authorized to carry out, in conformity with its constitutional or administrative systems, the task of supervising and co-ordinating the work of its dif-

[149] Article 2, paragraphs (b) (c) and (d).

[150] Article 36, paragraph 2, introductory sub-para. and sub-para (a), clause (ii) of the Single Convention and article 22, para 2, introductory sub-para and sub-para (a), clause (ii) of the Vienna Convention.

[151] Article 1 of the 1912 Convention and article 2 of the 1925 cannot be considered as providing for such control.

[152] Articles 7 and 8.

[153] Article 9, para. 1.

[154] Article 9, paragraph 2.

[155] Article 36, paragraph 2, sub-paragraph (a), clause (IV).

[156] Article 22, paragraph 2, sub-paragraph (3a), clause (IV).

[157] Article 36, para. 2, sub-para. (b).

[158] Article 22, para. 2, sub-para. (b).

[159] See article 19 of the Protocol.

[160] Article 14, amending Article 36, paragraph 2, sub-paragraph (b) of the Single Convention.

[161] These provisions of the amending Protocol are taken from the Convention of 1970 for the Suppression of Unlawful Seizure of Aircraft, Article 8, paragraphs 1–3, (Text in American Society of International Law. International Legal Materials, vol. X, Number 1, January 1971, p. 133). They are similar to those of the 1936 Convention.

[162] Article 9, paragraph 4, see also article 36, paragraph 2, sub-paragraph (b) of the unamended Single Convention and article 22, paragraph 2, sub-para. (b) of the Vienna Convention.

[163] Articles 11 and 12, see also article 13.

ferent agencies charged with the campaign against illicit traffic.[164]

Correspondingly, the Single Convention does not specifically require the establishment of a "central office." It requires parties, having due regard to their constitutional, legal and administrative systems, to make arrangements at the national level for co-ordination of preventive and repressive action against illicit traffic, to assist each other and to co-operate with each other and with the competent international organizations, in the campaign against the illicit drug trade, to assure an expeditious conduct of cooperation with the enforcement agencies of other countries and to provide for an expeditious international transmission of legal papers required for the prosecution of traffickers in other countries.[165] The Single Convention also states that parties "may" usefully designate an appropriate agency responsible for co-ordination of preventive and repressive action at the national level.[166] One may conclude that the organizational provisions of the Single Convention concerning the fight against illicit traffic are much more vague and considerably weaker than those of the Convention of 1936. The provisions of the Vienna Convention are similar to those of the Single Convention.[167]

The Convention of 1936,[168] the Single Convention [169] and the Vienna Convention [170] contain very similar provisions requiring the seizure and confiscation of the drugs, (psychotropic substances), substances and equipment (instruments) intended for the Commission of the punishable offenses concerned.[171]

The United States of America refused to become a party to the 1936 Convention. In a statement[172] of the U.S. delegation to the Conference explaining the American refusal to sign the Convention, reference was made to the failure of the 1936 Convention to provide for the punishment of "illegal cultivation and gathering of cannabis" [173] and to the fact that the Convention was "inadequate as far as cannabis was concerned" [174]

It follows from the preceding comparison of the penal provisions of the 1936 Convention and of the Single Convention that the penal provisions of the former treaty are considerably stronger than the provisions of the Single Convention. This is the reason why the 1936 Convention is the only drug treaty preceding the Single Convention which is not replaced by the latter as between parties thereto.[175]

THE SITUATION AT THE END OF WORLD WAR II

The evolution of international drug control prior to World War II had led to the establishment of a comprehensive international regime governing manufactured narcotic drugs with the result that illicit traffic in such drugs could not obtain its supplies in significant quantities from legal sources. Clandestine factories, which could acquire opium or coca leaves with relative ease, had taken the place of legal manufacturers as suppliers of the illicit traffic.

While the international control of manufactured drugs as it existed on the eve of World War II was basically the same as it is today, the international efforts prior to the War had not yet been completed and had not yet resulted in the conclusion of a treaty.[176] The control of the production of coca leaves and of cannabis and cannabis resin [177] was considered unrealistic prior to World War II. However,

[164] It was also provided that the functions of the "central office" may be delegated to the "special administration" to be maintained pursuant to article 15 of the Convention of 1931; article 11, paragraph 5 of the Convention of 1936.

[165] Article 35.

[166] Article 35, para. (a).

[167] Article 21.

[168] Article 10.

[169] Article 37.

[170] Article 22, para. 3.

[171] As regards the obligation of parties to furnish annual reports on the working of the Convention and the laws and regulations implementing the Convention, see article 16 of the Convention of 1936.

[172] League of Nations document C. 341. M. 216. 1936, XI. pp. 174–176.

[173] This document, p. 175.

[174] This document, p. 176; see, however, article 5 of the 1936 Convention.

[175] Article 44 of the Single Convention, Article 9 of the 1936 Convention is, however, replaced by article 36, para. sub-paragraph (b) of the Single Convention except that a Party to the Single Convention and to the 1936 Convention may, by notification to the Secretary General, continue to force this article 9.

[176] The only treaty provisions regarding the control of the production of opium, prior to World War II were article 6 of the 1912 Convention which required parties to enact "effective laws and regulations for the control of the production . . . of raw opium" and article 2 of the 1925 Convention by which governments undertook to enact laws or regulations to ensure the effective control of the production . . . of raw opium. Even such general and vague treaty provisions did not exist in respect of the production of coca leaves, cannabis and cannabis resin.

[177] See however the American Statement referred to above, at the Conference which adopted the 1936 Convention, concerning the need for punishment of the cultivation and gathering of cannabis."

it was generally recognized—as the League's efforts to elaborate a comprehensive system of international control of the production of opium show—that a successful fight against the illicit traffic in opiates, such as morphine and heroin, required an effective control of the production of opium. After World War II the need for the international control of the cultivation of the coca bush and of the production of cannabis and cannabis resin was also accepted by the family of nations.

Moreover, in the years immediately preceding World War II, scientific progress in the field of chemistry had created a new problem with which the international society had to deal. Chemists succeeded by a fully synthetic process to manufacture a drug (pethidine) which was capable of producing addiction, that is, physical as well as psychological dependence, and which was not obtained from agricultural raw materials, such as, opium, poppy straw, coca leaves, cannabis or cannabis resin. Since the late 1930's, a great number of "synthetic" drugs have been developed which are either addiction-producing themselves or readily convertible[94] into addiction-producing drugs. Prior to World War II, no treaty provisions existed by which such "synthetic" drugs could be placed under the *full* international narcotics regime in the Conventions of 1925 and 1931.[178]

The treaties concluded prior to World War II had also not prohibited opium smoking, opium eating, coca leaf chewing and the non-medical use of cannabis and cannabis resin.

The disappearance of the League of Nations whose organs exercised the international functions of narcotic control created another problem.[179]

[178] Such synthetic drugs could be placed only under the provisions of the 1925 Convention by operation of that treaty's article 10 whose application was not limited to particular chemical groups. This was actually done with respect to pethidine in 1945 (League of Nations Circular letter 6.1945.XI). A substance whose chemical structure would have been identical with any product obtained from any of the phenanthrene alkaloids of opium or from the ecgonine alkaloids of the coca leaf, but which would not have been so obtained, but would have been made by a fully synthetic process could have been placed by application of article 11 of the 1931 Convention, under full international control. Morphine can now be synthetized, but this was not the case before World War II, article 1, paragraph 2 of the 1931 Convention and Commentary to the 1931 Convention, paragraph 109, (see footnotes 86 and 91).

[179] As regards the limited functions of the Office international d'Hygiène publique, an organization created before the establishment of the League of Nations, see articles 8 and 10 of the 1925 Convention and article 11 of the 1931 Convention.

Six narcotics treaties had been concluded before World War II. A codification of the treaty law in the field of narcotics control and a simplification of the international control machinery appeared to be a desirable aim.

It seems, however, that the weakness of control of drugs in Group II of the 1931 Convention was not considered to represent an important problem, probably because governments applied a more strict regime to those drugs than would have been required by their treaty obligations and because these drugs did not appear in the international illicit traffic in significant quantities.

This situation as it existed at the end of World War II explains the basic features of the program of work which the United Nations, either through its organs or through plenipotentiary conferences meeting under its auspices, carried out from 1946 to 1961, the year in which the Single Convention on Narcotic Drugs was adopted.[180]

Some of the tasks which resulted from the post-war situation appeared to be urgent and capable of immediate implementation, others appeared to be less urgent or in any case to require more time to carry them out.

The Urgent Tasks Considered Capable of Immediate Implementation:

Transfer of the international functions of narcotics control from the organs of the League of Nations to the organs of the United Nations and to the World Health Organization

This was accomplished by the Protocol signed at Lake Success on 11 December 1946, amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and on 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936.[181] In particular, the League's Advisory Committee on Traffic in Opium and Other Dangerous Drugs was replaced by the United Nations Commission on Narcotic Drugs. The functions of the Health Committee of the League of Nations and of the Office

[180] See Adolf Lande, The Adjustment of the International Opium Administration to an Eventual Dissolution of the League of Nations, Columbia Law Review, May 1945, p. 392; see in particular p. 411 as regards the tasks of the Family of Nations as they then appeared to result from the post War situation.

[181] Text in United Nations Treaty Series, vol. 12, p. 179.

international d'hygiène publique [179] were transferred to the World Health Organization.[182] The Permanent Central Board [183] and Supervisory Body [184] of the League continued to function until March 2, 1968 when both were replaced by the present International Narcotics Control Board in accordance with article 45, paragraph 2 of the Single Convention and the resolution 1106 (XL) of the Economic and Social Council. Their appointive bodies were replaced by United Nations organs and the World Health Organization.

Extension to "Synthetic Drugs" of the International Control Regime of the 1931 Convention and thus of Provisions of the 1925 Convention governing manufactured narcotic [1] drugs

This was done by the Protocol [185] 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.

Establishment of a Comprehensive System of Control of the Cultivation of the Opium Poppy for the Production of Opium and of the Production of Opium.

The effective control of the production of opium was considered to be extremely urgent in the early years of the United Nations Commission on Narcotic Drugs. Moreover, in the years preceding the outbreak of World War II, the League's Advisory Committee on Traffic in Opium and Other Dangerous Drugs had done a considerable amount of preparatory work. A "Draft of the Principal Articles Which Might be Embodied in a Convention for Limiting and Controlling the Cultivation of the Opium Poppy and the Production of Raw Opium and Controlling Other Raw Materials Used in the Manufacture of Opium Alkaloids" had been prepared.[186] It was decided therefore not to wait to establish control of opium production until it could be incorporated in the planned codification treaty, which would include all drug treaty law and would fill the gaps in the existing drug control system. It was resolved to conclude an *interim* agreement for the purpose of introducing this urgent control.[187]

The Commission first considered the creation of *an international opium monopoly* which was found to be unacceptable to most countries. This plan was ill-conceived because it would have imposed heavy bureaucratic burdens on the international *legal* trade, which no longer supplied illicit channels significant amounts of opium while it could not have prevented diversion by the *cultivators* of part of their opium crops. The efforts of the Commission on Narcotic Drugs to introduce, as an *interim measure*, an effective system of international control of opium production finally led to the United Nations Conference of 1953 which was called by the Economic and Social Council [188] and which adopted the *Protocol of 23 June 1953 for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium.*[189]

This Protocol, whose preparation was carried out in great haste, contains a number of very useful provisions, some whose value is controversial, and some omissions,[190] which can be due only to oversight. The following provisions of the Protocol require mentioning either because they constituted progress in the field of drug control, which in the same or in a very similar form were taken over by the Single Convention, or because their critical appraisal might be useful in order to determine whether they should be taken up again in future attempts to improve the international drug treaty system.

The Protocol limited the *use of opium* [190A] *exclusively to medical and scientific purposes.*[191] Parties could by reservation[192] free themselves from implementation of this provision for a limited period of time to permit opium smoking or non-medical opium-eating [193] which was "traditional" in their territories. The Single Convention took over the substance of this provision by outlawing the use of any "narcotic" drugs, including opium, coca leaves, cannabis and cannabis resin. The Convention contains exceptions in favor of countries which make the required reservation, permitting them to continue the non-medical use of opium, coca leaves, cannabis or cannabis resin for a limited period of time. These transitional provisions of the Convention are very similar to those of the 1953 Protocol regarding the temporary continuation of the non-medical use of opium.[194]

The 1953 Protocol, as the Single Convention, does not prevent any party from producing opium for its *domestic* requirements.[195]

The Protocol, as well as the Convention, require parties, which permit the cultivation of the poppy for the production of opium, to establish a particular agency [196] for the implementation of their treaty obligations regarding such cultivation and production.

The Protocol obligated such parties

- not to permit the cultivation of the poppy for the production of opium except in areas which it authorized for this purpose. The purpose of this provision was the concentration of opium production in some geographic areas in order to facilitate control.[197]
- to permit the production of opium only to licensed cultivators, each license specifying the extent of the area on which the cultivation of the poppy was permitted.[198]
- to require the cultivators to deliver their total opium crops to the Agency which was to be held to purchase and take physical possession of these crops as soon as possible.[199]
- to confer upon the Agency a monopoly of the international and wholesale trade in opium and of holding opium stocks other than those held by manufacturers licensed to manufacture alkaloids from opium.[200]

The Single Convention imposes the same obligations on opium producing countries with the minor modifications.

Opium becomes available for illicit purposes principally from three basic sources:

- From poppies cultivated in areas which are not under effective Government control,[201] no matter whether their cultivation is theoretically "illegal" or whether no legislation concerning them exists at all.
- From poppies legally or illicitly cultivated in areas which are under the control of *conniving* government authorities. The role of official corruption, even in high places, and the complicity of government officials should in this connection not be underrated.[202] In appraising such a situation we must understand that this attitude of government officials which according to our ideas we must refer to as "official corruption" does not necessarily have the same moral connotation, under the different social and cultural conditions of the areas in question, as in our country.
- From diversion by the legal cultivator of part of his opium crop into illicit channels. Such a cultivator does not deliver his whole crop to the national opium agency as he would legally be bound to do, but conceals a part which he sells as a higher than the official price to an illicit trader.

Opium is produced by incising the capsules of poppies while still standing in the field and by collecting the latex exuding from the incisions. Opium

[182] See also Protocol of 1946 concerning the International Office of Public Health, United Nations Treaty series, vol. 9, p. 3.

[183] See above footnote 16.

[184] See above footnote 67.

[185] Text in United Nations Treaty Series, vol. 44, p. 277.

[186] League of Nations document C.175.M.104.1939.XI. Annex I, pp. 11–21.

[187] See Report of the Commission on Narcotic Drugs on its Third Session, United Nations document E/799, p. 31 and Report of the Commission on its Fourth Session, United Nations document E/1361, p. 26; see also resolutions of the Economic and Social Council 49 (IV), 159 (VII) E and 246 (IX)D.

[188] Resolution 436A (XIV) of the Economic and Social Council; see also that Council's resolution 478 (XV).

[189] Text in United Nations Treaty Series, vol. 456, p. 3.

[190] There was no requirement of licensing the trade in raw opium; Only the pre-war general provisions of article 1 of the 1912 Convention and of article 2 of the 1925 Convention to control effectively the distribution of such opium continued to apply.

[190A] The use of *medicinal opium* was already limited to such purposes by the 1925 Convention (Article 4, para. (a) in connexion with article 3).

[191] Article 2.

[192] Article 19.

[193] Use of opium for "quasi-medical purposes".

[194] See article 4, para. (c) and article 49 of the Single Convention.

[195] Article 24, para. 5, sub-para (a) of the Single Convention; see also article 6, paragraph 3 of the 1953 Protocol.

[196] Referred to in the Single Convention as "national opium agency". The agency may under both treaties consist of one or more Government agencies. The functions of the control in question must however be performed by a single government agency if the constitution of the party permits this. Article 3, para. 1 of the Protocol and article 23, para. 1 and 3 of the Convention.

[197] Article 3, para. 2 of the Protocol.

[198] Article 3, para. 3 and 4.

[199] Article 3, para. 5. The Single Convention also requires that the Agency shall purchase and take physical possession of the crops "as soon as possible" but not later than four months after the end of the harvest", Article 23, para. 2, sub-para. (d).

[200] Article 3, para. 6 of the Protocol. The Single Convention expressly exempts from this monopoly of holding opium stocks also those held by manufacturers of medicinal opium and opium preparations, Article 23, para. 2, sub-para (e) of the Single Convention. It may be noted that under article 1 of the Protocol the term "opium" includes "medicinal opium" but not "galenical" opium preparations. Article 23, para. 2, sub-para (e) of the Single Convention, moreover, stipulates that Parties need not extend the monopoly of the international and wholesale trade in opium and of holding opium stocks, to medicinal opium and opium preparations; see article 2, para. 3 of the Single Convention. It may be noted that the text of article 3 of the Protocol, but not article 23 of the Convention confers the functions referred to under (i), (ii) and (iv) upon "the Agency or other competent government authorities"

[201] "Government" as the term is used here does not include a tribal organization.

[202] Report of the Permanent Central Board on its work in 1965, para. 105, United Nations document E/OB/21.

production therefore cannot be hidden from neighbors or authorities and illicit opium production is consequently impossible in areas which are under effective government control and whose government authorities are willing to suppress it. An unwillingness to do so may of course be motivated by the desire not to deprive the cultivators of their sole or principal cash crop and thus to create possibly serious political, economic and social problems.

On the other hand it is hardly possible for even the most competent national opium agency to establish the exact amount of the opium harvest which an individual cultivator has legally collected and is bound to deliver to the agency. It is only too natural that such a private cultivator who is often very poor is frequently tempted by the higher prices offered by illicit traffickers. It is inevitable that even in countries, where opium production is governed by a national monopoly system as required by the 1953 Protocol and the Single Convention, some diversion of legally produced opium into illicit channels is bound to occur as long as private individuals are permitted to cultivate the poppy for the production of opium. This diversion can be prevented only if licenses to produce opium are granted only to relatively large corporations, co-operatives or state farms. Both the 1953 Protocol and the Single Convention contain the basic weakness that they permit the granting of licenses to produce opium to private individuals. Whether and when a generally acceptable treaty could be concluded, which would exclude individual private farmers from producing opium, is difficult to estimate, particularly after the intensive treaty making activities in the field of drugs in recent years. The elimination of illicit opium supplies from the sources mentioned above is of course not a matter which can be accomplished by the instrumentality of the international drug treaties alone.

The Protocol does not contain any provision which would require a party to prohibit the cultivation of the opium poppy whenever the prevailing conditions in its territory would render such an action the most suitable measure, *in its opinion*, for protecting the public health and welfare and for preventing the diversion of drugs to the illicit traffic. The Single Convention has included such a provision not only with respect to the cultivation of the opium poppy but also in respect to that of the coca bush and the cannabis plant.[203] Such a provision must of course be implemented in good faith as all treaty provisions. A country which has an efficient administration and which despite adoption of strict controls would be unable to prevent the diversion into the illicit traffic of important quantities of the legally produced opium would hardly act in good faith if it would declare that, in its opinion, the prohibition of poppy cultivation would not be the most suitable measure for preventing the diversion of drugs into the illicit traffic. The production of opium cannot be concealed from the authorities in areas under effective government control nor can the cultivation of the poppy be hidden. Turkey is undoubtedly a country which is capable of exercising effective government control over its territory and which, despite its control measures, could not prevent large-scale diversions from its legal opium production. It is therefore suggested that the Turkish governments acted in accordance with its obligations under the Single Convention to which it is a party when it recently prohibited the cultivation of the opium poppy with effect from the 1972 crop year.

The 1953 Protocol does not permit parties to *import or export opium* other than opium produced in any of the following *seven countries* which will be parties to the Protocol:[204] Bulgaria, Greece, India, Iran, Turkey, Union of Soviet Socialist Republics and Yugoslavia.

The Single Convention admits to the international trade in opium:

- opium produced in any of the following countries which are parties to the Convention: Afghanistan, Bulgaria, Burma, India, Iran, North Vietnam, Yugoslavia.[205]
- opium produced by any country which produced and exported that drug during ten years prior to 1 January 1961 if that country has established and maintains a national control agency as required by article 23 of the Single Convention and has in fact an effective means of ensuring that the opium which is produces is not diverted into the illicit traffic.[206]

[203] Article 22 of the Single Convention; see also article 24, paragraph 1, sub-paragraph (b).

[204] Article 6, paragraph 2, sub-paragraph (a).

[205] These are the countries which, according to information furnished by the Secretarial of the International Narcotics Control Board, during ten years immediately prior to 1 January 1961, exported opium which they produced; see article 24, para. 3 of the Single Convention; see also article, para. 4, sub-paragraph (a), clause (i).

[206] This admission to the international trade of opium produced in the territory of non-parties was motivated by the desire to permit the export of opium produced in countries such as North Vietnam, which during the years in question had exported opium of its own farms but could not become a party to the Single Convention.

Footnote continued on next page.

- an annual maximum amount of five tons of opium produced in the territory of any party[207] which has notified to the Economic and Social Board its desire to export this opium and furnishes to that organ information regarding the controls which it has in force in respect of the opium to be produced and exported as well as regarding the name of the country or countries to which it expects to export the opium.[208]
- opium produced in the territory of any party[207] which has notified to the Economical and Social Council its desire to produce opium for export in amounts exceeding five tons annually, the estimated amounts to be produced for export, the controls existing or proposed regarding the opium to be produced and the name of the country or countries to which it expects to export the opium *and* which has obtained the Council's approval of its intended production for export.[209] and
- opium seized from the illicit traffic which is exported by one party to another party.[210]

The failure of the authors of the Single Convention to incorporate the provision of the 1953 Protocol limiting the international opium trade to opium produced in the territory of those of the seven named countries which became parties to the Protocol[204] and the Single Convention's enlargement of potential sources of opium has been widely criticized, particularly in the United States of America. This restrictive provision of the 1953 Protocol has on the other hand been one of the reasons for which several countries refused to become parties to that treaty. In appraising the criticism of the Single Convention on this point, it must be realized that it is based on considerations which had more validity under the different conditions of the past than they have at present. It was held in the past that legal overproduction of opium is one of the principal causes of diversion. Due to the controls required by the 1953 Protocol and by the Single Convention and introduced by the countries now engaged in the legal production of opium, the only stage of *legal trade* at which opium is presently diverted into illicit channels, occurs with the licensed individual farmer who cultivates the poppy for the production of opium. It is safe to state that opium, once it has been taken over by the national opium agency, is not diverted into the illicit traffic either by such an agency or in significant quantities from the subsequent trade in the opium sold by the agency. It is very difficult to see how the restrictive provisions of the 1953 Protocol limiting the *legal* international opium trade to opium produced in seven named countries or even the more liberal provisions in question of the Single Convention can contribute to the prevention of diversion of opium by a licensed individual farmer or to the suppression of the *illicit* or *uncontrolled* production of opium. Moreover, less opium is sometimes legally produced than is needed for medicinal purposes.[211] There seems at present to be a greater danger of *legal* underproduction than of *legal* over-production. One must also not overlook that harvesting of a quantity of opium often requires many more man-hours than that of an amount of many other agricultural products of the same or even greater value on the legal market. The past Permanent Central Board[16] found that in one opium-producing country the collection of 7 kg. of opium required about 1280 man-hours.[212] It follows that even at the present increased world market prices of opium[213] legal production of opium can be economically profitable only in countries with a very low wage level.[214] While it cannot be predicted which additional country with a low wage level may become capable of exercising effective control and of entering the world market with needed additional legal

Footnote continued from previous page.

without being invited by the Economic and Social Council (Article 40). Such an invitation could not be expected under the political conditions as they existed in 1961. The provision admitting such opium (article 24, para. 4, sub-para. (b)) represented a concession to the view point of those countries which favoured the so-called "all State clause" i.e. the admission to the treaty of all states. This veiw point was specially presented by the Communist states.

[207] Other than the privileged countries referred to under the first category above.

[208] Article 24, para. 2, sub-para. (a) and para. 4, sub-para. (a) clause (ii).

[209] Article 24, paragraph 2, sub-paragraph (b) and paragraph 4, sub-paragraph (a), clause (iii).

[210] Article 24, paragraph 5, sub-paragraph (b); see the restrictions of article 7 of the 1953 Protocol on the disposal of seized opium, which were not taken over by the Single Convention.

[211] See the figures on production and utilization of opium in the years 1966, 1967, 1968, 1969 and 1970 as published by the International Narcotics Control Board, Statistics on Narcotic Drugs for 1970, United Nations Document E/INCB/15, Table I, p. 15; see also paragraph 36, p. X of this document.

[212] Report of the Permanent Central Board on its work in 1966, United Nations document E/OB/22, paragraph 51, p. XVIII.

[213] If the information at the disposal of the writer is correct the price of 1 kg of opium containing 10 percent of morphine rose to about 24 to 26 dollars.

[214] Legal opium production although not economically justified may also be authorized by a country which desires to obtain autarchy in respect of this important commodity.

supplies of opium without becoming an important source of the illicit traffic, the danger of future shortages of opium required for medical purposes should not be underrated. It is to be expected that the wage level will rise not only in the countries which presently legally produce opium, but also in countries which at their present level could take their place. Legal opium production may become less and less profitable and finally entirely uneconomical in both kinds of countries. Such a possible shortage of opium might of course be obviated by an increasing substitution of synthetic narcotics for drugs obtained from opium or by an increasing price of opium which might not only have the effect of increasing legal opium production, but also on the other hand stimulate the development of fully adequate synthetic substitutes [215] and thus in turn reduce the medical need for opium. It may finally be pointed out that poppy straw could not fully replace opium as raw material for the manufacture of morphine. This would require a tremendous increase in the cultivation of the poppy for its seeds. However, without such an increase there would not be enough poppy straw for the complete replacement of opium. Even in the recent past, an increase in the production of morphine from poppy straw seems to have been prevented by the fact that not enough straw was available for this purpose. The cultivation of the poppy for the straw alone is entirely uneconomical.

It may also be noted that no country commenced opium production for export under the more liberal provisions of the Single Convention. Iran which had prohibited the production of opium and recently resumed it for domestic purposes, but not for export [216] would under the provisions of the Protocol be authorized to produce opium for export. One may hold that contrary to the past, the present international campaign against the illicit traffic in opium does not need additional measures for the limitation of the quantities of legally produced opium, but prevention of the diversion of opium by licensed individual cultivators and the suppression of illicit or uncontrolled production of opium in the areas in which they occur. The best means of preventing diversion by licensed individual farmers would be the prohibition of the production of opium by such farmers. Refusal to renew the license of a farmer whose alleged opium yield from a unit of land is considerably lower than the amount of opium harvested by other farmers from such a unit of land would also be a useful measure.

Prohibition and prevention of poppy cultivation in all countries which are incapable of exercising effective control must be one of the principal aims of further international action in this connection.

In conclusion, of the Single Convention's control of sources of opium supplies, which in the past might have been of great value, may have to be revalued and may be found to have lost their usefulness in the light of changed circumstances brought about particularly by the international narcotics regime.

The 1953 Protocol provided for a system of *sanctions* [217] which *inter alia* authorized the Permanent Central Board to recommend to the parties an embargo on the import of opium, the export of opium, or both, from or to the offending country or territory.[218] The Board was also authorized to make such an embargo "mandatory".[219]

Such an embargo if implemented would have the effect of cessation of the *legal* imports of opium into the offending country or territory or of the *legal* exports of opium from such a country or territory. A cessation of legal imports might endanger the supply of needed medicines but would have no effect on the illicit traffic which is not any more fed by legal imports as was the case in 1925. The sanction system, which was then established by the 1925 Convention and which *inter alia* authorized the Permanent Central Board to recommend the cessation of the exports of drugs to an offending country, was based on conditions as they existed at that time, but which no longer exist.

The cessation of legal exports of opium from an offending country might cause some economic disadvantages to that country and might therefore make some sense as sanction, but it could also increase an already existing shortage of opium for medical purposes in other countries. It is however not asserted that the authority of the Permanent Central Board to recommend or make mandatory the embargo provided for in the 1953 Protocol is without any value. Its authority to take such action might have strengthened the Board's position in negotiations with governments which failed to implement their treaty obligations. It must however be emphasized that the embargo system of the 1953 Protocol is based on conditions as they existed in 1925. Sanction provisions which would take into account the changes which have since then taken place in the drug field might usefully have to be different.[220]

The 1953 Protocol authorized the Permanent Central Board to apply its sanction provisions also to non-parties.[221]

The "sanction" rules of the 1953 Protocol contains another provision which is worthwhile discussing because it proved to be unacceptable to a number of countries and because a similar provision proposed by the United States in recent diplomatic negotiations leading to the adoption of the Protocol of 1972, amending the Single Convention on Narcotic Drugs, 1961, was also opposed by many States. Under the 1953 Protocol,[222] the Permanent Central Board could submit to a government an inquiry which would contribute to the elucidation of the opium situation under the jurisdiction of that government. The Board could propose that this inquiry should be carried out by a person or a committee of inquiry. The inquiry would require the express consent of the government concerned. A failure of the government to reply to the Board's proposal within four months should be considered to be a refusal to consent. The inquiry would have to be carried out in collaboration with officials designated by the government. The American efforts led to an inclusion in the Protocol of 1972 of a provision [223] which would expressly forsee the possibility of a government studying possible defects in its narcotics regime, at the proposal of the International Narcotics Control Board. If the Board, on the basis of information which it could use for this purpose, would have objective reasons to believe that the aims of the Single Convention are being seriously endangered by reason of the failure of any party, country or territory to carry out provisions of this Convention, it would be authorized to propose to a government that a study of the matter should be carried out in its territory by such means as the government would deem appropriate. The Board would also be entitled to propose such a study to a country, which, without any failure in implementing the Single Convention, had become or might become an important center of illicit cultivation, production or manufacture of, or traffic in or consumption of drugs.[224] The Board would be entitled to propose this study if it thinks such action necessary for the purpose of assessing the possibly defective control situation. If the government would decide to undertake the proposed study, it could request the Board to make available its expertise and the services. The modalities of the study and the time limit for the completion of the study would have to be determined by consultation between the government and the Board. The government would be required to communicate the results of the study to the Board and to indicate the remedial measures which it considers necessary.

This new provision of the Single Convention would be very helpful in improving the drug situation in a country. However, nothing in the unamended Single Convention would prevent the Board from recommending such a study,[225] although without reference to article 14,[226] and a government from carrying out such a recommendation.[227]

The 1953 Protocol also introduced provisions by which the amounts of opium supplies which a country or territory could obtain annually by imports would be limited. The maximum amounts of opium imports which would be permitted would be calculated on the basis of the estimates of opium requirements which the government would furnish to the Permanent Central Board; or if it fails to do so, would be established by the Supervisory Body.[67] The Supervisory Body could amend the estimates of a government only with the governments consent. The Board is also required to order the discontinuation of further exports of opium to a country or territory which has exceeded its import limits. In short, the Protocol subjected opium to the estimate and limitation system which the 1931 Convention applied to the manufactured narcotic drugs.[228] The Single Convention subjects opium, as well as coca leaves, cannabis and cannabis resin and extracts and tinctures of cannabis

[215] This question will also be referred to further below.

[216] The document referred to in footnote 211 above, Table I, p. 14.

[217] Article 11–13.

[218] See the definition of "territory" in article 1 of the Protocol; see also footnote 63.

[219] Article 12, para. 2 and 3 and article 13 of the embargo

[220] See also above the discussion of article 24 of the 1925 Convention.

[221] As regards the application of provisions of narcotics treaties to non-Parties see also the above discussion of articles 24 and 26 of the 1925 Convention and of the estimate system of the 1931 Convention.

[222] Article 11, paragraph 1, sub-paragraph (d).

[223] Article 6 of the Protocol. The provision which by amending the Single Convention would be introduced into this Convention would be numbered article 14, paragraph 1, sub-paragraph (c).

[224] Article 14, paragraph 1, sub-para. (a) of the Single Convention as it would be amended by article 6 of the Protocol.

[225] Article 15, paragraph 1.

[226] The view may perhaps also be held that the Board could propose such a study as part of the request for explanations which it could make under the unamended text of article 14, paragraph 1.

[227] The government would, however, under the unamended text not be required to communicate to the Board the results of its study and to indicate the remedial measures which it would consider necessary to take although it might be interested in doing this in the explanations which it would desire to give under article 14, para. 1.

[228] Article 8, para. 1, and 4–11 of the Protocol.

—the drugs which the 1931 Convention excluded from its provisions—to its estimate and limitation system.[229]

The Protocol also required each opium producing country to furnish to the Permanent Central Board an annual estimate of the extent of the area in which it proposed poppy cultivation and an annual estimate of the amount of opium to be harvested.[230] It did not confer a binding character on these estimates.[231] These provisions regarding estimates of area and harvest were not adopted by the Single Convention.[232] The Protocol of 1972 would introduce into the Single Convention provisions which would require parties to furnish annual estimates of the area to be used for the cultivation of the poppy for any purpose (and not only for opium), as well as estimates of the approximate quantity of opium to be produced. It would require that these estimates of the area should not be exceeded. Parties would have to organize and control opium production in such a manner as to ensure that, as far as possible, the quantity produced in any year should not exceed their estimates of opium production.[233] In determining whether production has exceeded the estimates, certain deductions would have to be made from the amount of opium which would have been produced.[234] These provisions of the Protocol may have to be appraised in the light of the following considerations:

• Whether additional restrictions limiting the quantities of legally produced opium collected by the national opium agencies can reduce the amounts of opium diverted into illicit channels by licensed individual farmers, and whether they can have any effect on the other important sources of illicit opium, namely the cultivation of the poppy for opium in areas which are not under effective government control or in areas under the control of conniving government authorities.

• Whether a government can make a reasonably accurate estimate of the approximate quantity of opium which it may harvest from a unit of area of land in regions whose weather conditions are unstable.

The question may also be raised whether the considerable number of European countries, which cultivate the poppy for the seeds or do not permit the production of opium, are fully capable of preventing and actually prevent such production and have no diversion of opium would be willing to accept an obligation to furnish to the International Narcotics Control Board an annual estimate of the area and of the geographic location of the land to be used for the cultivation of the poppy as well as annual statistical figures with respect to the "ascertainable area of cultivation of the poppy".[235]

Attention is also drawn in this connection to a provision of the Single Convention which would not be affected by the Protocol of 1972 and according to which any state may furnish supplementary estimates during the year. The Protocol of 1972 would not exclude the estimates of opium production from the right of governments to change their estimates by supplementary estimates. Neither the earlier estimates nor the supplementary estimates can under the unamended Convention or under the Protocol be amended without the consent of the government concerned. The Protocol would provide that in case of disagreement between the government and the Board, the latter would have the right to establish, communicate and publish its own figures. Only the estimates or supplementary estimates of the Governments would have the *legal effect* of determining the limits of narcotics supplies to be obtained by manufacture or import or both or the legal effect of establishing the limits which the amount of opium production would not be permitted to exceed; the figures established and published by the Board in the case of the above mentioned disagreement could only have a *moral* effect. An opium producing country could by its estimates and supplementary estimates always establish the amounts of opium which it would be permitted to produce. It could also, by supplementary estimates, assure that its opium production would not exceed the limits which would be prescribed by the Single Convention as amended by the Protocol.[235]

[229] See above the discussion of the 1931 Convention in chapter II of this paper headed "The gradual evolution of the international drug treaty system."

[230] Article 8, para. 3.

[231] Article 8, paragraph 10. The estimates of opium requirements, on the other hand, were not permitted to be "exceeded".

[232] Article 19.

[233] Article 19, paragraph 1, sub-paras. (e) and (f) and para. 5 and article 21 bis, para. 1 as these provisions would be worded by the Protocol of 1972 (Articles 9 and 11).

[234] Article 21, para. 3 and article 21 bis, para. 2 (the latter provision as introduced by article 11 of the Protocol of 1972).

[235] Article 19, para. 1, sub-para. (e) and article 20, paragraph 1, sub-para. (g) as these provisions would be worded by articles 9 and 10 of the Protocol of 1972; Article 11, para. 3 (not amended by the Protocol), article 19, para. 1, sub-para. (f) of the amended Convention, article 21, paragraph 1 of the amended text and article 12, paragraph 1 of both texts; Article 19, para. 5 and article 21, para. 3 of the amended text.

In the case of estimates and supplementary estimates determining the limits of the supply of drugs to be obtained by *manufacture* and *import*, governments can follow suggestions of the Board by reducing manufacturing or import plans or by reducing or discontinuing additional manufacture or imports. Once the poppy is sown, an opium producing country could, in the case of supplementary estimates, carry out suggestions of the Board to reduce its estimates and its planned opium crop, either by uprooting or otherwise destroying some of the plants in the field or by prohibiting its farmers from collecting opium from a part of the poppies which they would have grown. Finally, in reviewing the opium production estimates the Board would have at its disposal only estimates of the area to be used for cultivation of the poppy for any purpose and not for *the area on which it would be planned to grow the poppy for the production opium.*[236]

The provisions of article 5 of the 1953 Protocol regarding the limitation of opium stocks which governments may hold have proved in practice to be of no value, have not been included in the Single Convention and have not been proposed for consideration in any future revision of the international drug treaty system.[237]

The Tasks Resulting From the Post War Situation Which Appeared To Be Less Urgent Or In Any Case Would Require Some Time To Carry Them Out.

The Commission on Narcotic Drugs was of the opinion that provisions dealing with these tasks should be included in the Single Convention on Narcotic Drugs which it intended to prepare. These tasks were:

• *Codification of the law contained in all existing multilateral narcotics treaties which numbered six in 1946, but whose number had grown to nine in 1953.*[238]

• *Simplification of the international control machinery by substituting a single organ for the Permanent Central Board*[10] *and Supervisory Body*[67] *and by reforming the secretarial arrangements serving the international control organs.*

• *Closing the gaps which were held still to exist in the international narcotics regime.*

The latter would be accomplished by (1) establishing a comprehensive system of control of the cultivation of the coca bush, of the production of coca leaves, of the cultivation of the cannabis plant for the production of cannabis and cannabis resin and of the production of these cannabis drugs and (2) by prohibiting the non-medical use of coca leaves, cannabis and cannabis resin which was still permitted under the existing narcotics treaties. The 1953 Protocol, which was considered to be only an interim measure, already provided for a comprehensive international regime of the cultivation of the poppy for the production of opium and of such production and for the prohibition of the non-medical use of all kinds of opium. Such a regime had not yet existed under the pre-war treaties, which had not yet prohibited the non-medical use of raw opium and prepared (smoking) opium.[239] Since the Single Convention was intended to replace all preceding multilateral narcotics treaties, including the 1953 Protocol,[240] it had also to provide for control of the cultivation of the poppy for the production of opium and of such production and for the continued prohibition of the non-medical use of all kinds of opium.

THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961

It may be recalled that the work of the Commission on Narcotic Drugs on the Single Convention was initiated by the United States representative on the Commission.[241] The work was carried on under the authority of resolutions of the Economic and Social Council 159 (VII) II D of August 3, 1948 and 246 (IX)D of July 6, 1949, both of which were adopted on the recommendation of the Commission.[242] The

[236] It appears at least questionable whether the Board could under Article 12, para. 1 and article 19, para. 1, introductory sub-paragraph require governments to furnish separate figures on the area to be used for the cultivation of the poppy *for the production of opium.*

[237] As regards the obligation of parties to furnish to the Secretary General an annual report on the working of the 1953 Protocol and a report on the legislative and administrative measures adopted in accordance with this Protocol, see article 10 of this treaty.

[238] Their number was increased to ten by the addition of the Single Convention, but will rise to 12 when the Vienna Convention of 1971 and the Protocol of 1972 will come into force.

[239] But only of "medicinal opium"; see article 4, para. (a) and article 5 of the 1925 Convention.

[240] Moreover, the 1953 Protocol which was adopted on June 23, 1953, came into force only on March 8, 1963. It was accepted only by a relatively small number of countries. As of December 31, 1971, it numbered only 49 Parties while the Single Convention had 81 on this date.

[241] Report of the Commission on its Third Session (1948), United Nations document E/799, p. 23.

[242] Report of the Commission on its Third Session, United Nations document E/799, pp. 23–24 and Report of the Commission on its Fourth Session, United Nations document E/1361, p. 41.

Commission devoted its efforts to this task from its third session in 1948 to its thirteenth session in 1958.[243] The Economic and Social Council, by its resolution 689 (XXVI) J of July 28, 1958,[244] requested the Secretary General, to call a plenipotentiary conference for the adoption of the Convention. This Conference met in New York from January 24 to March 25, 1961, and adopted the Single Convention on Narcotic Drugs, 1961 on March 25, 1961. The Convention was opened for signature ("done") on March 30, 1961.

The Commission considered three drafts of the Single Convention, of which the first and second drafts[245] were prepared by the Secretariat in accordance with principles adopted by the Commission, and the Third Draft[246] was prepared by the Commission itself. The Third Draft was used by the plenipotentiary conference as working document in elaborating the final text of the Single Convention.

Some of the Controversial Problems Which Arose in the Course of the Preparatory Work on the Single Convention

Estimates and Statistics

Contrary to the earlier and later narcotics treaties, obligations of parties were frequently described in very general terms, leaving it to international organs to fill in details. For example, parties would have been bound to furnish such statistical and other information as the "International Drug Commission"[247] would request as being necessary for the performance of the functions of the international control organs.[248] They would also have been required to supply such estimates of their drug requirements as the "International Drug Board"[249] would determine.[250] No list of estimates which parties would specifically be bound to furnish was included in the draft treaty. The second and third drafts of the Single Convention, as its final text, returned to the method of describing in some detail the treaty obligations of Parties; and

Extension of Control to New Drugs

The International Drug Commission[247] was authorized to place under international control any (dangerous) drug, and to apply the appropriate control measures. It would have been irrelevant whether the drug in question had properties similar to those already under international control[251] or what its chemical formula was. Parties would however have had the right, within a stated period, to reject onerous decisions of the Commission,[252] and thus would not have been bound by them.[252] This proposed extensive authority of the Commission to adopt decisions binding upon those parties which do not reject them is somewhat similar, although less far-reaching, than article 2 of Draft B of the Protocol on the Control of Drugs Outside the Scope of the Single Convention on Narcotic Drugs.[253] The proponents of such a provision hold that it is highly improbable that a government would want to expose itself to international opprobrium by expressly rejecting the control of a really dangerous drug.[254] Anyway, the Second and Third Draft and the final text of the Single Convention returned to the method, employed by the 1931 Convention and the 1948 Protocol, of defining more or less closely the type of drugs which may be placed under international control by a binding decision of an international organ, a decision which cannot be rejected by the parties.[255]

[243] It did also some work at its fourteenth session in 1959 regarding the preparations to be included in Schedule III of the proposed Single Convention; Report of the Commission on its Fourteenth session United Nations document E/3254, p. 13.

[244] This resolution was also adopted on the recommendation of the Commission, Report of the Commission on its Thirteenth Session, United Nations document E/3133, pp. 57–58.

[245] United Nations documents C/CN. 7/AC.3/3 and E/CN. 7/AC.3/7.

[246] United Nations document E/CN. 7/AC.3/9 and Addendum 1.

[247] The name given to the political organ which should take the place of the Commission on Narcotic Drugs.

[248] Section 13, para. (b) of the First Draft. While the statistical data and the estimates, which Parties have to furnish, are spelled out in articles 19 and 20 of the Single Convention of 1961, this Convention still gives to the Commission on Narcotic Drugs the general authority to require parties to furnish to the Secretary General "such information" as it "may request as being necessary for the performance of its functions." This may include statistical data in addition to those expressly prescribed by the terms of article 20 of the Single Convention.

[249] The name proposed for the independent (semi-judicial organ)[16] which was to take the place of the Permanent Central Board and of the Supervisory Body.[87]

[250] Section 23, paragraph 1 of the First Draft.

[251] See article 10 of the 1925 Convention, article 11 of the 1931 Convention, article 1 of the 1948 Protocol and article 3, para. 3, sub-para. (iii) of the Single Convention.

[252] Section 3 of the First Draft.

[253] Text in United Nations. doc. E/CN. 7/519, p. 76.

[254] United Nations document E/CN. 7/519, para. 26.

[255] See, however, the limited right of rejection in article 2, para. 7 of the Vienna Convention of 1971 on Psychotropic Substances.

The International Clearing House

The First Draft of the Single Convention contained provisions regarding an "International Clearing House" which would have required parties not to authorize an export of a controlled drug to any country or territory until it would have obtained confirmation from the International Drug Board[240] that the export would not exceed the estimates of that country or territory.[257] These provisions were rejected by the Commission and do not appear any more in the subsequent drafts and in the final text of the Single Convention. They would have imposed an unnecessary burden on the legal international trade in controlled drugs, from which, due to the import certificate and export authorization system, only very insignificant amounts are diverted into illicit channels. Such a system of an "international clearing house" would also have delayed the shipment of urgently needed medicines. It could not have prevented the theft of drugs which are being shipped from one country to another country. Unfortunately, such thefts continue to occur occasionally.

Mandatory Prohibition of Dangerous Drugs

The Draft provided for the possibility of the *mandatory prohibition* of the production[258] or manufacture of, trade in and use of particularly dangerous drugs, except for small amounts for scientific purposes.[259] A provision of this kind was included in the Second Draft, but only as an alternative to another text which only would have required Parties "to consider sympathetically" such a prohibition.[260] The Third Draft provided for a regime of mandatory prohibition of drugs in Schedule IV[261] without any alternative as that foreseen in the Second Draft. The Plenipotentiary Conference rejected the idea of a mandatory prohibition of dangerous drugs. It included instead in the Single Convention a provision which amounts only to a recommendation to prohibit drugs in Schedule IV.[262] Opponents to mandatory prohibition agreed that it would be useful if international organs would have authority to discourage the medical use of particularly dangerous drugs which in their opinion have no medical value or whose advantages could be obtained equally as well from other less dangerous drugs. They also thought it useful if an international organ could *recommend* the prohibition of dangerous drugs of this kind. They held, however, that no person or group of persons at an international center could be sure that a particular drug did not have some important therapeutic value of which they were not aware. Moreover, admission of dangerous drugs to medical treatment, if effectively controlled, did not constitute a danger to the control regimes of other countries and in this sense did not represent the type of international problem, which multilateral narcotics treaties sought to solve.[263] A mandatory prohibition of the trade in and use of dangerous drugs should only be ordered by the national authorities and not by international organs.

The provision of article 7, paragraph (a) of the Vienna Convention of 1971, which would prohibit all use of substances in Schedule I of that Convention (such as LSD or mescaline), except for scientific and *very limited medical* purposes, is also influenced by the ideas of those who consider international *mandatory* prohibitions or restrictions of the therapeutical use of very dangerous medicines to be useful.[264]

Sanctions

The *sanction provisions* of the First Draft of the Single Convention included the right of the International Drug Board[240] to require parties to discontinue the export to, or import from, an offending country or territory, of any or all controlled drugs. The Draft did not provide for the less severe measure of *recommendation* of such an embargo, but only for

[257] Section 24 of the First Draft.

[258] Separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained, Section 1, paragraph (g) of the First Draft; see also article 1, para. 1, sub-paragraph (t) of the Single Convention.

[259] Drugs in Schedule C, Article 2, paragraph 3 of the draft.

[260] The two alternative versions of paragraph 5 of article 2 of the Second Draft; see, however, article 40 of this draft which would have introduced a regime of mandatory prohibition of cannabis and cannabis resin.

[261] Article 2, paragraph 1, sub-para. (e); Schedule IV included heroin, desomorphine, cannabis drugs, and ketobemidone. Article 39 would have provided for a regime of prohibition of cannabis drugs making, however, exceptions for such drugs to be used in the indigenous systems of Ayurvedic, Unani and Tibbi medicine on the Indian-Pakistani subcontinent. There seems to be some inconsistency between the above provision of article 2 and Schedule IV on the one hand and article 39 on the other hand.

[262] Article 2, paragraph 5 of the Single Convention. The content of this provision was given above in the discussion of the 1931 Convention in connection with the consideration of the heroin question as it was treated by the Conference which adopted the 1931 Convention.

[263] See above the discussion in Chapter I of this paper headed "The national interest in international control of dangerous drugs".

[264] See above the reference to this provision in the discussion of the 1931 Convention.

the imposition of obligatory embargo.[265] The discontinuation of legal exports of drugs was an appropriate punitive measure capable of reducing the illicit traffic under the conditions as they existed in 1925, but not under present circumstances. Such a discontinuation might be a questionable measure because it might endanger the treatment of innocent sick people. The cessation of the import of drugs (and particularly the threat of such cessation) from an offending country or territory has retained some value as an enforcement measure, since it could cause economic disadvantages to a country or territory.[266] However, it may cause considerable inconveniences to other countries which faithfully carry out their treaty obligations, but whose normal sources of drug supplies could be cut off by such a measure. These considerations may have to be taken into account in future revisions of the international narcotics regime and may lead to the adoption of provisions regarding sanctions which are more in accord with present conditions than the punitive cessation of the import or export of *medicines*.

As the first Draft, the Second and Third Draft of the Single Convention provided for a *mandatory* embargo of the import or export of drugs, but the latter two also contained provisions under which that embargo would not be obligatory, but would have the character of a *recommendation*.[267] The Single Convention does not provide for a *mandatory* embargo. Its sanction provisions (article 14, paragraph 2) authorize the International Narcotics Control Board only to *recommend* to parties that they stop the import of controlled drugs, the export of such drugs, or both, from or to the offending country or territory.

The Protocol of 1972 would amend the Single Convention (article 14 bis) to authorize International Narcotics Control Board either in addition to, or as an alternative to, the recommendation of an embargo,[268] to recommend, in agreement with the Government concerned, to the competent United Nations organs and to the specialized agencies, that technical or financial assistance, or both, be provided to the government in support of its efforts to carry out its treaty obligations. The authors of the Protocol obviously recognized that the threat and even the imposition of punitive measures might not help in improving the drug situation in countries, which are not fully capable of carrying out their treaty obligations without foreign assistance. However, even under the unamended text of the Single Convention the Board would be entitled to recommend, in agreement with the government concerned, the granting of assistance by international organizations or other governments, either in addition to, or as an alternative of, the enforcement measures provided for in article 14, paragraphs 1 and 2[269]. The Board is not bound to take these measures, but is only entitled to adopt them.

As in the case of the 1925 Convention and of the 1953 Protocol, the applicability of the sanction provisions of the three drafts of the final text of the Single Convention *to non-Parties* may be noted. It applies also to most of the sanction provisions of the Vienna Convention of 1971 which are nearly the same as those of the Single Convention.[270]

Amendment of Estimates

One provision of the First Draft of the Single Convention requires particular mention not only because it was a subject of controversy in the preparatory work of the Single Convention but also because

[265] Section 26, paragraph 2, sub-para. (c) and (d).

[266] As regards opium it may, however, cause or increase a shortage of opium in other countries and thus be undesirable from the view point of public health; see *supra*, discussion of the sanctions of the 1953 Protocol. The 1925 and 1931 Convention provided only for the discontinuation of exports to the country or territory concerned and not for the cessation of imports from such offenders; the 1953 Protocol was the first treaty whose sanction system covered imports as well as exports, but only in respect of opium.

[267] Article 23, paragraph 2, sub-para. (d) of the Second Draft and article 22, para. 4 of the Third Draft. The Second and Third Draft, but not the First Draft permitted an appeal against a mandatory embargo. The 1953 Protocol also did this; Article 23, paragraph 2, sub-paragraph (c) of the Second Draft and article 22, paragraph 3 of the Third Draft.

[268] The Board could make such a recommendation assistance also either in addition to, or as an alternative the "enforcement" measures provided for in [illegible] para. 1 (proposing to the offending Government the ing of consultations (1972 Protocol), request of [illegible] tions of serious failures to carry out treaty provisions posal of a study by the Government concerned of [illegible] situation (1972 Protocol), requesting the adoption of dial measures, and calling the attention of the Parties Economic and Social Council and of the Commission (1972 Protocol) of the General Assembly to the [illegible] 268 as well as the recommendation of an embargo

[269] They include measures referred to *supra*, [illegible]

[270] Article 19, paragraphs 1 to 6; para. 7 provides for the application of the sanction rules graphs 1 to 6 to a *party* which by the exercise of partial rejection of control decisions of the Commission on Narcotic Drugs causes results which give the International Narcotics Control Board reason to believe aims of the Vienna Convention on Psychotropic Substances are being seriously endangered.

introduction of a similar provision was proposed in the recent negotiations leading to the adoption of the Protocol of 1972, amending the Single Convention on Narcotic Drugs. The First Draft would have authorized the International Drug Board [240] to amend, *after consultation with the Government concerned*, the estimates of drug requirements, furnished by that government.[271] This Board would thus have had the final say on the quantities of drug supplies which a country would have been authorized to obtain.[272] The authors of the Second Draft limited the right of the International Narcotics Control Board [273] to change the estimates without the consent of the government. The Second Draft would have established as a general rule that the Board could change the estimates only with the consent of the government;[274] but it would still have authorized the Board to establish the estimates of any state [275] under the following conditions: The estimates furnished by the government would, in the opinion of the Board, have to be "unsatisfactory"; the Board would without undue delay have to request explanations from the state and, not having received the requested explanations after an appropriate interval, would have to reiterate its request. Only if the state concerned would fail to reply within a reasonable period to this second request could the Board substitute its own estimates for the unsatisfactory estimates furnished by the government.[276] The Third Draft [277] and final text [278] of the Single Convention merely authorize the International Narcotics Control Board to amend estimates only with the consent of the government which has furnished them. They do not provide for any exception from this requirement. They follow in this the precedents of the 1931 Convention [279] and of the 1953 Protocol.[280]

At the Twenty-Fourth session of the Commission on Narcotic Drugs, it was suggested to amend article 12, paragraph 5 in a way which would have authorized the International Narcotics Control Board to modify estimates without consent of the government.[281] The Protocol of 1972 did not incorporate such an amendment of the Single Convention. Its revision of article 12, paragraph 5 would still maintain the requirement of the consent of the government to amendments of its estimates by the Board. The new version of this paragraph would add, however, that in case of a disagreement between the Board and a government concerning that government's estimates or supplementary estimates, the Board should have the right to establish, communicate and publish its own estimates, including supplementary estimates.[282] It is suggested that the correct view would be that a country's *legally* binding limits of drug supplies (to be obtained by manufacture or import or both) would in such a case have to be calculated on the basis of the estimates of the government and not on the basis of those established by the Board without that government's consent.

A few of the views held by those who are opposed to conferring upon the International Narcotics Control Board the right to amend estimates without consent of the government and to determine, with binding effect, the quantities of narcotic [1] drugs supplies which each of the nearly 190 countries and territories may annually obtain, are:

The conditions which determine the drug needs of different countries vary from country to country. This applies even to countries of similar economic and social conditions and of a similar level of health services. It is impossible even for a group of international experts to determine with a reasonable degree of accuracy the quantities of each drug which each of such numerous countries and territories need. Even an occasional under-estimation by the Board could lead to a shortage of medicines in a particular country or territory and, thus, endanger the proper treatment of sick people. Such a situation would undoubtedly discredit the international drug regime and create considerable doubts about the value of a control system, which may produce such a deplorable situation. Moreover, there is presently no significant diversion of manufactured drugs from legal trade into illicit channels nor is there any such diversion of opium once it has come into the possession of the national opium agency. An unilateral right of an international organ to limit further the quantities of drugs which may be *legally* produced, manufactured or imported could have no effect whatsoever

[271] Section 23, para. 7. The estimates would have been [illegible]

[272] Section 23, para. 8.

[273] Section 23, para. 8 and Section 24.

[274] The name given by the Second Draft to the independent (semi-judicial) control organ (Article 6) and maintained by the final text of the Single Convention.

[275] Article 21, paragraph 6.

[276] The application of the provisions of the estimate [illegible] to non-Parties.

[277] Article 21, paragraph 4, sub-para. (b).

[278] Article 20, paragraph 5.

[279] Article 12, paragraph 5.

[280] Article 5, paragraph 6.

[281] Article 8, paragraph 7.

[282] Report of the Commission on its Twenty-Fourth Session, United Nations document E/5082, paragraph 571 and Annex VII, Section A.

[283] Article 5 of the 1972 Protocol.

on the diversion of opium by licensed cultivators, or contribute to the suppression of the uncontrolled or illicit production of opium. The value of estimates of production [283] is questionable even with opium because it is hardly possible, by appropriate control arrangements, to assure [284] that actual production [285] is reasonably close to the estimates [286] in the majority of years. This is even truer in the case of the production of cannabis and coca leaves [287] which is hardly controlled anywhere as would be required under the Single Convention. It will be recalled, moreover, that the provisions of this Protocol, as well as those of the Single Convention, concerning the control of the production of opium contain an important weakness. The provisions of the Single Convention concerning the production of coca leaves, cannabis and cannabis resin are even more inadequate. Anyway one can hardly see how binding production estimates of an international organ can substitute for measures intended to remove these weaknesses of control.

Single Organ and Single Secretariat

The First Draft of the Single Convention would not only have replaced the Permanent Central Board and Supervisory Body by a single organ, it would also have provided for a *single secretariat* [288], to be furnished by the Secretary General, to serve both the International Drug Commission [247] (the political organ) and the International Drug Board [249] (the independent, semi-judicial organ). Under the provisions of the drug treaties preceding the Single Convention, the Secretariat of the Permanent Central Board was appointed first by the Secretary General of the League of Nations and then by the Secretary General of the United Nations, following nomination by the Board and approval first by the League's Council and later by the Economic and Social Council of the United Nations.[289] The Secretariat of the Supervisory Body was provided first by the Secretary General of the League of Nations and by the post-war period by the Secretary General of the United Nations [290]. The secretariat services of the League's Advisory Committee on Traffic in Opium and Dangerous Drugs were supplied by the League Secretary General [291] and those of the Commission on Narcotic Drugs have been, and are being furnished, by the Secretary General of the United Nations.[292] In 1946, the Secretary General of the United Nations, the Permanent Central Board and Supervisory Body agreed [293] to establish a joint Secretariat of this Board and the Supervisory Body to serve these two organs, until they were replaced in 1968 by the present International Narcotics Control Board.

The restrictions surrounding the secretariat of the Permanent Central Board, particularly that its secretariat members could be appointed only on the nomination of the Board, had reduced the importance of political influence and the relevance of geographic distribution in the selection of staff members. Moreover, there was no duplication [294] between the work of the Joint Secretariat of the Board and Supervisory Body and of the Division of Narcotic Drugs, serving *inter alia* the Commission on Narcotic Drugs.[295]

The Second [296] and Third Drafts [297] of the Single Convention returned to the 1925 Convention method of staff appointment for the independent (semi-judicial) control organ. Both would have provided that the secretary and staff of the International Narcotics Control Board should be appointed by the Secretary General on the nomination of the Board and subject to the approval of the Economic and Social Council.

Although the majority of the delegates was in

[283] Article 1, paragraph 1, sub-para. (t); i.e., the separation of the opium, coca leaves, cannabis and cannabis plant from the plants from which they are obtained.

[284] Article 21 bis, para. 1 of the Single Convention as it would be introduced by the 1972 Protocol.

[285] The amounts collected by the national opium agencies.

[286] See the production figures published by the International Narcotics Control Board, Statistics on Narcotic Drugs for 1970, United Nations document E/INC. B/15, Table I, pp. 14–15.

[287] See Table II, p. 16 and page XV of the document referred to in the preceding footnote.

[288] Section 27 of the First Draft.

[289] Article 20, para. 2 of the 1925 Convention in its unamended version and as revised by the 1946 Protocol.

[290] Article 5, para. 6 of the 1931 Convention in its amended version and as amended by the 1946 Protocol.

[291] Under the Covenant of the League of Nations.

[292] First under the Charter of the United Nations as now under this Charter as well as under article 16 of the Single Convention which requires the Secretary General to furnish the secretariat services of the Commission on Narcotic Drugs and of the International Narcotics Control Board. The Secretariat services of the Commission are rendered by the Division of Narcotic Drugs of the United Nations Secretariat.

[293] General Assembly of the United Nations, Official Records, Fifteenth Session, vol. II agenda item 50, document A/4603, para. 7.

[294] This was confirmed by a later management survey.

[295] The World Health Organization has also a secretariat unit charged with problems of drug dependence.

[296] Article 25a; this was, however, only an alternate provision.

[297] Article 24, paragraph 2.

favor of establishing a single secretariat for the Commission on Narcotic Drugs and the International Narcotics Control Board, the Plenipotentiary Conference provided in the Single Convention that the Secretary General should furnish the secretariat services of the Commission and the Board, thus leaving it up to him to make such arrangements as he considers appropriate.[298] The secretariat services supplied by the Secretary General, however, must be in accord with the arrangements which the Economic and Social Council is required to make, in consultation with the Board, to assist the Board in carrying out its functions.[299] Under the arrangements in force at the time of this writing,[300] provision is made for a separate secretariat of the Board, which is an integral part of the Secretariat of the United Nations and under the full administrative control of the Secretary General. This secretariat, however, is bound to carry out the Board's decisions. Its chief is appointed or assigned by the Secretary General in consultation with the Board. Provision also is made for administrative measures to protect the confidential nature of the Board's correspondence and other papers. The need for such measures arises from provisions of the Single Convention.[301]

It is submitted that the Board needs a separate secretariat in order to carry out its functions free from the political pressures which contrary to the Charter of the United Nations [302] members of the United Nations Secretariat are sometimes subjected to by some governments.

The Protocol of 1972 would retain the provision of the Single Convention requiring the Secretary General of the United Nations to furnish the secretariat services of the Commission and the Board. However, it would add to that provision that "in particular, the Secretary of the Board shall be appointed by the Secretary General in consultation with the Board." [303] This addition implies the obligation of the Secretary General to maintain a separate secretariat of the Board.

Control of Poppy Straw

In the course preparing the Single Convention, very strict provisions were also proposed for the control of *poppy straw*.[304] The Second Draft, which incorporated the provisions of the 1953 Protocol regarding the control of the cultivation of the poppy, opium production, trade in opium in producing countries, and the limitation of the international trade in opium to that produced in seven countries extended these provisions to poppy straw.[305] The Third Draft did the same, adding Afghanistan to the list of privileged countries whose opium and poppy straw would be admitted to the international market.[306] Moreover, it placed poppy straw in Schedule I, extending to it all control provisions applicable to drugs, such as morphine.[307] The Convention, however, did not take over the provisions of the Second and Third Draft concerning poppy straw.[308] It provides only that the international trade in poppy straw shall be subject to the import certificate and export authorization system and that parties shall furnish quarterly statistics on the import and export of poppy straw and annual statistical figures on the amount of straw utilized for the manufacture of narcotic drugs.[309] Parties are also required to prevent the accumulation of poppy straw in the possession of drug manufacturers, traders and distributors (including State enterprises engaged in such manufacture, trade or distribution), in excess of those quantities required for the normal conduct of business.[310] The Convention also contains the very general provision that parties, which permit the cultivation of the poppy for purposes other than the production of opium, should take all measures necessary to assure that opium is not produced from such poppies and that the manufacture of drugs from poppy straw is adequately controlled.[311]

Some of the views of the opponents of strict control of poppy straw, which prevailed at the Plenipotentiary Conference that adopted the Single Convention were:

The morphine content of different varieties of poppy straw differs; it is greater in the upper parts of the stem and capsules rather than in the lower

[298] Article 16.

[299] Article 9, paragraph 2 of the Single Convention.

[300] As approved by resolution 1196 (XLII) of the Economic and Social Council. The Annex to this resolution contains the text of the arrangements.

[301] Article 14, para. 1, sub-para. (a) in its present form and as it would be amended by the 1972 Protocol.

[302] Article 100, para. 2.

[303] Article 16, as amended by article 8 of the 1972 Protocol.

[304] Called "poppy chaff" in the First Draft, Section 21.

[305] Article 32 and 33.

[306] Article 31 and 32.

[307] Article 1, sub-para. (k) and Schedule I in the United Nations document E/CN. 7/AC. 9, Add. 1.

[308] Or those of the first draft.

[309] Morphine.

[310] Article 25, paras. 2 and 3, article 20, para. 1, sub-paras. (b) and (d), article 29, para. 3 and article 30, para. 2, sub-para. (a).

[311] Article 25, para. 1; see also article 4 of the 1953 Protocol.

parts. Notwithstanding the advanced methods of extraction now used by morphine manufacturers, the average yield of morphine was 0.18 percent in 1970 and 0.20 percent in 1969 of the quantity of the straw used.[312] It follows that an average quantity of 500 kilograms of poppy straw is required for the manufacture of one kilogram of morphine while 10 kilograms or even less of opium yield the same amount of morphine. Furthermore, relatively voluminous means of transportation and large storage facilities are needed for the straw. The process of manufacturing morphine from straw is difficult. A complicated and expensive apparatus, and access to water and energy is needed. The manufacture of one kilogram of morphine would require an apparatus including vessels with a total capacity of approximately 10,000 litres. A plant of the size needed for such an activity could hardly be hidden from the authorities.[313] In fact, although the process of extracting morphine from poppy straw has been known since the 1920's, no clandestine manufacture of morphine from the straw has been discovered.

It may be mentioned in this connection that in 1970, 27.9 percent of the world's morphine was made from poppy straw, 5.5 percent from "concentrate of poppy straw" and 66.3 percent from opium.[312] "Concentrate of poppy straw" is listed in Schedule I and thus subject to the same regime as morphine.

Control of Opium, Coca Leaves

The Second and Third Draft of the Single Convention applied the regime governing the cultivation of the poppy and production of opium to the cultivation of the coca bush and the production of coca leaves.[314] The final text of the Single Convention does the same.[315] It may be worthwhile mentioning that all three drafts and the final text of the Single Convention contain provision intended to ensure the right to use coca leaves for the preparation of a flavoring agent of beverages.[316]

The Second Draft also provided for limiting the international trade in coca leaves and in crude cocaine to coca leaves produced and crude cocaine manufactured in any of those countries, which would be named in the Convention and which would become parties to the Convention. Crude cocaine made from leaves produced in one of the privileged countries would also have been admitted to the international market wherever it might have been manufactured.[317] The Third Draft contained the same provision, naming Bolivia, Indonesia and Peru as the countries which would have been privileged by the Convention.[318] The Single Convention does not contain the international trade restriction on coca leaves or crude cocaine, however, both drugs are subject to the import certificate and export authorization system.[319]

It may finally be noted that in the course of the negotiations leading to the adoption of the Protocol of 1972, Peru proposed to amend the Single Convention for the purpose of requiring a party, which imports coca leaves for the preparation of a flavoring agent, to use alkaloids which it would extract from such leaves, only to meet its domestic requirements. The Protocol of 1972 does not contain any provision which would subject the international trade in coca leaves to restrictions other than those applicable to drugs in Schedule I of the Single Convention.

Provisions of the Single Convention on Narcotic Drugs

The purpose of the Single Convention is twofold:

- Limitation of all phrases of the narcotic drug economy and of the use of narcotic drugs to medical and scientific purposes.
- Limitation of the narcotics supplies of each country or territory and of the world as a whole to the quantities needed for medical and scientific purposes.

[312] Statistics of the International Narcotics Control Board for 1970, United Nations document E/INCB/15, Table III, p. 21. The sum of the percentages of morphine made from different raw materials in 1970 is not exactly 100; this is due to the fact that the data received by the Board were not yet complete at the time of compiling the figures.

[313] Records of the Plenipotentiary Conference, United Nations document E/CONF. 34/24/Add. 1, vol. II, p. 57.

[314] Article 37 of the Second Draft, article 36 of the Third Draft; the First Draft contained already very similar provisions, Section 32, para. 4–5.

[315] Article 23 and Article 26; the most important difference being that in the case of opium the national opium agency must take physical possession of the opium crop "as soon as possible, but not later than four months after the end of the harvest" while in the case of coca leaves the national coca leaf agency must take physical possession of the crops only "as soon as possible after the end of the harvest," no definite maximum period of time being prescribed for this purpose.

[316] Section 32, para. 5 of the First Draft, article 37 of the Second Draft, article 38 of the Third Draft and article 27 of the Single Convention.

[317] Article 38; the reference to crude cocaine in these provisions was, however, placed in square brackets; it was indicated that as regards "crude cocaine" the proposed restriction represented only an alternative version of the text.

[318] Article 37; the square bracket (see the preceding note) around "crude cocaine" was omitted.

[319] The import certificate and export authorization would have applied to coca leaves and crude cocaine under the drafts of the Single Convention.

[320] Report of the Commission on Narcotic Drugs on its Twenty-Fourth Session, United Nations document E/..., para. 582, and Annex VII, Section D.

Limitation of Narcotic Drugs to Medical and Scientific Purposes

The relevant provision requiring this limitation is article 4 paragraph (c) which reads as follows:

"The Parties shall take such legislative and administrative measures as may be necessary: . . . .

(c) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs."

The exceptions referred to by the phrase "subject to the provisions of this Convention" are those of article 2, para. 9,[321] of article 27[322] and article 49. Article 49 permits those parties which make the required reservation to continue to allow, for definite periods of time, *existing* legal opium smoking, opium eating, coca leaf chewing and non-medical use of cannabis, cannabis resin and extracts and tinctures of cannabis, provided that the non-medical consumption concerned has been *"traditional"* in the territory in which it is permitted to continue. Article 49 does not free from the obligation to apply the controls required for production,[283] manufacture, international and domestic trade, other distribution and possession. After the expiration of the time limits foreseen in article 49, there will be no exception from the prohibition of the non-medical consumption of drugs covered by the Single Convention.[323] The term "medical and scientific purposes" appears in the field of the multilateral narctorics treaties for the first time in the 1925 Convention.[324]

The phrase "medical purposes" has not been uniformly interpreted by governments when applying narcotics treaties. Some have prohibited the use of the controlled drugs by all addicts,[325] making exceptions only when necessary to mitigate suffering during a withdrawal treatment. Some other countries have permitted consumption by addicts of minimum quantities of drugs required to prevent painful withdrawal symptoms and to enable them to lead a "normal" life. There have also been a few cases in which all consumption of narcotic drugs by addicts was interdicted even in the case of withdrawal treatment.[326] These different interpretations by governments of the term "medical purposes" have also continued under the regime of the Single Convention and no party has protested against the use of the controlled drugs for the purpose of maintenance programs such as in the United Kingdom, It must be concluded that governments have a very wide discretion in interpreting the term "medical purposes" in accordance with their own conditions.[327]

Moreover, the term "medical purposes" can not have exactly the same meaning at all times and under all circumstances. Its interpretation must also depend on the stage of medical science at the particular time in question. There may also be a legitimate difference of view among medical experts as to what is proper medical use in a particular case. It is suggested that the meaning of the phrase "medical purposes" must in all cases be determined by medical considerations, which include the *desire to help the addicts* or other abusers of controlled drugs.

The term "medical purposes" includes veterinary and dental purposes.[328]

The basic aim of the Vienna Convention is also to limit all phrases of the economic activities dealing with psychotropic substances and the use of such substances to medical and scientific purposes. The Convention would require each Party to limit, by such measures as it would consider appropriate, the

[321] Use of drugs as chemicals in industry for other than medical or scientific purposes provided that by denaturing or other means it is ensured that they are not liable to be abused or have ill effects and that the harmful substance can in practice not be recovered; see the similar provision of article 4, paragraph (b) of the Vienna Convention on Psychotropic Drugs.

[322] Facilitating the use of coca leaves for the preparation of a flavoring substance for beverages.

[323] See also the above discussion of article 19 of the 1953 Protocol and the discussion in part (b) of chapter III of this paper, of the tasks to be accomplished by the Single Convention.

[324] Article 5; the 1912 Convention (article 9) uses the term "medical and legitimate purposes."

[325] Or other abusers in the case of controlled drugs which are not "addictive" in the technical sense.

[326] Use for the analgesic or antitussive purposes for which these drugs are normally prescribed was of course permitted.

[327] The uncontested practice of Governments in implementing treaty provisions is a very important consideration in the interpretation of treaties; see article 39, paragraph 3, sub-paragraph (b) of the Vienna Convention of May 23, 1969 on the Law of Treaties (Text in United Nations document A/CONF./39/27). The Convention is not yet in force at the time of this writing.

[328] As regards the limitation "to medical and scientific purposes" in the Vienna Convention on Psychotropic Substances, see article 5, paragraph 2 and article 7, paragraph (a) of this Convention.

manufacture, export, import, distribution and stocks of, trade in and use and possession of, substances in Schedules II, III and IV to medical and scientific purposes.[329] It is submitted that the term "medical purposes" in the Vienna Convention has the same meaning in the Single Convention.

As regards substances in Schedule I, the Convention would prohibit their use except for scientific and very limited medical purposes under very strict controls. It would also place the manufacture of, trade in, distribution, possession, export and import of these substances under a very severe regime.

Substances Subject to the Single Convention

- Plants: the opium poppy for the production of opium, the coca bush grown for any purpose whatsoever and the cannabis plant for the production of cannabis or cannabis resin.[330]
- Drugs: [331] substances which are included either in Schedule I or II as revised by operation of article 3 of Single Convention. All drugs included in Schedule IV, which may also be modified in accordance with the provisions of article 3, are also listed in Schedule I. Their inclusion in Schedule IV has only the effect that they are subject to the controls of article 2, paragraph 5, in addition to all the controls which govern drugs in Schedule I.[332]
- Preparations: [333] mixtures containing a drug are generally subject to the same control measures as the drugs which they contain. They ar normally exempted only from very few control Preparations, which are included in Schedu III as revised by the operation of article 3, ar exempted from important control measure such as the application of the import certific and export authorization system.[334]

Mention may also be made of two general a vague provisions which relate to substances which d not fall under the narcotics regime established b the Single Convention.

Article 2, paragraph 8 requires parties to use the best endeavors to apply to substances which do no fall under the Single Convention, but which may b used in the illicit manufacture of drugs, such measure of supervision as may be practicable; and article 3 paragraph 3 which obligates parties to adopt suc measures as may be necessary to prevent the diver of, and illicit traffic in, the leaves of the cannab plant. The authors of article 2, paragraph 8 have of such substances as acetic anhydride, which i used in the conversion of morphine into heroin is also very widely used in the chemical industry fo other legitimate purposes. Countries which do no have a chemical industry, but in whose territo the clandestine manufacture of heroin takes pla may find it practicable in implementation of art 2, paragraph 8, to prohibit the importation o possession of acetic anhydride.

The Vienna Convention contains a similar pro provision which is nearly literally the same. Art 2, paragraph 9 requires parties to use their be endeavors to apply to substances which do not f under this Convention, but which may be used the illicit manufacture of psychotropic substance such measures of supervision as may be practicab

Control of Plants

Opium Poppy.—The controls which are requ by the Single Convention are similar to those of 1953 Protocol.

Countries which have an effective administr and effectively control their national territory p ticularly the regions in which the poppy is cultiv

The provisions of the Single Convention gover the cultivation of the opium poppy and the prod tion of opium can have a beneficial effect on such countries. But even these states *cannot pre* the diversion by licensed cultivators of a part o

[329] Article 5, para. 2; Parties may, however, permit the use of such substances in industry for the manufacture of non-psychotropic substances or products, subject to the application of the control measures required by the Vienna Convention until the psychotropic substances come to be in such a condition that they will not in practice be abused or recovered, article 4, para. (b); see also article 2, para. 9, of the Single Convention. The Vienna Convention does not control the cultivation of plants from which psychotropic substances may be obtained. The separation of the substances from such plants would be "manufacture" and as such be controlled. The Vienna Convention does not use the term "production". Another exception would be the Vienna Convention's authorization of the use of psychotropic substances in Schedule II, III and IV, (but not of those in Schedule I) for the capture of animals by persons specifically authorized by the competent authorities to do this. Such use would, however, have to be subject to the controls required by the Convention, article 4, para. (c).

[330] See, however, article 22 (applicable to the three plants grown for any purpose) and Article 25, paragraph 1, subparagraph (a) (applicable to the poppy grown for any purpose other than opium).

[331] Article 1, paragraph 1, sub-paragraph (j).

[332] Article 2, paragraphs 1 and 5.

[333] Article 1, para. 1, sub-para (s).

[334] Article 2, paragraph 4. Such preparations are ex empted from the prescription requirement as are th Schedule II and their preparations.

opium crop into the illicit traffic. The rate of such diversion in some countries has been estimated to be between 10 to 25 percent of the crop.[335] Even in India, which is reputed to have a good system of control of opium production, but which permits cultivation by licensed individual farmers, there appears to be a significant diversion of legally produced opium into illicit channels. India reports to have seized from the illicit traffic 4270 kg. of opium in 1969 and 3338 kg. in 1970. The amount actually diverted was certainly a multiple of the seized quantities. It has been estimated that generally not more than five to 10 percent of drugs in the hands of illicit traffickers are seized by the authorities. Even the amount of opium diverted in India into the illicit market would suffice to manufacture all the heroin which the illicit traffickers need for the American market.

On the other hand, no diversion of opium from legal production appears to occur in countries, such as the Union of Soviet Socialist Republics and Bulgaria.[336]

It would be advisable, from the view point of control, to prohibit the cultivation by individual farmers of the poppy for opium production. It would also be useful if the Single Convention could be amended to introduce a provision which would require governments to grant licenses to cultivate the opium poppy only to corporations, cooperatives or state farms. The corporations or co-operatives would have to be relatively large to prevent collusion. It is also probable that a provision limiting the right to produce opium to licensed state farms and co-operatives might have a greater chance of being generally accepted than one which would give this right to private corporations. As long as such an amendment is not adopted, it appears particularly important to rely on the provisions of Article 22 of the Single Convention which requires a party to prohibit the cultivation of the poppy if, acting in good faith, it is of the opinion that such prohibition is the most suitable measure for protecting the public health and welfare and for preventing the diversion of significant amounts of opium into the illicit traffic. It would not matter if a party, not acting in good faith, would in such a case allege that, in its opinion, this prohibition was not the most suitable measure for the purposes in question. In requesting such a prohibition one must of course weigh the advantages to be obtained from preventing the diversion of opium against the possibility that such a measure may cause or increase a shortage of opium needed in other countries for medicinal purposes. An efficient administration, which is in effective control of the poppy growing region, can suppress the cultivation of the poppy as well as the production of opium, two activities which cannot be hidden from the authorities. At the same time, it cannot, prevent the diversion of opium which has been harvested by the individual farmer and whose exact amount very often cannot be known to the control officials.

Possible improvements of the treaty provisions regarding opium production are:

- a world-wide prohibition of opium production, accompanied by a substitution of poppy straw for opium in the manufacture of morphine.
- a world-wide prohibition of poppy cultivation and the replacement of the drugs obtained from opium by synthetic products.

There is not enough straw available for the manufacture of the required quantities of morphine, the largest amount of which is converted into codeine, a very useful and relatively non-dangerous drug. It also cannot be expected that the amount of straw needed for this purpose can be sufficiently increased. Moreover, such a world-wide prohibition of the production of opium would have no effect on the uncontrolled or illicit production of opium which, as a long-range problem, is much more serious than the diversion of opium by licensed cultivators.

As regards the replacement of opium derivatives by synthetic substances, a recent Report of a World Health Organization Scientific Group, entitled "Opiates and their Alternatives for Pain and Cough Relief" reached the following conclusions:

- Synthetic alternatives are available that are equivalent to and may, in some respects, be superior to the opiates for the relief of moderate to severe pain.
- Synthetic alternates are available that *may* be equivalent, though none is clearly superior, to the opiates (codeine) for the relief of mild to moderate pain.

[335] Report of the Permanent Central Board[16] on its work in 1964, United Nations document E/OB/20, para. 9; Report of this Board on its work in 1965, United Nations document E/OB/21, paragraph 38 and Report of this Board for 1966, United Nations document E/OB/22, para. 58 (risk of diversion by individual farmers).

[336] Statistics of the International Narcotics Control Board for 1969 and 1970, United Nations documents E/INC B/11, Table IX, p. 75 and E/INC B/15, Table IX, p. 74; India also follows the useful practice of refusing the renewal of a license to a farmer whose alleged opium yield from a unit of land is considerably lower than the amount of opium harvested by other farmers.

- Synthetic alternates are available that can be and to some extent are being, used for the relief of cough, and on substantial evidence a few of them rate as equivalent to codeine in effectiveness. Lack of well-controlled clinical trials in most instances prevents a *definitive* judgement on their relative merits.

At the present stage of research the replacement of codeine by snythetic drugs would not yet be medically justified. Furthermore, a large part of the medical profession would be opposed to the discontinuation of codeine in therapy. Codeine is the most important drug obtained from opium and the largest part of the legally produced opium is used for the manufacture of morphine which is converted into codeine.

The world-wide prohibition of the cultivation of the opium poppy will also have little, if any, effect on illicit and uncontrolled cultivation and it will be very difficult for political and economic reasons to carry out the prohibition in most of the regions in which illicit and uncontrolled cultivation takes place at present. Those countries which cultivate the poppy for its seeds, do not permit the production of opium, effectively prevent such production and, in fact, do not have any problem of illicit production of opium whatsoever would not accept a treaty provision requiring a world-wide prohibition of the cultivation of the opium poppy.

Countries which do not have an effective administrative system and in particular are not able to exercise full governmental control over their poppy growing regions.

Some of these countries are Afghanistan, Laos, Thailand, Burma, some States to the North of the Indian-Pakistani Sub-Continent, such as Nepal, and Pakistan in the tribal borderland near the Khyber pass. The opium grown without legal control in these countries offers clandestine manufacturers many substitute sources of opium supplies. The problem posed by this widespread uncontrolled or illicit opium production is also complicated by the fact that it generally takes place in regions which have an archaic political, economic and social structure and whose population often depends to a greater or larger extent on the sale of opium for their livelihood. Opium is frequently the only cash crop. Furthermore, these areas do not have the required skilled personnel capable of exercising effective administrative controls and their population generally lacks the understanding of the opium problem and as a result the willingness to co-operate in its solution. Not only a program of crop substitution or of replacement of opium production by other ways of earning a livelihood might be required in some of the regions concerned; but also radical modernization of their archaic political, economic and social structure in order to create the conditions which would make effective control possible. Otherwise, illicit production of opium might continue.

It is obvious that problems of this kind cannot be solved by treaty provisions nor by national laws controlling or prohibiting opium production. In fact, some of the countries from which large quantities of opium flow into the international illicit traffic are even parties to the Single Convention, namely Afghanistan, Burma, Pakistan and Thailand. It is particularly gratifying that the problem of illicit opium is approached in some countries by measures of economic and social reforms rather than solely by legal and administrative steps. An example is the pilot project undertaken by the Thai Government with the assistance of the United Nations Fund for Drug Abuse Control.[337]

Efforts of individual countries, either by their own means or with the help of international organizations or friendly governments, to introduce the required economic and social reforms in areas in which illicit or uncontrolled opium production occurs are certainly valuable and should be encouraged and strengthened but it would be wrong to rely solely on the isolated efforts of individual countries. The suppression of illicit and uncontrolled production is an international problem not only because its solution is in the interest of the entire world; but also because such production takes place in a number of different countries, so that even a successful efforts in a particular country actually leads to its suppression of poppy cultivation clandestine manufacturers will be able to obtain the opium which they need from other countries in which illicit or uncontrolled cultivation takes place.[338]

Not all districts in which illicit or uncontrolled production of opium occurs necessarily represent the same problems. In some, the issue may be only a legal and police matter, capable of being handled by improved laws and law enforcement; but in the majority, attempts to enforce a prohibition of poppy cultivation may lead to violent resistance and difficult political problems.

[337] The role of the United States Government in bringing about these projects should, however, not be underestimated nor should the value of American efforts in inducing Turkey to prohibit poppy cultivation.

[338] The Permanent Central Board [18] in the report on its work in 1966, has pointed to this aspect of the problem (United Nations document E/OB/22, paragraph 118.

Even where basic reforms of political, economic and social conditions are required to establish an effective government administration to enforce control measures and to obtain the needed willing cooperation of a large part of the local population, circumstances vary from country to country; so must the methods employed.

The past Permanent Central Board suggested that a world plan be adopted for the economic and social modernization of these areas.[339] If it is accepted that such a world wide approach would be needed and *worth the great efforts* required, it would be necessary to create an international diplomatic atmosphere in which the opium problem would be accepted by the family of nations as a whole. Any observer at international Conferences on drug problems realizes that many countries were not interested in the opium issue and did not show a willingness to co-operate in its solution. In view of the recent spread of large scale addiction to many countries, which did not believe they had such a problem, the creation of the appropriate international atmosphere may be easier today than yesterday. A major diplomatic effort would be useful. All means should be used to arouse national and international opinion in favor of a radical world-wide approach towards the opium problem.

In preparing the proposed world plan, the following measures would be useful. The Commission on Narcotic Drugs should first request the Secretariat of the United Nations to indicate and to describe all locations of illicit or uncontrolled opium production. The Laboratory of the Division of Narcotic Drugs of the United Nations Secretariat has a very extensive knowledge of these locations. All governments should be asked whether they have areas in which illicit or non-controlled production of opium exists..

Each country which would be found to have illicit or uncontrolled opium production should be invited by the Economic and Social Council or the General Assembly to prepare a detailed plan of action for the suppression of this production. The government should be requested to include in its plan all measures, including necessary economic and social ones, and state which measures it could carry out by its own unaided efforts and for which foreign assistance would be needed and requested. The governments should be advised that they could obtain the services of experts for the preparation of these plans. Such services, if requested, should be furnished by the United Nations Development Program and the Technical Cooperation Departments of the United Nations. These organizations should be invited by the Economic and Social Council or the General Assembly to render this aid in preparing the national plans. An expert body should be appointed by the Council or the General Assembly or the Governing Council of the United Nations Development Program to analyse individual national plans in the light of the programs of other countries. This body should have the right to propose modifications of the plans and to recommend a consolidated plan on a world scale.

[339] The Board suggested that such a plan should not only cover the opium question, but also the coca leaf problem.

A world opium conference of all states and of all international organizations should be called by the Economic and Social Council or the General Assembly for the adoption of such a plan, determining which of the proposed national measures would require international aid. Each Government and organization participating in the Conference should pledge their financial and other assistance.

The conference would focus the world's attention on the opium question as an important international problem. The international narcotics control organs would be encouraged to take more courageous and forceful action than they could otherwise do in this world of sovereign, nationalistic states. The willingness of states to act must be strengthened. While foreign aid is essential for the solution of the world's opium problem, continuous pressure must be brought to bear on the governments to act.

The Coca Bush.—Coca leaves are used for three purposes:

- chewing which is considered to be an abuse of the drug and which were tolerated under the terms of article 49 of the Single Convention must be abolished within twenty-five years from the coming into force of that Convention.[340]
- the preparation of a flavoring agent.[341]
- the manufacture of cocaine.

According to the statistical figures reported to the International Narcotics Control Board, the world's total production of coca leaves was more than 14,000 metric tons in 1969 and more than 13,000 metric tons in 1970. Real production was undoubtedly much greater. The greatest part of this production is used for chewing. The amount needed for the manufacture of cocaine, whose medical use has become very limited, is very small. The world's total manufacture of cocaine was 1241 kilograms in 1969 and 1939

[340] Article 49, paragraph 2, sub-para. (e); the Convention entered into force on 13 December 1964.

[341] Authorized permanently by article 27.

kilograms in 1970.[342] In 1970, only 353 metric tons of coca leaves were used to manufacture cocaine and to make flavoring agents,[343]

The cultivation of the coca bush and the production of coca leaves are not effectively controlled anywhere. Clandestine manufacturers of cocaine have no difficulty in obtaining coca leaves. Cultivation and production are not subjected to the full regime required by article 26 of the Single Convention. This treaty stipulates that the rules applicable to the cultivation of the opium poppy and production of opium should also be applied to the cultivation of the coca bush and to the production of coca leaves. However, the opium regime is inadequate for the control of the cultivation of the coca bush which grows and is cultivated under conditions which are very different from those of the poppy. In fact, neither the Commission on Narcotic Drugs nor the Plenipotentiary Conference devoted any real efforts to finding control measures which would be suitable for the coca bush.[344]

The present writer has no expert knowledge of the differences between the botanical properties and agricultural conditions of the coca bush and of the poppy; but such differences must be considered in developing adequate control schemes. The poppy is an annual plant [345] while the coca bush has an average life time of fifteen to twenty years. The opium is collected by incising the capsules of the poppies while still standing in the field while the leaves of the coca bush are picked individually by hand. The coca bush yields normally three or four crops each year. The size of these crops fluctuate greatly,[346] but so does that of the opium harvest, although the reasons appear to be different in the case of the two plants. A considerable quantity of coca bushes appears to grow wild.[347]

A number of delegates to the Plenipotentiary Conference which adopted the Single Convention was well aware of the fact that the poppy regime was not suitable for the coca bush. The United States representative pointed out this weakness of the Third Draft [348] which provided for the application of the provisions controlling the poppy to the coca bush. The United States proposed an amendment [349] which would have required the parties to control the cultivation of the coca bush and the production of coca leaves exclusively for medical, scientific and other legitimate [350] purposes. The amendment also stipulated that the General Assembly, after consultation with Bolivia, Columbia, Indonesia and Peru, may adopt control regulations. These regulations should be binding upon each party which would not reject them by a notification to the Secretary General within a year from the date of their adoption by the General Assembly. The American amendment was adopted by the Ad hoc Committee charged with elaborating the regime of the coca bush.[351] The Plenary rejected the proposed revision of the coca bush,[352] with the final result that the Single Convention applies the same regime to the bush as it applies to the poppy.

In order to amend the regime provided by the Single Convention for the control of the coca bush and the production of coca leaves, it would be necessary to obtain the agreement of those countries who would be affected by the amended rules of control. The United States should initiate the required negotiations with those countries. Such rules as would be accepted by these countries would most probably be adopted by the Economic and Social Council in accordance with article 47, paragraph 1, sub-paragraph (b) of the Single Convention. It is expected that no party would reject such an amendment. The amendment would thus come into force without the need for a new Plenipotentiary Conference. Adoption by this procedure would also have the additional advantage of being binding upon all parties to the Single Convention, while an amendment by a treaty (Protocol) adopted by a new diplomatic conference would bind only those parties to the Single Convention which accept it.

Effective control of the cultivation of the coca bush and of the production of the coca leaves would also require the suppression of coca leaf chewing. This suppression, obligatory under the terms of the Single Convention (article 49, paragraph 2 (e) can be accomplished only by long overdue economic and social reforms in the Andean region of South America. Bolivia, contrary to Peru, is not even a party to the Single Convention and has been particularly reluctant to take measures necessary to abolish coca leaf chewing and to replace the coca bush by other crops. In two written agreements with the past Permanent Central Board, Bolivia has *inter alia* expressly undertaken to carry out a gradual suppression of coca leaf chewing and of the cultivation of the coca bush.[353]

After suppression of coca leaf chewing, only a very tiny fraction of the present coca leaf production will be required for medical purposes (cocaine) and for the preparation of a widely used flavoring agent. In view of the small quantities involved, which would be of little monetary value, it may be possible to obtain agreement that each coca leaf producing country should establish a state enterprise which would have a monopoly of the cultivation of the coca bush and of the harvesting of, and all trade in the leaves. Each country could also be authorized to grant this monopoly to a single cooperative or corporation working under close state supervision. That country should moreover be required to abolish all coca bush cultivation and coca leaf trade not conducted by the monopoly. Since it would be impossible to prevent diversion by licensed individual farmers of a part of their coca leaf crop, cultivation by them should be prohibited under the proposed monopoly regime. Furthermore, economic and social reforms would have to be adopted to carry out a program of abolishing coca leaf chewing and of reducing coca leaf production to the small quantities which would still be needed for medical and aromatic purposes. Extensive foreign aid, although not on the scale of that needed for the world-wide suppression of uncontrolled or illicit opium production, would also be needed. The reforms might have to include crop substitution and the creation of other livelihoods to replace coca bush cultivation; development of community services, educational measures including nutritional education; and some transfer of population. Foreign aid should also be made available for the preparation of the required national plans or for the modification of already existing programs.

The administrative services of the governments which control the coca leaf producing areas are much more advanced than those of some governments which are the *nominal* sovereigns of territories in which uncontrolled or illicit opium production occurs. The coca leaf problem also has much smaller geographic dimensions than the opium problem. Viewing the matter from a world-wide angle, the coca leaf question is certainly much less important than the opium question. This is not meant to suggest that the solution of the coca leaf problem should be delayed; but the international action required for this purpose should not divert our attention from the need of devoting the main efforts of the family of nations to the solution of the much more important opium problem.

The Cannabis Plant.—The control of the production of cannabis and cannabis resin offers great difficulties because many varieties of the cannabis plant grow in numerous countries. There is widespread wild growth in many parts of the world, such as Afghanistan, India, Iran, Mexico, many African countries and some districts of the Union of Soviet Socialist Republics. Cannabis and cannabis resin are also distributed by illicit traffickers in much greater quantities and in many more countries than any other drug. According to the statistical data published by the International Narcotics Control Board, only five of 63 countries and territories, which furnished figures on seizures of drugs, did not report cannabis seizures in 1970. The total amount of cannabis seized in 1970 was more than 340 metric tons. In addition, more than 2300 metric tons of cannabis plant material were seized in South Africa.[354] A large part of the cannabis drubs in the illicit traffic is obtained from illegal cultivation; but much comes from wild growth. The role of uncontrolled cultivation in some countries also plays an important part in the illicit supply.

[342] 665 kilograms in 1966, 1391 kilograms in 1967 and 1039 kilograms in 1968.

[343] United Nations document E/INC B/15, paragraphs 70–74, Table II, p. 16 and Table VI, p. 32.

[344] The Report of the United Nations Commission of Enquiry on the Coca Leaf (United Nations document E/1666, p. 97) makes a number of useful recommendations which however suggest only in general terms the establishment of a "system to control the actual production and distribution of coca leaf" and the setting up of an official organ or an organ under official supervision which should be entrusted with "the task of applying the control measures to all operations affecting the coca leaf" and with a monopoly of the export of the leaves. Other recommendations of the Commission included: gradual suppression of production of coca leaves for chewing within fifteen years; a cadastral survey of the cultivation of the coca bush; prohibition of cultivation outside designated areas; registration of existing producers of, and dealers, in the leaves; registration of new *dealers* should not be permitted and coca leaf plantations other than those already existing should not be authorized; only registered producers or dealers should be permitted to engage in production or trade. Crop substitution was also recommended; see also page 90 of the Report.

[345] ANSELMINO, O, ABC of Narcotic Drugs, Geneva, Permanent Central Opium Board, 1931, p. 13 (League of Nations document C.C.P. 44(1), 1931. XI. 1).

[346] The Report referred to in footnote 344, pp. 73-74.

[347] United Nations document E/CN. 7/AC. 3/4/Rev.1 p. 32. It is sometimes asserted that such wild growth represents abandoned cultivation.

[348] United Nations document E/CN. 7/AC. 3/9, annex 36; Records of the Conference (U.N. document E/CONF. 34/24) Vol. I, p. 38.

[349] Conference doc. E/CONF. 34/C. 7/L. 1, Records of the Conference Vol. II, p. 43.

[350] i.e., the preparation of a flavouring agent for beverages.

[351] Conference doc. E/CONF. 34/10, Records of the Conference, vol. II, p. 271.

[352] Records of the Conference, vol. I, pp. 101-102.

[353] For the texts of these two agreements see United Nations documents E/OB/20, paragraph 32 and E/OB/22, paragraph 95.

[354] United Nations document E/INC B/15, Table IX, pp. 73–76.

It appears that the potency of drugs obtained from different varieties of the plant varies. The tops of the female plants, especially of those which have not been fertilized, are particularly rich in the potent resin. The potency of the drug is also said to depend on the climatic conditions of the location in which the plant is grown.

The Board's Statistical Report indicates only two countries as having produced cannabis in recent years: India and Pakistan; but there are certainly a few more countries, such as Nepal, which permitted or at least tolerated the production of this drug.

Varieties of the cannabis plant are also grown for their fiber and oil seeds. The governments concerned have generally found it to be superfluous to apply control measures to this kind of cultivation. How widespread is the cultivation of the plant for its fiber can be seen from the statistical data published by the Food and Agriculture Organization of the United Nations.[355] According to this information, a number of European countries grew the plant on 94,000 hectares yielding 82,800 metric tons of fiber in 1970; India used 165,000 hectares with an estimated yield of 75,000 metric tons of fiber. The World's total area in which cannabis was grown for fiber was 626,000 hectares with a yield of 298,100 metric tons of fiber. The United States of America which grew the plant for the fiber on a very small area from 1948 to 1952, has since then entirely discontinued the legal cultivation of the cannabis plant.

The Plenipotentiary Conference opined that the cultivation of the cannabis plant for its fiber and seeds alone did not represent any significant risk of becoming a source of illicit supplies of cannabis drugs. Therefore, it included in the Single Convention a provision that this Convention should not apply to the cultivation of the cannabis plant grown exclusively for industrial purposes (fiber and seed) or horticultural purposes.[356]

Whether illicit traffickers would try to obtain cannabis drugs from plants, which are grown for such purposes and which very often can yield only very weak drugs, assuming effective controls would make it impossible for them to acquire their supplies from plants yielding more potent cannabis and ampler amounts of the resin, is difficult to determine. An investigation undertaken in the United States in 1937 [357] came to the conclusion that only the [illegible] lower stalks and roots of the plant fail to contain the active ingredient during the growth of the plant. It was also concluded that the active ingredient disappears from the upper stalks after the fruits are mature, and that the seeds do not contain it at all or only minor quantities so as to exclude the possibility of misuse. Whether or not these results were borne out by later research, it cannot be excluded that illicit traffickers could obtain some cannabis drug from plants grown for their fiber and seeds.

The Commission on Narcotic Drugs in the 1950's considered two possibilities for solving abuse of cannabis plants grown for industrial purposes:[358] breeding a drug-poor or drug-free strain of the cannabis plant, or replacement by other fiber yielding plants. While such breeding was possible, it was too costly and replacement by other plants was not justified by the risk of diversion of drugs from cannabis plants grown for industrial purposes, under the conditions as they existed in the 1950's.[359]

Some of the difficulties in the way of an effective control of production of cannabis and cannabis resin are: widespread wild growth of plants capable of yielding potent drugs; illicit or uncontrolled cultivation of the cannabis plant for the drugs in some countries in which the illicit traffic originates, or toleration of the production of cannabis drugs [illegible] by some countries which have laws prohibiting the production or the cultivation.

While opium must be collected by incision of the capsules while the poppies are still standing in the field and therefore cannot be concealed from neighbors and authorities, substances can be obtained from the cannabis plant after its harvesting for the fiber and its seeds, that is, after removal of the [illegible] from the field.[360] The production of drugs from cannabis plants grown for industrial purposes can be hidden with relative ease. Countries which have an effective administration are capable of making opium production from poppies grown for the seeds impossible, but would not be able to prevent some production of cannabis drugs from plants grown for industrial purposes. While uncontrolled cultivation of the poppy for the seeds in such countries is therefore compatible with an effective international poppy regime, it appears that uncontrolled cultivation of cannabis plants for industrial purposes would become a source of the illicit traffic in cannabis and cannabis resin as soon as better sources are taken away from the traffickers by effective international control measures.

The Single Convention applies to the cultivation of the cannabis plant for the production of cannabis or cannabis resin and to such production, the same regime as it provides for the poppy. This poppy regime is even more inadequate for the cannabis plant than it is for the coca bush. If the cannabis plant grown for the production of the drugs were controlled only by the provisions prescribed by the Single Convention, it would hardly be possible to prevent large diversions by the licensed individual cultivators. Moreover the regime of the Single Convention could have no effect on obtaining cannabis drugs from plants grown for industrial purposes, which the Convention expressly excludes from its controls.

It would be unduly optimistic to assume that in the foreseeable future the illicit traffic will be suppressed by a universally accepted and applied international regime. In the immediate future, countries will have to rely on domestic enforcement measures and on inducing other countries, which are the source of cannabis drugs, to prohibit the cultivation of any variety of cannabis for any purpose, to enforce energetically such a prohibition, to improve their enforcement services and to co-operate closely with other nation's authorities. Where the prohibition of cannabis cultivation would require economic measures or the improvement of local enforcement services, foreign aid on a bilateral or multilateral basis should be favored.

More effective treaty provisions might include an [illegible] To prevent any abuse, it would be necessary to prohibit removal from the field of any parts of the cannabis plant except the mature stalks and the seeds and to burn the remainder. Such a measure would, however, be very impractical and its correct implementation could hardly be controlled.

international regime which would cover the cultivation of all cannabis plants for whatever purposes.[361] The cultivation of cannabis plants by individual farmers should not be permitted. Governments which would permit the cultivation of the cannabis plant [362] for any purpose would have to establish a monopoly of such cultivation, of the production, if any, of cannabis drugs and of the trade in all parts of the plant. Such a monopoly should be entrusted to a state enterprise, a cooperative or a corporation.

Some significant production of cannabis and Cannabis resin would have to be continued as long as the non-medical use of these drugs [363] is permitted under the transitional provisions of article 49 of the Single Convention.[364] In 1970 more than 94 metric tons of cannabis were still used in India for non-medical purposes and in 1969 more than 12 metric tons were so used in Pakistan under these provisions of the Single Convention. Even after expiration of the period during which countries may permit the non-medical use of cannabis drugs, some production will have to be carried on. In the years 1966 to 1970, 17 countries have used quantities of cannabis of one kilogram or more for medical purposes or research. In 1970, 1,639 kilograms were employed for these needs, 1,521 kilograms in India alone. While the World Health Organization has found that the use of cannabis is obsolete for therapeutic purposes, the value of cannabis drugs still is recognized in the indigenous (Unani, Tibbi and Ayurvedic) systems of medicine on the Indian-Pakistani subcontinent. Furthermore, it may be that therapeutic uses for cannabis will be discovered in the future.

Even the adoption of such a radical international regime, for the control of the cannabis plant and for the production of cannabis and cannabis resin would not be sufficient for the suppression of the illicit traffic in cannabis. It would have to be supported by very extensive measures of foreign aid to enable some governments to implement such treaty provisions. Considerable political pressure would also be required to induce a number of reluctant governments to accept and implement such a far-reaching regime. But it seems to be superfluous to discuss these sup-

[355] Food and Agricultural Organization, Production Yearbook 1970 (Vol. 24) Table 98, pp. 288–290.

[356] Article 28, paragraph 2; in fact, any cultivation for any purpose other than the production of cannabis or cannabis resin is so exempted. Cultivation for the leaves would also be free from control as long as it is not undertaken also for the cannabis or the resin.

[357] Report of the Marihuana Investigation (Summary) of the U.S. Bureau of Narcotics, pp. 9 and 12.

[358] Resolutions 548F II (XVIII) and 588 C(XX) of the Economic and Social Council; Reports of the Commission on Narcotic Drugs on its Ninth, Tenth, Eleventh and Twelfth Sessions, United Nations documents E/2606 (paragraph 118), E/2768 Rev. 1 (paragraphs 199–206), E/2811 (paragraphs 282–288) and E/3010, Rev. 1 (paras. 322–335).

[359] See Bredemann, G., Schwanitz, F., and Von [illegible] busch, R., "Problems of modern hemp breeding with particular reference to the breeding of varieties of hemp containing little or no hashish", in United Nations Bulletin on Narcotics, Vol. VIII, No. 3; see also United Nations documents E/CN. 7/297 and E/CN. 7/324, paragraphs [illegible]

[360] See footnote 359 above; the undertaking of a program of breeding drug-free cannabis plants might be advisable in any event.

[361] Other than drug-free plants which might be bred.

[362] And of extracts and tinctures of cannabis, article 49, paragraph 1, sub-paragraph (d).

[363] Paragraph 2, paragraph (f); this temporary exception must be ended within twenty-five years from the coming into force of the Single Convention (13 December 1964).

portive measures, since it cannot be expected that the suggested control measures have a chance of being generally accepted in the foreseeable future.

International juridical aspects of legalization of the non-medical use of cannabis and cannabis resin

It must be emphasized that such legalization is not advocated. Moreover, the admission of the use of dangerous substances depends on a number of considerations, which are outside the scope of this paper, including medical (research on the degree of harmfulness); political (acceptance by the population); administrative (possibilities of enforcement); social (effects on society of enforcement of laws opposed by a large part of the population); and philosophical (how far society should limit the freedom of individuals to harm themselves) factors. The fact that a prohibited substance is less harmful than substances whose consumption is legal is not a valid argument. A number of considerations may make it advisable to outlaw the use of a less harmful drug while authorizing the non-medical consumption of more harmful ones. *Equality* of treatment of chemical substances is not required.

The non-medical use of cannabis and cannabis resin and of extracts and tinctures of cannabis is not permitted under the Single Convention, except under article 49, which does not apply to the United States. Several legal considerations which may have a bearing on this issue are:

• Deletion of cannabis and cannabis resin from Schedules I and IV and their inclusion in one of the Schedules of the Vienna Convention on Psychotropic Drugs. This could be accomplished by decisions of the Commission under article 3 of the Single Convention and under article 2 of the Vienna Convention. This would have no effect on the prohibition of the non-medical use of the cannabis drugs and on the requirement of a medical prescription for their acquisition by individuals.[365] It is also doubtful whether these drugs could be included in Schedules of the Vienna Convention because in view of article 28 of the Single Convention, concerning the control of the cannabis plant grown for their production and concerning the control of such production, they might be considered to be already "under international control" and only substances "not yet under international control" can be included in these Schedules.[366]

• Deletion of cannabis and cannabis resin from the schedules of the Single Convention without including them in a schedule of the Vienna Convention. This would appear to free these substances from the provisions concerning control of drugs and to authorize their sale and use for non-medical purposes. The provisions of article 28, paragraph 1 concerning the control of the production of cannabis and cannabis resin, of article 1, paragraph 1, sub-paragraph (t), including in the definition of "production" the separation of cannabis and cannabis resin from the cannabis plant, and of article 4, paragraph (c), requiring parties to limit exclusively to medical and scientific purposes the production of "*drugs*", would remain in force.[367] But since cannabis and cannabis resin would no longer be listed in any of the Schedules of the Single Convention, they would no longer be *drugs* in the meaning of the Single Convention. Thus their production would not be limited to medical and scientific purposes. A somewhat anomalous situation would be created. Production of cannabis and cannabis resin would continue to be controlled by the same strict regime as the production of opium but would be authorized for any purpose. Any of the non-medical use of cannabis and cannabis resin would be legalized.

• Amendment of the Single Convention to legalize the non-medical use of cannabis and cannabis resin and avoid the anomaly of strict control of production.[369] An amendment by a new treaty (protocol), however, could free cannabis producing countries from their obligation to apply the strict control measures of the Single Convention, but only with regard to those parties which would accept the new treaty. The cannabis producing countries would remain bound to apply the present regime with parties to the unamended text would have to accept the amendment.

An amendment, by the simplified procedure of article 47, paragraph 1, sub-paragraph (b) and paragraph 2 of the Single Convention, would come into force if no party objects within the eighteen months mentioned in paragraph 2. It can hardly be expected that some countries would not make

[365] Articles 5 and 9 of the Vienna Convention.

[366] Article 2, paragraph 1 of the Vienna Convention; it is however submitted that the term "international control" used in this paragraph was obviously meant to refer only to control by the Single Convention. The fact that a substance is controlled by provisions of an earlier narcotics would not prevent its inclusion in a Schedule of the Convention. Cannabis and cannabis resin are controlled some provisions of the 1925 Convention.

[367] The definitions, in article 1, paragraph 1, sub-paragraphs (b) and (d), of cannabis and cannabis resin would remain.

[368] Article 1, paragraph 1, sub-paragraph (j).

[369] Article 1, paragraph 1, sub-paragraph (t).

an objection, since it cannot be assumed that an American decision to legalize the non-medical use of cannabis would cause all other parties to come to the same conclusion. Those that wish to continue the prohibition of non-medical use of cannabis certainly would desire that the international cannabis production regime remains in force.

A removal of cannabis, by treaty amendment, from the schedules of the Single Convention would, lead to the same difficulties; but this would not be necessary since it could be accomplished by the operation of article 3 of the Single Convention.

• Transferral to Schedule II of cannabis and cannabis resin from Schedule I and IV and extracts and tinctures of cannabis from Schedule I. This would have the effect of permitting these drugs to be sold by licensed retailers (druggists) without medical prescription.[370] This would have the effect of permitting non-medical use of cannabis drugs. Such a transfer, if done for the purpose of facilitating the non-medical consumption of cannabis, would be a violation of the provisions of the Single Convention, which requires parties to limit the use of all drugs, including those in Schedule II, to medical and scientific purposes.[371] This transfer could be accomplished by a decision of the Commission on Narcotic Drugs acting on the recommendation of the World Health Organization under article 3 of the Single Convention. It would be a subterfuge, however.

• Denunciation of the Single Convention,[372] which has been suggested by an advocate of the legalization of cannabis.[373] Such a denunciation would make it possible for the United States to carry out such a legislation because no preceding treaty prohibits the non-medical use of cannabis or cannabis resin.[374] But cannabis drugs could be deleted from the schedules of the Single Convention and included in a schedule of the Vienna Convention on Psychotropic Drugs. If the United States becomes a party to that Convention and it enters into force, we would still be bound to prohibit the non-medical consumption of cannabis drugs.[375]

Moreover, an American denunciation of the Single Convention would have very undesirable consequences. It would deprive this treaty of much of its strength. Furthermore, if the American example would be followed by many other countries—as it probably would—it could reduce the number of parties to less than forty and, as a consequence, the Single Convention would cease to exist.[376] This would deprive the international society of the advantages brought about by this treaty. There would be no international control of the cultivation of the coca bush. International control of opium production would have to reply on the 1953 Protocol, which is unacceptable to many states and which could remain in force only if three of the following four states continued to adhere to it: Greece, India, Iran and Turkey.[377]

Finally, a denunciation of the Single Convention would not be necessary for legalization would be possible by the operation of article 3 of the Single Convention.

The leaves of the cannabis plant

The leaves of the cannabis plant, when not accompanied by the tops of the plant, are not "cannabis" in the sense of the Single Convention,[378] and, therefore, are not "drugs" whose use is limited to medical and scientific purposes.[379] Such leaves are therefore not subject to the narcotics regime. Only a single provision of the Single Convention applies to them. This requires that parties adopt measures necessary to prevent the misuse of, and "illicit traffic" in, the leaves.[380]

Parties may permit the non-medical use of the leaves while preventing their misuse. This may involve an obligation to prevent the consumption of very potent leaves, or to prohibit the sale of excessive quantities of them. Prohibition of sale to persons

[370] Article 30, paragraph 2 (b), sub-para. (i) and paragraph 6 of the Single Convention; see also article 2, paragraph 2.

[371] Article 4, paragraph (c); see, however, article 2, paragraph 9, article 27 and article 49.

[372] Article 46.

[373] Kaplan John, Marijuana, New York, World Publishing Company, 1970.

[374] The 1925 Convention limits, however, the use of extracts and tinctures of cannabis to medical and scientific purposes; article 4, paragraph (f) and article 5; the United States is not a Party to the 1925 Convention.

[375] Article 5, article 7, paragraph (a) and article 9 of the Vienna Convention.

[376] Article 46, paragraph 3 in connection with article 41, para. 1.

[377] Article 21 and article 6, paragraph 2, sub-para. (a); the other three States mentioned in this subparagraph (Bulgaria, Yugoslavia and Union of Soviet Socialist Republics) declared they would not accept the 1953 Protocol.

[378] Article 1, paragraph 1, sub-para. (b).

[379] Article 4, paragraph (c), article 1, paragraph 1, sub-para. (j) and Schedules I and II.

[380] Article 28, paragraph 3; the term "illicit traffic" as used in this provision has not the same meaning as that given to it by article 1, paragraph 1, sub-paragraph (l).

below a certain age also may be required. These are only examples of what parties may have to do under the very vague provision of the Convention concerning the leaves. In order to prevent the "illicit traffic" in the leaves, governments may be required to limit the trade in the leaves to businesses licensed to engage in this activity or to authorize state enterprises. Export of the leaves without governmental authorization may also have to be prohibited. Generally speaking, such control laws as are enacted in many countries to prevent excessive consumption of, and illegal trade in, alcohol may be sufficient to implement the obligation of parties to the Single Convention regarding the leaves of the cannabis plant. These are merely considerations regarding the legal aspects of the use of cannabis leaves under the Single Convention and should not be considered to imply any proposal to legalize their non-medical use.

Control of Drugs

The Single Convention applies its provisions regarding drugs not only to manufactured drugs (including extracts and tinctures of cannabis), but also to drugs which are agricultural products (all kinds of opium, coca leaves, cannabis and cannabis resin) and to the preparations of the drugs. All drugs are listed either in Schedule I or II, the latter being exempted from a few measures of control. Preparations are, with minor modifications, subject to the same control as the drugs which they contain, except if they are in Schedule III in which case they are exempted from some important control provisions. Drugs in Schedule I which are also included in Schedule IV are also subject to article 2, paragraph 5, in addition to all control measures governing drugs in Schedule I.[381]

The control system governing "narcotic" [1] drugs may be summarized under the following headings:

- System of authorizations (drug businesses, establishments and premises, permits, import certificate and export authorization system, prohibitions and restrictions of export and import, possession of narcotic drugs, and consumption of narcotic drugs).
- Record keeping and Reporting to and Control by domestic authorities.
- Organs of Domestic Control ("Special Administration").
- Penal laws to be applied to violations of laws enacted to implement the Single Convention.
- Limitation of narcotics supplies.
- Reports to international control organs.
- Changes in the Schedules of the Single Convention.
- The Commission on Narcotic Drugs.
- The International Narcotics Control Board.

The System of Authorizations.—There are two kinds of licenses: those authorizing the participation in a particular phase of the drug economy and those authorizing the use of establishments and premises. The notion of license requires the exercise of discretion by the authorities to grant or refuse the license. It is submitted that for a person, who has certain educational qualifications, to have a right to obtain a license to engage in a particular phase of the drug economy would be incompatible with the provisions of the Single Convention regarding licensing of production,[382] manufacture and trade.

Licensing of drug businesses

The system of licensing of drug businesses is intended to enable the national authorities *inter alia*

- to assure high technical and moral standards of the leadership of drug enterprises.[383]
- to restrict the number of drug enterprises to facilitate control.
- to prescribe in the license such conditions as the authorities may find necessary or useful regarding the quantities to be manufactured or to be held in stock, the kind of records to be maintained or other details of business management or control.
- to make possible, by the revocation of licenses, the elimination of drug businesses when required for the purposes of effective control.

Each manufacturer[385] of, trader[385] in or distributor[385] of drugs requires a license.[386] In contradistinction to the preceding drug treaties, the licensing requirement of the Single Convention applies also to the retail trade in drugs in Schedule II and to the trade in preparations in Schedule III. Under the earlier treaties the retail trade in drugs in Group I corresponding to the drugs now in Schedule II, as codeine, and any trade in "preparations for

[381] Article 2, paragraph 1 to 5; the provisions of paragraph 5 were indicated above in connection with the discussion of the 1931 Convention and of the heroin problem.

[382] Article 1, paragraph 1, sub-paragraph (t); this type of licenses includes also the licensing of cultivators.

[383] Article 34, paragraph 1 of the Single Convention, article 8, paragraph 4 of the Vienna Convention.

[384] United Nations document E/CN. 7/519, pp. 33-34.

[385] No matter whether an individual businessman, partnership or corporate body.

[386] Article 29, paragraph 1, article 30, paragraph 1, para. (a) and article 31, paragraph 3, sub-paragraph

export of which export authorizations are not required," preparations corresponding to those now in Schedule III,[387] could be carried on without license.

This licensing requirement does not apply to state enterprises.[388] This does not mean that any state enterprise can engage freely in any drug business activity it wishes. Only those State enterprises, which are charged by their government, may engage in the drug business.

The licensing requirement for drug businesses applies also to preparations.[388] A license to carry on a retail trade in drugs also authorizes the licensee to compound ("manufacture") preparations for sale to individuals.

While it is useful, from the view point of narcotics control, to reduce the number of all businesses engaged in the narcotics trade, it is essential to limit the number of manufacturers of basic drugs and of importers of drugs *and* preparations to a small number, which would still be compatible with competition and with maintaining favorable conditions for research. The need for a restrictive system is conditioned by the requirement of limiting the narcotics supplies through the manufacturing and import quota system of the Single Convention.[389]

The need for restricting the number of manufacturers of basic drugs was also recognized by the League's Advisory Committee on the Traffic in Opium and Other Dangerous Drugs, by the Council of the League and by the Commission on Narcotic Drugs.[390]

It is particularly important that countries, which are not capable of exercising effective control, should not issue licenses for the manufacture of basic drugs and their sales. The League's Advisory Committee was particularly concerned about this danger.[391] The special sensitivity of countries, which have a deficient administration, must be realized. The situation is very different from that in the 1930's when the Advisory Committee expressed its concern. Nevertheless, everything must be done to induce governments not to issue drug manufacturing licenses, in order to prevent a return to the conditions of the late 1920's and early 1930's when licensed drug manufacturers sold hundreds and even thousands of kilograms of morphine and heroin on the illicit market.[392] In the future, it may be possible to obtain general acceptance of a treaty provision by which governments would undertake to prohibit the manufacture of narcotic drugs if the conditions prevailing in their territory would render such action the most suitable measure, *in their opinion*, for preventing the diversion of drugs into the illicit traffic. Such a provision would be patterned after article 22 of the Single Convention regarding the prohibition of the cultivation of the opium poppy, coca bush or cannabis plant. It would offer a diplomatic instrumentality to induce countries not to engage in drug manufacture. While there is now no significant diversion of manufactured narcotic drugs into the illicit traffic,[393] this provision would be helpful in meeting future dangers.

The Vienna Convention on Psychotropic Substances would also require a license "or other similar control measure" for engaging in any phase of the economy of such substances; [394] with regards to substances in Schedule I such as LSD or mescaline, "a special license" or special "prior authorization" would be prescribed.[395] This Convention does not control the cultivation of plants from which psychotropic substances can be obtained. The separation of such substances from the plants from which they are obtained would be "manufacture" (Article 1, paragraph (i)) and would be subject to the controls of the Convention. The Convention does not employ the term "production."

Licensing of Establishments and Premises

The term "establishment" as is used in articles 29 and 30 of the Single Convention means any place of the drug business concerned with fixtures and organized staff. A drug business may have one or more "establishments." "Premises" are whole buildings or parts of buildings used for the drug business.

[387] As regards these preparations see also the above discussion of the 1925 and 1931 Conventions.

[388] See above and article 2, paragraphs 3 and 4.

[389] Article 21.

[390] League of Nations document C. 530, M. 241, 1934. XI, Section VII (d), p. 10; League of Nations Journal, 16th year, No. 2, February 1935, p. 102; Report of the Commission on Narcotic Drugs on its eleventh session, United Nations document E/2891, paragraph 258 and Annex II (4). See also Comprehensive Drug Abuse Prevention and Control Act of 1970, Section 303 (a) (1).

[391] See the documents of the League referred to in the previous footnote; see also League of Nations documents C. 256. M. 105, 1934. XI, p. 4 and C. 33. M. 14. 1935. XI, pp. 35-37; see also the report of the Permanent Central Board on its work in 1963, United Nations document E/OB/19, paragraph 14.

[392] Report of the Permanent Central Board on its work in 1966, United Nations document E/OB/22, paragraph 36–37.

[393] Anyway not on the manufacturing and wholesale level; there is occasionally some diversion on the retail level.

[394] Article 8, paragraph 1; applies to substances in Schedules II, III or IV.

[395] Article 7, paragraph (b).

The Single Convention requires Parties to "control under license" the establishment and premises in which manufacture of narcotic drugs or their preparations may take place or in which the trade in or distribution of, such drugs may be carried on. This requirement does not apply to places of trade in preparations nor to places of retail trade in which preparations are compounded ("manufactured") for sale to individuals.[396]

This license requirement also applies to state enterprises. It is primarily intended to assure that the establishments and premises in which the manufacture or trade takes place should facilitate control and prevent theft or other types of diversion.

The narcotics regime preceding the Single Convention prescribed the licensing of "establishments and premises" that manufactured[397] drugs, not those dealing with preparations.[398]

The requirement of licensing trade and distribution, and establishments and premises in which trade or distribution takes place, does not apply to "persons duly authorized to perform and while performing therapeutic or scientific functions".[399]

With regards to psychotropic substances in Schedule II, III and IV, the Vienna Convention would stipulate that the parties should control under license or other similar control measures the establishments and premises in which the manufacture of, trade in or distribution of these substances or *their preparations* would take place. The parties would also be expressly required to provide that security measures be provided for such establishments and premises to prevent theft or other types of diversion.[400] With regard to substances in Schedule I, the Vienna Convention would prohibit their use, except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their governments or specifically approved by them.[401] Parties would have to require that manufacture of, trade in, and distribution and possession of psychotropic substances in Schedule I should be under a special license or prior authorization[402] and to provide for close supervision of these activities and for limited use of these substances.[403] These strict control provisions imply that parties would also have to require that establishments and premises, in which the manufacture of, trade in or distribution of substances in Schedule I would take place, to maintain strict controls, similar to those applicable to substances in other Schedules.

Permits (Quotas)

Under the Single Convention, parties must require that licensed manufacturers of drugs obtain periodical permits specifying the kinds and amounts of drugs which they shall be entitled to manufacture. This requirement need not apply to preparations.[404] Manufacturing quotas are such permits.[405] Since the supply limits are calculated on an annual basis, these "periodic" permits should be granted at least annually. Countries which import drugs might apply such a system of permits to importers, although this is not expressly required by the Single Convention. This would be one of the ways to assure that limits of the drug supplies would not be exceeded.[406] They could also achieve this objective by proper administration of the import certificate and export authorization system.[406]

The Vienna Convention, contrary to the Single Convention, would not require permits. The reason is that this treaty does not have a system of limiting the supplies of psychotropic substances to certain quantities to be computed in accordance with rules which it would prescribe, while the narcotics regime does.[407]

[396] Article 29, para. 2 sub-para. (b); and article 30, para. 1, sub-para. (b), clause (ii).

[397] Excluding the manufacture of medicinal opium and extract and tinctures of cannabis.

[398] Article 6, para. (a) of the 1925 Convention and article 13 of the 1931 Convention; see also article 10, para. (a) of the 1912 Convention.

[399] Article 30, para. 1, sub-para. (c) of the Single Convention.

[400] Article 8, paragraph 2, sub-paras. (b) and (c) and article 3, paragraph 1; the provisions of the Convention regarding licenses or other control measures respecting businesses involved in manufacture of, trade in and distribution of substances in Schedule II, III or IV and respecting establishments and premises to be used for such purposes would not apply to "persons duly authorized to perform or while performing therapeutic or scientific functions," nor would the requirement of taking the security measures with regard to such establishments and premises (Article 8, paragraph 3).

[401] Article 7, paragraph (a).

[402] Article 7, paragraph (b).

[403] Article 7, paragraph (c).

[404] Article 29, paragraph 2, sub-paragraph (c).

[405] Article 21.

[406] Article 31.

[407] Introduced by the 1931 Convention and taken over by the Single Convention in basically the same form; see in this connection the provision of the Vienna Convention which would bind the Parties to restrict the amount of substances in Schedule I supplied to a duly authorized person to the quantity required for his authorized purpose; article 7, paragraph (d).

The Import Certificate and Export Authorization System [408]

The basic features of this system are: each import (or export) whether it consists of one or more drugs requires a separate authorization by the government of the importing (or exporting) country. No export may be authorized unless previously permitted by the government of the importing country or territory. This permission must be proven by the exporter by producing to the authorities of the exporting country a copy of the import authorization or "import certificate", in which the government of the importing country certifies that it has approved the import concerned. By a system of communications, it is assured that the governments of the importing country and the exporting country are informed of the quantities of drugs which were shipped and actually arrived at their destination. This information is given on copies of the export authorizations which are sent by the government of the exporter to the government of the importer and returned by the latter government to the former with an endorsement indicating the required information. Moreover, a copy of the export authorization must accompany each consignment.

Each authorization must also give the data indicating the drugs, their amounts, importer and the exporter.

The import certificate and export authorization system of the Single Convention applies to all narcotic drugs and their preparations except those included in Schedule III. This follows the narcotics regime which preceded the Single Convention and which exempted preparations referred to as "preparations for the export of which export authorizations are not required" or "exempted preparations", a group of preparations [408] which corresponds to the category of preparations presently included in Schedule III.

The Vienna Convention would apply to Schedule I and II psychotropic substances an import certificate and export authorization system similar to the Single Convention's. It would be expressly required that the non-proprietary name *or, lacking such a name,* the designation of the substance concerned in the Schedule should be given. An indication of the pharmaceutical form of the substances to the consigned would also have to be shown and, if the substance to be shipped would be in the form of a preparation, the name of the preparation would also have to be furnished.[409]

International shipments of substances in Schedule I would be subject to additional control measures. Their export or import would be prohibited except when both the exporter and importer would be the competent authorities or agencies of the exporting and importing country or region,[410] respectively, or other persons or enterprises which would be specifically authorized by the competent authorities of their country or region.

International shipments of substances in Schedule II would also be subject to additional controls, namely to a system of "prohibition and restrictions."

Individual exports and imports of psychotropic substances in Schedule III would not require a governmental authorization. The exporter, however, would be bound to draw up a declaration in triplicate giving information identifying the consignment, the exporter and the importer. The exporter would have to furnish two copies of this declaration to the competent authorities of his country or region and would have to attach the third copy to the consignment. The government of the exporter would have to send, by registered mail with return of receipt requested, a copy of the declaration to the competent authorities of the importing country or region. It would also be stipulated that the parties *"may"* require that on receipt of the consignment, the im-

[408] These preparations were those expressly described in article 13, paragraph 1 of the 1931 Convention in connection with article 4, paragraph (d) of the 1925 Convention; those exempted by operation of article 8 of the 1925 Convention (see Schedule III of the Third Draft of the Single Convention, United Nations document E/CN. 7/AC. 3/9/Add. 1) and those preparations of drugs in Group II of the 1931 Convention", "which are adopted to a normal therapeutic use" (article 13, paragraph 2, sub-paragraph (b)) and United Nations document C. 191. M. 136. 1937 XI. (Commentary to the 1931 Convention, paragraph 137).

[409] Article 12, paragraph 1 of the Single Convention.

[410] "Region" is defined by the Vienna Convention as a part of the national territory which is divided into two or more such entities for the purposes of applying the Convention. (Article 28). The term may also apply to the territories of two or more Parties which have formed a customs union and which have decided to treat their territories as a single "region" for the purposes of the Convention. The term "region" is about the same kind of entity which the Single Convention (article 1, paragraph 1, sub-paragraph (y)) calls "territory" and defines as part of a national area which is treated as separate entity for the application of the system of import certificates and export authorizations. The Single Convention permits also that the national area of two or more Parties which have formed a customs union be treated as a simple "territory", (Article 43); see also article 1 of the 1953 Protocol.

porter should transmit to the competent authorities of his country or region the copy of the declaration which accompanied the shipment, with an endorsement stating the quantities received.[411]

It is obvious that this system, which appears to have been drawn up to impose no obligatory administrative burdens on the authorities of the importing countries, might rather often have the result that the authorities of the exporting country would not know whether the shipment arrived at its destination or whether the whole or part of it was lost, stolen or diverted into illicit channels. The government of the importing country would also lack this knowledge unless it would choose to obtain from the importer the copy of the declaration which accompanied the consignment with endorsement. Unless governments, under the general rules [412] requiring them to control the trade in psychotropic substances in Schedule III, would choose to apply to the international trade in these substances additional effective control measures, the regime of the Vienna Convention concerning individual international consignments of substances in Schedule III might not make it very difficult to obtain from foreign countries such substances for illicit purposes. Whether a stricter regime would be generally acceptable or even desirable is another matter which might have to be judged in the light of such factors as the extent to which illicit traffickers actually obtain substances in Schedule III from foreign sources. It might also be important to consider whether in view of the easy availability from domestic legal sources of some of the barbiturates listed in that Schedule, it is probable that a significant international illicit traffic in those substances would develop and whether and how far one could curtail the freedom of medical practitioners to prescribe them without making difficult their availability for legitimate therapeutic purposes.

Substances in Schedule III would also be subject to the system of "prohibition and restrictions." Neither the import certificate and export authorization system nor the provisions regarding declarations would apply to psychotropic substances in Schedule IV, although they would be subject to the same system of "prohibition and restrictions" as that which would govern international trade in Schedule II and III substances.

[411] And the date of the receipt. Article 12, paragraph 2 contains the rules governing international shipments of substances in Schedule III.

[412] Article 8, paragraph 1 and paragraph 2, sub-paragraph (a).

Prohibitions and restrictions of export and import

The Vienna Convention provides that countries or regions could require *all* other parties not to export to them Schedule II, III or IV substances. They would indicate this by a notification addressed to *all* other parties through the Secretary General. Certain quantities of such substances, however, could be excepted from this prohibition by the importing country or region to meet specific needs.

The effect would be that parties could prevent the free (unauthorized) import into their national territory of substances in Schedule III and IV. They could also prevent the import of substances in Schedule III and IV, which the exporting countries would not admit for domestic use on account of their harmful side effects, but would nevertheless export to other countries. Representatives of developing countries have asserted at international conferences that exports of this kind have taken place. These provisions would also govern substances in Schedule II which would be subject to the import certificate and export authorization system. The importing countries, by their administration of this system, would achieve, with respect to Schedule II substances, results similar to those achieved by special provisions regarding the prohibition or restrictions of import. The authors of the Vienna Convention did not find it necessary to apply these provisions to substances in Schedule I, whose exports and imports would not only be subject to the import certificate and export authorization but also to the strict control provisions of article 7, paragraph (f).

The parties would have to take "measures" to assure that none of the substances indicated in the notifications are exported to the country or region of the notifying party with the exception of those amounts which would be specially authorized by the party in particular cases. The "measures" which would have to be taken need not necessarily be of a legislative nature, as long as they would be effective. In exporting countries, which have only a small number of exporting manufactures or other drug exporters, an instruction to such exporters or agreement with them might be sufficient.

Finally, it may be mentioned that the Vienna Convention would provide that parties may permit international travellers to carry small quantities of preparations of substances in Schedule II, III or IV (but not of those in Schedule I) for personal use. Each party would however be entitled to satisfy

[413] Article 13.

itself that these preparations have been lawfully obtained.[414] This means that parties would not have to require an export and import authorization with regard to such preparations if they contain a substance in Schedule II, nor to require the traveller, with respect to preparations of substances in Schedule III, to make a declaration, which exporters of these preparations would otherwise have to make.[415]

Neither the Single Convention nor any other narcotics treaty contains a provision of this kind. It may be noted that the Vienna Convention would free exempted preparations,[416] which contain substances in Schedules II or III, from the application of the import certificate and export authorization system or from the requirement of making an export declaration, respectively, but neither these preparations nor those of substances in Schedule IV from the rules regarding "Prohibition and restrictions on export and import."

If the Commission on Narcotic Drugs would decide to add a noncontrolled substance to any of the schedules of the Vienna Convention, a party would be entitled to notify the Secretary General that in view of exceptional circumstances, it would not be in a position to give effect to all the provisions applicable to the substance in a particular schedule. This would free the notifying party from the obligation to apply certain control measures; but the notifying party would not be exempted from the import certificate and export authorization system for Schedule I or II substances, except in relation to another party which would also have given such notice for the same substance. The notifying party would also be bound by the export declaration, which exporters of Schedule III substances would be obligated to make. It would not be required to make such a declaration regarding the substance if it would be exported to another party which would also have sent to the Secretary General similar notification regarding that substance (Article 12, paragraph 1 and 2).

Notifying parties would not be freed from applying the rules regarding "Prohibition of and restrictions on export and import" (Article 13). They also would have to apply these rules to a substance placed in Schedule I. They would not be required to apply the strict control regime of article 7, paragraph (f).

The notifying parties, which would be authorized to apply the less severe regime for Schedule I substance allowed to them as result of their notification, would be required to "take into account, as far as possible, the special control measures" applicable to substances in Schedule I (Article 7). Moreover, parties which would have given a notice with respect to a substance transferred from one schedule to another governed by stricter controls and obligations, would have to apply as a minimum all of the control provisions applicable to the schedule from which it would have been transferred (Article 2, paragraphs 5, 6 and 7).

In general terms the right of parties to reject decisions of the Commission would not free them from the obligation to apply the provisions governing international transactions, except (1) that they would not be bound to apply the import certificate and export authorization system or to make the export declaration with respect to a substance a party would have given the required notice; and (2) they would in respect of substances placed in Schedule I have to substitute the rules of article 13 for those of article 7, paragraph (f).

Authorization of Possession of Narcotic Drugs

Three provisions of the Single Convention relating to the possession of drugs are of interest for the purposes of this paper and may usefully be considered together: [417]

- Article 4, paragraph (c) requires the parties to take such legislative and administrative measures as may be necessary to limit possession of drugs exclusively to medical and scientific purposes,
- Article 33 stipulates that the parties shall not permit the possession of drugs except under legal authority.
- Article 36, paragraph 1 requires each Party, subject to its constitutional limitations, to treat as punishable offense the *possession* of drugs, contrary to the provisions of the Single Convention, as well as any other *action* which in the opinion of the party concerned would violate these provisions, provided in both cases that the acts were committed intentionally. If the offense is serious it shall be liable to ade-

[414] Article 4, para. (a).

[415] Article 12, para. 2.

[416] Preparations corresponding to those in Schedule III of the Single Convention; the exemption, which could be made unilaterally by the government, would be subject to review by the World Health Organization and the Commission on Narcotic Drugs. The Commission would be entitled to terminate the exemption partially or totally; article 3 of the Vienna Convention.

[417] Article 27, paragraph 1 authorizing the possession of coca leaves for the preparation of flavoring substances is of no interest in this connection.

quate punishment particularly by imprisonment or other penalties of deprivation of liberty. The paragraph lists a number of other acts which under the same conditions must be so treated including the distribution, purchase, sale and delivery on any terms whatsoever of drugs, but does not list *acquisition* and *use* of drugs.

The three provisions just mentioned apply to all drugs whether in Schedule I or II, and to their preparations, including preparations in Schedule III.[418]

Possession of drugs by persons, corporate bodies or state enterprises which are engaged in any phase of the drug economy is legally authorized under article 33 if it serves the business purpose.

The supply or dispensation of drugs in Schedule I and their preparations other than preparations in Schedule III to persons not engaged in the drug economy, requires a medical prescription. This requirement need not apply to such drugs and their preparations as individuals may lawfully obtain, use, dispense or administer in connection with their duly authorized therapeutic functions. The supply or dispensation, to individuals, of drugs in Schedule II and their preparations and of all preparations in Schedule III *need not require* a medical prescription.[419]

With a few exceptions,[420] no possession of any drug or of any preparation of any drug may be permitted for other than medical and scientific purposes. Drugs in Schedule II and their preparations and the preparations in Schedule III, which under the terms of the Single Convention may be acquired by individuals without medical prescription, are not excepted. Governments which do not require a prescription for the purchase of these drugs and preparations should therefore obligate their licensed retail traders not to sell them to an individual who obviously intends to abuse them, and not to sell excessive amounts of them to a single person. They would also be bound to confiscate these drugs and preparations if found in the possession of a person who intends to abuse them. Unless stricter controls are required by national law than prescribed by the Single Convention, the prevention of the unauthorized possession Schedule II drugs and their preparations and of preparations in Schedule III will generally be very difficult if not impractical or impossible.

The obligation of parties to limit the possession of drugs to medical and scientific purposes [422] not to permit the possession of drugs except [illegible] legal authority applies whether the drugs are held [illegible] distribution or for personal consumption; and [illegible] obligation must be implemented by all governments bound by the Single Convention. They are [illegible] to confiscate drugs in Schedule II and their [illegible] tions and preparations in Schedule III and drugs Schedule I and their preparations possessed by [illegible] sons not legally authorized to have them.

Does the penal provision of article 36, paragraph 1 apply not only to possession of drugs for distribution, but also to possession of drugs for personal use? "Possession" is not intended to apply to possession for personal use, but only to possession for sale or other distribution. This view is based on the provisions of article 36, which seek to fight illicit traffic and not to require the punishment of those not participating in that traffic. Moreover, article 45 of the Third Draft of the Single Convention, which served as working document of the Plenipotentiary Conference which adopted this treaty, enumerated in its paragraph 1, sub-paragraph (i), "possession" among the acts for which punishment would be required. This sub-paragraph is identical with the first part of paragraph 1 of article 36 of the Single Convention dealing with "possession" as one of the punishable offenses. Article 45 of the Third Draft is included in Chapter IX of the Draft, headed *"Measures against Illicit Traffickers"*. This would seem to support the view that only possession for distribution, not for personal consumption, is a punishable offense under article 36 of the Single Convention. The Draft's division into chapters was not taken over by the Single Convention and [illegible] the reason why the above chapter heading was deleted; but article 36 still is in that part of the Convention devoted to the illicit traffic. This part is preceded by article 35, entitled "Action against the Illicit Traffic", and followed by article 37, titled "Seizure and Confiscation". Article 36, paragraph 1 does not list "use"—consumption of drugs contrary to the provisions of the Convention—as a punishable offense. "Use" certainly presupposes "possession" of the drug to be consumed. The paragraph also does not refer to "acquisition" of drugs, but only to "purchase". If it intended to require the punishment of persons not participating in the illicit traffic, it would have used the more general term "acquisition". The illicit trafficker purchases the drugs which he intends to sell, while the user may occasionally acquire drugs without consideration. The term "purchase" as used in article 36, paragraph 1 means "purchase" for distribution and not "purchase" for personal consumption.

Possession is not "action" and for this reason cannot be covered by the requirement that, subject to the conditions mentioned in article 36, paragraph 1, each party should treat as a punishable offense "any other *action* which in the opinion of such party may be contrary to the provisions of this Convention".

But parties which hold that the possession in article 36, paragraph 1 covers possession for personal consumption may decide that it is not a "serious offense" and need not be punished by imprisonment. Parties may punish the unauthorized possession of drugs exclusively for personal consumption by fines, by censure or by confiscation of the drugs which they would have to do anyway, even if they would not consider the unauthorized possession of drugs for personal consumption to be a punishable offense. Moreover, if a party considers such possession to be such an offense it would have to confiscate the drugs involved under article 37 which renders liable to seizure and confiscation any drugs, substances and equipment used in or intended for the commission of any of the offenses, referred to in article 36.

Governments could also consider illegal possession of drugs for distribution and illegal distribution not to be *serious* offenses to be punished by penalties of deprivation of liberty in certain cases, such as, where the drug concerned is not very dangerous and the intended or actual distribution for non-medical purposes would be delivery to a friend without any consideration.

No provision of the Single Convention would prevent a government from inflicting such severe punishment as it may see fit on a person who illegally possesses drugs for any purpose whatsoever.

The Protocol of 1972 amending the Single Convention would allow parties to treat and rehabilitate any illicit trafficker, who abuses drugs, in addition to his conviction or punishment; and would also allow them to *substitute* such measures for conviction or punishment. This amendment is patterned after article 22, paragraph 1, sub-paragraph (b) of the Vienna Convention on Psychotropic Substances. This far-reaching provision, which could also be applied to major illicit traffickers, could seriously impede the campaign against the illicit traffic. Such traffickers may have very good relations with the authorities of the country in which they reside and such a provision could offer corrupt authorities a pretext not to try or punish the traffickers, alleging that these criminals are abusers of drugs.

The amendment of the Protocol of 1972 which would authorize the Parties to substitute measures of treatment and rehabilitation for conviction or punishment moreover would remain ineffective for many of the states which would accept the amendment according or would become parties to the amended Single Convention, would also be parties to the *unamended* Single Convention. This applies to all those numerous States which are already parties to the unamended Single Convention and would accept the Protocol, as well as to those which would become parties to the Single Convention after the coming into force of the Protocol, and would, failing an expression of a different intention by the states concerned, be considered parties to both the amended and the unamended Single Convention. Parties to the unamended Single Convention, which would also be parties to the amended text, would remain bound to those parties to the unamended Convention which would not accept the amendment and they could not choose to substitute treatment and rehabilitation for conviction or punishment. Treatment and rehabilitation not more severe than punishment, therefore, under article 39 of the Single Convention, they cannot replace the obligation to punish unless all parties have agreed to the right of substitution. This means that, although they would accept the amendment, parties to the unamended text of the Single Convention would be bound to continue to punish the offenses enumerated in article 36, paragraph 1, as long as they are obligated to states which are parties to the unamended treaty only.

The Vienna Convention has no provision which would *require* parties not to permit the possession of psychotropic substances in Schedule II, III and IV except under legal authority. It declares however that it would be desirable that Parties do not permit the unauthorized possession of these substances.[423] The Convention, on the other hand, would prescribe that the possession of substances in Schedule I should be "under a special license or prior authorization." [424]

This treaty enumerates punishable offenses as the 1936 Convention [425] and the Single Convention did. [426] It would provide, subject to its constitutional

[418] Article 2, paragraphs 1–4.

[419] Article 30, paragraph 2, sub-para. (b), clause (i) and para. 6; see also articles 2, paras. 2–4.

[420] Article 2, para. 9, article 27, para. 1 and article 49.

[421] Article 4, paragraph (c).

[422] Article 33.

[423] Article 5, paragraph 3.

[424] Article 7, paragraph (b).

[425] Article 2, paragraph (a).

[426] Article 36, paragraph 1.

limitations, that each party should treat as a punishable offense any *action* intentionally committed contrary to a law or regulation adopted pursuant to this Convention. Serious offenses should be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty.[427] In view of the lack of an obligation by parties not to permit the possession of substances in Schedule II, III or IV, except under legal authority, possession for any purposes cannot be covered by the term "punishable offenses." [428]

Apart from defining punishable offenses in general terms and from permitting the substitution of treatment and rehabilitation for conviction or punishment, the penal provisions of the Vienna Convention are nearly the same as those of the Single Convention. The penal provisions of the Vienna Convention are intended to apply to illicit traffickers, not to users, who do not participate in the illicit traffic. Article 22 of the Vienna Convention—"penal provisions"—is in the Convention's part devoted to illicit traffic. Article 21, which precedes the "penal provisions", is titled "Action against the illicit traffic".

The definition of punishable offenses in article 22, paragraph 1, sub-paragraph (a) not only does not cover possession of substances in Schedule II, III and IV, but also does not include possession of substances in Schedule I for personal consumption and the purchase or other acquisition of *all* psychotropic substances for personal consumption. "Possession" may not be an "action", which is a punishable offense under article 22, paragraph 1, sub-paragraph (a). Regarding consumption of psychotropic substances, including those in Schedule I, neither the 1936 Convention[429] nor the Single Convention[430] include illicit "use" of drugs among the offenses which Parties are required to punish. This may strengthen the view that the penal law of article 22 of the Vienna Convention, whose provisions are patterned after those of the 1936 Convention and the Single Convention, was not intended to apply to the consumption of any psychotropic substance in Schedule I or any other Schedule.

[427] Article 22, paragraph 1, sub-paragraph (a).

[428] It is, however, admitted that one can assume another legal view, namely that possession of substances in Schedule II, III and IV for distribution is a punishable offense under the Vienna Convention if the government concerned does not permit the possession of these substances without legal authority since the Convention declares it desirable not to permit this possession without such authority (Article 5, paragraph 3).

[429] Article 2, paragraph (a).

[430] Article 36, paragraph 1.

Governments which consider illicit acquisition and purchase of psychotropic substances for personal use or possession of substances in Schedule I for such consumption to be punishable offenses covered by article 22, paragraph 1, sub-paragraph (a) may if they wish take the position that acts of this nature are not "serious offenses liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty." They may therefore penalize these acts only by such sanctions as fines, censure or confiscation of the substances, would be obligatory under article 22, paragraph 3.[431] Those governments may even adopt the same attitude with respect to offenses, such as illicit delivery of a small quantity of psychotropic substances to a friend without consideration.

The question whether illicit acquisition, including purchase, and possession for personal consumption are punishable offenses is of much less importance under the Vienna Convention than under the unamended text of the Single Convention, since the former would authorize the substitution of treatment and rehabilitation for the conviction or punishment of any offender, who also is user of psychotropic substances. Major traffickers would not be excluded.

Since parties to the Vienna Convention would not be required to prohibit the possession of substances in Schedules II, III and IV except under legal authority,[432] they would not necessarily have a treaty obligation to confiscate such substances found in the possession of unauthorized persons, except where these substances would be used or would be intended for the commission of the penal offenses covered by article 22.[431] Parties to the Convention, on the other hand, would have an obligation to limit the possession of these substances to medical and scientific purposes by implementing all the control provisions required by the Convention. They would particularly have to assure that these substances should not be supplied or dispensed for individual use except pursuant to a medical prescription.[433] Where parties would not be able to prevent the supply of such substances to persons who intend to use them for non-medical purposes, they might consider it to be "appropriate" to confiscate them.

[431] This paragraph of article 22 provides that any psychotropic substance or other substance, as well as any equipment used or intended for the commission of any offense covered by article 22 should be liable to seizure and confiscation. See also article 37 of the Single Convention and article 10 of the 1936 Convention.

[432] Article 5, paragraph 3.

[433] Article 9, paragraph 1; see, however, article 9, paragraph 3 and article 2, paragraph 7, sub-paragraph (d).

It is regrettable that the right of parties under the Vienna Convention to permit the possession of substances in Schedules II, III and IV without legal authority was not restricted to possession for personal use.

Since the possession of the substances in Schedule I would require a special license or prior authorization,[434] there can be no doubt that parties to the Vienna Convention would be bound to confiscate these substances if found in possession of an unauthorized person.

Persons who would have the special license or prior authorization to manufacture, trade in or distribute psychotropic substances in Schedule I or the specific authorization to export or import them,[435] would also be authorized to possess quantities of these substances required for their authorized business. They would not need, in addition, a special license or prior authorization for this possession. This would also apply to persons "duly authorized" to use substances in Schedule 1 for "scientific and very limited medical purposes," in respect of the amounts which would be required for such use. The quantities which they would be permitted to have might be determined by rules or special instructions to individual businesses or users which governments might have to issue in implementation of their obligation to provide for close supervision of such businesses[436] and use and to restrict the amount supplied to a duly authorized person to the quantity required for his authorized purpose.[437]

Nothing in the Vienna Convention would prevent a party from imposing an appropriate penalty on persons who would possess, without authorization, any psychotropic substances with the intent to abuse them. Governments would be entitled to do this even though they might consider possession not to be a punishable offense under the terms of the Vienna Convention.

Authorization of Consumption of Narcotic Drugs

The word "consumption" is employed here in its ordinary meaning. It may be recalled that the words "consumption" and "consumed" are used by the Single Convention to indicate the transfer from the manufacturing or wholesale level of the drug economy to its retail level.[438] The Convention sometimes applies the term "use" for "consumption" in its common meaning[439], and on other occasions for "employment" of drugs for other purposes, such as, the manufacture of other drugs, of preparations in Schedule III and substances not controlled by the Convention.[440]

[434] Article 7, paragraph (b).

[435] Article 7, paragraph (f).

[436] The requirement of close supervision of "specifically authorized" exporters and importers is not expressly foreseen in article 7, paragraphs (c) and (f), but follows undoubtedly from the purpose and intention of article 7.

[437] Article 7, paragraphs (a), (b), (c) and (d).

[438] Article 1, paragraph 2.

[439] Article 2, paragraph 5, article 4, paragraph (c), article 32, paragraph 2 and article 49.

[440] Article 2, paragraph 9, article 21, paragraph 1, sub-para. (b) and article 27, para. 1; the words are also employed in various other meanings; see e.g. article 18, paragraph 2 and article 19, paragraph 4.

Apart from the exceptions of article 49, which do not apply to the United States, consumption of narcotic drugs, under the terms of the Single Convention, can be authorized only for medical and scientific purposes.[441] The Vienna Convention has the same provision with respect to psychotropic substances in Schedules II, III and IV [442] while in respect of substances in Schedule I it would prohibit all use (including consumption) except for scientific and *very limited* medical purposes under very strict controls.[443]

The normal method by which governments authorize the consumption of drugs is the "medical prescription". From an ideal viewpoint, consumption of all drugs should be authorized only on a physician's orders—medical prescription. The expenses which would be incurred by individual patients or by public or publicly subsidized health insurance systems; the shortage of doctors; and the increased burdens which would be imposed upon medical practitioners and pharmacists prevent achievement of the ideal.

The Single Convention requires a medical prescription only for the supply or dispensation, to individuals, of drugs in Schedule I and their preparations, excepting preparations in Schedule III. This does not apply to drugs and their preparations which individuals may lawfully obtain use, dispense or administer in connection with their duly authorized therapeutic functions.[444] Moreover, drugs in Schedule II and their preparations as well as all preparations in Schedule III are not subject to this prescription requirement. Drugs in Schedule II are not only those which are less dangerous but which in addition are

[441] Article 4, paragraph (c).

[442] Article 5, paragraph 2.

[443] Article 7, paragraph (a).

[444] Another exception is foreseen in article 32, paragraph 3 which need not be discussed in this paper (Administration of drugs in emergency cases on ships or aircraft engaged in international traffic).

generally more widely used in medicine than drugs in Schedule I.[445] Preparations in Schedule III should be those which are not liable to abuse and cannot produce ill-effects because of the substances they contain and because the drugs therein are not readily recoverable.

A number of governments nevertheless requires a medical prescription for Schedule II drugs, for their preparations and even for preparations in Schedule III in order to assure their medical or scientific use. Where they do not require a medical prescription, they are bound by all the control measures of the Single Convention, particularly by prohibiting licensed retailers of drugs and preparations from selling them to persons who intend to abuse them and from selling excessive quantities to individuals.

The Vienna Convention's medical prescription provisions differ somewhat from the Single Convention's. The prescription requirement would not apply to psychotropic substances in Schedule I. Their use would be prohibited except for scientific and very limited medical purposes by duly authorized persons, in medical and scientific establishments[446] which would have to be directly under the control of the government or specifically approved by it.[447] Such use as would be authorized would have to be under close supervision;[448] the amount supplied to a person duly authorized to use substances in Schedule I would have to be restricted[449] and such a person would be required to keep records concerning the acquisition of the substances and the details of their use. Such records would have to be preserved for at least two years after the last use recorded therein.[450]

With regard to psychotropic substances in Schedule II, III and IV parties to the Vienna Convention would be bound to require that they should be dispensed or supplied for use by individuals pursuant to medical prescription only. Similarly, as under the Single Convention, this prescription requirement would not apply to substances which individuals might lawfully obtain, use, dispense or administer in the duly authorized exercise of therapeutic or scientific functions.[451] The Single Convention does not give specific details regarding such matters as the number of times prescriptions could be refilled or concerning the duration of their validity. The Vienna Convention however would require that the parties should take measures to ensure that the prescriptions should be issued in accordance with sound medical practice and subject to such regulations, particularly as to the number of times they could be refilled and the duration of their validity, as would protect the public health and welfare.[452] However, it is submitted that an obligation similar to this explicit provision of the Vienna Convention is implied in the provisions of the Single Convention. The parties to this latter treaty which must limit the use of narcotic drugs to medical and scientific purposes are of course obligated to see to it that those medical prescriptions which they are bound to require are issued in accordance with sound medical practice and that their refilling and duration of validity is regulated in a manner compatible with the requirement of protecting the public health and welfare.

Psychotropic substances in Schedule I would be excepted from the requirement of a medical prescription because they would be subjected to control provisions which are intended to establish a more strict regime than the control which would be offered by medical prescriptions. Apart from this exception of substances in Schedule I, all psychotropic substances no matter in which Schedule would be subject to the requirement of medical prescriptions. Contrary to the Single Convention, the Vienna Convention normally would not exempt less dangerous drugs which are widely used in medicine from this requirement, that is, some substances in Schedules III and IV. One case in which the Vienna Convention would do this is that of certain preparations which a party could exempt from some controls including in particular the requirement of medical prescription. A party would be able to decide to do this in the case of a preparation which would contain a psychotropic substance other than a substance in Schedule I and which according to that party's findings would be compounded in such a way that it would present no or a negligible risk of abuse and that the substance could not be recovered by readily applicable means in a quantity liable to abuse, so that the preparation would not give rise to a public health and social problem. Such a decision of a party would be subject to review by the World Health Organization and the Commission on Narcotic Drugs which could terminate all or some of the exemptions which the party would have decreed in respect of the preparation concerned.[453]

The Vienna Convention contains however two other exceptions from the requirement of a medical prescription which have no counterpart in the Single Convention:

If a party would be of the opinion that local conditions would require this it could, under such conditions as it would prescribe, authorize designated licensed retail distributors of psychotropic drugs to supply, at their discretion and without medical prescription, to individuals small quantities of substances in Schedules III and IV or of preparations containing such substances for their use for medical purposes in exceptional cases. The conditions which parties would have to impose on such an authorized retail distributor should also include the obligation to record each individual sale which should not only indicate the substance and its quantity sold but also the identity of the buyer. The authorities responsible for local public health would have to designate the licensed retail distributors who would have this right to sell without medical prescription. The party would have to determine the maximum amounts of those small quantities which could be so sold. Local circumstances which in the opinion of a party might require such limited sale of psychotropic substances without medical prescriptions would be a year round or temporary absence of a doctor on an island or in an isolated locality. The "exceptional cases" to which the provision refers would include those urgent cases in which a doctor could not easily be reached to write the required prescription.[454] The provision in question would not expressly exclude that such a supply of psychotropic substances without medical prescription could under the above mentioned conditions be authorized in a whole country. The reference to "local circumstances" which might require such an action seems however to indicate that it was the intention of the authors of this provision to authorize a party to permit this supply of psychotropic substances only in those localities in which such a sale without prescription would be needed; and such localities would normally form only one or several parts of a country and hardly a country as a whole.

A party could under the Vienna Convention give written notice to the Secretary General that in view of exceptional circumstances it would not be in a position to give effect to all the control measures which would have to be applied to a previously uncontrolled substance which would be placed by the Commission on Narcotic Drugs in any of the Schedules in accordance with the procedure of article 2 paragraph 4 and 5. A party which would give such a notice in respect of a previously uncontrolled substance which would be added to Schedule IV would not have to apply the requirement of a medical prescription to the supply or dispensation of that substance for use by individuals.[455]

Record keeping and Reporting to and Control by Domestic Authorities.—The Single Convention requires that "governmental authorities, manufacturers, traders, scientists, scientific institutions and hospitals keep such records as will show the quantities of each drug manufactured and of each individual acquisition and disposal of drugs". Such records must be preserved for a period of not less than two years.[456]

Licensed cultivators of the poppy for the production of opium, of the coca bush and of the cannabis plant for the production of cannabis or cannabis resin are not required to keep records. They may sometimes be illiterate farmers.[457]

The "government authorities" to which the provisions concerning records refers are state enterprises which are those engaged in the manufacture of and trade in narcotic drugs and also the national opium, coca leaf and cannabis agencies which must be maintained in countries which authorize respectively the cultivation of the poppy for opium, of the coca bush or of the cannabis plant for the production of cannabis or cannabis resin. Government authorities charged with functions of drug control need not maintain the above mentioned detailed records. They must however keep such records as would enable them to administer the licensing system, to allocate where necessary manufacturing or import

[445] Drugs of Group II of the 1931 Convention (corresponding to those at present in Schedule II) and their preparations and "preparations for the export of which export authorizations are not required" (i.e. preparations corresponding to those in Schedule III at present) were also exempted from the prescription requirement under the narcotics regime preceding the Single Convention; as regards Sydenham Laudanum, tincture of opium and Dover's powder, see article 9 of the 1925 Convention.

[446] According to the view of the U.S. delegation at the Conference which adopted the Vienna Convention these establishments could be doctors' offices.

[447] Article 7, paragraph (a).

[448] Article 7, paragraph (c).

[449] Article 7, paragraph (d).

[450] Article 7, paragraph (e).

[451] Article 9, paragraph 1.

[452] Article 9, paragraph 2.

[453] Article 3, paragraph 2–4 of the Vienna Convention.

[454] Article 9, paragraph 3 and Article 3, paragraph 1 of the Vienna Convention.

[455] Article 2, paragraph 7, sub-paragraph (d).

[456] Article 34, paragraph (b). The reference to counterfoil books in this paragraph need not be discussed in this paper. The use of such books appears to be discretionary, Article 30, paragraph 2, sub-para. (b) clause (ii) of the Single Convention.

[457] Article 23, paragraph 2, sub-paragraph (b), article 26, paragraph 1 and article 28, paragraph 1.

quotas or both, to establish estimates of their drug requirements and the statistical returns which they have to furnish to the International Narcotics Control Board, to see to it that the limits of narcotics supplies which their countries or territories [458] may obtain by manufacture or import or both are not exceeded and more generally to have at their disposal all the data which they might have to supply to international organs under the Single Convention.[459]

The provision of the Single Convention regarding record keeping do not normally require medical practitioners (physicians, surgeons, veterinarians and dentists) to keep any records. They are not considered to be "traders" within the meaning of this provision.[460] Some countries however require them to keep more or less detailed records of the kind of those which the above mentioned provision describes. Medical practitioners who have a hospital or engage in scientific research for which they use narcotics or in the sale of narcotic drugs to other persons than to their own patients must in these capacities keep the records which hospitals, scientists or pharmacists are bound to maintain.

It may in this connection be recalled that the Vienna Convention would require persons using psychotropic substances in Schedule I for the performance of medical functions to keep records concerning the acquisition of these substances and the details of their use, such records to be preserved for at least two years after the last use recorded therein.[461] Keeping records of the kind of those required by the Single Convention does not impose too heavy a burden on manufacturers and wholesalers who must maintain similar records for commercial reasons. The obligation to record each sale of widely used drugs such as codeine or of widely used preparations may however impose a very heavy burden on pharmacists. It is for this reason that the narcotics regime preceding the Single Convention did not require retail distributors (pharmacists) to keep records concerning drugs in Group II [462] of the 1931 Convention and their preparation or of "preparations for the export of which export authorizations are not required." [463] The text of the Single Convention however does not appear to exempt retail distributors from the obligation to keep records showing each individual acquisition and disposal of drugs in Schedule II and their preparations and of preparations in Schedule III.[464] It is suggested that the failure of the Single Convention to exclude from the obligatory records of retail traders the entry of each individual disposal (sale) of these products is probably due to an oversight of the authors of the Convention. In fact, a number of parties to the Single Convention do not require pharmacists to keep records of their retail sales of drugs in Schedule II, of their preparations and of preparations in Schedule III and other parties have not objected to this practice. It may be assumed that a kind of understanding exists that governments need not require pharmacists to record their retail sales of drugs in Schedule II, of their preparations or of preparations in Schedule III. It is however submitted that the sale of a preparation in Schedule III which contains a drug in Schedule I and which the pharmacist did not acquire in a ready-made form, but which he has compounded himself, must be entered in his records as sale of the preparation indicating the amount of drug which it contains, as must be entered each sale of a drug in Schedule I or its preparation.

The Protocol of 1972 amending the Single Convention on Narcotic Drugs, 1961, would free parties from their obligation to require the recording of each acquisition and of each retail distribution (retail sale) of preparations in Schedule III.[465] It is regrettable that the amendment would exempt from the obligatory recording also *acquisitions* of these preparations. The entry in the records of the acquisitions which are normally much less numerous than the retail sales would not impose a particularly heavy burden on the trader. The individual acquisitions are anyway recorded for commercial reasons. This recording would be useful from the view point of narcotics control since they could be compared with

[458] Article 1, paragraph 1, sub-paragraph (y).

[459] Article 12, paragraph 4, article 13, paragraph 3, Article 18 and Article 19, paragraph 4.

[460] Records of the Plenipotentiary Conference, United Nations document E/CONF. 34/24 (Vol. I) p. 4 and E/CONF. 34/24/Add. 1 (Vol. II) pp. 145–146.

[461] Article 7 paragraph (e) of the Vienna Convention.

[462] The category corresponding to the group of those drugs which are at present in Schedule II, such as codeine.

[463] Shortly also referred to as "exempted preparations", see article 6, paragraph (c) of the 1925 Convention and article 13, paragraph 2 of the 1931 Convention; see also article 10, paragraph (c) of the 1912 Convention; and a particular League of Nations document C.191.M.115.1931 XI. (Commentary to the 1931 Convention) paragraph 135–137.

[464] Article 2, paragraph 2–4 in connection with article 34, para. (b).

[465] Article 1 of the Protocol which amends to this effect article 2, paragraph 4 of the Single Convention; paragraph 4 describes the regime applicable to preparations in Schedule III.

the corresponding entries in the books of the manufacturers or wholesalers who compounded and sold the preparations. Such a comparison might be helpful in checking the correctness of the entries of these manufacturers or wholesalers who have to account for the drugs which they used in making the preparations in Schedule III.

The provisions of the Vienna Convention regarding the keeping of records by businesses engaged in different phases of the trade in psychotropic substances [466] and by persons using psychotropic substances in Schedule I for the performance of medical or scientific functions [467] are much more extensive and differentiated in relation to the dangerous properties of the substances involved than the provisions of the Single Convention.

The records which manufacturers, traders in and distributors of, psychotropic substances in Schedule I of the Vienna Convention [468] would have to maintain are basically the same as manufacturers of, traders in, and distributors of, drugs in Schedule I and their preparations must keep under the Single Convention.[469] The difference in the wording of the two treaties does not affect the validity of this conclusion. The Vienna Convention would require that these records should show the quantities held in stock while the Single Convention does not; but books kept in accordance with the requirements of the Single Convention showing all incoming [470] and outgoing items in respect of each drug and preparation will also indicate the balance and thus the quantities held in stock in regard to each of these products.

The Vienna Convention would also expressly require that the recording of each acquisition and disposal of substances in Schedule I should indicate not only the quantity of the substance involved, but also the date of the transaction as well as the supplier and recipient. The provision of the Single Convention expressed in more general terms [471] does not explicitly state that the date of the transaction, the supplier and recipient should be shown in the records. However, this provision as well as the corresponding provisions of the earlier narcotics treaties [472] have always been understood to require the recording of these data. Without this information the records would lose most of their value for the purpose of control.

There is however one important difference between the provisions of the Vienna Convention concerning the records to be kept in respect of psychotropic substances in Schedule I and those of the Single Convention relating to the records to be maintained. The Single Convention does not require medical practitioners to keep records while the Vienna Convention would require persons performing medical functions to keep records concerning the acquisition of substances in Schedule I and the details of their use.[473]

The Vienna Convention would also obligate persons performing scientific functions to record the acquisition of substances in Schedule I and the details of their use. The Single Convention prescribes that scientists (and scientific institutions) should keep such records as would show the quantities of each individual acquisition and disposal of drugs.[474] Since it is assumed that this provision of the Single Convention would also require in regard to drugs in Schedule I and their preparations an indication of the recipient and of the date and purpose of the scientific use it appears to be difficult to establish in which details the record of scientific use of psychotropic substances in Schedule I would differ from the records of scientists required under the Single Convention. Looking however at the intention of the authors of these provisions of the two treaties one must come to the general conclusion that the scientific records regarding psychotropic substances in Schedule I would have to be more detailed than the scientific records required by the Single Convention.[475]

[466] Article 11, article 2, paragraph 7 and article 3, para. 3.

[467] Article 7, paragraph (e).

[468] Article 11, paragraph 1.

[469] It will be recalled that the Single Convention interpreted literally applies its full system of recording also to drugs in Schedule II and their preparations and to preparations in Schedule III. It has, however, been submitted above that the retail sale of such drugs and preparations need not be recorded in accordance with a "kind of understanding" of the parties to the Convention.

[470] Whether by manufacture or acquisition.

[471] Article 34, paragraph (b).

[472] Article 6, paragraph (c) of the 1925 Convention; see also article 10, paragraph (c) of the 1912 Convention.

[473] Article 7, paragraph (e).

[474] It may be questionable whether the *disposal* of drugs in Schedule II, their preparations and preparations in Schedule III would have to be recorded.

[475] It might often be difficult to state whether a particular use is scientific or therapeutic. This difficulty would cause no problem in the case of psychotropic substances in Schedule I because in both instances the same type of records would have to be maintained; article 7, para. (e); in case of the Single Convention the medical practioners would not have to maintain records in respect of the therapeutic activities, but he would have to keep them in regard to scientific work.

The records regarding psychotropic substances in Schedule II which parties to the Vienna Convention would have to maintain [476] would be the same as those which are required by the Single Convention for drugs in Schedule I and their preparations. The text of the Vienna Convention does not require in respect of these substances the recording of the quantities held in stock as it does in regard to substances in Schedule I. It stipulates explicitly that the records should also state the date, supplier and recipient in the case of each transaction in substances in Schedule II; but, as has been stated above, the records prescribed by the Single Convention must also give these data in regard to drugs in Schedule I and their preparations. It is also held that medical practitioners would not be bound by the Vienna Convention to record their acquisitions and use of psychotropic substances in Schedule II for therapeutic purposes.

The records which manufacturers, wholesale distributors, importers and exporters of psychotropic substances in Schedule III would have to keep under the Vienna Convention [477] would also be the same as manufacturers and such traders in drugs, whether in Schedule I or II, and in their preparations would have to maintain under the Single Convention.

The regulations of the Vienna Convention governing in respect of psychotropic substances in Schedule III the records of retail distributors, institutions for hospitalization and care and scientific institutions [478] are however different from the corresponding provisions of the Single Convention. The latter Convention has for records of scientists, scientific institutions and hospitals the same provisions as for "traders" (including wholesale traders, importers and exporters). As interpreted above it would however relieve retail traders (pharmacists) from the obligation to record individual sales of drugs in Schedule II, of their preparations and of preparations in Schedule III, but not from the requirement to record individual acquisitions of these products. The regulations of the Vienna Convention just mentioned are somewhat vague. They would require parties to this Convention to "ensure, through appropriate methods and taking into account the professional and trade practices in their countries, that information regarding acquisition and disposal of substances in Schedule III by retail distributors, institutions for hospitalization and care and scientific institutions is readily available."

As regards psychotropic substances in Schedule IV only manufacturers, exporters and importers would by the Vienna Convention be obligated to keep records. These records would have to show only the quantities of each such substances manufactured, imported and exported.[479]

The provisions of the Vienna Convention concerning records to be kept in regard to those preparations of substances in Schedules II, III or IV [480] which a party would exempt under article 3, paragraph 3 of that Convention differ widely from the provisions of the Single Convention concerning records of preparations in its Schedule III. First, of all, the simplified method of record keeping for which the Vienna Convention would provide in regard to "exempted" preparations would be applied only by those countries which have decided under article 3, paragraph 3 to exempt these preparations from all or some of the control measures from which they would be authorized to exempt them. Moreover, these control measures would have to include the requirement provided in article 11 regarding the keeping of records in respect of the Schedule to which those psychotropic substances would belong which the "exempted" preparations would contain. All other countries and particularly also those which would have exempted the preparations, but would not have included among the provisions from which they would have freed these preparations, the normal provisions regarding records of the psychotropic substances which the preparations would contain would not apply the simplified method of recording permitted by article 11, paragraph 6 in respect of "exempted" preparations.[481]

Only those countries which would make the required relevant decision would be authorized to apply this simplified method of recording to the preparations which it would exempt. Even those countries could be required by a decision of the Commission on Narcotic Drugs pursuant to article 3, paragraph 4 not to apply this simplified method, but to keep in regard to these "exempted preparations" the records which would have to be maintained, under article 11, paragraphs 2-5, in respect of the psychotropic substances which the "exempted" preparations would contain.

Under the "simplified" method of keeping records concerning preparations exempted under article 3, paragraph 3, the party would be entitled to limit itself to requiring manufacturers of such exempted preparations to keep records as to the quantity of each psychotropic substance used in the manufacture of the exempted preparation and as to the nature, total quantity and initial disposal of the exempted preparation made therefrom.

Under the Single Convention, preparations are not placed in Schedule III by a unilateral decision of a party; but insofar as they were not included therein by the Plenipotentiary Conference which adopted the Convention, only by a decision of the Commission on Narcotic Drugs in accordance with a recommendation of the World Health Organization. As has been suggested above, the records regarding such preparations must be the same as those concerning the manufacture of and individual acquisitions and disposals of all drugs and their preparations except that retailers need not record the individuals sales of such preparations. This relief from recording may be granted by all parties to the Single Convention. It will be recalled that retailers also need not maintain records of individual sales of drugs in Schedule II and their preparations. The amendment which would be introduced into the Single Convention by the Protocol of 1972 and under which not only the retail distribution of preparations in Schedule III but also all acquisitions of such preparations would be exempted from the requirement of recording has been mentioned above.

The parties to the Vienna Convention would be required to assure that the records and information referred to in article 11 which would be needed for purposes of reports to be furnished to the Commission on Narcotic Drugs or to the International Narcotics Control Board under article 16 should be preserved for at least two years.[482]

A party which, in respect of a previously uncontrolled substance placed by the Commission on Narcotic Drugs in any of the four Schedules of the Vienna Convention, would under article 2, paragraph 7 of that Convention give written notice to the Secretary General that, in view of exceptional circumstances, it would not be in a position to give effect to all the provisions of the Convention applicable to that substance would not be bound to require, in regard to such a substance, the maintenance of the records which would be prescribed by article 11, paragraph 1-5.[483] It appears, however, that such a party would nevertheless in respect of a substance placed in Schedule I or II have to require the maintenance of records indicating the quantities manufactured, exported to and imported [484] from each country or region as well as the stocks held by manufacturers since it would need this information for the statistical returns which it would have to furnish to the International Narcotics Control Board.[485] For the same reason a party which has given written notice with respect to a substance placed in Schedule II would apparently have to require the keeping of records showing the quantities of that substance used for industrial purposes.[486]

It may also be assumed that a party which by a written notice addressed to the Secretary General would under article 2, paragraph 7 reject the full control of a previously uncontrolled substance which would have been placed in Schedules II, III or IV could, in addition, exempt preparations of such a substance under the conditions of article 3, paragraph 2 and 3. Such an exemption may, in particular, offer to the party taking this measure the advantage of freeing the exempted preparations containing a substance in Schedule II from the application of the import certificate and export authorization system [487] and exempted preparations containing a substance in Schedule III from the requirement of making export declarations.[488] A party which would under these conditions exempt a preparation which contains a substance in Schedule II would have to

[476] Article 11, paragraphs 2 and 3.
[477] Article 11, paragraph 2.
[478] Article 11, paragraph 4.
[479] Article 11, paragraph 5.
[480] Preparations of psychotropic substances in Schedule I could never be exempted, article 3, para. 2 of the Vienna Convention. For the conditions and procedure of the exemption see the above description in the Section headed "Authorization of Consumption of Narcotic Drugs"; the exempted preparations of the Vienna Convention correspond in a way to the preparations in Schedule III of the Single Convention, differ however strongly from the latter by the unilateral methods of exemption and by the fact that the effects of the exemption would be restricted to the country which would make the exemption.
[481] See also article 3, para. 3, sub-para. (b).
[482] Article 11, paragraph 7. See above, as regards a similar period during which persons performing medical or scientific functions with psychotrophic substances in Schedule I must preserve their records concerning the acquisition of these substances and the details of their use, article 7, paragraph (e).
[483] Article 2, paragraph 4–7.
[484] A party would not have to require the keeping of records of these imports and exports if it could establish the figures from the import and export authorizations concerned which would be required for international transactions in substances in Schedule I and II, Article 12, paragraph 1.
[485] Article 2, paragraph 7, sub-para. (a), clause (v) and sub-para. (b), clause (v).
[486] Article 2, paragraph 7, sub-paragraph (b), clause (v).
[487] Article 12, paragraph 1.
[488] Article 12, paragraph 2.

require the maintenance of records showing the quantities of the substance used in the manufacture of the preparation,[489] since it would have to supply this information to the International Narcotics Control Board. This kind of record would also have to be maintained for the same reason in regard to an exempted preparation containing a substance in Schedule III whose full control would have been rejected under article 2, paragraph 7 by the required written notice of the party.[490]

The exemption of a preparation by a party which would have rejected under article 2, paragraph 7, sub-paragraph (d) the full control of a substance in Schedule IV which is contained in the preparation would hardly be useful. Such an exemption might impose on the party the application of more severe controls than it would otherwise have to carry out.

It has already been mentioned that if a party by the required written notice would reject the full control of a substance which would be transferred from one Schedule to another Schedule providing stricter controls it would be bound to apply as a minimum the provisions applicable to the Schedule from which the substance would have been transferred. This would also include the requirement of maintaining the records which would be prescribed for this latter Schedule.

The provisions obligating parties to require the maintenance of records do not give a full picture of the situation either in the case of the Vienna Convention or in that of the Single Convention. Governments must require businesses engaged in any phase of the trade in narcotic drugs or psychotropic substances to record all facts which government would have to obtain from them in order to be able to furnish the required data to the international organs.

The maintenance of records as required by the two conventions is a very important factor in the system of drug control. Owners or managers of big businesses will hardly take the risk of making, or arranging for, false entries in their records. Moreover, the authorities are very often able to check the correctness of the records by comparing the entries in the books of both parties to a transaction.

Effective domestic control over the trade in narcotic drugs and psychotropic substances requires that governments obligate the participants in this trade to make periodic reports to their national drug control offices. They need such reports also in order to obtain the data which they must furnish to the international control organs; but neither the Single Convention nor the Vienna Convention expressly provide for such reports of participants in the various phases of the drug trade to the domestic authorities.[491] An obligation of governments to require such reports is however implied in those provisions which provide for the keeping of records and for reports to international organs.

In addition to their obligation to carry out specific control measures, parties to the Single Convention have an obligation, which is defined in general terms, to control all phases of the drug trade. They are bound to "control all persons and enterprises carrying on or engaged" in the manufacture of, trade in, distribution, import or export of narcotic drugs.[492] The very general meaning of this obligation was recognized by the Plenipotentiary Conference which adopted the Single Convention.[493] It is suggested that the "persons" to be controlled are all persons participating in the manufacturing or trading process and not only the owners or managers of the firm, but also office workers, technicians and manual labourers. The "enterprises" which must be controlled, no matter whether they are owned by individuals, partnerships, corporate bodies or the state, are the drug businesses, their buildings and premises, including the appurtenances and equipment used by the businesses.

This general obligation requires parties not to limit their control to those measures which are expressly prescribed by provisions of the Convention. It must of course be interpreted in a reasonable manner: e.g. it certainly does not require the physical search of all employees leaving the building or premises of a drug firm or the continuous presence of a Government inspector on the premises. Only such control measures are required as are necessary and practical under the special conditions of the Party concerned. Such measures would be: the exclusion from the drug

[489] Article 2, paragraph 7, sub-paragraph (b), clause (v).

[490] This opinion is based on the assumption that the provision of article 3, paragraph 3, would take precedence over article 2, paragraph 7, sub-paragraph (c).

[491] See however article 17 of the 1931 Convention; see also article 12, paragraph 2, sub-paragraph (b) of the Vienna Convention.

[492] Article 29, paragraph 2, sub-paragraph (a), article 34 paragraph 1, sub-paragraph (b) clause (i) and article 31 para. 3, sub-paragraph (b); for similar provisions in earlier narcotic treaties, see article 10, first paragraph of the 1931 Convention and article 6, first paragraph of the 1925 Convention.

[493] Records of the Conference, vol. II (United Nations document E/CONF. 34/24/Add. 1) pp. 124–125; see also Vol. I (United Nations document E/CONF. 34/24) p. 23.

factory or trading business of persons convicted or justifiably suspected of illicit traffic. It is also submitted that this general obligation to exercise control includes the requirement to carry out more or less frequent government inspections. These inspections should in particular examine the records of the drug firm in question and the quantities of the drugs held in stock in order to establish that no illicit diversion has taken place. The adequacy of the safety measures to prevent theft should also be examined. This obligation of the parties to the Single Convention to carry out inspections is not based on a specific provision requiring it but only on the above mentioned general obligation to exercise "control".

The Vienna Convention has similar general provisions which would require parties not to limit themselves to carrying out the specific measures which would be prescribed by the treaty but also others which could be reasonably expected from a practical view point. These general provisions of the Vienna Convention, however, seem to have a more limited scope than the corresponding provisions of the Single Convention. They would require parties to control "*all duly authorized* persons and enterprises carrying on or engaged in the manufacture of, trade (including export and import trade) in, or distribution of substances" in Schedules II, III and IV.[494] They would also obligate the parties to provide for "close supervision" of the specially licensed for in advance specially authorized manufacture of, trade in, distribution and possession of substances in Schedule I.[495] Such close supervision would also have to be exercised over the prohibition of all use of substances in this Schedule except for scientific and very limited medical purposes by *duly authorized* persons under the restrictive conditions stipulated by the Convention.[496]

The reference of these general control provisions of the Vienna Convention to "duly authorized persons" may be interpreted to mean that they would need to be applied only to the enterprises and to persons who would require a *due authorization* for their participation in the controlled activities and not to such persons as office workers, technicians and manual labourers. Some control such as that outlined in the above discussion of the corresponding provisions of the Single Convention, over such persons employed in work relating to the controlled activities seems however to be needed. It may be that the parties to the Vienna Convention would consider such a control as part of their obligation to control the "enterprises" engaged in the activities in question.

Contrary to the Single Convention which has no specific provision requiring inspections[497] the Vienna Convention would obligate parties to maintain a system of inspection of manufacturers, exporters, importers and wholesaler and retail distributors of psychotropic substances and of medical and scientific institutions which use such substances.[498]

Organs of Domestic Control ("Special Administration").—In order to implement their obligations under the Single Convention or under the Vienna Convention when in force governments are bound to charge some of their organs with the performance of the various tasks which must be carried out. It is submitted that although it is not expressly required by a provision of these Conventions it is nevertheless implied that governments are bound to entrust with drug control functions some special organs, which are specialized in those particular aspects of the drug problems which are their concern and which are exclusively charged with carrying out drug control activities.[499] There is moreover need for centralization of information on the illicit traffic and for domestic and international co-ordination of the work of the various enforcement agencies engaged in the campaign against the illicit traffic. Provision must also be made that expeditious legal assistance is given and, in particular, the required legal papers are quickly transmitted to foreign prosecutors and courts in cases of the illicit traffic. Arrangements must also be made that communications of international organs regarding drug questions are routed to the competent national agencies concerned; moreover, reports which must be furnished to international control organs must quite often be obtained from different government agencies and must be collected and reproduced in a single document by a central national office.

Finally, it would also be desirable that the various multidisciplinary efforts to deal with the drug problem should be co-ordinated and at least some of them undertaken in accordance with a single plan.

[494] Article 8, paragraph 2, sub-paragraph (a).

[495] Article 7, paragraphs (b) and (c).

[496] Article 7, paragraphs (a) and (c).

[497] It may be noted that the title of article 34 of the Single Convention reads "Measures of Supervision and Inspection"; the body of the article however does not require or even refer to "inspection".

[498] Article 15.

[499] Although the "Special Administration" required by Article 17 of the Single Convention and declared to be desirable by article 6 of the Vienna Convention does not mean a single authority, the use of the word "special" seems to indicate that there is a need for some "special drug control organs".

All this would require a high degree of centralization and co-ordination in the field of drug control. It is for this reason that the Conference which adopted the 1931 Convention recommended that governments should consider the desirability of establishing a *single authority*, with the duty of regulating, supervising and controlling the traffic in dangerous drugs and of preventing and combatting drug addiction and the illicit traffic.[129] Such an organization of drug administration is however possible only in very few countries. Some countries are prevented by provisions of their federal constitutions and many more by other systems of decentralized government from establishing a single authority for purposes of drug control or even from achieving in this area a sufficiently high degree of centralization and co-ordination. This is in many countries also impossible or at least very difficult even in respect of the police organs engaged in the campaign against the illicit traffic. The competence of many police organs is limited to some localities or territories or even to specially assigned substance matters. They are often not subject to the authority of a central national police and sometimes even not to directions or orders of central government organs. Anyway the constitutional and administrative systems of states are too different to make it possible to prescribe in a treaty reasonably precise rules regarding the structure of government agencies, which would be widely acceptable. It is for this reason that the Single Convention's provision regarding the obligation of parties to establish a "special administration" for the implementation of this treaty is even more vague than the provision of the 1931 Convention on the same point.[500] The provisions of the Single Convention concerning the administrative measures which Governments have to adopt in their fight against the illicit traffic are also more indefinite than those of the 1936 Convention.[501] The Vienna Convention of 1971 on Psychotropic Substances even would not render obligatory the establishment of a "special administration", but declares it only desirable[502] and its provisions[503] on the administrative measures which parties would have to carry out in the campaign against the illicit traffic are actually the same as those of the Single Convention.

Penal Laws to be Applied to Violations of Laws Enacted to Implement the Single Convention.—The Vienna Convention provides that measures of treatment and rehabilitation which it enumerates could be applied *in addition* to punishment or *as substitute* for the conviction or punishment of persons who would be themselves abusers of psychotropic substances and would commit intentionally any of the actions which the Convention declares to be punishable offences and which if serious it requires to be liable to adequate punishment, particularly by imprisonment or other penality of deprivation of liberty.[504]

This provision stipulating that in the case of offenders who would abuse psychotropic substances measures of treatment and rehabilitation could be taken *in addition* to punishment or as *substitute* for conviction or punishment appears to apply also to intentional participation, conspiracy to commit and attempts to commit, any of the acts which under the terms of the Convention would be punishable offences, as well as to preparatory acts and financial operations in connection with such offences.[505]

The Protocol of 1972 [506] would introduce virtually the same provision [507] into the Single Convention in regard to persons who would abuse narcotic drugs and would commit intentionally the offences which are punishable under this Convention and if serious are liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty. This new provision of the Single Convention would also apply to intentional participation, conspiracy, attempts, preparatory acts and financial operations in connection with the offenses punishable under the present or amended text of the Single Convention.[508] The only difference between the text to be introduced into the Single Convention and the corresponding provision of the Vienna Convention would be that the former provides for measures of treatment and rehabilitation in addition *to conviction or punishment* while the latter provides for such measures in addition only to *punishment*. It goes without saying that a government may submit to measures of treatment and rehabilitation an illicit trafficker who abuses narcotic drugs or psychotropic substances in addition to convicting or punishing him (as the Protocol of 1972 provides) or in addition to punishing him (as the Vienna Convention stipulates) and that it does not require an authorization by a treaty to do this. What it needs for this purpose is authorization by its own national law and not that by an international treaty.

These provisions of the Vienna Convention and of the Protocol of 1972 [509] apply to all illicit traffickers who abuse psychotropic substances or narcotic drugs respectively no matter how serious their crimes may be. It is submitted that in most countries this would hardly give rise to any problem since it can be expected that they would carry out their treaty obligations in good faith. There are however a few countries in which major illicit traffickers have very close relations with the local authorities. A provision authorizing the substitution of measures of treatment and rehabilitation for conviction or punishment of any illicit trafficker who abuses narcotic drugs or psychotropic substances may be used by such corrupt authorities as pretext not to prosecute or punish major illicit traffickers.

The provision of the Protocol of 1972 authorizing the substitution of measures of treatment and rehabilitation for conviction or punishment of offenders who would abuse narcotic drugs would for a number of states remain ineffective for a very long time after the coming into force of the Protocol. Those States which would be parties to the unamended and amended text of the Single Convention would continue to be bound to carry out the old text in relation to those countries which would be parties only to the unamended treaty.

Much of the effect which the proponents of these provisions of the Vienna Convention and of the Protocol of 1972 intended to reach could also be obtained by those countries which would adopt the opinion that the purchase and possession of narcotic drugs or psychotropic substances for personal consumption are not punishable offenses under the treaty provisions concerned, as well as by those states which would consider that such purchase and possession though punishable offenses are not of a serious nature and could therefore be subjected to such lenient sanctions as fines, censure or confiscation of the drugs or substances involved. It will also be recalled that in the same sub-section [510] in which these legal views were presented it was also submitted that some governments could even consider that the gratis delivery of a small quantity of a relatively less dangerous narcotic drug or psychotropic substance to a friend would not be a "serious" offense, at least in some particular cases. In presenting these views it must be stressed again that the writer of this paper only attempts to describe the law on these problems under the international treaties concerned and does not advocate a particular policy which in his opinion the United States Government should adopt in respect of these questions. No provision of a drug treaty would prevent the United States to impose on violators of its drug control laws such severe penalties as it may consider to be necessary.

Those provisions of the Protocol of 1972 [511] which would amend the rules of the Single Convention concerning extradition [512] were described in "The Evolution of Penal Law in the Field of International Drug Law". This amendment would constitute a very important progressive step in the fight against the illicit traffic in narcotic drugs.

The difficulties which in many countries are in the way of prosecuting crimes committed abroad by nationals and even more in the way of prosecuting such crimes of foreigners were referred to in the above mentioned Section. These difficulties explain why the Single Convention subjects to a party's constitutional limitations, legal system and domestic law its obligation to prosecute serious offenses of the illicit traffic which were committed abroad;[513] but all countries which adhere strongly to the maxim that in general crimes committed abroad should not be tried by their courts make at least one exception, namely in the case of piracy. Many of these countries make also exceptions in a few other cases in which important national interests dictate such a course.

[500] One compare the relevant texts of article 17 of the Single Convention and of article 15 of the 1931 Convention.

[501] One compare article 35 of the Single Convention with article 11–13 of the 1936 Convention.

[502] Article 6.

[503] Article 21; the only difference is that article 21 of the Vienna Convention prescribes that Parties should send to other Parties which would be "directly concerned" copies of these reports on cases of illicit traffic in psychotropic substances or on seizures from such traffic which they would be required to send to the Secretary General under article 16 of the Convention. For a more general obligation of parties to communicate to each other reports on the illicit traffic, see article 23 of the 1931 Convention.

[504] Article 22, paragraph 1, sub-paragraphs (a) and (b) together with paragraph 1.

[505] Article 22, paragraph 2, sub-paragraph (a), clause (i).

[506] United Nations document E/CONF. 63/8.

[507] Article 14 of the Protocol introducing the provision as article 36, paragraph 1, sub-paragraph (b) of the Single Convention.

[508] Article 36, paragraph 1, sub-paragraphs (a) and (b) of the amended text of the Single Convention together with paragraph 2, sub-paragraph (a), clause (ii); see also article 36, paragraph 1 of the unamended text.

[509] Article 22, paragraph 1, sub-paragraph (b) of the Vienna Convention and article 36, paragraph 1, sub-paragraph (b) of the amended text of the Single Convention.

[510] "Authorization of Possession of Narcotic Drugs."

[511] See article 14 of the Protocol.

[512] Article 36, paragraph 2, sub-paragrzph (b).

[513] Article 36, para. 2, introductory sentence and sub-para. (a) clause (iv); there is no obligation to prosecute offenses committed abroad which are not serious.

It is suggested that in view of the deterioration of the international drug situation since 1961 when the Single Convention was concluded many Governments concerned may at present find the prosecution of serious offenses of illicit traffic committed abroad much less objectionable on grounds of principle than they did in 1961 and therefore may find it justified to include these offenses among their exceptions from the principle of territorial jurisdiction in criminal cases. Looking at the problem from a world wide angle the question of the illicit traffic is perhaps today a more serious problem than piracy which appears still to occur only in some limited places of the sea. The question may be examined how far such actions as are defined as offenses by its own law. States and its several states; and if the answer is in the affirmative the United States by diplomatic means including appropriate interventions at the international conferences in question could try to persuade the other states concerned to adopt the same attitude.

The punishment of crimes of illicit traffic committed abroad also presents some problems of legislation because a State can obviously prosecute only such actions as are defined as offences by its own law. The crimes of illicit traffic constitute violations of the national drug law of one or several states and not "crimes of international law". To produce a definition of a crime of illicit traffic which although committed abroad in violation of foreign law should be punishable in another country in which the trafficker can be found may present a rather difficult problem of legislative technique, particularly also in the United States.

It would not be advisable, at least for the present, to try to obtain by a new treaty the general acceptance of an obligation to prosecute crimes of illicit traffic committed abroad. It is suggested that such a treaty obligation would not be adopted without some restrictive conditions such as those for which the Single Convention provides. It appears to be more hopeful to win over by diplomatic means individual states to the suggested new position than to persuade at a Conference a group of opposing states to adopt the proposed exception from their traditional principles governing criminal jurisdiction.[514]

While the adoption of a national policy on the treatment in penal law of illegal possession of narcotic drugs or psychotropic substances for personal consumption and thus also on the treatment in penal law of illicit consumption of such products depends on a number of considerations which are outside the scope of this paper it may be permitted to mention that in the view of many in a number of countries penal sanctions deter at least under certain conditions more or less numerous persons from abusing dangerous drugs.

Limitation of Narcotics Supplies.—The Single Convention's system of limiting the narcotics supplies which each country or territory[515] may annually obtain by manufacture or import or both[516] is nearly the same as that of the 1931 Convention. Contrary to the 1931 Convention the Single Convention applies its limitation system also to extracts and tinctures of cannabis which are "manufactured" drugs and to opium[517], coca leaves, cannabis and cannabis resin which are agricultural products. As regards the supplies of these agricultural commodities the Single Convention establishes only the maximum amounts which may be obtained by importation and not those which may be acquired by production (harvesting).[518]

The separate functions of the Supervisory Body and Permanent Central Board regarding the administration of this limitation system under the 1931 Convention[519] are under the Single Convention carried out by a single organ—the International Narcotics Control Board which replaced these two organs. The statement which the Supervisory Body and Permanent Central Board[520] had to issue under express provisions of the 1931 Convention[521] are now published by the International Narcotics Control Board under the more general provisions of the Single Convention requiring the Board to publish an annual report on its work and such additional reports as it considers necessary containing *inter alia* an analysis of the estimates and statistical information at its disposal. In addition to these reports the Board must, at such times as it shall determine but at least annually, issue such information on the estimates as in its opinion will facilitate the carrying out of this Convention.[522]

Some features of the limitation system of the Single Convention will be affected by the Protocol of 1972 when in force. The provisions which the Protocol would introduce into the Single Convention include estimates of the area of land to be used for the cultivation of the poppy for *any* purpose and of the approximate quantity of opium to be produced and those regarding the obligation of parties not to grow the poppy on a larger than the estimated area and to organize and control opium production in such a manner as to ensure that, as far as possible, the quantity of the opium harvest does not exceed their estimates.[523] The Protocol would however introduce some other provisions into the Single Convention which require attention; namely those concerning synthetic drugs and some additional provisions in respect of opium.

Some of these provisions would give, in respect of opium and synthetic drugs, the phrase "the total of the estimates" a meaning which would be different from that which this phrase has in regard to other drugs under the amended text and in respect of all drugs under the unamended text of the Single Convention.

The expression "the total of the estimates" is a device of legislative technique used by the Single Convention[524] in order to avoid the need for repeating all the addenda and subtrahends of which this "total" is composed, in provisions in which all of them form the basis of a computation of legally relevant quantities. The Single Convention uses the formula "the total of the estimates" only for the calculation of import limits and it does this twice: once to calculate the excessive drug imports of a country or territory which under article 21, paragraph 4 authorize the International Narcotics Control Board to require the parties to the Single Convention to discontinue further exports of the drug or drugs concerned to such a country or territory during the currency of the year in question.[525] This phrase is used a second time in the provision which requires parties not knowingly to permit the export of drugs to any country or territory except within the limits of "the total of estimates" for that country or territory, with the addition of the amounts intended to be re-exported. It is nowhere used for calculating the limits of the *supplies* which may be obtained by manufacture or import or both.[526]

The addenda which must be included in "the total of estimates" are the estimated figures of the requirements of the drug concerned for the different purposes foreseen in the definition of this phrase.[527] The subtrahend which must be deducted from the sum of these addenda is the quantity available without need for acquiring it by manufacture or import, that is, the quantity which remained from excessive supplies of the preceding years.[528] As can be seen the quantity of "the total of the estimates" is related to the quantity *needed* by the country and territory in question. The total of the estimates therefore can appropriately be used for calculating the *import* limits as the Single Convention does in the two pro-

[514] See in this connection also article 36, paragraph 4 of the Single Convention and also article 14 of the 1936 Convention.

[515] Article 1, paragraph 1, sub-paragraph (y).

[516] Article 21, 12, 19, 13 and 20 of the Single Convention.

[517] The system of limitation of narcotics supplies in respect to opium, was already introduced by the 1953 Protocol, as article 8, paragraph 1, 2, 4 to 11.

[518] Article 21, para. 1; for the definition of "production" as separation of the drugs from the plants from which they are obtained see article 1, para. 1, sub-para. (t). "Manufacture" is of course no way of obtaining these agricultural products; see also in this connection the different limitation provisions of article 24 which do not limit the quantities of opium which each country or territory may obtain, but only the sources of opium for the international trade in this drug.

[519] And under the 1953 Protocol in respect of opium.

[520] For a description of these statements, see the outline of the limitation system in the discussion of the 1931 Convention.

[521] Article 5, paragraph 7 and article 14, paragraph 3.

[522] Article 15, paragraph 1 and article 12, paragraph 6.

[523] Article 19, paragraph 1, sub-paragraphs (e) and (f) and paragraph 5, article 20, paragraph 1, sub-paragraph (g) and article 21 bis, paragraph 1 of the amended text of the Single Convention and articles 9, 10 and 11 of the Protocol of 1972.

[524] As by the 1931 Convention and by the 1953 Protocol. Article 19, paragraph 2 of the Single Convention, in its unamended form, defines this phrase for all drugs.

[525] For a discussion of article 21, paragraph 4 of the Single Convention and of nearly the same provision of article 14, paragraph 2 of the 1931 Convention see "The Gradual Evolution of the International Drug Treaty System."

[526] Article 31, paragraph 1, sub-paragraph (b) of the Single Convention; The Convention does not provide for limits of the supplies which may be obtained by "production" nor for limits of the amounts which may be "produced."

[527] The estimated quantities of drugs to be consumed domestically for medical and scientific purposes; the estimated quantities of drugs to be used for the manufacture of other drugs, of preparations in Schedule III and of substances not covered by the Single Convention; the estimated amounts of drugs required for bringing the actual stocks on hand at December 31 of the preceding year to the estimated level to be held as at December 31 of the year to which the estimates relate and the estimated quantities necessary for addition to "special stocks"; i.e., stocks held by the Government for use of the armed forces and to meet exceptional circumstances such as epidemics and natural catastrophes.

[528] In computing the excessive supplies of the preceding year the quantity of the seized drug in question which was released for licit use and the quantity taken from special stocks for the requirements of the civilian population in that year must be deducted from the supply limits of the same year; i.e., of the year in which the supply limits were exceeded (Article 21, paragraphs 2 and 3). It must not be overlooked that "production" (Article 1, paragraph 1, sub-paragraph (t)); i.e., the amounts of opium, coca leaves, cannabis or cannabis resin which were produced play no part in the limitation scheme of the unamended text of the Single Convention; see also above footnotes 518 and 526A.

visions referred to above.[529] In considering the changes which would be effected by the Protocol of 1972 in the definition of "the total of the estimates" for opium and in that of this total for synthetic drugs one must keep in mind that the Protocol does not change the Single Convention in its use of the phrase "the total of the estimates" exclusively for the computation of the *import* limits to be established under these two provisions.

With regards to drugs other than opium or synthetic [530] drugs the situation would not be changed by the Protocol because the definition of "the total of the estimates" for those drugs would not be altered by the Protocol.[531]

The amendments introduced by the Protocol would require parties to furnish annual estimates of the number of industrial establishments which would manufacture synthetic drugs as well as estimates of the quantities of synthetic drugs to be manufactured by *each* of these establishments.[532] "The total of the estimates" for a synthetic drug, under the amendment introduced by the Protocol [533] would either be the total as defined in the unamended text or subject to the deductions referred to in article 21, paragraph 3 [534] the sum of the estimated amounts to be manufactured by each of the above mentioned establishments whichever of these two quantities [535] would be the higher. Two different situations could arise under this new definition of the total of the estimates of synthetic drugs. One in which subject to the deductions referred to above the sum of the estimated quantities of the drug concerned to be manufactured by the different establishments of a country would be smaller than (or equal to) the total of the estimates for that drug as computed under the definition of the unamended text of the Single Convention. In this case the amendment would be without any effect; the import limits of the country in question in respect of the synthetic drug involved would be computed for the purposes of article 21 paragraph 4 and of article 31, paragraph 1, sub-paragraph (b) on the basis of the same "total of estimates" as under the unamended text of the Single Convention. The second situation would be one in which again subject to the above mentioned deductions the sum of the estimated quantities of the synthetic drug involved to be manufactured by the establishments of the country concerned would be bigger than that country's "total of the estimates" for the drug in question, as computed under the old text of the Single Convention. In such a case that bigger sum would be "the total of the estimates" which would serve as basis for calculating the import limits under the above mentioned provisions. Consequently, a country which does not manufacture a synthetic drug or only a small quantity of it not sufficient for its needs could be entitled to import less of this drug under these provisions than a country which manufactures larger amounts of that drug than its requirements. The latter country if it is a big manufacturer of the synthetic drug involved could under the above provisions of article 21 and 31 import a multiple of its requirements. It may be concluded that the results of this amendment of the Single Convention are hardly of any value from the view point of drug control and that its motivation is not quite clear.

The question also arises whether the obligation to furnish estimates of "the number of industrial establishments" which would manufacture synthetic drugs and of "the quantities of synthetic drugs to be manufactured by each" of these establishments involves an obligation to identify each of such establishments.[536] It is submitted that the better opinion would be that such an obligation does not exist. The country furnishing the estimates could give the estimated number of establishments and indicate the amount of the synthetic drug involved to be manufactured by the first, second, third, etc. of the establishments. For example, the estimated number of establishments which would manufacture pethidine would be 3 and that the establishment numbered 1 would manufacture 2 kgs. of this drug, the establishment numbered 2 3 kgs. and the establishment numbered 3 1 kg.[537] It is however admitted that this suggested interpretation could be controversial.

The estimate of the quantity of a synthetic drug to be manufactured by a particular establishment would be binding upon the party furnishing the estimate; the party would have to see to it that the establishment does not manufacture more than the amount stated in the estimate [538]; but this estimated amount would quite frequently have to be modified during the year to which the estimate relates. In such a case, the country concerned would not only have to make revised allocations of the amounts of the synthetic drug in question to be manufactured by individual establishments—as it might also have to do under the unamended Single Convention—but would also have to amend, by supplementary estimates, the estimates of the quantities of the drug involved which would have to be manufactured by those establishments whose quotas would be changed. Not everybody will agree that this additional burden imposed upon governments is of any value from the viewpoint of narcotics control particularly since there is no significant diversion of manufactured "narcotic" drugs from legal manufacture into illicit channels.

Some similar problems as those arising from the amendment's revised definition of the phrase "the total of the estimates" for synthetic drugs will result from the new definition of this phrase for opium. The Protocol of 1972 would provide in regard to opium for two different calculations of the amount of "the total of the estimates". The bigger of the two amounts which would result from these provisions would be "the total of the estimates" which would serve as basis for computing the limits of opium imports of the country or territory concerned under the above mentioned provisions of article 21 and 31.

Under the first of these two calculations "the total of the estimates" would be this total as established under the terms of the unamended text of article 19, paragraph 2 of the Single Convention *less* the amount which the International Narcotics Control Board may decide to deduct under the terms of article 21 bis, paragraph 2 which would be introduced by the Protocol into the Single Convention. Since the same amount may under certain conditions be deducted by the Board from the amount of opium which a country would be authorized to produce it appears to be advisable to postpone the discussion of this deduction to be made for the purpose of defining "the total of the estimates" until the deduction from authorized opium production is being considered.

The amount to be established under the second of the two calculations for which the Protocol would provide and which if bigger would be "the total of the estimates" for computing the limits of opium imports under the above mentioned provisions would be, subject to the deductions referred to in article 21 bis, paragraph 2 of the amended text and to those mentioned in article 21, paragraph 3 of the Convention, the estimate which the country concerned would furnish of the "approximate quantity of opium" which it would produce.

Here again a somewhat pecular situation may arise. If the country concerned does not produce opium or only less than its requirements its total of the estimates for computing its import limits under the relevant provisions would be the amount established by the first of those two methods of calculating this total which were described above, since this amount would (normally [539]) be smaller than its estimates of its opium production less the deductions to be made as stated above. In the case of big opium producers—those which produce more than or even a multiple of their requirements—their estimates of opium production subject to the deductions would be their "total of the estimates" which would form the basis of the amounts of opium which they could import under the provisions repeatedly referred to above. A country such as India could import hundreds of tons of opium which it obviously does not need.

The provisions of article 21, paragraph 4 and those of article 31, paragraph 1, sub-paragraph (b) are intended to prevent countries from importing drugs in excess of their requirements. The new definitions of "the total of the estimates" for opium and synthetic drugs would deprive these provisions in a number of cases of some of their usefulness for the purpose for which they have been intended.[540]

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[529] Article 21, paragraph 4 and article 31, paragraph 1, sub-paragraph (b).

[530] Neither the unamended text of the Single Convention nor the Protocol gives a definition of "synthetic". The Convention (in its unamended form) uses this word only once, in article 1, paragraph 1, sub-paragraph (j).

[531] See, however, the deductions which might be required by article 19, paragraph 2, sub-paragraph (d) of the new text.

[532] Article 19, paragraph 1, sub-paragraphs (g) and (h) of the new text.

[533] Article 19, paragraph 2, sub-paragraph (c).

[534] Article 19, paragraph 2; the deductions referred to in article 21, paragraph 3 would have to be made in both ways of defining "the total of the estimates". They would also have to be made in the definition of this phrase under the old text of article 19, paragraph 2. The subtrahend would be the amount which remained from excessive supplies of the preceding year.

[535] "The total of the estimates" as defined in the old text or this "sum" less the deductions mentioned.

[536] Article 19, paragraph 1, sub-paragraphs (g) and (h) of the amended Convention.

[537] Article 12, paragraph 1 and Article 19, paragraph 1, introductory paragraph.

[538] Article 19, paragraph 5 of the amended and unamended text.

[539] "Normally" if the country concerned furnishes correct estimates in accordance with the provisions of the amended Convention. If it furnishes excessive estimates of opium production, these excessive amounts, subject to the required deductions, could under article 19, paragraph 2, sub-para. (b) of the amended text become its "total of estimates."

[540] The provision of article 21, paragraph 4 is nearly the same as article 14, paragraph 2 of the 1931 Convention which was introduced for the purpose of preventing excessive imports. Article 31, paragraph 1, sub-paragraph (b) is new.

The interpretation of article 19, paragraph 2, sub-paragraph (d) of the amended Single Convention may need some consideration. This sub-paragraph requires that "the *estimates furnished* under the preceding sub-paragraphs of this paragraph shall be appropriately modified to take into account any quantity seized and thereafter released for licit use as well as any quantity taken from special stocks for the requirements of the civilian population." The sub-paragraph refers to "the estimates furnished under the preceding sub-paragraphs" of paragraph 2; but no estimates are furnished under these sub-paragraphs; they are furnished under paragraph 1 of article 19. The "preceding sub-paragraphs" give only three different definitions of the phrase "the total of estimates", one for opium (sub-paragraph (b)), one for synthetic drugs (sub-paragraph (c)) and one for the other drugs (sub-paragraph (a)). It is therefore submitted that not the "estimates" which are furnished,[541] but the amounts of "the totals of the estimates" computed under the preceding sub-paragraphs are to be "appropriately" modified under the terms of sub-paragraph (d).[542]

The two items by which the totals of the estimates are to be "appropriately" modified are:

- Any quantity of the drug concerned which was seized and thereafter released for licit use.
- Any quantity of the drug concerned taken from "special[543] stocks" for the requirements of the civil population.

These two items play a role in the computation of legally relevant quantities under the terms of provisions of the Single Convention which would *not* be amended by the Protocol of 1972.[544] Each government must deduct these items from its drug supply limits which are computed by adding the figures of article 21, paragraph 1 relating to requirements of drugs for different purposes.[545] It will be recalled that for calculating these limits of drug supplies which may be obtained by manufacture or import or both the Single Convention does not use the phrase "the total of the estimates"; and this would not be changed by the Protocol of 1972; it will therefore be noted that the supply limits of synthetic drugs which a country may obtain by manufacture or import and the supply limits of opium which a country may obtain by imports under article 21, paragraphs 1 and 2 *would not be affected* by provisions of the Protocol while the *import* limits of these drugs (synthetic drugs or opium) for the purpose of applying article 21, paragraph 4 or article 31, paragraph 1, sub-paragraph (b) may be changed by the new definitions of the phrase "the total of the estimates" under the amendments which would be introduced by the Protocol.[546] In computing "the total of the estimates" under the amended or unamended Single Convention the deductions required by article 21, paragraph 3 must always be made. The figures which must be deducted under this provision are the amounts of drug supplies which parties acquired by manufacture or import or both in excess of the amounts allowed to them by the provisions of article 21, paragraphs 1 and 2 i.e. the sum of the figures referred to in paragraph 1 minus the two items which are mentioned in article 19, paragraph 2, sub-paragraph (d) of the amended Single Convention and are therefore under consideration.[547] In computing the excesses over the supply limits of the *preceding year* which the Board under article 21, paragraph 3 must deduct from "the total of the estimates" for the *current year* i.e. the year to which this total[548] refers the Board must take into account the two items under consideration, that is, it must deduct from the sum of the figures referred to in article 21, paragraph 3 and the amounts of seized drugs released for licit use and those taken from "special stocks" for the requirement of the civilian population in the preceding year.[549]

[541] Or in case of a failure of country or territory to furnish them, "to the extent practicable" established by the International Narcotics Control Board", Article 12, paragraph 3.

[542] A similar drafting in exactitude can be found in article 14, paragraph 1 of the 1931 Convention which uses the term "the estimates" for the phrase of "the total of the estimates", League of Nations document C.191.M.136.1937.-XI. (Commentary to the 1931 Convention), paragraph 144.

[543] For the meaning of "special stocks" see article 1, paragraph 1, sub-paragraph (w) and above footnote 527.

[544] Article 21 paragraphs 1–3 and paragraph 4, sub-paragraph (a).

[545] The sum of the quantity consumed, within the limit of the relevant estimate; the quantity used, within the limit of the relevant estimate, for the manufacture of other drugs, of preparations in Schedule III and of substances not covered by the Single Convention; the quantity exported; the quantity added to the stock for the purpose of bringing that stock up to the level specified in the relevant estimate and the quantity acquired, within the limit of the relevant estimate, for "special" purposes.

[546] The provisions of article 21, paragraph 4 and of article 31, paragraph 1, sub-paragraph (b) were outlined above.

[547] The two items are also mentioned in article 21, paragraph 2 where their deductions from the supply limits is required.

[548] And its component estimates refer.

[549] Each Government must also make this deduction in order to calculate its supply limits which it must not exceed

The question arises whether under the sub-paragraph (d) under consideration the quantities of seized drugs released for licit use and those taken from "special stocks" for the requirements of the civilian population should be those released and taken in the preceding year or those released and taken in the current year in which "the total of the estimates" refers. In the first case any such deductions made to modify "appropriately" the various "totals of the estimates" would duplicate the substractions which were already made under article 21, paragraph 3 and which must be made in any calculation of "the total of the estimates" either under the amended or the unamended text of the Single Convention. In the second case the modification of "the total of the estimates" by the deduction of the items under consideration would in practice hardly be possible if not even impossible. One must recall again that the phrase of "the total of the estimates" is used only for the computation of two legally relevant quantities. First, to determine the excessive imports of a country which under article 21, paragraph 4 would authorize the Board to require parties to discontinue further exports of the drug or drugs concerned to the country involved during the currency of the year in question. Secondly, to establish the import limits for the purpose of article 31, paragraph 1, sub-paragraph (b) according to which parties are required not knowingly to permit the export of drugs to any country or territory except within the limits of "the total of the estimates for that country or territory" with the addition of the quantities intended to be re-exported. In the first case the Board must compute "the total of the estimates" in order to establish whether it has authority to require the discontinuation of further exports. In the second case the exporting party must obtain from the Board the required information on "the totals of the estimates" which are the most important factors in calculating the quantities which it would be authorized to export. In both cases the Board would not be able to deduct from "the total of the estimates" of the current year the quantities of seized drugs released for licit use or of those of the drugs taken from "special stocks" for the requirements of the civilian population in the same year, because it would not know these quantities. Under the terms of the Single Convention parties are required to furnish to the Board the statistical data on such release for licit use or transfer from "special stocks" in a given year only by June 30 of the *following* year.[550] The Board would therefore learn the size of the quantities which it should use in modifying "the total of the estimates" of a given year under the sub-paragraph (d) under consideration only rather late in the *subsequent* year. It is held that sub-paragraph (d) could be applied in practice only if the parties were willing to report *immediately* to the Board any release of seized drugs for licit use and any withdrawal from "special stocks" for the needs of the civilian population; but there appears to be no provision in the Single Convention which would require them to do this.[551] It is also questionable whether the deductions of the quantities released for licit use or transferred from "special stocks" in the current year from "the total of the estimates" of the same year would be any value from the view point of drug control since such release and transfer in the preceding year had to be taken into account in computing "the totals of the estimates" of the current year and the release and transfer in the current year will have to be considered in calculating the totals of the estimates of the following year under article 21, paragraph 3.

The provisions of article 21 bis paragraph 2 which would be introduced by the Protocol into the Single Convention and by which the Board would under certain conditions be authorized to make some deduction from the amount of opium which a party would be authorized to produce and from that party's "total of the estimates" may be considered because they may need some explanations and because—it is held—they may give rise to some difficulties of application.

The conditions under which the Board may apply these provisions may be summarized as follows:

- A party which under article 19, paragraph 1, furnished an estimate of the approximate quantity of opium to be produced, has not organized and controlled opium production in such a manner[552] as to ensure that, as far as possible, the quantity produced in the year to which the estimate relates should not exceed its estimate.[553] It is suggested that it was hardly the intention of the authors of article 21 bis, paragraphs 2–5 to limit their application to parties

[550] Article 20, paragraph 1, sub-paragraph (e), paragraph 2, sub-paragraph (a) and paragraph 4.

[551] Article 18, paragraph 1, introductory paragraph could not be applied because the information would not be necessary for the performance of functions of the Commission on Narcotic Drugs, but for functions of the Board.

[552] Applying in particular also the provisions of article 23 of the Single Convention.

[553] Article 21 bis, paragraph 1 of the amended text.

which have furnished estimates of their opium production. They certainly meant to apply these provisions also to parties which have failed to supply such estimates and for which the Board has established them in accordance with article 12, paragraph 3.

• As result of this failure to take the required measures of organization and control referred to under the first category, the party has not limited its opium production to "licit purposes" and to quantities not exceeding in a significant measure the approximate estimates of its opium production which it had furnished or which had been established by the Board. The "licit purposes" are, except for the purpose of the provisions of article 49,[554] "medical and scientific purposes." The assumption that the excess must be significant is concluded from the fact that the estimate which should be furnished and which should not be exceeded needs only to be "approximate".

• A significant amount of opium produced within the borders of that party, whether licitly or illicitly, has been introduced into the illicit traffic.

It is required that the Board finds the existence of these conditions on the basis of information at its disposal in accordance with provisions of the Single Convention. This information would consist of the statistical data [555] which governments would furnish, of facts supplied by them to complete or explain their statistical data and of matters brought to the attention of the Board by the Commission on Narcotic Drugs, by other United Nations organs, by specialized agencies or by those other intergovernmental or non-governmental international organizations which are referred to in article 14, paragraph 1, sub-paragraph (a) of the amended text of the Single Convention.[556]

Under these conditions, the Board may, in accordance with the procedure prescribed by article 21, paragraph 2, decide to deduct from the amount of opium which the party concerned would be authorized to produce and from that party's "total of estimates" for opium, all or a portion of the quantity of opium which has been introduced into the illicit traffic. Such a decision which the Board may (but is not required to) make shall apply to *"the next year"* in which such a deduction can be technically accomplished, taking into account the season of the year and contractual commitments to export opium.[557] As far as the deduction from "the total of the estimates" is concerned it will cause no technical difficulties of the kind of those to which Article 21, paragraph 2 refers to make the deduction in the year following that in which the Board's decision would be taken. It would even be possible to make the deduction in the same year in which the Board would make its decision particularly if the Board would do this very early in the year. It is however concluded from the use of the words *"the next year"* that the year following the year of the Board's decision would be the first year in respect of which the deduction from "the total of the estimates" for opium may be decreed by the Board. It is however submitted that such a deduction would not be very meaningful as it would only reduce the amounts of opium which the parties would under article 31, paragraph 1, sub-paragraph (b) be authorized to export to the offending party and also decrease the quantity of that drug which such a party could import without causing the Board to obtain under article 21, paragraph 4, the right to require other parties to discontinue further opium exports to that party for the currency of the year in question. It will be recalled here again that the quantity of "the total of the estimates" is pertinent only in regard to the import limits under the two provisions just referred to. It may safely be assumed that major opium producers particularly if a significant amount of their opium production is diverted into the illicit traffic will hardly be in particular need of importing opium. To determine in the light of the technical difficulties to which the paragraph under consideration refers the "next year" in which the deduction should be made from the amount of opium which the offending party would be authorized to produce might cause the Board considerable difficulties. It is required that it should be the next year in which such a deduction could be technically accomplished. It cannot be that year "in which at the time of the decision of the Board the administrative and agricultural preparations of opium production (e.g. the issue of licenses to the cultivators or the sowing of the poppy plants) are already advanced".

[554] As regards article 49 see above, the sub-section headed "Limitation of all phrases of the narcotic drugs economy and of the use of narcotic drugs to medical and scientific purposes" in "The Single Convention on Narcotic Drugs, 1961."

[555] Including the estimate of opium production under article 19, paragraph 1, sub-paragraph (f) of the amended text.

[556] Article 20, article 8, paragraph (b), article 12, paragraph 4 and article 13, paragraph 3; see also article 14, paragraph 1 sub-paragraph (a) of the unamended text.

[557] In some countries the sowing is done in the autumn and the opium harvested in the following summer.

The Board might also have considerable difficulties in taking into account "contractual commitments to export opium", when considering the determination of the "next year" in which the deduction should be made.

In periods of shortages of opium such as those occurred in some recent years the offending country might have entered into contractual commitments to sell in advance to a particular drug manufacturer or legal opium importer at least a large part of its opium harvest in several future years. The reduction of legal opium production—the amount of opium collected by the national opium agency—might increase a possibly already existing shortage of opium available for medical purposes and that opium once in the hands of the agency is not diverted into illicit channels, but only as long as it is in the possession of the individual private cultivators of the poppy. The threat of such reduction might have some value as additional means of persuading the opium producing country involved to increase its efforts to improve its control regime; but the reduction would normally have very little if any effect on the extent of the illicit traffic in opium, particularly in opium collected in countries which have no legal control or are not able to exercise effective control in the poppy growing districts. Even those countries which have a good system of control in accordance with the requirements of the Single Convention, are not able to prevent the diversion by licensed private individual cultivators of a significant portion of their opium crops.[558]

The Single Convention states nowhere in which way the Board should determine for the purpose of applying article 21 bis, paragraph 2, the size of the "significant amount of opium" which would have been introduced into the illicit traffic. Normally no country knows or even can know the exact quantity of opium or of any other drug flowing into illicit channels. Only those governments would be an exception who have members who participate in or even lead the illicit traffic as actually was the case in some countries.[559]

[558] See the proposed remedial measures in "Establishment of a Comprehensive System of Control of the Cultivation of the Opium Poppy for the Production of Opium and of the Production of Opium" in "The Situation at the End of World War II; see also "The Opium Poppy" in "The Single Convention on Narcotic Drugs, 1961".

[559] See Report of the Permanent Central Board [10] on its work in 1965, United Nations document E/OB/21, paragraph 105 referring to "official corruption, even in high places."

The question arises whether the Board should be authorized to make an estimate of the amount of opium introduced into the illicit traffic. Several suggestions have been made to make estimates of the amounts of drugs in the illicit traffic. Some have proposed to multiply for this purpose the amount of seized drugs by twenty, others by ten; but the amount of seized drugs depends also on the efficiency of the enforcement services and in countries which have a good narcotics police the amounts of drugs seized may form a larger portion of those in the illicit traffic than in countries which have less adequate services. There may be other factors which may determine the relationship between the size of seizures and the amounts in the illicit traffic such as the length of the border which have to be watched, the nature of the frontier regions. Moreover, if the Board should base its estimates on the statistical figures on seizures of opium which governments must furnish [560] how would it be able to establish with a reasonable degree of certainty that the seized opium was produced in the country against which it would consider to take action pursuant to article 21 bis, paragraph 2? Governments sometimes report what they believe to be the origin of drugs which they seized; but they declare quite often that the origin which they indicate is only probable. They state only in relatively few cases that this information is certain. Moreover how should the Board verify that the information which it receives from governments regarding the origin of opium is correct? Should it request a sample of each quantity of opium seized and have the sample examined by the United Nations Laboratory of the Division of Narcotic Drugs? Will governments always supply such a sample? There is no provision in the Single Convention which impose upon the parties a legal obligation to do this. The Laboratory will also often be able to determine the origin of opium only with a high degree of probability and not with certainty. It may sometimes find it particularly difficult to distinguish opium grown in a country from opium grown in a neighboring country.

Finally can it be assumed that article 21, paragraph 2 would authorize the Board to decide to make the deductions in question on the basis of its *estimates*?

The Board could find in some cases that a certain amount of opium produced in a particular country was, beyond any reasonable doubt, introduced into the illicit traffic. This certainty could normally be established only in regard to relatively small quanti-

[560] Article 20, paragraph 1, sub-paragraph (e) of the Single Convention.

ties; but the Board could, under the conditions of article 21, paragraph 2 decide to deduct such quantities if "significant," from the authorized opium production and the total of the estimates of the country of origin of the opium. Such a certainty could be established, for example, with respect to some quantity of Turkish opium introduced illegally into Iran when the latter country maintained a regime of prohibition of opium production with great success.[561] It must however not be overlooked that an opium producing country could, by furnishing supplementary estimates, undo that effect on the amount of its authorized production which a deduction decreed by the Board under Article 21, paragraph 2 would have. It may be necessary here to refer again to the amendment by the Protocol of the Single Convention according to which in a case of disagreement between a government and the Board concerning that government's estimates or supplementary estimates the Board would have the right to establish, communicate and publish its own estimates or supplementary estimates.[562] The amendment would however not change the provision which stipulates that estimates or supplementary estimates can be changed only *with the consent of the government* furnishing them. In the case of the above mentioned controversy the estimates of the government and not those of the Board would have the *legal* effect of determining the legally authorized quantities which depend on them. The estimates of the Board would only have a *moral* effect. No provision of the amended Single Convention would exclude from these legal provisions the estimates or supplementary estimates[563] of the approximate quantity of opium to be produced by a country or the amendment's stipulation that these estimates should determine, as far as possible which quantity of opium the party furnishing them would be authorized to produce.[564] Thus, it would be the government and not the Board which would finally determine which quantity of opium a country would be authorized to produce and this would apply also to article 21, paragraph 2 whatever deduction the Board might decide to make under this provision.

It was not the principal aim of the authors of article 21 to give the Board authority to make deductions from an offending party's authorized opium production or from that party's "total of the estimates" for opium. Their main intention appears to have been to give the Board additional means to persuade, and if necessary to bring pressure to bear upon an offending opium producing country. This intention can be seen from the provisions which would require the Board in considering a decision under article 21, paragraph 2, to take also into account any relevant new control measures which the party concerned might have adopted [565] and after notifying to the party concerned its decision to make deductions pursuant to paragraph 2, to consult with that party in order to resolve the situation satisfactorily.[566] Article 21 bis also adds that if the situation would not satisfactorily be resolved the Board would be able to utilize the provisions of article 14 where appropriate.[567]

It may be concluded that despite the difficulties of interpreting and applying its paragraph 2 the new article 21 could be of considerable usefulness as means of persuasion and of exercising pressure.

The Vienna Convention on Psychotropic Substances does not provide for "estimates" which parties would have to furnish nor would it limit the *quantities* of supplies of psychotropic substances which countries or regions would be authorized to acquire annually. It would also normally not require parties to prevent an excessive accumulation of such substances in the possession of manufacturers or traders. There would however be an important exception with respect to substances in Schedule I. Parties to the Vienna Convention would be bound to restrict the amounts of such substances supplied to a duly authorized person to the quantities required for his authorized purpose;[568] and this would apply to specially licensed or in advance specially authorized manufacturers of, traders [569] in and distributors of substances in Schedule I as well as to those persons who under the restrictions provided for in the Convention, would be duly authorized to use these substances for scientific and "very limited medical purposes".[570]

The value of a government's estimates of its opium production for determining the quantity of opium which it should be authorized to produce has been subjected above to a critical appraisal; but more generally, the whole system of estimates of drug requirements, furnished by governments, and of limiting the narcotics supplies of each country and territory in accordance with these estimates has been questioned by some critics. Doubts have been expressed that legal manufacturers or traders would divert into illicit channels quantities of drugs which would exceed those needed for legitimate business purposes or even that they could do this under the existing strict narcotics regime. It was asserted that such surplus quantities would only induce manufacturers to reduce their output and importers to decrease their purchases abroad. It is also added that by now manufacturers and importers already know the quantities which they need and that it is much more important for purposes of narcotics control to keep down the number of drug manufacturers and traders and particularly that of manufacturers than to limit the quantities of narcotics supplies by a complex system. Some of the critics of the estimate system admit however that it played an important part in preventing diversion of legal supplies into illicit channels in the years following the adoption of the 1931 Convention which introduced this system and that it may still be of some value in the case of countries which are newcomers in the field of drug manufacture.

This criticism is not justified and the estimate system has retained much of its value. The estimates which governments furnish to the Board and the information which they must supply at that organ's request in order to complete or to explain their figures [571] and which could relate practically to all essential factors of their drug manufacture, trade and consumption enable the Board to review the drug situation in each country and territory from a worldwide angle and to do this on the basis of *advance* information and not only *post factum* as the Board could proceed on the basis of the statistical information which it receives.[572] The Board is thus in a position to engage in early consultations about defective controls with the governments concerned and in appropriate cases to assist them in taking early corrective measures. This is particularly important in the case of those countries which rely for their drug supplies not on their own manufacture, but on imports. These importing countries include a good many states which are less advanced economically and often have a less efficient administration than the drug manufacturing countries. Such importing States, whether they are parties to the Single Convention or not, must furnish to the Board estimates of their drug requirements in order to be able, under the relevant provisions of this treaty,[573] to obtain from exporting parties quantities of drugs which are calculated on the basis of their own estimates and not on the basis of those which the Board would establish if they would fail to furnish estimates themselves.[574] Such importing states are thus compelled to correspond with the Board and weak administrations may thus enter quite naturally into relations of consultation with the Board which may often lead to an improvement of their drug control systems.

Reports to International Narcotics Controls Organs.—These reports are the basis for the international control of the implementation of the Single Convention in individual countries and territories. The Single Convention has separate provisions regarding the information which parties must supply to the International Narcotics Control Board and concerning that which parties are required to furnish to the Secretary General and through him to the Commission on Narcotic Drugs.

The items of information which parties must furnish to the Board are composed of two main groups: the estimates of their drug requirements for different purposes and statistical data on every phase of their drug economy.

While preparations are normally subject to the same regime as the drugs which they contain furnishing of estimates and statistics distinct from those dealing with those drugs is not required.[575] This means that the statistical returns on manufacture need not contain figures on the amount of preparations which were compounded, but only the amount of basic drugs which was made, whether it was later used for the compounding of preparations or not. The statistical figures on consumption, import, export, stocks, on import or procurement within the country or territory for "special purposes" and on the withdrawal from "special stocks" for the requirements of the civilian population must not include the amounts of preparations involved, but the quantities of the drugs contained in these preparations. This applies also to seized preparations and their disposal, to the utilization of preparations for the compounding of preparations in Schedule III and to all the estimates. If it is estimated that preparations would be utilized for the

[561] Iran's attempts to suppress drug addiction failed, however, because of the flow into its territory of huge amounts of Turkish and Afghan opium.

[562] Article 12, paragraph 5 of the amended text.

[563] Article 12, paragraph 5 of the amended text in connection with article 19, paragraph 3.

[564] Article 19, paragraph 1, sub-paragraph (f) and paragraph 5 and article 21 bis, paragraph 1 of the amended text.

[565] Article 21 bis, paragraph 5.

[566] Article 21 bis, paragraph 3.

[567] Article 21, bis, paragraph 4.

[568] Article 7, paragraphs (a), (b), (d) and (f).

[569] Including "specifically authorized" importers and exporters, article 7, paragraph (f).

[570] Article 7, paragraph (a).

[571] Article 12, paragraph 4 of the Single Convention.

[572] Article 13, particularly its paragraph 3 and article 20, see also article 2, paragraph 9, article 27, paragraph 2 and article 49, paragraph 3, sub-paragraph (b).

[573] Article 21, paragraph 4 and article 31, paragraph 1, sub-paragraph (b).

[574] Article 12, paragraph 3.

[575] Article 2, paragraph 3.

manufacture of preparations in Schedule III the amount of drugs contained in the preparations to be so utilized must be included in the estimated quantities of these *drugs* to be employed for this purpose.[576]

As regards preparations in Schedule III, only estimates of the amount of drugs to be used for their compounding and statistical figures on the amounts of drugs actually so used need to be given.[577]

The items on which parties must furnish estimates of their drug requirements are laid down in article 19, paragraphs 1 and 2.[578] They are under the unamended text of the Single Convention nearly the same as those which parties had to furnish under the 1931 Convention. The differences were pointed out in the discussion of the 1931 Convention in "The Gradual Evolution of the International Drug Treaty System" and in "Limitation of Narcotics Supplies". It was reported in the same section that the Vienna Convention does not require parties to furnish estimates to the Board.

The additional estimates concerning opium production and "synthetic drugs" which parties to the Single Convention would have to furnish under the amendment of this treaty were also considered in "Establishment of a Comprehensive System of Control of the Cultivation of the Opium Poppy for the Production of Opium and of the Production of Opium" in "The Situation at the End of World War II".

The statistical information which parties to the Single Convention have to supply to the Board is described in article 20.[579] It refers to the production [580] or manufacture of drugs, utilization of drugs for the manufacture of other drugs, of preparations in Schedule III and of substances not covered by the Single Convention, utilization of poppy straw for the manufacture of drugs, consumption of drugs, imports and exports of drugs and poppy straw, seizures of drugs and disposal thereof, stocks of drugs as at 31 December of the year to which the statistical information relates, drugs imported into or procured within the country or territory for "special purposes" [581] and drugs withdrawn from "special stocks" for requirements of the civilian population. An amendment introduced by the Protocol of 1972 would also require parties to furnish statistical information on the "ascertainable area of cultivation of the opium poppy" *for any purpose*.[582]

The statistical information which parties to the Single Convention are bound to supply is very similar to that which was required under the narcotics regime preceding that Convention.[583] Principal differences are (1) that this regime did not require consumption statistics for drugs in Group II of the 1931 Convention while the Single Convention provides for such statistics in respect of the corresponding group of drugs which forms now its Schedule II and (2) that figures on imports and exports of drugs in Group II had to be reported only annually while such figures in respect of drugs in Schedule II must now be supplied quarterly.[584]

The statistical information, which in accordance with forms prepared by the Board, parties would have to furnish under the Vienna Convention would be much more limited than that which they are required to supply under the Single Convention. It would refer only to the manufacture of substances in Schedules I, II, III and IV; to stocks of substances in Schedules I and II held by manufacturers; to the export and import of substances in Schedules I and II, these export and import figures to be subdivided by country or region of destination of origin, as the case may be; to

[576] Article 19 and 20.

[577] Article 2, paragraph 4.

[578] Nearly all of these items are enumerated above in footnote 527; Parties must, in addition, supply estimates of the stocks of drugs to be held as at 31 December of the subsequent year (Article 19, paragraph 1, sub-paragraph (c)) and must inform the Board of the method used for determining their estimates (Article 19, paragraph 4).

[579] See also article 2, paragraph 9, sub-paragraph (b), article 27, paragraph 2 and article 49, paragraph 3, sub-paragraph (b).

[580] Harvesting, article 1, paragraph 1, sub-paragraph (t).

[581] For the armed forces and to meet exceptional circumstances such as epidemics and natural catastrophes, the drugs to be held by the government, article 1, paragraph 1, sub-paragraph (w).

[582] This item was discussed in "Establishment of a Comprehensive System of Control of the Cultivation of the Opium Poppy for the Production of Opium and of the Production of Opium." The amendment of the Protocol would delete the present paragraph 3 of article 20 according to which Parties "may" as far as possible also furnish to the Board information in respect of areas cultivated for the production of opium. Under article 9, paragraph 1, sub-paragraph (a) clause (i) of the 1953 Protocol Parties were bound to furnish to the Permanent Central Board information on the area on which the poppy was cultivated for the production of opium.

[583] Article 22 (and 23) of the 1925 Convention, article 13 and 22 of the 1931 Convention and article 9 of the 1953 Protocol.

[584] The earlier regime did also not provide for quarterly statistics on international transactions in poppy straw. The 1953 Protocol however required already such data on an annual basis (article 4, paragraph (c)).

the total quantities of substances in Schedules III and IV exported and imported without any indication of the country or region of origin or destination; to substances in Schedules II and III [585] used in the manufacture of preparations exempted pursuant to article 3, paragraphs 2 and 3 [586] and to substances in Schedules II, III and IV used for industrial purposes, that is, the manufacture of non-psychotropic substances or products.[587]

The International Narcotics Control Board would also be entitled to require parties to furnish information in respect of the quantity of any substance in Schedule III or IV exported to and imported from each country or region. Parties would, however, have to furnish such information only if requested by the Board to do so and the Board would have to treat as confidential its request for information as well as the information given on the basis of this request if the party concerned asks for it.[588]

The Convention expressly states that those statistical figures which would have to be given on manufacture of psychotropic substances do not include the quantities of preparations manufactured. Only the amounts of psychotropic substances which would be manufactured would have to be furnished whether they would be employed later for the compounding of preparation or not. While normally the provisions of the Vienna Convention which would apply to the psychotropic substance concerned would also apply to the preparations which contains this substance, nevertheless, it is submitted that the stock, import and export figures which would have to be supplied pursuant to article 16, paragraphs 4–5 would not have to include the quantities of the preparations involved, but the amounts of the psychotropic substances which these preparations would contain. This would also apply to preparations if any which would be used for industrial purposes.

As regards preparations of substances in Schedules II and III, which would be exempted pursuant to article 3, paragraphs 2 and 3, only the quantities of these substances which would be used for the manufacture of these preparations would have to be reported. In respect of preparations so exempted, which would contain only a psychotropic substance in Schedule IV even this information would not be required. But this limitation of the obligation to furnish statistical data would apply only to those parties which would exempt the preparation in question *and* would include among the provisions from which they would exempt these preparations the relevant provisions of article 16, paragraphs 4–5. Otherwise, these parties would have to include in their stock, import and export statistics the quantities contained in the exempted preparations. All parties which would not exempt such a preparations exempted by other parties would of course have to do the same.[588]

The Vienna Convention contains no separate provision which would authorize the Board to require such further information as it would consider necessary to complete or explain the information contained in the statistical returns which it would receive.[589] It may however be assumed that the Board would have such a right since the Vienna Convention would require the Board "to prepare annual reports on its work containing an analysis of the statistical information at its disposal, and, in appropriate cases, an account of the *explanations*, if any, given by or required of Governments." [590]

The Vienna Convention does not require the supply of statistical data on the production "of psychotropic substances." What is called "production" in the Single Convention namely "the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained" if applied to the separation of psychotropic substances from the plants in question would be covered by the term "manufacture" in the Vienna Convention and the quantities of such "production" would therefore have to be included in the figures on manufacture.

The Commission on Narcotic Drugs could require parties to furnish to the Secretary General such statistical data on psychotropic drugs as the Board would not receive under the terms of the Vienna Convention if the Commission would find them to be necessary for the performance of its functions.

The estimates and statistical data which are enumerated in articles 19 and 20 of the Single Convention and which the Board receives under these

[585] Preparations containing substances in Schedule I could not be exempted, article 3, paragraph 2.

[586] See "Record Keeping and Reporting to and Control by Domestic Authorities" and "Authorization of Consumption of Narcotic Drugs" in "The Single Convention on Narcotic Drugs, 1961."

[587] Substances in Schedule I could not be so used. The psychotropic substances would have to be subject to the controls of the Convention until they would come to be in such a condition that they could not in practice be abused or recovered, article 4, paragraph (b).

[588] Article 16 paragraph 5.

[589] See however article 13, paragraph 3 of the Single Convention.

[590] Article 18, paragraph 1.

provisions give only a very incomplete and perhaps even a somewhat misleading picture of the kind and extent of the information which the Board may receive in respect of narcotic drugs and their control in each country or territory. The Board is expressly authorized to require such further information as it considers necessary to complete or explain the information contained in the estimates and statistical information which it receives. This additional information may practically relate to any control provision of the Single Convention.[591] Defective or incomplete estimates and incomplete or inaccurate statistical returns may be explained by a badly organized special administration or by a lack of such an administration.[592] Manufacutre and imports in excess of the supply limits prescribed by the Convention [593] may be due not only to a defective organizational structure but also to an incorrect administration of the system of licensing and permits in regard to the manufacture of drugs [594] and of the import certificate and export authorization system.

There is no provision of the Single Convention which would limit the kind of information which the Board may use for its work, except in regard to the application of article 14. It may be induced by several kinds of reliable information from responsible resources to require governments to complete or to explain the data contained in the estimates or statistical returns which they have furnished. It may however be assumed that in such cases they may not rely on information furnished by private citizens or private organizations [595] although it has now become quite common that United Nations organs obtain information from private citizens and such organizations often without any constitutional authority to do so and even base some of their actions on such information. It is submitted that the Board would not act *ultra vires* when asking a country for an explanation why its statistical figures on the consumption of opium are very small, if one of its members has personally seen in that country a considerable number of opium dens which are tolerated by the local authorities although the government of such a country has indicated in its annual reports that it has prohibited opium smoking. The Board may in any event use information furnished by the Commission,[596] the Secretary General and other organs of the United Nations and those of specialized agencies even for the purposes of the sanction procedure of article 14 of the Single Convention in its unamended version.[597] The amendment of article 14, paragraph 1, sub-paragraph (a) by the Protocol of 1972 would expressly admit for use in this sanction procedure information supplied by specialized agencies. It would add for this purpose information furnished "by either other intergovernmental organizations or international non-governmental organizations which have direct competence in the subject matter *and* which are in consultative status with the Economic and Social Council under Article 71 of the Charter of the United Nations or which enjoy a similar status by special agreement with the council",[598] provided that the organization concerned belonging to one of the two latter groups of organizations is approved by the Commission on Narcotic Drugs on the Board's recommendation.

The Protocol of 1972 would also introduce an amendment [599] into the Single Convention which would require parties to furnish, "if they deem it appropriate," to the Board and the Commission, "in addition to information required by article 18, information relating to illicit traffic activity within their borders, including information on illicit cultivation, production, manufacture and use of, and on illicit trafficking in, drugs" and to do this, "as far as possible" "in such manner and by such dates as the Board may request." The amendment adds that "if requested by a party, the Board may offer its advice [600] to it

[591] Article 12, para. 4 and article 13, para. 3.

[592] Article 17.

[593] Article 21, paragraphs 1 and 2.

[594] Article 29, paragraph 1 and paragraph 2, sub-paragraph (c) and article 31, paragraphs 4–16.

[595] See, however, article 14, paragraph 1, sub-paragraph (a) as amended by article 6 of the Protocol of 1972.

[596] Article 8, paragraph (b).

[597] It is quite clear from the Records of the Plenipotentiary Conference that the term "United Nations organs" used in article 14, paragraph 1, sub-paragraph (a) was intended to cover organs of specialized agencies and in any event those of the World Health Organization, Records of the Conference, vol. II, p. 200, United Nations document E/CONF. 34/24/Add. 1.

[598] The International Criminal Police Organization under resolution 1579 (L) of the Economic and Social Council.

[599] Article 35, paragraphs (f) and (g) of the amended Convention.

[600] Article 1, paragraph 1, sub-paragraph (b) defines "illicit traffic" to mean "cultivation or trafficking in drugs contrary" to the Single Convention; "cultivation" is defined in sub-paragraph (i) as "cultivation of the opium poppy, coca bush or cannabis plant", as regards the Board's function to give "technical advice" in the matter of "agreements on regional centres for scientific research and education to combat the problems resulting from the illicit use of and traffic in drugs, see article 38 bis of the amended Convention.

in furnishing" this "information and in endeavoring to reduce the illicit drug activity" within its borders.

This provision regarding information on the illicit traffic would not create an *obligation* of the parties. It may also be recalled that article 18 of the Single Convention imposes upon parties an obligation to furnish to the Secretary General [601] "such information as the Commission may request as being necessary for the performance of its functions, and in particular" *(inter alia)* "such particulars as the Commission shall determine concerning cases of illicit traffic." [602] Moreover, parties are bound to furnish this information "in such manner and by such dates and use such forms as the Commission may request." [603] The Commission is also expressly authorized to call the attention of the Board to any matter which may be relevant to the functions of the Board.[604] It is also submitted that the Board is already under the unamended text of the Single Convention authorized to require parties to furnish most or all of the information to which the amendment under consideration refers. Parties are bound to do this in supplying such additional information to complete or explain data contained in their own statistical returns or in those of other governments as the Board may require as being necessary for this purpose. These returns relate also to seizures of drugs and to the disposal thereof.

The past Permanent Central Board as well as the present International Narcotics Control Board have repeatedly rendered its advice and even assistance to countries requesting it in regard to their drug administration and even in some of their reports declared their readiness to give advice and assistance in improving national control regimes to countries desiring it. There does not seem any provision in the unamended text which would prevent the Board from offering or rendering such advice or assistance. It is however held that it is useful to call in the text of the Convention itself the attention of governments to the possibility of obtaining this advice.[605]

[601] And through him to the Commission on Narcotic Drugs.

[602] Article 18, para. 1, introductory sub-para. and sub-para. (c).

[603] Article 18, paragraph 2.

[604] Article 8, paragraph (b).

[605] Article 13, paragraph 3 and article 20, paragraph 1, sub-paragraph (c); See also the more general provision of article 9, paragraph 5 of the amended Convention according to which the Board would lend assistance to and facilitate effective national action to attain the aims of this Convention; see also article 14, paragraph 1, sub-paragraph (c) of the amended treaty.

It may be useful to mention that governments whether parties to the Single Convention or not, generally fully carry out their obligation to furnish to the Board estimates and statistical returns. For 1972 out of a total of 188 countries and territories which had to furnish estimates 174 (131 countries and 43 territories) sent their estimates themselves and only fourteen estimates (10 countries and 4 territories) had to be established by the Board. Only 20 countries or territories (14 countries and 6 territories) out of a total of 188 did not supply all or some of their annual or quarterly statistical returns for 1970.[606]

This high degree of treaty implementation is of course also due to the loyal cooperation of many countries including all economically advanced and all drug manufacturing countries [607] and to the desire of countries with less efficient administrations to obtain quantities of narcotics supplies calculated on the basis of their own estimates and not on the basis of estimates established for them by the Board. This relatively satisfactory situation is however also to a considerable extent due to the fact that the Board's Secretariat sends continuously reminders to tardy governments, calls in writing the attention of the national authorities concerned to the incompleteness, inaccuracies and inconsitencies of the data contained in their documents and particularly also to discrepancies between their own import and export statistics and the corresponding export and impert information of other countries. The Secretariat engages in fact continuously with a number of governments, either by correspondence and sometimes by personal meetings, in that kind of dialogue or consultation, for which the amended Convention would very usefully expressly provide.[608] The Secretariat dispatches in this connection more than two thousand and probably several thousands of communications each year.

The Information which parties would have to furnish to the Secretary General and through him to the Commission on Narcotic Drugs is described in article 18 of the Single Convention. This obligation is defined in general terms according to which the

[606] United Nations documents E/INC/B/15, pp. 3 and 4 and E/INC/B/14 paragraph 28; these documents contain the latest information published on this point at the time of this writing.

[607] The question of Chinese representation in the United Nations played a negative part in this connection.

[608] See article 9, paragraph 5, article 14, paragraph 1, sub-paragraph (a), and article 21, paragraph 3 of the amended Convention. The consultations referred to in article 14, paragraph 1, sub-paragraph (c) would be of a different kind.

parties are required to furnish to the Secretary General such information as the Commission may request as being necessary for the performance of its functions [609] and to do this in such manner and by such dates and by using such forms as the Commission may request.[610] Some of the specific reports which are included in this general obligation of parties are specially mentioned: [611] annual reports on the working of the Convention in each country or territory,[612] the texts of laws and regulations promulgated to give effect to the Single Convention,[613] important cases of the illicit traffic and the names and addresses of the government authorities empowered to issue export and import authorizations or certificates.[614]

In the form whose use the Commission prescribes for use in preparing the annual reports,[615] governments are required to furnish to the Secretary General and thus to the Commission information which covers *inter alia*: steps including preliminary steps taken to become a party of the ten multilateral drug treaties in force; [616] other international agreements or arrangements relating to narcotic drugs, whether bilateral or concluded by more than two countries; laws and regulations enacted to implement any of the four treaties under whose terms the annual reports are made; administrative arrangements for drug control; control of the international trade; control of manufacture, including the names and addresses of narcotics factories and the drugs each of them is authorized to make and their designations; [617] control of domestic trade; prohibition of manufacture of, international and domestic trade in, and use of some narcotic drugs; data on cultivators of plants from which narcotic drugs are obtained; statistical figures on drug abuse; and illicit traffic with many details.

In the form [618] which the Commission prescribes for use by governments in making their reports on important individual cases of the illicit traffic governments are required to supply information which includes *inter alia*: the kind and weight of the seized drug; the place and date of the illicit transaction or seizure; packing, labelling and trade mark of the seized substance; type of transportation used by the illicit trafficker (including name, owner, nationality and registration of ships, aircraft or other vehicle involved); route followed by the drug; destination; place of acquisition of the drug by the culprit; place where the drug was manufactured or where the plant was cultivated from which the drug was obtained; means by which the drug was obtained; in case of clandestine laboratories the apparatus seized; personal data of the trafficker and judicial or administrative measures taken against him.

This large list of data which is by no means exhaustive would give the Commission much material for the purpose of reviewing the working of narcotics control in each country and territory. Unfortunately, however, the reporting of governments to the Secretary General for use by the Commission is often very unsatisfactory. Some of the defects of the reports which are being submitted were summarized by the past Permanent Central Board. Essential data are frequently missing. The phrase "does not apply" or the word "nil" is used as answer to many important questions contained in the Commission's forms to be used for the reporting. Very often the same answer as in an earlier report is literally reproduced in subsequent reports without consideration of new developments; different reports of the same country sometimes contradict one another; the reported data are not unfrequently even incorrect as travellers in the countries concerned can quite easily observe; one can often note that a considerable number of the reports have been written in a routine fashion and sometimes by officials who are not equal to their tasks or do not

[609] Article 18, paragraph 1, introductory paragraph.

[610] Article 18, paragraph 2.

[611] See also in this connection the discussion of the 1931 Convention in the Chapter headed "The Gradual Evolution of the International Drug Treaty System".

[612] Annual reports had also to be furnished under the 1931 Convention (article 21), under the 1936 Convention (article 16) and the 1953 Protocol (article 10).

[613] See also article 21 of the 1912 Convention, article 30 of the 1925 Convention, article 21 of the 1931 Convention, article 16 of the 1936 Convention and article 10, para. 1, sub-para. (b) of the 1953 Protocol.

[614] Article 23 of the 1931 Convention; the lists of these authorities are published in the United Nations document series E/NA. 19.

[615] See United Nations document E/NR. FORM/Rev. 2, dated 21 March 1966.

[616] It is assumed that a revised form will extend this requested information to the Vienna Convention and to the Protocol of 1972; the writer of this paper does not yet have such a revised form.

[617] Lists of factories indicating the drugs each of them is authorized to make, are published in the United Nations document series E/NF. 19 ....., A Multilingual List of Narcotic Drugs under International Control containing all known synonyms is published by the United Nations Laboratory in Geneva and brought up-to-date from time to time; see United Nations document E/CN. 7/511, Sales No. E/F/S/R.69.XI.I., see also the List of Narcotic Drugs under International Control published by the International Narcotics Control Board, 14th edition (March 1970), published as Annex to the statistical forms ("Yellow List").

[618] Such a form is reproduced in Annex I of the United Nations document E/NR. FORM/Rev. 2.

appreciate the importance of their work or do not even know and are not able to obtain all the relevant data on which they have to report.[619] While the reporting on the illicit traffic although still very unsatisfactory may be a little better, the reporting on the extent of drug addiction is particularly deficient. This is still so although the reports of a few countries have improved in this respect in recent years. Many of the numbers of addicts given in the annual reports of governments are so low as to leave hardly any doubt that they are far from reality.[620] As regards countries in which addicts cannot obtain their drugs from legal supplies, but must rely for them on the illicit traffic it is certainly difficult to establish with some degree of accuracy the number of such addicts as it would be difficult to compute the numbers of other types of legal offenders; but even such countries are surely able to give a much more realistic estimate of the extent of their problem of addiction than they actually often do in their annual reports to the Secretary General. In other countries in which all or some addicts obtain their drugs on medical prescription doctors often refuse to report addicts to the authorities, justifying their position by the principle of the confidential character of the relationship between doctor and patient; but despite this principle they are bound and agree to report cases of contagious diseases; and drug addiction may be considered to be a contagious condition. Where doctors are willing to report the numbers, but not the names of the addicts whom they treat, the computation of the number of addicts is quite often impeded by the fact that some of them are "treated" by two or more doctors. Some countries whose addicts are supplied from legal sources have also made efforts to arrive at an estimate of the number of addicts by analysing the prescriptions which pharmacies are under the Single Convention required to maintain for a minimum period of two years.[621]

The quality of annual reports which have been furnished in recent years is considerably inferior to what it was in the period of the League of Nations and in the early years of the United Nations. This is certainly to a considerable degree due to the fact that a number of newly independent States lack experienced personnel while formerly their annual reports were prepared by colonial officials of their respective metropolitan countries; but this cause will certainly lose its effect as the new countries succeed in developing their own efficient civil service. But there are other reasons for this deterioration which are caused by the administrative practice of the United Nations itself.

Contrary to the earlier practice, the Secretary General does not anymore distribute to governments copies of the annual reports or of the individual reports on important cases of the illicit traffic. These reports are retained in the archives of the United Nations. This change was apparently done for economy reasons, because the translation of the reports into the five "official" languages [622] or even only into the "working" languages [623] and to some extent also the reproduction and distribution of such extensive documentation would involve great expenses. As before the United Nations secretariat prepares summaries of the annual reports,[624] and also some summaries of the reports on cases of the illicit traffic.[625] These summaries are transmitted to governments and also reviewed by the Commission on Narcotic Drugs. Which facts contained in the Annual Reports are important to be included in the summary is therefore decided by the officer of the Division of Narcotic Drugs and the Commission is not in a position to consider the full annual reports but only those parts of them which an international civil servant selects for this purpose. In fact the Commission has in recent years devoted very little attention to these summaries, particularly to those of the annual reports.[626] Its members prefer to discuss the situation in those countries which are of particular interest to them as sources of their narcotics supplies and they rely in this discussion more on information which they receive through their own governmental channels than on that which they may learn from the annual reports furnished under the narcotics treaties. This discussion is however impeded by worldwide political considerations of the victims of the illicit traffic [627] as well as by the increased national sensitivity of those countries whose stewardship should be subjected to the opprobrium of interna-

[619] United Nations document E/OB/21, paragraphs 124–125.

[620] United Nations documents E/OB/21, paragraph 152.

[621] Article 34, paragraph (b).

[622] Chinese, English, French, Russian and Spanish.

[623] Four at present for the Economic and Social Council: English, French, Russian and Spanish.

[624] These summaries are published in the United Nations document series E/NR. 19 . . . . /SUMMARY.

[625] Published in the United Nations document series E/NS. 19 . . . . . /SUMMARY . . . . .

[626] Several years ago, the representative of Canada even suggested in a meeting of the Commission that the summaries of annual reports were superfluous and could be abolished.

[627] Egypt is also such a country.

tional public opinion by its discussion in public sessions of the Commission.

The quality of the reports of government could be improved if they would be sent again to governments and also individually reviewed by the Commission which, by the reforms suggested below in "The Commission on Narcotic Drugs," would be in a position to discuss the drug situation in different countries with less attention to political problems than it can do today.

It would also be useful if the United Nations secretariat would engage in persistently reminding tardy Governments and in calling their attention to lacunae, inconsistencies and other defects in their reports, similarly as the Secretariat of the International Narcotics Control Board proceeds in respect of estimates and statistical returns. The United Nations Secretariat is expressly authorized by a resolution of the Economic and Social Council [628] to ask governments to furnish such explanations or additional information regarding statements contained in annual reports, seizure reports, texts of laws and regulations or in other reports forwarded by them to the Secretary General as may be necessary to enable the Commission on Narcotic Drugs to discharge its functions. The United Nations Secretariat does this to some extent; but its efforts should be increased and it should be enabled to do this by obtaining the required additional staff *qualified* for this task.

The Protocol of 1972 would not amend article 18.[629] Despite appearances to the contrary the Vienna Convention would not impose on parties less far-reaching obligations to report, through the Secretary General, to the Commission on psychotropic substances than the Single Convention does in regard to "narcotic drugs." [630]

The obligation of parties to make these reports under the Vienna Convention is formulated in literally the same general terms as the corresponding obligation of parties under the Single Convention. The parties to the Vienna Convention would be required to furnish to the Secretary General such information on psychotropic substances as the Commission would request as being necessary for the performance of its functions.[631] They would also have to do this in such a manner and by such dates as the Commission would request.[632] Although the Vienna Convention would not expressly authorize the Commission to prescribe the forms which governments should use in reporting to the Commission it is submitted that its right to determine the "manner" in which the reports should be made, would also include the right to prescribe these forms. The Vienna Convention mentions some reports which parties would have to make in accordance with their general obligations. So does the Single Convention. The Vienna Convention indicates some of the contents which the annual reports would have to include, namely: important changes in the laws and regulations concerning psychotropic substances and significant developments in the abuse of and the illicit traffic in psychotropic substances; the Single Convention does not do this in respect of narcotic drugs, but the Commission requires the inclusion in the annual reports of this information in regard to such drugs and in any event would be authorized to require this inclusion. The Vienna Convention also mentions expressly the obligation of parties to notify the Secretary General of the names and addresses of the governmental authorities which would be charged with the administration of its control regime for international transactions in psychotropic substances and would require the Secretary General to make this information available to all parties.[633] The Single Convention requires the parties to supply the same information in regard to narcotic drugs without however expressly indicating an obligation of the Secretary General to furnish this information to the parties; [634] but the Secretary General does this anyway.

The Vienna Convention would expressly require—as the Single Convention does—that parties should furnish reports on important cases of the illicit traf-

[628] Resolution 246 B (IX).

[629] See article 35, paragraphs (f) and (g) of the amended Convention which however would not impose additional obligations on parties in regard to their reports to the Commission on Narcotic Drugs through the Secretary General.

[630] Article 16, paragraphs 1–3.

[631] Article 16, paragraph 1, introductory paragraph. One compare with this provision article 18, paragraph 1, introductory paragraph of the Single Convention. Attention is drawn to the provisions of article 17, paragraph 1 of the Vienna Convention which authorizes the Commission to "consider all matters pertaining to the aims of this Convention."

[632] Article 16, paragraph 6. One compare this provision with article 18, paragraph 2 of the Single Convention (and also with article 12, paragraph 1, article 13, paragraph 1, article 19, paragraph 1, introductory sub-paragraph and article 20, paragraph 1, introductory sub-paragraph of the Convention.)

[633] Article 16, paragraph 2, article 7, paragraph (f), article 12 and article 13, paragraph 3 of the Vienna Convention.

[634] Article 18, para. 1, sub-para. (d) and article 21, paras. 4–16.

fic[635] While both treaties stipulate that a case may be important because of the quantities involved, the method employed by the illicit traffickers or the light thrown on the sources from which the illicit supplies are obtained the Vienna Convention adds that a case may also be important because of the new trends of illicit traffic which it may reveal.[636] The Vienna Convention would also require parties immediately to send copies of their reports on important cases of the illicit traffic to the other parties directly concerned, either through the diplomatic channels or the competent authorities designated by the parties for this purpose.[637] The Single Convention does not provide for such a communication, but the Secretary General transmits summaries of these reports to all parties to the Convention and to the Commission on Narcotic Drugs. The Vienna Convention would not expressly require the furnishing of the text of all laws and regulations promulgated in order to give effect to its provision as the Single Convention does in respect of its own provisions;[638] but the Commission under its general authority to require parties to furnish such information as it would request as being necessary for the performance of its functions under the Vienna Convention, could obligate parties to supply the texts of the laws and obligations enacted to carry out this treaty.

It is submitted that these divergences between the two treaties which have just been described in some detail only indicate the different emphasis which the authors of the two treaties might have placed on particular types of information. They are legally irrelevant, since the Commission could under both treaties obtain from the parties all the information which it would request as being necessary for the performance of its functions under the treaty concerned.

Changes in the Schedules of the Single Convention

Under the Single Convention as well as under the Vienna Convention, changes in their respective Schedules can be brought about in a procedure in which the Commission on Narcotic Drugs as well as the World Health Organization must take part.[639] The role which the World Health Organization plays in this procedure is different under the terms of these two treaties. Under the Single Convention the Commission may make a change in any of its Schedules only in *accordance* with the recommendation of the World Health Organization, but it can refuse to act in accordance with this recommendation. It cannot make any change which was not recommended by the World Health Organization.[640] However, under the terms of the Vienna Convention the Commission could make a change in any of the Schedules which would not agree with the World Health Organization's recommendation. In making its decisions the Commission would take into account the recommendation of the World Health Organization whose assessment would be "determinative as to medical and scientific matters" and bear in mind "the economic, Social legal, administrative and other factors" which it might consider relevant.[641]

The United States could prevent any decision of the Commission concerning a change in a Schedule of the Vienna Convention which would run counter to a policy agreed upon by the government departments in question [642] in the spirit of the relevant provisions of the "Comprehensive Drug Abuse Prevention and Control Act of 1970." [643] This opinion is based on the provision of article 17, paragraph 2 of the Vienna Convention which stipulates that decisions of the Commission changing a Schedule would require a two-thirds majority of its members. However it is also held that the United States could not only prevent decisions of the Commission which would run counter to such a policy, but would also generally be able to obtain the required consent of the Commission's two-thirds majority to placing an additional substance under the control of the Vienna Convention whenever it considers such a measure

[635] Article 16, para. 3 and article 18, para. 1, sub-para. (c).

[636] The answers to the questions included in the form which the Commission prescribes for use in reporting individual cases of the illicit traffic in narcotic [1] drugs would in fact reveal such new trends; see Annex I of the United Nations document E/NR. FORM/Rev. 2.

[637] Article 16, paragraph 3, sub-paragraph (d) and article 21, paragraph (b).

[638] Article 18, paragraph 1, sub-paragraph (b) of the Single Convention.

[639] Article 3 of the Single Convention; see also article 2 of the Vienna Convention; it is submitted that it could also be done by the procedure by which the Convention itself could be revised; article 47 of the Single Convention and article 30 of the Vienna Convention.

[640] Article 3, paragraph 3, sub-paragraph (iii) and paragraphs 4, 5 and 6.

[641] Article 2, paragraphs 5 and 6.

[642] U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) and U.S. Department of Health, Education and Welfare.

[643] Those provisions of Section 201 regarding changes in the domestic control status of a drug or other substance with the exception of paragraph (d) under which such a change would be required by an American treaty obligation.

necessary in accordance with a national policy adopted by the two departments.[644]

Despite important differences the procedures of the two conventions for effecting changes in their respective Schedules also show considerable similarities. In both cases the procedure can be initiated only by a notification either of the Party to the Convention concerned or by the World Health Organization to the Secretary General. A party or the World Health Organization is required to make such a notification if it has information which in its opinion may require an amendment to any of the Schedules of the treaty in question.

The Commission on Narcotic Drugs may require parties to subject a substance, not yet controlled by the Convention, to provisional control pending its final decision on the control status of that substance while it would not have this power under the Vienna Convention.[645] Parties to the Vienna Convention would however be required to examine the possibility of the provisional application to a substance which is a subject of the procedure pursuant to article 2, of all measures of control applicable to substances in Schedule I or Schedule II, as appropriate, if the information transmitted to them together with the notification of a party or the World Health Organization which would have initiated the procedure, would indicate that the substance involved would be suitable for inclusion in Schedule I or Schedule II. This requirement of examining the possibility of applying such provisional control would apply to substances which would not yet be controlled by the Vienna Convention as well as to substances which would already be in Schedule II, III or IV, of that Convention. The parties would have to make this examination "in the light of all information available to them," [646]

[644] The writer is inclined to believe that the Commission on Narcotic Drugs, in view of its composition, would be more ready to extend control to additional drugs or psychotropic substances than was the Conference of 1971 which adopted the Vienna Convention. It is of course assumed that the drug or substance would constitute an *international* problem.

[645] Article 3, paragraph 3, sub-paragraph (ii); the provisional control to be applied would have to be that control which must be applied to drugs in Schedule I of the Single Convention.

[646] Article 2, paragraph 3 of the Vienna Convention; see also article 3, paragraph 3, sub-paragraph (i) of the Single Convention.

Before discussing the descriptions, in the two Conventions, of the conditions under which a substance could be placed under the control regime of the treaty concerned three general observations may be made:

- Only a substance which would not yet be "under international control" could be placed under the control regime of the Vienna Convention.[647] What is meant by "international control" is *control by the Single Convention*, and not control by a preceding narcotics treaty. All drugs covered by control provisions of the earlier treaties are at present also controlled by the Single Convention. It is submitted that removal of a drug from the control of the Single Convention would under the conditions of article 2 of the Vienna Convention make it possible to subject it to an appropriate regime of the latter treaty although that drug might continue to be controlled by provisions of earlier narcotics treaties. There is on the other hand no provision of the Single Convention which would make it impossible to place under the regime of that treaty a substance which would be and continue to be controlled by the Vienna Convention. However, such an arrangement would hardly be practicable although the application of the provisions of both treaties to the same substance would be possible since they would not be incompatible with each other.

- Under the Single Convention not only dangerous substances which it defines for this purpose can be placed under international control but also those which are "convertible" into drugs already under the control of that treaty. The Vienna Convention would not provide for the control of substances which would be "convertible" into psychotropic substances already under its control or into substances which would have the dangerous properties which under the provisions of article 2 would render it possible to place them under that control.[648]

- The definitions in the two Conventions, of the dangerous substances which may be placed under their respective regime are *overlapping*.

[647] Article 2, paragraph 1.

[648] Article 2, paragraph 4. It is submitted that it would be impossible to consider the definition of this paragraph as covering such "convertible" substances. The provision of article 2, paragraph 9 refers to a different matter. It corresponds to article 2, paragraph 8 of the Single Convention. For various proposals to bring precursors within the scope of the Vienna Convention see e.g. United Nations documents E/CONF. 58/C. 3/L. 8, L. 10/Add. 4, L. 14 and E/CONF. 58/C. 4/L. 61.

Definition of the dangerous substances which may be placed under international control under the two treaties under consideration

Single Convention

Under the Single Convention the Commission on Narcotic Drugs may place under the Convention's control [649] only a substance which the World Health Organization has found to be liable to "similar" abuse and productive of "similar" ill effects as the drugs in Schedule I or Schedule II (i.e. as drugs already under the Convention's control) or to be convertible into a "drug" (a substance already under the Convention's control).[650] One could formulate this definition in more popular term by declaring that the substances involved must be found to be liable to similar abuse and productive of similar ill effects as morphine, cocaine or cannabis or to be convertible into drugs already under the control of the Single Convention.

It is of course within the competence of the World Health Organization to decide whether a substance has such properties and to interpret the relevant provision of the Single Convention when applying it. There may also be varying degrees of "similarity" and the Single Convention does not indicate what degree is required. It is therefore left to the judgment of the World Health Organization to decide what it considers to be "similar" for the purpose of this provision. In doing this it will also be guided by the risk which in its opinion the substance presents for public health and social welfare. One may mention that the World Health Organization has in practice not refused to assume the similarity of the dangerous properties of a substance with those of a drug already under control because the substance is much more potent than the drug as long as the dangerous effects of the substance are similar in kind to those of the controlled drug with which it is being compared. Etorphine and acetorphine are many times more potent than morphine. Following the above mentioned line of reasoning both of these drugs have been placed in Schedules I and IV of the Single Convention because they have morphine like effects. It may therefore be assumed that tetrahydrocannabinols which are in Schedule I of the Vienna Convention could be placed under the control of the Single Convention because they have cannabis like effects although much more potent ones than cannabis or cannabis resin.

[649] Either in Schedule I or II of the Convention. A drug may be placed in Schedule IV only if it is already in Schedule I, article 3, paragraph 5 and article 2, paragraph 5.

[650] Article 3, paragraph 3, sub-paragraph (iii).

It has been admitted by officials of the World Health Organization in meetings as well as in discussions with the writer of this paper that the ill effects of amphetamines could for the purpose of applying article 3, paragraph 3, sub-paragraph (iii) be considered "similar" to those of cocaine, both causing central nervous system stimulation. They have equally asserted that the ill effects of barbiturates which are addiction producing and of those tranquilizers which are also addiction producing could also for this purpose be considered to be similar to the ill-effects of morphine, all of these drugs producing central nervous system depression. The reason why the World Health Organization cannot assume this similarity is not necessarily *technical*, but *legal*. The Office of Legal Affairs of the United Nations ruled, in an opinion given to the Commission on Narcotic Drugs at its twenty-third session that barbiturates, tranquilizers and amphetamines were outside the scope of the Single Convention. The Office based this opinion on the consideration that there was an understanding at all stages of the drafting of the Single Convention and in particular also at the Conference of 1961 which adopted the Single Convention that this treaty should not be applicable to these three types of substances although the effects of the amphetamines have some degree of similarity to cocaine and those of barbiturates and some tranquilizers to morphine. It may be added that this understanding was reached at the 1961 Conference particularly at the insistence of the American delegation. This delegation was obviously motivated in this by the opinion that the huge burden which would be placed on international and national control organs by subjecting amphetamines,[651] barbiturates and tranquilizers to the narcotics regime would fatally weaken this regime in the campaign against addiction to narcotic drugs and thus frustrate international efforts which had been made for more than half a century. The delegation also appears to have held that the narcotics regime was not suitable for those barbiturates and tranquilizers which were consumed in quantities which were a multiple of the amounts of even the most popular narcotics such as codeine which were prescribed for legitimate therapeutic purposes. One would have to keep a proper balance between the requirements of fighting drug abuse and those of facilitating legitimate medical use.

[651] Amphetamines were considered much more medically useful in 1961 than they are today. Huge quantities of them were consumed for what were held to be legitimate medical purposes.

vention to amphetamines, barbiturates and tranquilizers if no party to the Convention would object to such a course of action.[652]

The legal opinion did not exclude the hallucinogenic drugs from the scope of the Single Convention. Those of them which the World Health Organization would find to have ill-effects "similar" to those of cannabis and cannabis resin could therefore be placed under the international narcotics regime by the operation of article 3 of the Single Convention.

The Possibility of Placing Amphetamines under the International Narcotics Regime.

It is possible that there would now be no objection to placing some or all of the amphetamines under the narcotics regime. The agreement of all parties many of which accepted the Single Convention on the basis of the above mentioned understanding would be required for this purpose. The following procedure could be followed: A resolution could be introduced in the Economic and Social Council requesting all parties to the Single Convention to agree to setting aside the understanding referred to repeatedly, in respect of amphetamines to be indicated and stating that all parties which would not expressly object in writing to the Secretary General within an indicated period of time would be considered to have agreed. If this resolution is adopted by the Council and no party objects to the suggested agreement the amphetamines in question could be notified to the Secretary General,[653] the required finding and recommendation of the World Health Organization could be obtained and the Commission could decide to place the amphetamines involved under the narcotics regime. Another course of action could also be considered. The inclusion of the amphetamines in question in Schedule I of the Single Convention [654] could be brought before the Council in form of a treaty amendment and the Council could be asked to circulate the proposed amendment pursuant to article 47, paragraph 1, sub-paragraph (b) of the Single Convention. If no party objects within the eighteen months referred to in article 47, paragraph 2, the amendment would enter into force. It is held that this procedure would probably take more time than the first proposed above for placing amphetamines under the international narcotics regime. In the case of both procedures it would be necessary that the United States and other interested countries such as Sweden inform all parties to the Single Convention of their interest in placing the amphetamines under the narcotics regime. Such a course of action would most vested interests to move uninformed or otherwise influenced governments to object to the placement of the amphetamines concerned under the narcotics regime.

The two proposed procedures for placing the amphetamines in question under the narcotics regime, if successful, would probably have the advantage of achieving quicker the aims of placing these drugs under international control than this would be the case under the Vienna Convention whose entering into force may perhaps take a very long time. Moreover, the narcotics regime applicable to drugs in Schedule I is somewhat stronger than the regime which would be applied to amphetamines in Schedule II of the Vienna Convention.

There are however two very serious arguments against placing the amphetamines under the narcotics regime in order to frustrate the efforts of probably delay and perhaps prevent the coming into force of the Vienna Convention. Moreover, it would set a precedent which would strengthen the position of those who might wish to place, by the same kind of procedure, barbiturates and tranquilizers under the narcotics regime. This would be very undesirable and in the case of some of the more valuable and widely used of these drugs very harmful from the viewpoint of public health. The United States and other countries, by their objection, could prevent the placement of these drugs under the narcotics regime. But the pressures which would arise would be very unpleasant and the position of the United States in its efforts to make its views on opium control prevail on the international scene might be considerably weakened.

Substances which may be placed under the control of the Vienna Convention.

The exclusion from this control of substances already under "international control" and of those which do not have themselves the required dangerous properties but are only "convertible" into such dangerous substances has been mentioned above.

A substance could be placed under the regime of the Vienna Convention only if it would be found by the World Health Organization to have the capacity to produce

- A state of dependence *and* certain mind altering effects (i.e. central nervous system stimulation or depression, resulting in hallucinations or disturbances in motor function or thinking or behavior or perception or mood), *or*
- Similar abuse and similar ill effects as a substance in Schedules I, II, III or IV.

Moreover, even a substance having these dangerous properties could be placed under the control of the Vienna Convention only if the World Health Organization would find "that there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem *warranting* the placing of the substance under *international* control." [655]

It would be required that the abuse or likelihood of abuse of the dangerous substance constitutes an *international* health and social problem in the sense that lack of control or defective control in one country would endanger the effectiveness of the control measures in another country. If this would not be the case the problem would not be "international" solely because the abuse or the likelihood of abuse of the substance would occur in more than one country. If the term "international" would not be understood in this sense certainly alcohol and most probably also tobacco could be placed under the Vienna Convention because they would be found to have the required dangerous properties and because they constitute "a public health and social problem" in many countries. The authors of the Vienna Convention had undoubtedly no intention to place alcohol and tobacco under its regime. Moreover if the term "international" were not understood to have the suggested meaning and if the very improbable situation would arise in which the Commission would consider the international control of alcohol or tobacco the United States could doubtless prevent such control particularly also because the Commission would have to take the decision to control by a two-thirds majority of its members.[656]

The definitions, in the Single Convention and the Vienna Convention, of the substances which could be placed under their respective regimes are overlapping. An examination of the definition of the Vienna Convention, reveals that any of the drugs under the Single Convention which are *themselves* liable to abuse and productive of ill-effects as described in that treaty's definition [657] and not *only* convertible into such dangerous drugs could be placed under the Vienna Convention if it would be removed from the control of the Single Convention.

Under both Conventions the Commission would not be bound to make a change in a Schedule if all conditions required for such action would exist.[658] It would in such a case have discretionary power to adopt or reject the revision of the Schedule in question.

The decisions of the Commission amending the Schedules of the Single Convention may be adopted by "a majority of its members present and voting" [659] while those amending the Schedules of the Vienna Convention would require a two-thirds majority of its total membership.[660]

Schedules

Both Conventions have several lists (Schedules) of substances to which they apply somewhat divergent regimes of varying strictness. The differences between the regimes of the Vienna Convention are greater than those between the regimes of the Single Convention.

The Single Convention has three such Schedules: Schedule I which is subject to the standard regime, Schedule II which is exempted from a few controls applicable to Schedules I and IV which is subject to controls formulated in rather vague terms,[660] in addition to those applicable to Schedule I.

The Vienna Convention has four Schedules numbered I, II, III and IV subject to four different control regimes. A Schedule with a lower number is controlled by a more strict regime than a Schedule with a higher number.

The Single Convention has, in addition, a Schedule III which does not list drugs but preparations which are subject to a particularly lenient regime. While preparations of narcotic drugs are generally subject

[652] For the full text of the Legal Opinion see United Nations document E/CN. 7/L. 306; for an extensive summary, Report of the Commission on Narcotic Drugs on its twenty-third session, United Nations document E/4606/Rev. 1, paragraph 354. This legal view was also shared by the past Permanent Central Board and Drug Supervisory Body, United Nations document E/OB/23-E/DSB/25, paragraphs 131–142.

[653] In order to speed up the matter the procedure could be initiated before it has been established that no party objects. The Commission could of course take its decision only afterwards.

[654] It is submitted that revising of the Schedules could be effected not only by the operation of article 3, but also by an amendment of the Single Convention.

[655] Article 2, paragraph 4, sub-paragraphs (a) and (b).

[656] Article 17, paragraph 2.

[657] Article 3, paragraph 3, sub-paragraph (iii).

[658] Article 3, paragraph 3, sub-paragraph (iii) and paragraphs 4, 5 and 6 of the Single Convention, article 2, paragraph 5 and 6 of the Vienna Convention.

[659] Rule 55 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council, United Nations document E/4767.

[660] Article 2, paragraph 5.

to the same regime as the drugs which they contain preparations in Schedule III whether they contain drugs in Schedules I or II are even exempt from some provisions which apply to preparation of drugs in Schedule II, the most important being those requiring the application of the import certificate and export authorization system. If the World Health Organization finds that a preparation because of the substances which it contains is not liable to that abuse and cannot produce those ill-effects which would justify placing a substance under the control of the Single Convention and that the drug therein is not readily recoverable the Commission *may*, in accordance with the recommendation of the World Health Organization, include that preparation in Schedule III.[661] Such a decision is effective for *all* parties and all of them may apply to the preparation concerned the lenient regime provided for preparations in Schedule III.[662]

The Controls applicable to the different Schedules of the Single Convention and of the Vienna Convention were discussed above in connection with the relevant provisions of the Single Convention or with that of corresponding provisions of earlier drug treaties.

The Vienna Convention does not have a Schedule corresponding to Schedule III of the Single Convention. Similarly as the Single Convention it would provide that a preparation should normally be subject to the same measures of control as the psychotropic substances which it would contain and if it would contain more than one psychotropic substance, to the measures applicable to the most strictly controlled of these substances.[663] However, a party by its unilateral action, could under certain conditions exempt from some required controls a preparation containing a psychotropic substance other than a substance in Schedule I. It could do this in the case of a preparation which would be compounded in such a way that it would present no, or a negligible risk of abuse and that the psychotropic substance could not be recovered by readily applicable means in a quantity liable to abuse, so that the preparation would not give rise to a public health and social problem.[664] A party could exempt such a preparation from all or some of the prescribed control measures other than:

- Article 8 except insofar as it would require the licensing of the manufacture of exempted preparations.
- Article 11 except insofar as it would require the manufacturer of exempted preparations to keep records as to the quantity of each psychotropic substance used in the manufacture of an exempted preparation, and as to the nature, total quantity and initial disposal of the exempted preparation manufactured from that substance.
- Article 13 which would require parties to take measures to ensure that none of those psychotropic substances should be exported from their territories to a Party or to its region or regions concerned whose import into its country or into one or several of its regions that party would have prohibited by a notification addressed, through the Secretary General, to all the other Parties. Quantities whose import the prohibiting party would in each case authorize by a "special import license" would however be excepted from this import and export prohibition. This prohibition with its exceptions would apply to "exempted preparations" as to other preparations of the psychotropic substances concerned,
- Article 15 insofar as it would require Parties to provide for inspections of the premises, stocks and records of the manufacturer of exempted preparations.
- Article 16 insofar as it would require parties to furnish to the International Narcotics Control Board statistics on the quantities of each substance in Schedules II and III used in the manufacture of exempted preparations.
- Article 22 insofar as the application of its penal provisions would be necessary for the repression of acts contrary to laws and regulations adopted to carry out the obligations referred to above. Article 22 would also have to be applied to the extent necessary for the repression of acts contrary to laws and regulations adopted to carry out other provisions from which the party concerned would not have exempted the preparation concerned or those provisions whose inclusion in the exemption would have been cancelled pursuant to article 3, paragraph 4.[665]

Only the party which would make the exemption would be freed from the obligation to apply to the preparation concerned the provisions from which it would exempt that preparation. Other parties would not have that freedom except if they would also exempt this preparation and only to the extent as their own exemption would provide for the discontinuation of application of control measures.

The requirement of a medical prescription [666] and that of applying the import certificate and export authorization system to substances in Schedule II [667] as well as the obligation to declare the export of substances in Schedule III [668] are among the measures from which a preparation could be exempted. Any exemption of a preparation made by a party could be partially or fully terminated by a decision of the Commission on Narcotic Drugs taken in accordance with a procedure [669] which is patterned after the procedure which would have to be followed in the case of changes in the Schedules of the Vienna Convention.[670] The Commission would have to adopt, by a two-thirds majority of its members,[671] its decision to terminate, partially or fully, an exemption. Its decision would take effect within 180 days from "the date" of its communication by the Secretary General to the Members of the United Nations, to non-member States parties to the Vienna Convention, to the World Health Organization and to the International Narcotics Control Board.

No provision is made for review of the Commission's decision by the Economic and Social Council nor for partial "rejection" of the Commission's decision on the pattern of that for which article 2, paragraph 7 provides in cases of changes by the Commission in the Schedules of the Single Convention.

It is quite possible that a provision such as that of article 3 permitting unilateral exemption by parties of preparations from some controls had to be included in the Vienna Convention in order not to impede the easy availability of very useful and widely employed medicined. It may however be added that article 3 unless carried out in good faith by all parties might seriously reduce the effectiveness of the control provisions governing psychotropic substances in Schedule II, III and IV.

Criteria for Inclusion in Particular Schedules.

The texts of both Conventions provide for some criteria which might guide the World Health Organization in recommending and the Commission on Narcotic Drugs in deciding in which Schedule a substance should be included.

The Single Convention stipulates that the Commission may, in accordance with the recommendation of the World Health Organization, include in Schedule IV a drug listed in Schedule I, if that Organization finds that this drug is particularly liable to "abuse" and to produce "ill effects" [672] and that such liability is not offset by substantial therapeutic advantages not possessed by substances other than drugs in Schedule IV.[673]

The views of the Technical Committee of the Conference which adopted the Single Convention, as regards the kind of drugs (Schedules I, II and IV) and preparations (Schedule III) which should be included in that Convention's different Schedules.

The Committee reported that in composing the Schedules it was guided by the substance's "degree of liability to abuse" and its "risk to public health and welfare."

In Schedule I were in particular to be included those drugs which:

- Have addiction-producing or addiction-sustaining properties greater than those of codeine and more or less comparable to those of morphine,
- Are convertible into substances having addiction-producing or addiction-sustaining properties with an ease or yield such as to constitute a risk of abuse greater than that of codeine,
- Have a liability to abuse comparable to that of cannabis, cannabis resin or cocaine *or*,
- Are convertible into substances having a liability to abuse comparable to that of cannabis, cannabis resin or cocaine.

The Technical Committee's detailed rules would provide for inclusion in Schedule II the following drugs:

- Those having addiction-producing or addiction-sustaining properties not greater than those of codeine but at least as great as those of dextropropoxyphene, *or* [674]
- Those being convertible into a substance having addiction-producing or addiction-sustaining prop-

[661] Article 3, paragraph 4.

[662] See, however, article 39 of the Single Convention.

[663] Article 3, paragraph 1 of the Vienna Convention.

[664] Article 3, paragraph 2 of the Vienna Convention. One will note that these conditions for exempting preparations from controls are very similar to those for such exemptions under Article 8 of the 1925 Convention and article 2, paragraph 4 of the Single Convention discussed above.

[665] This follows from the text of article 22, paragraph 1.

[666] Article 9.

[667] Article 12, paragraph 1.

[668] Article 12, paragraph 2.

[669] Article 3, paragraph 4.

[670] Article 2, paragraphs 1–2, 4–6.

[671] Article 17, paragraph 2.

[672] "Abuse" and "ill effects" of the kind which under article 3, paragraph 3, sub-paragraph (iii) would justify placing the substance under the control of the Single Convention.

[673] Article 3, paragraph 5.

[674] Dextropropoxyphene was removed from Schedule II and thus freed from control by a decision of the Commission under article 3, paragraph 6, sub-paragraph (b) of the Single Convention; United Nations document E/3893, paragraph 157.

erties with an ease and yield such as to constitute a risk of abuse not greater than that of codeine.

In the Technical Committee's view the following drugs were to be included in Schedule IV:

- Which have strong addiction-producing properties or a liability of abuse not offset by therapeutic advantages which cannot be afforded by some other drug, *and/or*
- Whose deletion from general medical practice is desirable because of their risk to public health.

The Committee finally held that the following preparations could be included in Schedule III:

- Which are intended for legitimate medical use, *and*
- Which have a specified drug content and are compounded with one or more ingredients in such a way that the preparation has no, or a negligible risk of abuse, and in such a way, that the drug cannot be recovered by readily applicable means or in yield which would constitute a risk to public health.[675]

In practice the World Health Organization in its recommendations and the Commission in its decisions have been guided by the provisions of the Convention (Article 3, paragraph 4 for preparations in Schedule III and article 3, paragraph 5 for drugs in Schedule IV) and by considerations of the degree of liability of abuse and by the extent of the risk to public health and welfare, of the drug or preparation concerned and not necessarily by the more detailed rules of the Technical Committee.

The Vienna Convention also points to certain factors which the World Health Organization would have to take into account in recommending the particular Schedule in which in its opinion a substance under consideration should be placed. These factors are in essence very similar to those which guide in the choice of a Schedule under the Single Convention. The World Health Organization would, under the Vienna Convention, be required to communicate to the Commission an assessment of the substance under consideration, which would include not only its finding regarding the dangerous properties of that substance, but also its views on the extent or likelihood of abuse of the substance, on the degree of seriousness of the public health and social problem which the substance constitutes, and on the degree of its usefulness in medical therapy. The Organization would also have to transmit to the Commission, together with this assessment, its recommendations on the control measures, if any, that would be appropriate in the light of this assessment.[676] It will be recalled that this assessment would be "determinative" as to medical and scientific matters.[677]

In deciding whether a substance would be controlled and if so in which Schedule it should be placed the Commission would have to take into consideration all these elements contained in the World Health Organization's communication and would also have to bear in mind the "economic, social, legal, administrative and other factors" to which it is referred by the Convention.[678]

Legal Remedies available to Parties against decisions of the Commission regarding changes in the Schedules of the Single Convention or of the Vienna Convention

Under both treaties such decisions are subject to review by the Economic and Social Council at the request of any Party to the Convention concerned. Under the Vienna Convention a party would moreover have the right to refuse to carry out some of the obligations which would be imposed upon it by the Commission's decision.

Review by the Economic and Social Council

Under the Single Convention only those decisions of the Commission which would amend any of its Schedules would be subject to review by the Council, while under the Vienna Convention not only such decisions but also those which would refuse to make an amendment to any of its Schedules could be reviewed by the Council at the request of a party to this treaty.[680]

Under both treaties a request for review would not have a suspensive effect. During the pendency of the review the original decision of the Commission would remain in effect, in the case of the Vienna Convention subject to the right of a party to refuse to carry out some of the control measures which would be required by the Commission's decision.[681]

The value of the possibility of review by the Council of the Commission's decision is questionable. The Council is composed of Government representatives few, if any, of which would have the technical knowledge required for such a review. Many of these representatives do not have qualified technical advisers or even the possibility of obtaining from their governments technically sound instructions for this purpose.[682] This was even the case when the Council was composed of 18 members as was the case when the Single Convention was adopted in 1961. The Council's membership was meanwhile increased to 27 by an amendment of the Charter of the United Nations [683] and will be increased to 54 by another amendment of the Charter when in force.[684] The membership of the Social Committee of the Council was already increased to 54.[685] It is this Committee which deals with drug problems and whose recommendations on this matter are normally accepted by the Council's Plenary Session. This increase in membership obviously reduces the capacity of the Council to review decisions of the Commission in a technically sound manner. Review of administrative action by a superior authority is an appropriate remedy in national administration but rarely in international administration which does not have the required kind of organizational machinery for this purpose.

The decisions of the Commission concerning the schedules of the two Conventions could only be reviewed under the conditions and in accordance with the procedure required by the treaty concerned. They could not be reviewed by the Council as the Council could do in regard to decisions of its Functional Commission which are taken under their terms of reference granted to them by the Council under the Charter of the United Nations.[686]

The Vienna Convention does not provide for review by the Council of a decision of the Commission to terminate, under its article 3, paragraph 4, fully or partially the exemption of a preparation while decisions under the Single Convention to place a preparation in Schedule III or to remove it therefrom are subject to such a review.

Since the Single Convention came into force there was not a single request for review by the Council of a decision by the Commission to change a Schedule of that Convention.

The right of a party to refuse to carry out some control measures which would be required by a decision of the Commission amending a Schedule of the Vienna Convention ("Right of Non-Acceptance" or "Right of Rejection") [687]

A party would have to exercise this right within 180 days after the "date" of the Secretary General's communication of the Commission's decision "to all Members of the United Nations, to non-member States to this Convention, to the World Health Organization and to the (International Narcotics Control) Board." The party would have to do this in case of a "decision adding a substance to a Schedule" by a written notice addressed to the Secretary General that, "in view of exceptional circumstances," it would not be in a position to give effect to all of the provisions of the Convention applicable to substances in that Schedule. The notice would have to state the reasons for the exceptional situation which would move the Party to give such a notice. A party which would give such a notice would nevertheless have to apply, as a minimum, certain control measures which would differ in regard to substances placed in different Schedules.[688]

There cannot be any doubt that this right of a party would not only apply to a previously uncontrolled substance which would be added to a Schedule because provision is made not only for such a case [689] but also for a case in which a substance would be

[675] Records of the Conference vol. II, pp. 263–264, United Nations document E/CONF. 34/24/Add. 1.

[676] Article 2, paragraph 4, closing sub-paragraph.

[677] Article 2, paragraph 5.

[678] It may be noted that "The Revised Draft Protocol ... Psychotropic Substances" which was prepared by the C... mission and which was used as working document by ... Conference which adopted the Vienna Convention pro... in its article 2, paragraph 4 some guidelines for the Wo... Health Organization's recommendation of the Schedule ... which a dangerous substance should be placed.

[679] Article 3, paragraph 8 of the Single Convention, ... ticle 2, paragraph 8 of the Vienna Convention.

[680] One compare article 3, paragraph 8, sub-paragraph (a) of the Single Convention with article 2, paragraph ... sub-paragraph (a) of the Vienna Convention. It is however admitted that another interpretation would also ... be impossible and that one could assume that the ... "decisions" under this provision of the Vienna Conven... refers only to decisions amending a Schedule and not ... those refusing to make any change.

[681] Article 3, paragraph 8, sub-paragraph (d) of the Single Convention and article 2, paragraph 8, sub-paragraph (d) of the Vienna Convention.

[682] At least until recently even the World Health Organization's Expert Committee on Drug Dependence (previously called "Expert Committee on Dependence-Producing Drugs," "Expert Committee on Drugs Liable to Produce Addiction" and earlier "Expert Committee on Addiction-Forming Drugs") had to rely largely on American experts in its findings on drugs whose international control action was considered.

[683] General Assembly Resolution 1991 (XVIII). The amendment entered into force on August 31, 1965.

[684] General Assembly resolution 2847 (XXVI). According to paragraph 4 of this resolution the Council will be composed of 14 African countries, 11 Asian countries, 10 Latin American countries, six Socialist countries of Eastern Europe and 13 Western European and "other" countries.

[685] Resolution 1621 A (L I), paragraph 2 of the Economic and Social Council.

[686] Article 68 of the Charter of the United Nations; see also article 3, paragraph 9 and article 7 of the Single Convention.

[687] Article 2, paragraph 7 of the Vienna Convention.

[688] Article 2, paragraph 7, introductory sub-paragraph.

[689] Article 2, paragraph 7, sub-paragraphs (a), (b), (c), and (d).

transferred from a Schedule subject to less strict controls to a Schedule governed by stricter controls.[690]

Although the introductory sub-paragraph appears to authorize the written notice under consideration in the case of any addition of a substance to a Schedule which would also include the transfer of a substance from a Schedule, subject to a more severe regime, to a Schedule controlled by a more lenient regime no provision is made for the effects which the notice would have in the case of such a transfer. It would be the better opinion that the provisions regarding the written notices in question do not apply to such a transfer.

Article 2, paragraph 7 does not apply to the removal of a substance from control [691] and to a decision of the Commission to terminate, in accordance with article 3, paragraph 4, partially or entirely the exemption of a preparation.

The question arises as to the effect of the written notice pursuant to paragraph 7 regarding partial non-compliance with a decision of the Commission, in the case of review of this decision and its possible alteration by the Economic and Social Council under paragraph 8. It must be admitted that the text of the Convention is not clear on this point.

The relief which parties could obtain by a written notice pursuant to paragraph 7 was not intended to be only provisional if the Commission's decision would be reviewed by the Council and definite only if such a review would not take place. The "exceptional circumstances" which under paragraph 7 would cause a party to give a written notice that it would not be in a position to give effect to all the provisions applicable to the Schedule to which the substance concerned would be added, would not be changed by a decision of the Economic and Social Council. Moreover, it was expressly proposed at the Conference which adopted the Vienna Convention that the effect of the written notice should be only provisional in the case of review by the Council of the Commission's decision. It was proposed that a provision such as that contained in article 2, paragraph 8, sub-paragraph (d) of the Revised Draft Protocol on Psychotropic Drugs in the version suggested by a minority of the Commission on Narcotic Drugs which prepared this draft, should be included in the Vienna Convention. This sub-paragraph (d) reads:

> "If the Council confirms or alters the decision of the Commission a Party shall comply with the decision of the Council, notwithstanding any notice of non-acceptance that it has made."[692]

This question was discussed rather extensively in the Committee on Control Measures of the Conference which adopted the Vienna Convention.[693] The Committee decided not to include the proposed additional provision and to transmit to the Plenipotentiary Conference a text without it.[694] The Conference acted in accordance with the Committee's recommendation.[695] The refusal of the Conference to accept the provision requiring a Party to comply with the Council's decision notwithstanding its written notice that it would not be in a position to carry out all the measures required by the Commission's decision which would have been reviewed by the Council, appears to show clearly that it was not the Conference's intention to deprive the Party's notice of its effects in a case of this kind.

The texts of article 2, paragraph 8, sub-paragraph (c) of the Vienna Convention and of article 3, paragraph 8 sub-paragraph (c) of the Single Convention are literally identical, except that the latter provision contains the words "and the decision of the Council shall be final" while the former does not.

If one accepts the view which accords with the Conference's intention that the written notice given pursuant to paragraph 7 would remain effective although the Commission's decision in question would have been reviewed and might even have been altered by the Council the rather difficult question arises what should be the effects of the notice. Here again the text of the Convention does not give an answer. Two possible views are suggested for consideration:

- The effects of the notice would not be affected by the review or by the results of the review by the Council. This means that the minimum obligations of a Party which would give the notice under consideration would depend on the Schedule to which the previously uncontrolled substance would be added [696] by the Commission or on the more strictly controlled Schedules to which a substance from a more lenient regime would be moved,[697] no matter which Schedule would be finally chosen in the reviewing process, or
- The effects of the notice would be those mentioned above pending the Council's review [698] and would later be those which they would have been if the Commission's decision would have been the same as that adopted by the reviewing Council, that is, the notice would after the end of the Council's review impose upon the Party concerned such obligations as if the Council's decision would have been the original decision of the Commission.

The view suggested under the first alternative would cause no difficulties if the Commission's decision would be confirmed by the Council; but if the Council would decide that the substance should not be controlled and sometimes if it would place the substance in a less strictly controlled Schedule than the Commission did, the obligations of the Party which would have given the notice would be even heavier than if it had not given that notice.

It is held that the view presented under the second alternative would yield more rational results. The differences in the minimum obligations of parties which pursuant to paragraph 7 would give notice in respect of additions to different Schedules are motivated by the different degrees of seriousness of the public health and social problem and of usefulness in medical therapy which the substances in question present. One must assume that evaluation of such a situation by a higher instance would be more accurate than that by a lower instance as one must do in all procedures providing for a legal remedy against a decision by appealing to a higher authority.[699] This is anyway the theory on which procedural provisions are based which allow review of decisions of a lower organ by a higher organ. The minimum obligations of parties which would give the written notice would thus finally be determined by the Schedule to which the substance in question would be added by the Commission's decision in *its final form* either in the version in which the decision would be adopted by the Commission itself if no review by the Council would take place or in the version in which it would appear as altered or confirmed by the Council.[700]

The Senate's resolution giving its advice and consent to the ratification of the Vienna Convention and the instrument of ratification itself might usefully contain a declaration indicating the interpretation by the United States of the effects of notices given pursuant to paragraph 7 in the case of the review of the Commission's decision by the Council.[701]

Effects of a written notice given pursuant to article 2, paragraph 7.

First two provisions should be kept in mind; one very vague and one specific:

- If the Commission would adopt a decision adding a previously uncontrolled substance to Schedule I the party which would give the notice under consideration, would, in addition to carrying out the prescribed minimum obligations, have to take into account, as far as possible, the special control measures applicable to substances in Schedule I under article 7.[702]
- If the Commission would transfer a substance from a more lenient regime to a Schedule providing for stricter controls the party would have to apply as a minimum all the control measures required by the former more lenient regime. The question arises what would be the situation if such a substance would be transferred to a Schedule which would require as a minimum more strict controls than those provided for in the former lenient regime, if not that substance but a previously *uncontrolled* substance would be added to that Schedule. If the text of the Convention would be taken literally the minimum which the party would have to carry out would be the measures prescribed under the former more lenient regime. This conclusion would have to be drawn from the fact that the provisions of paragraph 7, sub-paragraphs (a) to (d) refer to minimum obligations in the case of additions of *previously uncontrolled* substances to any of the four Schedules. It seems however somewhat incongruous that if a substance which would already be in Schedule IV would be transferred to Schedule I it would

[690] Article 2, paragraph 7, sub-paragraph (e).

[691] See in this connection article 23 of the Vienna Convention according to which a Party may adopt more strict or severe measures of control than those provided by this Convention; see also the corresponding provision of article 39 of the Single Convention.

[692] Report of the Commission on Narcotic Drugs on its First Special Session (January 1970), United Nations document E/4785, p. 17, footnote 11; see Conference document E/CONF. 58/C 4/Min. 4.

[693] Documents E/CONF. 58/C4/Min. 3, Min 4, and Min 26.

[694] Documents E/CONF. 58/C4/L. 60 and E/CONF 58/C 4/Min 26.

[695] Documents E/CONF. 58/L 4/Add. 9 and E/CONF 58/SR 25.

[696] Article 2, paragraph 7, subparagraphs (a) to (d).

[697] Article 2, paragraph 7, sub-paragraph (e).

[698] Article 2, paragraph 8, sub-paragraph (d).

[699] Although this is often not the case and would particularly frequently not be the case in the event of the review, by a political organ of a technical decision by a technical organ.

[700] As stated above, pending the Council's review the Commission's decision would in any event be determinative.

[701] It is held that such a declaration would not be a "reservation"; if this view is not accepted reference is made to article 32, paragraph 3 of the Vienna Convention.

[702] Article 2, paragraph 7, sub-paragraph (a).

require, as a minimum, the application of the regime applicable to substances in Schedule IV while if a previously uncontrolled substance would be added to Schedule I it would be subject to the much more strict control measures of paragraph 7, sub-paragraph (a) [703]

A notice given by a party pursuant to paragraph 7 would not free that party from applying the following control measures to a previously uncontrolled substance which would be added to *any* of the four Schedules:

- Licensing or another similar control measure in respect of the manufacture, trade (including export and import trade) and distribution (Article 8).
- Controlling under license or other similar control measure the establishments and premises in which manufacture, trade or distribution might take place [704] (Article 8).
- Taking measures to assure that no substance would be exported to the country or region of a party whose import would have been prohibited by that party into its country or into the region concerned, with the exception of such quantities as such a party would in each case authorize by a special import license (article 13).
- Applying the penal measures under article 22 for the repression of acts contrary to laws and regulation adopted by the party to implement its obligations.[705]

If the previously uncontrolled substance would be added to Schedules I, II or III, the party would moreover not be exempted from applying to that substance the following measures:

- Requiring medical prescriptions for the supply or dispensation of the substance for use by individuals (article 9).
- Applying the import certificate and export authorization system to a substance placed in Schedules I or II and carrying out the provisions regarding export declarations in case of exports of a substance placed in Schedule III (Article 12). This obligation would however not apply to international transactions in a substance added to Schedules I or II or to the export of a substance included in Schedule III in relation to another party which in respect to such a substance has also given the written notice pursuant to paragraph 7, introductory sub-paragraph.

However, if the previously uncontrolled substance would be added to Schedules I or II, the party would with respect to such a substance also have to furnish to the Board statistical information on the quantities of the substance manufactured, exported to and imported from each country or region as well as on stocks held by manufactures; [706] and in case of an addition to Schedule II the party's statistical report would moreover have to include data [707] on the quantities of the substance used in the manufacture of exempt preparations and on those used for "industrial" purposes.[708]

A party would in respect of substances added to Schedule I or II also have to require the keeping of such records as would enable it to obtain the information needed for its statistical reports to the Board [709]

A party which would make a written notice pursuant to paragraph 7 in regard to a previously uncontrolled substance added to Schedules II, III or IV could also exempt a preparation of such a substance in accordance with the provisions of article 3, paragraphs 2 to 4.[710]

[703] Article 2, paragraph 7, sub-paragraph (a) does not expressly require records, while article 11, paragraph 5 would require the keeping of some records in respect of substances in Schedule IV. It has, however, been pointed out in "Record Keeping and Reporting to and Control by Domestic Authorities," that parties, in view of paragraph 7, sub-paragraph (a), clause (v) would, in the case of addition of a previously uncontrolled substance to Schedule I, have to require the keeping of records, different from but more strict than the records to be kept in case of substances in Schedule IV under article 11, paragraph 5. The same would be the case in the event of addition of a previously uncontrolled substance to Schedule II (paragraph 7, sub-paragraph (b), clause (v)).

[704] This requirement may perhaps be doubtful.

[705] This obligation would differ depending on the Schedule to which the previously uncontrolled substance would be added. The reference to article 22 in paragraph 7, sub-paragraphs (a) to (d) would not be necessary since the obligation to apply article 22 in these four cases would also result from the text of article 22 itself.

[706] Article 2, paragraph 7, sub-paragraph (a), clause (v) and sub-paragraph (b), clause (v) and article 16, paragraph 4 sub-paragraph (a).

[707] Sub-paragraph (b) clause (v) of the paragraph cited in the preceding footnote and article 16, paragraph 4, sub-paragraphs (c) and (d).

[708] Preparations of substances in Schedule I could neither be "exempted" nor used for "industrial" purposes, article 3, paragraph 2 and article 4, introductory paragraph and paragraph (b).

[709] See "Record Keeping and Reporting to and Control by Domestic Authorities".

However, the party would in such a case have to apply to the preparation all the control measures required by article 3, paragraph 3 as well as those which would be prescribed by a partial termination of the exemption by the Commission pursuant to article 3, paragraph 4. It would not be freed from applying to the "exempted" preparation those measures which it would not be bound to apply to the substance contained in the preparation under article 2, paragraph 7; [710] but if the Commission would terminate the exemption entirely or if the party would do this itself the party would be obligated to subject the preparation only to those controls which it would have to carry out in regard to the substance included in the preparation under article 2, paragraph 7 and article 3, paragraph 1.

It may be permitted to suggest that the right of "rejection" or "non-acceptance" for which article 2, paragraph 7, would provide, is not of great interest to the United States. This view is based on two considerations:

- The United States could most probably prevent the addition of a previously uncontrolled substance to a Schedule or the transfer of a controlled substance from a more lenient to a more severe regime because such an action would require a decision of the Commission adopted by a two-thirds majority of its total membership.[711]
- The United States could by unilateral actions exempt preparations from practically all really burdensome controls. Such exemption could also be terminated, partially or entirely, only by decisions of the Commission adopted by two-thirds majorities of its total membership.[711]

It is believed that a party would hardly expose itself to the opprobrium of international public opinion, by making use of the right of "rejection" or "non-acceptance" in the case of a really dangerous substance, and if it would do it would most probably be forced by public opinion to withdraw its "rejection". Moreover, those countries which would manufacture the substances in question and would be the ones which would profit from the lack of control would normally be the economically more advanced nations whose political institutions would generally make them rather sensitive to the pressures of public opinion.

[710] With the exception of those measures from which the party would also be freed under the provisions of article 3, paragraphs 3-4.

[711] Article 17, paragraph 2.

However, it is held that the fact that countries other than the United States would also have the right of unilateral exemption of preparations might constitute a much more serious problem than the possibility of "rejection" or "non-acceptance" by a government not acting in good faith. Not justified exemptions would most probably be terminated by the Commission under article 3, paragraph 4; but some time would pass between the exemption and the Commission's decision during which considerable harm could be done to public health.

The Commission on Narcotic Drugs.—The Commission on Narcotic Drugs is a "Functional Commission" of the Economic and Social Council. Its composition and its members are determined by the Council. So are its Rules of Procedure and those of its functions which the Council desires to grant to the Commission,[712] in addition to those with which this organ has been charged by the international drug treaties.[713]

Th Commission is composed of government representatives, but the Council could give it any other constitutional structure. It could even decide that the Commission should consist partially or entirely of independent experts. Not only members of the United Nations, but also non-member states may be elected to membership of the Commission if they are members of a specialized agency or parties to the Single Convention. Originally consisting of fifteen government representative its membership has several times been increased, more recently to 30.[714] The Commission is meeting normally biennially and the term of office of its members is four years.[715]

The members of the Commission are chosen with due regard to adequate representation of countries which are important manufacturers of narcotic drugs, of those which are important producers of opium or coca leaves and of those in which drug addiction or the illicit traffic in narcotic drugs constitute a serious problem. The principle of equitable geographic distribution is also taken into account in this election.

Only the decisions of the Commission regarding the Schedules of the Vienna Convention and those terminating partially or entirely exemptions of pre-

[712] Under its "Terms of Reference", "Charter functions"; Article 68 of the Charter of the United Nations. See also Rules 71 of the Rules of Procedure of the Council, United Nations document E/3063/Rev. 1.

[713] "Treaty Functions."

[714] Resolution of the Economic and Social Council 1663 (L II) dated June 1, 1972.

[715] Council resolution 1156 (XLI) II, dated 5 August 1966.

parations under this Convention are taken by a two-thirds majority of its total membership; all other decisions of the Commission and all its recommendations are taken by a majority of the members present and voting.

The Commission's decisions taken under article 3 of the Single Convention are subject only to review by the Council in accordance with the procedure of paragraph 8 of this article.[716] All other decisions of the Commission and all of its recommendations adopted pursuant to the Single Convention are subject to approval or modification by the Council or the General Assembly in the same way as other decisions or recommendations of the Commission. The Commission's decisions and recommendations whether in form of recommendations to the Council, of draft resolutions suggested for the Council's adoption or of actions in the name of the Commission itself are included in the Commission's reports to the Council. They are normally not transmitted by the Secretary General to governments or to international organs to which they may be addressed until they have been approved by the Council either direct or indirectly by "taking note" of the Commission's report containing them. Only Commission resolution of minor importance which are not controversial, which have no financial implications and which if they concern a specialized agency have been accepted by that agency are dispatched for implementation before they are so approved by the Council.[717]

The decisions which the Commission would take under powers granted to it by earlier drug treaties would also not be subject to the authority of the Council or General Assembly. While decisions of the Commission regarding Schedules of the Vienna Convention are subject to review by the Council in accordance with the procedure of article 2, paragraph 8 of that Convention all other decisions and all recommendations of the Commission under the Vienna Convention,[718] being "treaty functions" are not subject to the authority of the Council and the General Assembly. The Vienna Convention does not contain any provision providing for such an authority.

[716] Article 3, paragraph 9.

[717] See article 60 and 68 of the Charter of the United Nations and article 7 of the Single Convention; records of the Plenipotentiary Conference, vol. II, p. 211, United Nations document E/CONF. 34/24/Add. 1.

[718] Article 3, paragraph 4, article 12, paragraph 1, sub-paragraph (a), article 14, paragraph 2, article 16, paragraph 1, introductory paragraph and paragraph 6, article 17, paragraph 1 and article 18, paragraph 1.

Prior to the coming into force of the Single Convention the Commission had very limited treaty functions.[719] It carried out the major part of its work under the terms of reference which it received from the Council. The terms authorized the Commission to assist the Council in all matters concerning narcotic drugs, to consider improvements of the narcotics regime, to submit proposals to the Council for this purpose and to perform such other functions relating to narcotic drugs as the Council would direct;[720] but the Commission had a very broad view of its powers. It did not only deal with "narcotic" drugs, but also with "psychotropic" drugs and in fact considered any aspect of the problem of drug abuse whose examination it held necessary. In adopting this broad view of its "Charter functions" it has never met any objection by the Council which took note of the Commission's reports dealing with subjects which were actually outside its "terms of reference" if interpreted literally. The Council even approved resolutions proposed by the Commission concerning such subjects.

Many of the specific functions which the Commission has under the Single Convention were already discussed above in connection with the considerations of control provisions of this treaty.[721] So were those functions which would be conferred upon the Commission by the Protocol of 1972 amending the Single Convention.[722]

[719] Article 5, paragraph 6 of the 1931 Convention (appointment of a member of the Supervisory Body), article 11, paragraph 4 of the 1931 Convention (appointment of a member of an ad hoc expert body) article 21 of the 1931 Convention (form of annual reports), article 2 of the 1948 Protocol (Provisional control of synthetic drugs) and article 10 of the 1953 Protocol (form of Annual Reports).

[720] Council resolution 9 (I).

[721] Article 3, article 8, paragraph (b) and article 18 paragraph 1, introductory sub-paragraph and sub-paragraph (c) and paragraph 2; reference may be made also to the article 15, paragraph 1, according to which the Board's reports should be submitted to the Council through the Council to article 14, paragraph 1, sub-paragraphs (a) and (c) and paragraph (2) concerning the Board's right to call the attention of the Commission to a serious failure of a government to carry out provisions of the Single Convention to article 31, paragraph 5, according to which the parties shall follow as closely as may be practicable the form of the import certificate approved by the Commission; and to article 32, paragraph 2, according to which the Commission shall recommend safeguards to prevent the improper use or diversion of narcotic drugs in the said kits of aircraft or ships engaged in international traffic; see also article 49, paragraphs 3 and 4.

The Commission has also been granted the far-reaching authority to discuss all matters pertaining to the *aims* of the Single Convention. This right is not limited to the discussion of the implementation of the provisions of the Single Convention. It has also been authorized to make recommendations not only for the implementation of the provisions of the Convention but also for that of its *aims*. The Commission has also been expressly empowered to draw the attention of *nonparties* to its decisions and recommendations with a view to their considering taking action in accordance therewith.[723]

The most important weapon of the Commission in the fight against the illicit traffic is its power to discuss publicly the failure of a government to carry out provisions of the Single Convention and thus to bring the pressure of the power of public opinion to bear upon such a government. This was also the most powerful weapon of the Commission's predecessor in the League period, of the League's Advisory Committee on Traffic in Opium and Other Dangerous Drugs". Public criticism of governments was in fact an important feature of the work of the Advisory Committee and, in its very early years, of the Commission on Narcotic Drugs. The late Stuart J. Fuller, who was American observer on the Advisory Committee pointed to this feature of the Committee's discussions in an address before the Rotary Club of Washington in 1938 in which he said: "The Opium Advisory Committee affords the one forum in the world where the problem of the illicit traffic in narcotic drugs can be and is publicly discussed and where any government whose territory has been used as a base for the illicit traffic may without fear or favour be publicly asked to account for its stewardship. Most of the progress made in the past ten years has been due to *publicity*, and the value of this committee as an organ of publicity is widely recognized and, in some quarters feared."[724] It is also the view of the writer of this paper that the insistent public criticism of Iran by the American representative, asked by the Canadian delegate, in the early years of the Commission was to a large extent responsible for the later prohibition of opium production in Iran, which before and in the years after the war was the origin of huge quantities of illicit opium. Despite its recent resumption of opium production the position of Iran as a source of illicit opium appears still to be immensely better than at that time. If the information at the disposal of the present writer is correct Iran is still a victim of the illicit traffic coming from abroad and not the origin of significant quantities of *opium* appearing in other countries.[725]

Public and completely frank discussion of defective controls in some countries has not been the practice of the Commission since the end of the forties, in the same manner as it was the practice of the League's Advisory Committee and of the Commission in its very early years. The increased national sensitivity of the population of the offending countries and political considerations are responsible for this weakness of the Commission's work. Reports of the Commission have sometimes even praised the efforts of countries which have been notorious as sources of opium in the international illicit traffic. When the past Permanent Central Board, in the report of its work in 1966 referred to the persistent clandestine manufacture of heroin in Marseilles the only public reaction in the Commission was a criticism of the Board's statement by the representative of France.

One should however not underestimate the efforts which the representatives of the United States made to bring pressure to bear on the representatives of the offending countries outside *public* meetings of the Commission. The sessions of the Commission which formerly took place annually but in recent years unfortunately normally only bienually,[726] offered a good opportunity for this kind of effort. The efforts made on a bilateral basis and the practice of permanently stationing narcotics agents in the countries in which the illicit traffic originates have also been very valuable. It is however a fact that we have world-wide interests which are often of vital importance to us. However, we may dislike it narcotics questions cannot always take precedence over *all* our other national interests. The following suggestion is made to ensure a more frank public criticism of

[722] Article 6 of the Protocol amending article 14, paragraph 1, sub-paragraph (a) of the Single Convention and article 13 of the Protocol introducing article 35, paragraph (f) into the Convention; see also article 6, amending article 14, paragraph 1, sub-paragraph (c) under the new designation of sub-paragraph (d).

[723] Article 8.

[724] Department of State Press Release, February 5, 1938, p. 111.

[723] United Nations documents E/5082, paragraph 174; see also paragraphs 303–339, and in particular paragraphs 308 and 324; see also United Nations document E/INCB/15, pp. 14 and 74.

[726] Council resolution 1156 (XLI) II, dated 5 August 1966.

defective national controls even in cases in which for important political reasons it would be difficult for the United States to take the initiative. It has been mentioned above that the Economic and Social Council is the master of the composition of the Commission on Narcotic Drugs. An attempt should be made to move the Council to add to the membership of the Commission consisting of Government representatives, several independent persons to be appointed by the Secretary General who would certainly nominate a U.S. citizen, a national of socialist country and a national of an "unaligned" country if the number of the independent members would be three. The Council would follow, in adopting such an American motion, the precedent of the League of Nations. The League's Advisory Committee had, in addition to government representatives, three independent members called "assessors". These assessors could participate in the meetings of the Committee with the same rights as the members, except that they could not be elected as officers and were not entitled to vote. They were not paid, but received their travelling expenses and a daily subsistence allowance. The institution of such assessors [727] may not have been of particular value at the time of the League since public discussions in the Advisory Committee were not impeded by political considerations in the same degree as they were and could be impeded in the discussions of the Commission. If the American assessor would be expert, energetic and courageous and appointed for a period of five years the institution of assessors could be very useful in ensuring public criticism of offending governments in meetings of the Commission. A long term of office of the assessor would be necessary to avoid pressure on the Secretary General by interested governments not to reappoint an assessor who during his short term of office would have been effective in criticizing their conduct.

In view of its functions and, in particular, in view of the part which the Commission has in preparing new treaties it is sometimes called the "policy making" and "legislative" organ of international drug control.

Similarly, as the Single Convention, the Vienna Convention also authorizes the Commission not only to consider *all* matters pertaining to the *implementation* of its provisions and to make recommendations relating thereto, but also to do this in respect of all matters pertaining to its *aims*.[728] Although in less words than article 8 of the Single Convention the Vienna Convention gives the Commission the same broad powers of considering problems of psychotropic substances and of making recommendations concerning them as the Single Convention has in regard to narcotic drugs.[729] The Vienna Convention also does not contain any provision which would prevent the Commission from addressing its recommendations to non-parties.

The International Narcotics Control Board

Constitutional Provisions

The constitution of the International Narcotics Control Board is not determined by the Economic and Social Council, but laid down in the Single Convention. Its eleven members are elected for a term of office of three years. Three must be chosen from a list of at least five persons nominated by the World Health Organization who must have medical, pharmacological or pharmaceutical experience. The remaining eight members are elected by the Council from a list of persons nominated by the Members of the United Nations or by Parties of the Single Convention which are not Members of the United Nations.

The members of the Board are not governmental representatives, but should be independent experts. It is a sound organization principle to strengthen the independence of officials by granting them a long term of office. The short period of three years for which members of the Board are elected under the present text of the Single Convention is therefore not a good feature of this treaty. The provisions of the Protocol of 1972 which would extend the term of office of members of the Board to five years would therefore constitute a very useful amendment.[730]

The Protocol would also increase to 10 the number of members which the Council is required to choose from the list of candidates nominated by governments. The total membership of the Board would thus be raised to thirteen.[731] The Convention requires that in electing the members of the Board the Council, with due regard to the principle of equitable geographic representation, should give consideration to the importance of including on the Board, in equitable proportion, persons possessing knowledge of the drug situation in the producing,[732] manufacturing [733] and consuming [734] countries, and connected with such countries.[735]

The Single Convention requires that the members of the Board should be "persons who, by their competence, impartiality and disinterestedness, will command general confidence."

As regards *competence*, it may be suggested that knowledge and understanding of international narcotics control and particularly also a comprehension of the ways in which international administration works and which are very difficult from those of domestic administration, are very important. In view of the fact that those three members which are elected from the list of persons nominated by the World Health Organization have medical pharmacological and pharmaceutical knowledge it is very desirable that the remaining members have the required knowledge and understanding of international administration.[736]

[727] In the League period they were appointed for one year each time; see Renborg Bertil A., International Drug Control, Washington, Carnegie Endowment for International Peace, 1947, pp. 35 and 38.

[728] Article 2, article 3, paragraph 4 and article 16, paragraph 1, introductory paragraph and paragraph 6; see also article 12, paragraph 1, sub-paragraph (a) (regarding the establishment by the Commission of a form for import and expert authorizations); article 14, paragraph 2 (concerning the Commission's recommendation on safeguards to prevent the misuse or diversion of psychotropic substances carried in first-aid kits of forms of public transport engaged in international traffic); article 18, paragraph 1 (use of the Board's reports to the Council through the Commission) and article 19, paragraph 1, sub-paragraphs (a) and (c) and paragraph 2 (right of the Board to call to the attention of the Commission a serious failure to carry out provisions of the Convention.)

[729] Article 17, paragraph 1 of the Vienna Convention.

[730] Article 3 of the Protocol amending article 10, paragraph 1 of the Single Convention; for the basic provisions concerning the Board's constitution, see article 9, paragraphs 1-3 of this Convention.

[731] Article 2 of the Protocol amending article 9, paragraph 1, sub-paragraph (b) of the Single Convention.

[732] Mainly important opium producing countries, but also coca leaf producing countries.

[733] Important manufacturers of narcotic drugs.

[734] Countries which rely mainly on imports for their requirements of manufactured narcotics.

[735] Article 9, paragraph 3 of the Single Convention. One will note the similarity of this provision with the principles which guide the Council in electing the members of the Commission on Narcotic Drugs. However, in the case of the Board no reference is made to countries in which the illicit traffic or drug addiction presents an important social problem.

[736] United Nations document E/4761, Annex II, paragraph 14; see also Records of the Plenipotentiary Conference, vol. II. p. 6, footnote 16.

The Single Convention contains provisions to ensure the impartiality, disinterestedness and *independence* of the member of the Board. It requires that during their term of office the members should not hold any position or engage in any activity which would be liable to impair their impartiality in the exercise of their functions. The members must not only not be in a position which would make them subject to instructions of their governments, but also not in one which would make it likely that they could favour private enterprises which might be interested in influencing the work of the Board.

Arrangements to ensure the technical independence of the Board

The Convention contains another very important provision to ensure the impartiality of the Board. The Council is required to make, in consultation with the Board, all arrangements necessary to ensure the full technical independence of the Board in carrying out its functions.

It is suggested that such arrangements should in any event:

- Grant the Board a separate secretariat bound to carry out its decisions even in cases in which they might differ from instructions given by higher secretariat officials. It is admitted that such a conflict between decisions and instructions will rarely if ever arise; but the principle of the precedence of the Board's decisions is very important since it is unfortunately a fact that contrary to the provisions of the Charter of the United Nations [737] some governments try unduly to influence the actions of the United Nations secretariat.
- Grant the Board some influence over the composition of its secretariat or at least the right to be consulted about the appointment of the Chief of its secretariat.
- Grant the Board some discretionary budgetary powers within limits set by the General Assembly each year. It would certainly be incompatible with the independence of the Board if a civil servant charged with United Nations budgetary functions could, by its decision, render impossible such actions of the Board as a local inquiry of the drug situation in a country in which an extensive illicit traffic originates

[737] Article 100; see also "Some of the Controversial Problems which arose in the course of the preparatory work on the Single Convention" in "The Single Convention on Narcotic Drugs, 1961."

and whose government has agreed to the inquiry.

The Council, in consultation with the Board, has adopted such administrative arrangements necessary to enable the Board to carry out its functions in full technical independence. The arrangements are contained in the Annex to Council resolution 1196 (XLII) of May 16, 1967 and incorporate the three principles just mentioned. Since they are due to expire on March 1, 1974 the United Nations Conference of 1972 to Consider Amendments to the Single Convention on Narcotic Drugs, 1961 adopted a resolution in which it recommended the continuations of the system instituted by the Secretary General in accordance with the Council's arrangements.[738] It is suggested that it would be helpful in strengthening the effectiveness of the Board if the United States would use its influence to ensure a prolongation by the Council of the arrangements of 1967 in accordance with the resolution of the Conference.

Other provisions of the Single Convention which strengthen the independence of the Board are those which authorize that organ to meet as often as, in its opinion, may be necessary for the proper discharge of its functions [739] and to submit to the Council as many reports as it considers necessary with *any* observations and recommendations which it desires to make.[740]

Article 14, paragraph 2 of the Single Convention provides that "the State concerned" may bring before the Council a recommendation of the Board that the parties should discontinue the import of drugs, the export of drugs, or both, from or to an offending country or territory. The state against which the embargo has been recommended—no matter whether against the state as a whole or only against any of its territories—is the "State concerned" in the meaning of this provision. It is suggested that the Council could in such a case not *alter* the Board's recommendation since this would be incompatible with that organ's constitutional technical independence. The Council may however consider the merits of the Council's recommendation, may make *suggestions* as to the way in which the Board should handle the matter in the future and may also adopt its own recommendations on the subject.

The Protocol of 1972 would add to article 9 of the Single Convention which contain the basic provisions regarding the Board's constitutions, two paragraphs, numbered 4 and 5. According to these new paragraphs the Board, in co-operation with governments, and subject to the terms of the Single Convention, would have "to endeavor to limit the cultivation, production, manufacture and use of drugs to an adequate amount required for medical and scientific purposes, to ensure their availability for such purposes and to prevent illicit cultivation,[741] production and manufacture of, and illicit trafficking in and use of, drugs."[742] It is also required that all measures taken by the Board under the Single Convention should be "those most consistent with the intent to further the co-operation of governments with the Board and to provide the mechanism for a continuing dialogue between governments and the Board which will lend assistance to and facilitate effective national action to attain the aims of this Convention."

It is undoubtedly very useful that these new provisions would re-emphasize the aims of the Single Convention [743] and the value of the Board's cooperation with governments,[744] of its continuing dialogue with governments whose controls are defective and of its rendering assistance to such governments in improving their weak administration.[745]

Other amendments to the Single Convention which would be introduced by the Protocol of 1972 also refer to consultations of the Board with governments whose administrations would require improvement and to advice or assistance to be given by the Board or other international organizations.

Under article 14, paragraph 1, sub-paragraph (b) as amended the Board would have the express right to propose to a country the opening of consultations if that country, without any failure in implementing the provisions of the Single Convention, has become or if there exists evidence of a serious risk that it may become an important centre of illicit cultiva-

[738] Resolution I of the Conference, United Nations document E/CONF. 63/9, p. 5.

[739] Article 11, paragraph 2.

[740] Article 15, paragraph 1.

[741] See the definition of "illicit traffic" in article 1, paragraph 1, sub-paragraph (t).

[742] Paragraph 4.

[743] Second paragraph of the Preamble and article 4, paragraph (c) of the Single Convention.

[744] See also article 35, paragraph (c) of the Single Convention.

[745] See "Reports to International Narcotics Control Board gans" as regards the practice of the Board to maintain continuous "dialogue" and to carry on consultations with Governments which have a weak administration, and to give advice and render assistance to such Governments.

tion, production or manufacture of or traffic in or consumption of narcotic drugs.[746]

So was the provision of article 14 which would be introduced by the Protocol of 1972, according to which the Board would be authorized, with the agreement of the government concerned, to recommend to international organizations to render technical or financial aid; the Board would be entitled to do this either in addition to or as an alternative of the "sanctions" provided for in article 14, paragraphs 1 and 2.

The consultation between the Board and an offending party under article 21, paragraph 3 of the amended text of the Single Convention were also referred to earlier, so was the advice which, if requested by a party, the Board might offer under article 35, paragraph (g) of the amended Single Convention. Article 38 of the amended text provides that a party would be able to obtain the technical advice of the Board in connection with the agreements to which this provision refers and which would contemplate the development of regional centres for scientific research and education to combat the problems resulting from the illicit use of and traffic in narcotic drugs.

Various other functions of the Board were considered in the discussion of provisions of the Single Convention and of those of earlier drug treaties which are related to activities of the International Narcotics Control Board or of its two predecessors, the Permanent Central Board and the Drug Supervisory Body.

Publicity the Principal Weapon of the International Narcotics Control Board

The measures which the Board may adopt under article 14 to assure the execution of provisions of the Single Convention are not its most potent means of influencing governments to carry out their treaty obligations. The most extreme measure which the Board can take under this provision is to recommend to parties that they discontinue the import of drugs, the export of drugs, or both, from or to the country or territory which has seriously failed to implement

[746] The Board would also have the right, under the unamended text of this sub-paragraph, to propose the opening of consultations to a government which has seriously failed to carry out provisions of the Single Convention, while under the unamended text the Board is expressly authorized only to ask for explanations which it could do also under the amended text. There is, however, no provision under the unamended text which would in such a case prevent the Board from proposing consultations.

the Single Convention. Such measures would be of questionable value under present conditions which are very different from those which prevailed in the early period of the international narcotics regime when measures of this kind might have aided in reducing the illicit traffic.[747] Even among the steps foreseen in article 14 those measures would be most effective for purposes of international narcotics control which would result in publicity as: calling the attention of the parties, the Council and the Commission to the matter [748] or *publishing* a report on the serious failure of a country to carry out its obligations, which would have to be communicated by the Board to the Council which in its turn would have to forward this report to the parties.[749] The Protocol of 1972 would amend article 14, paragraph 1, sub-paragraph (c) [750] to the effect that the Board could call the attention of the parties, the Council and the Commission to the matter not only if the government concerned has failed to give satisfactory explanations of its serious failure to implement the treaty when called upon to give such explanations or has failed to adopt the remedial measures, if any, which it has been requested by the Board to take but also if the Board would find that there is a serious situation that needs co-operative action at the international level with a view to remedying it. The amendment appears to mean that the Board could in this second case also call the attention of the parties, the Council and the Commission to the matter even though it would find that the explanations of the country concerned are satisfactory and that that country has adopted the remedial measures, if any, which it has been called upon by the Board to take. This amended text could also be understood to mean that the Board would be entitled to take the action in question even in cases in which the government concerned would not have been asked to give any explanations or to adopt any remedial measures under article 14, paragraph 1, sub-paragraphs (a) or (b) respectively. If such an interpretation would be accepted it would mean

[747] In the discussion of the 1925 Convention in the Chapter "The gradual evolution of the international drug treaty system"; in the discussion of the 1953 Protocol in "The Situation at the End of World War II" and "Some of the Controversial Questions which arose in the course of the preparatory work on the Single Convention" in "The Single Convention on Narcotic Drugs, 1961."

[748] Article 14, paragraph 1, sub-paragraph (c) (sub-paragraph (d) of the amended text).

[749] Article 14, paragraph 3.

[750] Which would become sub-paragraph (d).

that under the amended text the Board could call the attention of the parties and of the above mentioned international organs to the matter even though the country concerned would not have committed any serious failure or any failure at all to carry out the provisions of the Single Convention, provided that the Board would find that there is nevertheless a serious situation that needs co-operative action at the international level with a view to remedying it. However, it must be admitted that such an interpretation which appears to follow from the amended text, would be inconsistent with the assumption that article 14, paragraph 2 would in all cases continue to have a punitive character.

Under the unamended text as well as under the amended text it is in the cases just mentioned within the *discretion* of the Board to call the attention of the parties and of the organs concerned to the matter or not to do it; but under the amended text it would become an obligation of the Board to take this action if

- The aims of the Convention are being seriously endangered and it has not been possible to resolve the matters satisfactorily in any other way.
- The Board would find that there is a serious situation that needs co-operative action at the international level with a view to remedying it and that bringing such a situation to the notice of the parties, the Council and the Commission is the most appropriate method of facilitating such cooperative action. It is submitted that an obligation of the Board to take such action in these two cases would exist even though the country concerned would not have committed a serious failure to carry out provisions of the Single Convention.[751]

The question arises whether the Council, after considering the reports of the Board, and of the Commission if available on the matter, could call the attention of the General Assembly to the matter in all four cases mentioned in sub-paragraph (d) of the amended text or only in the fourth (and last) case mentioned therein. It appears to follow from the semicolon in the third line from the bottom of sub-paragraph (d) that this right of the Council would apply only to the fourth case. However, it is submitted that neither in its unamended nor in its amended form the Single Convention can affect the right of the Council under the Charter of the United Nations, to make recommendations to the General Assembly, with respect to any economic, social, cultural, educational and related matters and to make reports thereon.[752] These matters also include international drug control.[753]

The Reports of the Board

The Board's reports under article 15 may be the organ's most important instrument for the promotion of effective international and domestic drug control. Its power to call the attention of the parties, the Council and the Commission to a matter with which it deals under article 14 or to publish a report on such a matter is limited by restrictive conditions and would also remain so under the amendments of the Protocol of 1972. The Board's possibilities to report to public opinion under article 14 are consequently also limited. However, the Board's reports under article 15, are not subject to such restrictions and therefore represent its most effective instrument for appealing to public opinion which is generally recognized to be a very important factor of strength in the international narcotics regime.[754]

By article 15, the Board is required to prepare an annual report on its work and such additional reports as it considers necessary. These reports have to contain an analysis of the estimates and statistical information at its disposal,[755] and in appropriate cases, an account of the explanations given by or required of governments;[757] but what is more important is that the reports may contain "any observations and recommendations which the Board desires to make." It is provided that the Board's report should be submitted to the Council through the Commission which may make such comments as it sees fit. This provision can however not prevent the Council from considering the Board's report at any time as is its right under the Charter of the United Nations to consider any other economic or social matter. The Council has in fact, at its forty-eighth and fiftieth sessions, decided to consider the Board's annual report prior to the examination of that document by the Commission.[758] The Council did this to avoid too long a delay of its discussion of the Board's report. Such a delay may in particular be caused by the fact that the Commission meets normally only biennially. Too long a delay in the Council's consideration of the Board's report may render "dated" the facts contained in that report, deprive them of their "news value" and thus of much of their effect on public opinion.

Particularly since 1963, both the International Narcotics Control Board and its predecessor the Permanent Central Board have taken a very broad view of what they may include in their reports. They have not only reported on the implementation of, or failure to implement, provisions of the drug treaties, but also given a comprehensive review of the international control regime and sometimes presented a report of the problem of drug abuse with its manifold aspects, including the political, economic, social and administrative questions which may explain the phenomenon of extensive drug abuse and point to the weakness of control in a number of countries. The Convention requires that the Board's reports should be communicated to the parties and *subsequently* published by the Secretary General. The parties are bound to permit the unrestricted distribution of the Board's reports. This provision is explained by the view of the authors of the Single Convention that such an unrestricted distribution would assist the Board in gaining the support of public opinion for its work.

The Protocol of 1972 would not amend article 15 of the Single Convention referring to these reports of the Board. The Vienna Convention on Psychotropic substances contains nearly the same provisions as the Single Convention requiring the Board to make annual and additional reports to the Council. It would provide for their submission to the Council through the Commission on Narcotic Drugs which could make such comments as it would see fit, for communication of the reports to the parties and for their subsequent publication by the Secretary General. Parties to the Vienna Convention would also be bound to permit the unrestricted distribution of the Board's reports. The Vienna Convention does not require that the Board's reports should contain an analysis of the estimates.[759] The Vienna Convention does not provide for estimates.

It may be assumed that the Board would, under the Vienna Convention, take the same broad view of its right to include in its reports comments and recommendations as it does under the Single Convention.

Measures by the Board to Ensure the Execution of Provisions of the Single Convention (Sanctions).

It is provided that the Board could initiate the procedure under article 14 only on the basis of information submitted by governments under the provisions of this Convention, or of information communicated by United Nations organs and bearing on questions arising under those provisions. It has already been pointed above[760] that this information is by no means as limited as it might appear. It has been explained that the Board does not only receive estimates of drug requirements and statistical information but is authorized to require governments to supply additional information which it considers necessary to complete or explain the estimates and statistics and that this additional information may practically relate to any control provisions of the Single Convention. It has also been mentioned that the term "United Nations" as used in the unamended article 14 also covers "specialized agencies". The right of the Board which would be introduced by the Protocol of 1972 to use also information obtained from other intergovernmental organization and from certain international non-governmental organizations.

Under the unamended text the board has the right to commence the procedure under article 14 only if it has "reasons to believe that the aims of this Convention are being seriously endangered by reason of the failure of any country or territory to carry out the provisions of this Convention". The Protocol of 1972 would amend this provision by requiring

[751] It may be mentioned that under the unamended text the Board could in any event call the attention of the Parties and of the two organs to the matter only in a case in which it would have reason to believe that the aims of the Convention are being seriously endangered by reason of a failure of the country concerned to carry out the provisions of the Single Convention. This follows from the conditions laid down in article 14, paragraph 1, sub-paragraph (a) under which the procedure under article 14 may be initiated. This appears also to apply to the first of the cases in which under article 14, paragraph 1, sub-paragraph (d) of the amended Convention of the Board would be entitled to take this action.

[752] Article 62, paragraph 2 of the Charter.

[753] See article 23, paragraph (c) of the Convention of League of Nations and of article 55, paragraph (b) of Charter of the United Nations in "The Gradual Evolution of the International Drug Treaty System."

[754] Records of the Plenipotentiary Conference of 1961, vol. I, pp. 73 and 81.

[755] It is at present done in its annual report and annexes thereto.

[756] See "Limitation of Narcotics Supplies".

[757] Under article 12, paragraph 4 and article 14, paragraph 3, see also "Reports to International Narcotics Control Organs".

[758] United Nations document E/SR 1735 (12 January 1971), paragraps 40, 45 and 76–77.

[759] Article 18 of the Vienna Convention; see also "Reports to International Narcotics Control Organs".

[760] See "Reports to International Narcotics Control Organs".

that the Board would have to have "*objective* reasons" to believe that such a situation exists in order to initiate the procedure whose first step [761] would be the Board's right (but not an obligation) to ask the government concerned for explanations. The amendment would, in addition, grant the Board the express right to propose to the Government concerned the opening of consultations. It is however submitted that the Board may also propose the opening of consultations without being expressly authorized to do so by the unamended text.

Under the unamended text of article 14, paragraph 1, sub-paragraph (a) the Board is required to treat as confidential its request for explanations from an offending government as well as the explanations which it would receive in response to such a request. This obligation of the Board would however end if the Board continues the procedure of article 14 to the stage at which it would call the attention of the parties, the Council and the Commission to the matter under sub-paragraph (c) of this paragraph in its unamended version.

Under the amended text of article 14, paragraph 1, sub-paragraph (a) the Board would be bound to treat as confidential its request for explanations from an offending government, the explanations received from that government, its proposal to a government to open consultations, no matter whether addressed to an offending government or to a government which has not failed to carry out the Single Convention, *and* its consultations held with both kinds of these governments. The Board's obligation to treat these matters as confidential would also end if the Board would continue its procedure to the stage at which it would call the attention of the Parties, the Council and the Commission to the matter under sub-paragraph (d) of paragraph 1, of the amending text; but while the Board could, under the unamended text, take this action only in respect of offending countries, it could under the amended text do this also in regard to a country which would not fail to comply with the Single Convention, but whose drug situation would nevertheless be serious as described in the amended text (sub-paragraph (d)). It may be considered to be somewhat incongruous that the Board could reveal the contents of its consultations with such a country which would originally have been held on a confidential basis. This may affect the conduct of the consultations with that country and perhaps their value.

The question may also be raised whether the Board's report on a matter dealt with under article 14 would relieve that organ of its obligation to treat as confidential the matters in question. Article 14, paragraph 1, sub-paragraph (a) does not free the Board from this obligation in case of such a report which under article 14, paragraph 3 the Board has the right to publish and to communicate to the Council which in its turn is required to forward the report to the parties. Article 14, paragraph 3 is silent on this question. The Board could publish in such a report the confidential matters involved if the report deals with a case which has reached the stage at which the Board has called the attention of the parties, the Council and the Commission to the question under paragraph 1, sub-paragraph (c) of the unamended text or sub-paragraph (d) of the amended text. It will be noted that article 14, paragraph 3 would not be amended by the Protocol of 1972.

The Board is not required to treat as confidential the remedial measures which it may request Governments to adopt pursuant to article 14, paragraph 1, sub-paragraph (b).

The information on the basis of which the Board may conclude that it has objective reasons to believe that a serious failure to implement provisions of the Single Convention exists could not apply to the right of the Board to propose the opening of consultations to a government which would not fail to comply with provisions of the Single Convention. The above mentioned provision could also not apply to the other measures which the Board would under the Protocol of 1972 be authorized to take in relation to Governments which would not fail to carry out its treaty provisions. The question arises whether the Board could in such cases use information furnished by intergovernmental organs, other than organs of the United Nations and their specialized agencies or by the non-governmental agencies referred to in article 14, paragraph 1, sub-paragraph (a) as amended. As can be seen, the introductive text of article which provides for a procedure against offending countries of provisions concerning countries which would have complied with the terms of the Single Convention, but would nevertheless have a serious drug situation might lead to several difficulties of interpretation.

[761] Under the unamended text. Under the amended text the first step could, in the case of an offending country be: either a proposal to such a government to open consultations or a request to furnish explanations. In the case of a government which would not have failed to comply with provisions of the Convention the first step would be the proposal to open consultations.

After having asked for explanations from the offending country concerned under the unamended text of article 14, paragraph 1, sub-paragraph (a) the Board has under the unamended text of sub-paragraph (b) of this paragraph, the right, but not an obligation, to propose to the offending country such remedial measures as it may consider necessary. Under the Protocol of 1972 the Board would have this right also in regard to countries which would not fail to comply with provisions of the Single Convention, but to whom the Board would have proposed the opening of consultations as foreseen in the amended text of article 14, paragraph 1, sub-paragraph (a).

The provision of article 14, paragraph 1, sub-paragraph (c) as it would read under the amendment of the Protocol of 1972 was considered above in connection with the discussion of the institution of the "Local Inquiry" of the 1953 Protocol.[762]

The Board has the right to call the attention of the parties, the Council and of the Commission to a drug situation in offending countries as well as to that in other countries.[763]

Article 14, paragraph 2 provides under the unamended text as well as under the amended text for authority of the Board to recommend that the parties discontinue the import of drugs, the export of drugs, or both, from or to "the country or territory concerned." The Board may make such a recommendation "when calling the attention of the parties, the Council and the Commission to a matter in accordance with paragraph 1 (c) [761] above". The Board can, under the unamended text, call the attention of the parties and of these two organs to the matter with which it has dealt only in respect of a country which has seriously failed to carry out the provisions of the Single Convention and can therefore recommend the import embargo or export embargo or both only against such a country. Therefore, the Board's recommendation has doubtless a punitive character under the unamended text. It has the nature of a sanction.

Under the amended text of article 14, paragraph 2 which is literally the same as its unamended text except that the reference is to "paragraph 1(d)" instead of "paragraph 1(c)" the Board could under the same conditions make the above mentioned recommendation.

However, the Board could, under sub-paragraph (d) of the amended text call the attention of the parties and of the two organs to a matter with which it would have dealt not only in the case of governments which would have seriously failed to carry out provisions of the Single Convention, but also in the case of countries which would have a difficult drug situation although they would have fully complied with the provisions of that treaty. The Board could thus make the recommendation not only in regard to countries which would not have carried out the provisions of the Convention but also in regard to countries which would have done so. If this view is accepted the Board could apply article 14, paragraph 2, as sanction against offending countries; in regard to other countries it might make a recommendation pursuant to this provisions if it would consider that a discontinuation of the export of some drugs to such a country might aid in improving its difficult drug situation. However, such a case could rarely occur under present conditions since the country itself could normally prevent the imports concerned by refusing to issue the required import authorizations; but one case may be mentioned in which a recommendation to discontinue the export of drugs to a country or territory could assist the government of that country or territory in its efforts to control its drug situation: A part of a country could have declared itself independent under an insurrectionist government which might have been recognized by a drug exporting country. Some of the members of such a government might engage themselves in the illicit traffic or co-operate with illicit traffickers—and this has not been a very rare event in the past. In a case of this nature a recommendation of the Board to discontinue drug exports to the territory under the control of the insurrectionist authorities might be very helpful to the legitimate government to control the drug situation in its national territory, but perhaps also to other governments. It is, however, admitted that this example of the use of article 14, paragraph 2 is rather far-fetched. It seems to be the better view that the authors of the Protocol of 1972 did not wish to deprive article 14, paragraph 2 of its exclusive character of a sanction against countries which would not comply with the provisions of the Single Convention in a very serious manner. It seems that it was overlooked to make in article 14, paragraph 2

[762] See "Establishment of a Comprehensive System of Control of the Cultivation of the Opium Poppy for the Production of Opium and of the Production of Opium" in The Situation at the End of World War II."

[763] In article 14, paragraph 1, sub-paragraph (c) of the unamended text or sub-paragraph (d) of the amended text.

[761] The unamended text is quoted. Under the amended text the reference is to "paragraph 1 (d) above".

the revisions consequential to the amendments which would be introduced by the Protocol of 1972 into the sub-paragraph, designated (c) under the unamended text and (d) in the new text, of paragraph 1 of the article 14.

Another possibility would be that the authors of the amendments of the just mentioned sub-paragraph considered it unnecessary to revise[763] article 14, paragraph 2, because they held that in all cases in which the Board would, under that sub-paragraph as revised by the Protocol, be authorized or required to call the attention of the parties, the Council and the Commission to the matter, the government concerned would also have failed to carry out provisions of the Single Convention. It is however submitted that such an interpretation could hardly be reconciled with the actual text of article 14, paragraph 1, sub-paragraph (d).

The export or import embargoes of drugs, which may be useful medicines, are of questionable value as sanctions under the present conditions which are very different from those of the time at which this type of sanctions was conceived. Sanctions or the threat of sanctions of a more general economic nature would be much more appropriate at present. A threat of sanctions of this nature might be helpful in inducing some governments to make a greater effort to improve their drug control administration. It is therefore suggested that it would be useful to authorize the Board in extreme cases of non-compliance with the provisions of the Single Convention, to propose to the Economic and Social Council to recommend some economic sanctions against an offending government. The writer of this paper is of course aware of the possibility that some countries may raise the objection to such an idea, that sanctions are under the Charter of the United Nations within the competence of the Security Council and not within that of the Economic and Social Council; but in the case of the suggested provision the Economic and Social Council would not act under the Charter but under the treaty containing this provision. It is quite usual that United Nations organs have under special treaties powers which they could not exercise under the Charter. Whether a proposal to provide in the Single Convention for economic sanctions would be widely acceptable at present or in the near future is of course another matter. However, it is suggested that the value of economic sanctions in the drug field is worthwhile considering and may well be taken into account in more range plans to improve the international drug re

The Board may apply to parties and non-p alike the provisions of article 14. This would so under the amendments which would be intr by the Protocol of 1972.

The provisions regarding the measures (sanct which the Board may take under the Vienna vention to assure the execution of the provisi this convention are nearly the same and literally the same as those of article 14 of the Convention in its unamended version.[764] The tion of the information on the basis of whic Board could initiate the procedure differs sou from that definition in the unamended article the Single Convention. In view of the interpr given above to this definition in the Single vention there is hardly any real difference scope of information which the Board may tak account in the procedures of the two treat ensure their implementation.

There is however one important difference be the enforcement procedure of the Single Con and that of the Vienna Convention. Under the treaty a party, but a written notice addressed Secretary General, could declare that, in v exceptional circumstances, it is not in a posi give effect to all the provisions applicable to merly uncontrolled substance which would be by the Commission in a Schedule of the V Convention. A party could do the same in t of psychotropic substances transferred by the mission to a Schedule subject to more strict c from a Schedule subject to a more lenient In the case of such a written notice the part cerned would, under article 2, paragraph 7, from some of the obligations which would from the Commission's decision. The Vien vention would provide that the Board cou adopt its enforcement procedure if it woul reason to believe that the aims of the Con would be seriously endangered as a result of cision of a party taken under article 7, para as result of a written notice of a party.[767] The Convention does not provide for such a parti acceptance of decisions of the Commission

[763] Except to substitute the reference to sub-paragraph (d) for that to sub-paragraph (c).

[766] Article 19 of the Vienna Convention.

[767] Article 19, paragraph 7 of the Vienna Conven also the above Section "Changes in the Schedules Single Convention," Sub-section "Right of Non-Ac or "Right of Rejection".

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drugs under international control or under a more strict regime.

All other provisions [768] of the Vienna Convention concerning measures by the Board to assure the execution of the provisions of the Convention could be applied to parties and non-parties alike.

EVALUATION OF INTERNATIONAL DRUG CONTROL

In view of the vast illicit traffic and the epidemic-like spread of drug use in many countries in recent years, one could be inclined to attach very little value to the international narcotics regime, but such a view would not be justified. It would certainly be wrong to overrate the importance of the international system, since it can affect only one of the causative factors of drug abuse—the availability of substances with a potential for abuse and not the other elements which are responsible for this social evil.[769] But it would equally be wrong to underestimate the beneficial effects of this system as can be substantiated by a comparison of the situation as it existed before international narcotics control became effective and as it exists today.

When making an evaluation of the international narcotics regime, the following factors must not be overlooked:

- The illicit traffic is a consequence of the control. Experience has shown that any control of an economic activity is accompanied by a black market. The truth of this in the field of drugs could be seen in the United Kingdom at the time at which addicts could easily obtain prescriptions of heroin gratis under the British Health Insurance system, but could not similarly obtain marihuana. At that time in the United Kingdom an illicit traffic in marihuana, but not in heroin, existed. Unrestricted prescription of heroin by physicians would not eliminate the illicit heroin traffic in the United States. It might lead to a reduction of the price of heroin on the illicit market since the illicit distributors would try to remain competitive with the prices charged by physicians,[770] who would be willing to give addicts the heroin which they would desire.
- The present tremendous increase in drug abuse does not prove the failure of international narcotics control. By analogy, the usefulness of a medicine is not negated by the fact that the disease which it has succeeded to contain for some time is aggravated by complications for which the medicine has not been designed to treat. The discontinuation of the medicine may often render the condition of the patient even more serious than it would be otherwise. Although the views on the special causes of the spread of drug abuse necessarily differ, there can be no doubt that this phenomenon is due to a complexity of social factors, including the increasingly rapid economic and social change with its impact on human behavior. The increased incidence of crime and mental disease under contemporary conditions represents a somewhat similar complex problem.
- A large part of the increase in abuse of drugs does not refer to the abuse of manufactured narcotic drugs whose legal trade is effectively controlled by the narcotics regime, but refers to psychotropic drugs, which are not similarly controlled and which pose quite different control problems than narcotic drugs. Marihuana[771] (cannabis and cannabis resin) is the most widely abused drug. It is defined as one of the "narcotic" agricultural products whose control undoubtedly represents the weakest point of the international regime. The control of the cannabis plant is even more difficult than that of the opium poppy and the coca bush.[772] The cannabis plant, cannabis and cannabis resin have been subject to a comprehensive system of international control only since the Single Convention came into force on December 13, 1964.

A comparison between the drug abuse situation as it existed before the international control system became effective and the situation as it exists today is very difficult. Only a very few countries have statistical data from which per capita narcotics consumption for the period prior to the narcotics regime can be computed. Moreover, statistical data on the extent of drug addiction is unavailable. Nevertheless, the past Permanent Central Board, on the basis available data, came to the conclusion that the *relative*

Article 19, paragraphs 1–6.

For further discussion of this point, see *supra*, "The special interest in international control of dangerous drugs". However, comparatively small the number of such physicians would be, it would be sufficiently large to assist numbers of addicts.

[771] The leaves of the cannabis plant are not subject to the international narcotics regime.

[772] See discussion of "Cannabis Plant" in *Supra*, "The Single Convention on Narcotic Drugs, 1961."

incidence of addiction to manufactured drugs has appreciably diminished since the beginning of narcotics control. The Board admitted that the old figures cannot readily be compared with recent figures. It recognized that legitimate per capita consumption must have increased in the wake of economic and social advancement and the evolution of modern medicine and of national health schemes. The Board compared the earlier figures of countries, which prior to the narcotics regime had advanced medical services, with their recent figures, and found that the recent legal per capita consumption of narcotic drugs has been greatly reduced. The Board held that the consumption figures for the period prior to narcotics control included quantities consumed by addicts. Taking into account the increased per capita consumption for legitimate purposes, the Board found that the relatively greater per capita consumption in the past was helpful in determining the extent of addiction in a country prior to the introduction of effective narcotics control.[773]

Among the countries studied by the Board, the United States received particular attention. The Board did not include cocaine in its study although the United States consumed more than five times as much prior to 1914 than in 1966 with half the 1966 population. The Board omitted it because the reduction in its per capita consumption to a large extent was caused by a decline in its therapeutic uses. The Board also omitted cannabis because it had no data for its study. The Board limited itself to *opiates*.

The Board had at its disposal the quantities of opium imported into the United States in the years preceding World War I and could estimate its morphine content. In making its examination the Board had to take into account that the number of natural opiates in use was much greater than before the international narcotics regime and the Harrison Act was enacted. Moreover, considerable quantities of synthetic drugs which are consumed today, were unknown before World War I.

A comparison of the quantity of a particular opiate consumed before World War I with the amount used now would not be very meaningful for the Board's study. The Board reduced its estimates of the quantities of drugs annually consumed to a common denominator in order to allow for the differing potencies of various narcotics. The Board did not compare the weight of the amounts consumed, but rather the numbers of therapeutic dosages. It was aware that this procedure was far from perfect. However, it felt justified in stating that the annual legal per capita consumption of narcotics immediately before 1914 was about twice as much as it was in 1966. The Board also assumed that American patients now received whatever quantities of narcotic drugs were needed for medical purposes. It inferred that the much larger per capita consumption before World War I was to a great extent due to the fact that huge quantities of narcotics from legal sources were at that time used by addicts. The Board concluded that the quantities legally consumed before World War I were sufficient to maintain between 400,000–600,000 addicts in a population one-half that of 1966.

In judging the accuracy of the Board's calculation consideration must be given to the fact that in the physicians more readily prescribed narcotics for analgesic and antitussive purposes than today. This situation also contributed to the continuation of addiction for many physicians, who first gave patients prescriptions for these purposes later prolonged narcotics to maintain their patients' addiction. The difference between the per capita consumption of narcotics prior to 1914 and in 1966 can be explained only to a minor, if any, extent by the former readiness of physicians to prescribe narcotic drugs for analgesic and antitussive purposes.[774]

The Board's calculation also was based on the hypothesis that the proportion of narcotics consumed in the form of codeine was the same before World War I and during 1966. However, it felt that the proportion of codeine consumed was much smaller before the war because the widespread use of heroin indicated a lower codeine rate. The Board concluded that the number of addicts, who obtained narcotic drugs from legal sources in the United States before World War I must have been even greater than the estimated 400,000–600,000, which was computed solely on the basis of comparing the per capita consumption of therapeutic dosages of narcotic drugs in the two periods.[775]

It cannot be doubted that addiction to opiates was until a few years ago much lower than

[773] United Nations document E/OB/19, paragraphs 10 and 11.

[774] This consideration applies also to those narcotics in some states could be sold without medical prescription. The use of such drugs first taken for the alleviation might later have been continued for the satisfaction craving of the user who became addicted.

[775] United Nations document E/OB/22, paragraph

before the introduction of narcotics control. Even now when the number of American addicts is estimated at 500,000–600,000, at least the *relative* incidence of addiction to opiates is still much lower than it was before World War I.

These results could never have been achieved without control in other countries, otherwise narcotic drugs could freely flow into America from legal sources abroad. It is the basic achievement of international narcotics control that no significant diversion of manufactured narcotics drugs from legal manufacture and trade into illicit channels occurs anymore. There is also no significant diversion of opium once it is in the possession of the national opium agencies and has entered the controlled legal trade. This great achievement is not minimized by the fact that retailers sometimes illicitly sell drugs. To evaluate this great success of the international narcotics regime it may be useful to consider the situation as it existed before international control became effective. The two conventions which established the international regime of manufactured narcotic drugs are the 1925 Convention and the 1931 Convention which entered into force in 1928 and in 1933, respectively.[776] Since the mid 1930's illicit traffickers in manufactured narcotics could not obtain their supplies from legal sources and had to rely on clandestine manufacturers. This emergence of clandestine manufacture and its continued existence has become possible because international efforts failed to deprive them of the opium and coca leaves which they need and which they can still obtain with relative ease.

A few examples taken from a report of the Permanent Central Board may give a picture of the situation before international control became effective.

Reports from manufacturing countries between 1925 and 1929 showed that seventy-three metric tons of narcotic opium derivatives and six tons of cocaine escaped from legal trade into the illicit traffic. During 1927 and in the first three months of 1928 a single legal factory exported 860 kgs. of morphine, 2,711 kgs. of heroin and 40 kg of cocaine to a single country for illicit purposes. This factory handled about one-third to one-half of the world's legal manufacture of narcotic drugs. In 1929 a country of Southern Europe, which had never before manufactured drugs, suddenly authorized three narcotics factories. Two were founded by well-known illicit traffickers. During the first six months of 1930 this country exported 2,300 kgs. of morphine and 4,300 kgs. of heroin, including 1,400 kgs. of morphine and 2,700 kgs. of heroin to Greece alone. The alleged countries of destination reported that the drugs never arrived.[777]

The tasks of the American enforcement services are very difficult; but one can hardly imagine how much more difficult they would become if the situation described above existed abroad today. Even this principal achievement of international narcotics control—the prevention of diversion of significant quantities of legally manufactured narcotic drugs into illicit channels—would be endangered if countries whose governments are unable to exercise effective control would commence the manufacture of narcotic drugs.

International efforts to control the production of opium, coca leaves, cannabis and cannabis resin and to deal with the clandestine manufacture of narcotic drugs have been a failure; but it would be a mistake to assume that with regard to the production of opium no results were obtained. In the years 1934 to 1937 those governments which furnished information reported a total opium production of 18,500 metric tons; 1,100 tons were reported to have been used for domestic consumption by addicts, 800 tons to have been exported for opium smoking and 1,400 tons [778] to have been used for medical purposes including the manufacture of morphine and codeine. 15,200 metric tons were entirely *unaccounted* for. This does not include the huge amounts of opium produced in Manchuria and Jehol in the 1930's.[779] According to present estimates only an annual quantity of about 1200 to 1400 metric tons of opium obtained by diversion from legal production or from illegal or uncontrolled production is available for illicit purposes. This reduction has been brought about by prohibition of opium production or by introduction of a control system as required by the 1953 Protocol or the Single Convention. Those opium-producing countries which do not permit licensed individual farmers to cultivate the poppy for opium have been most successful in their control efforts.[780] But this reduction of opium

[776] The 1948 Protocol only extended the regime of these two treaties to new synthetic drugs.

[777] United Nations document E/OB/22, paragraph 34-36.

[778] It seems that this reported figure is higher than the amount which was actually so used.

[779] United Nations document E/OB/22, paragraph 41.

[780] With regard to the difficulties of controlling the production of opium, coca leaves and cannabis see "Establishment of a Comprehensive System of Control of the Cultivation of the Opium Poppy for the Production of Opium and

production could not solve the problem of the illicit traffic in manufactured drugs. It reflects *inter alia* the virtual elimination of opium smoking in China; but 1,200 tons of opium which are still available for illicit purposes are enough to manufacture large amounts of morphine and heroin to supply millions of addicts. On the assumption that an addict daily consumes not more than three therapeutic dosages of morphine or heroin it has been estimated that 1,200 metric tons of opium would be sufficient annually to supply more than 10 million morphine addicts and more than 20 million heroin users.[781] In any event, enough opium remains in illicit channels to supply the American illicit market with heroin.

A SUMMARY APPRAISAL OF THE PROTOCOL OF 1972 AMENDING THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961.[782]

In the present state of international relations, it is nearly inevitable that highly technical treaties which are the product of large multilateral conferences contain a number of defects, including weak draftsmanship, obscure provisions and valueless provisions, which had to be accepted by way of compromise. The Protocol of 1972, which is the product of many difficult compromises, contains a number of weaknesses.

There are some provisions which will not easily be acceptable to a number of countries, specifically those provisions which would require parties to furnish to the Board annual estimates of the area and geographic location of land to be used for the cultivation of the opium poppy *for any purpose* (and not only of the area to be used for the production of opium)[783] and annual statistical figures on the "ascertainable area of cultivation of the opium poppy" *for any purpose*.[784]

Another such provision would obligate governments to furnish to the Board annual estimates of the number of industrial establishments which will manufacture synthetic drugs, and of the quantities of synthetic drugs to be manufactured by each of these establishments.[785] These latter provisions will probably not only be unacceptable to several countries, but are certainly completely useless from the viewpoint of drug control, and may even make such control more difficult. These provisions resulted Several "Third World" countries insisted on it and were backed in this by some opium producing countries which appear to have desired to impose on industrial countries some burdens in compensation for those which they believed to take upon themselves under the terms of the new Protocol. Their motives were largely emotional.

A few other provisions of the Protocol are obviously based on a misunderstanding of the working of the international narcotics regime and in particular of the part played by section, "The Total of the Estimates." [786] The new definition of the "Total of the Estimates" for opium and that of the "Total of the Estimates" for a synthetic drug will have the effect in some opium producing countries and in some countries manufacturing the synthetic drug that these countries will be able to import more opium or the synthetic drug than under the terms of the unamended Convention. This will certainly be the case of the very large producers of opium and of large manufacturers of the synthetic drug. Such countries will be able to import huge quantities which they will not need, while the definition of the "Total of the Estimates" in the unamended text of article 19, paragraph 2 serves the purpose of limiting the import of drugs to the real requirements of the country or territory.[787]

Moreover, the United States for a long time will not be able to apply article 36, paragraph 1, sub-paragraph (b) which would be introduced into the Convention by the Protocol. Our country and others which are parties to the unamended Convention will remain bound to apply article 36, paragraph 1, sub-paragraph (a) and not be authorized to substitute sub-paragraph (b) of the Protocol. They will be obligated to those parties to the Single Convention which would not accept the Protocol, that is, as long as all parties to the unamended Single Convention will not have become parties to the amended text.[788]

The *advantages* which the Protocol would considerably outweigh its defects.

First of all, the Protocol would greatly strengthen the Board. The increase of the term of office of the members of the Board from three to five years would certainly aid in assuring their independence.[789] Under the Protocol, the Board whose memberships would also be increased from eleven to thirteen,[790] would be an organ different from that under the unamended Convention; but this would not prevent the new Board from carrying out its functions in relation to those parties to the unamended treaty which would not accept the Protocol. First, the Board is authorized to implement most of its tasks even in relation to non-parties.[791] Second, it would be entitled to act in relation to states which would be parties only to the unamended text, for the reasons given by the International Court of Justice in its advisory opinions on the South-West African case.[792]

The Board would also be assured of having its own secretariat.[793] The fight against the illicit traffic would be facilitated by the new provisions regarding extradition of traffickers.[794]

A number of the new provisions clearly show that the authors of the Protocol had a full understanding of the nature of the international society as a society of sovereign states. They would emphasize and strengthen those activities of the Board, of other international organs and of Governments themselves in the drug field which are most appropriate and generally most effective. Special emphasis is laid on the need for strengthening the cooperation of the Board with Governments. The Board is expressly required to further this cooperation, to provide the mechanism for a continuing dialogue with them and to give them assistance and advice if requested to do so.[795] The Board is entitled or even required to initiate consultations with concerned governments.[796] The need for co-operative action at the international level between governments themselves as well as between governments and international organs is stressed.[797]

The incapacity of some governments, by their own efforts, to make a full contribution to the achievement of the aims of the Convention is recognized and the Board is expressly authorized, with the agreement of the concerned governments to recommend to the competent United Nations organs and to the specialized agencies that technical or financial assistance, or both, be granted to those governments in support of their efforts to carry out their obligations.[798]

Provision is made for the Board's right to propose to a government which has a serious drug situation to make a study of this situation and thus to obtain a better understanding of its drug problems and of the remedial measures which might be required. The government may request the Board to make available for such a study the expertise and the services of one or more competent persons to assist it in the proposed study. The persons made available by the Board are subject to the approval of the government.[799]

The importance of the prevention of drug abuse, of the early treatment and rehabilitation of persons abusing drugs, of the need for training of personnel employed in such treatment or rehabilitation, and for promoting an understanding of the problems of drug abuse by drug personnel and by the general public, if there is a risk that drug abuse will become widespread, must be recognized by governments, who are required to undertake these measures.[800]

It may also be worthwhile mentioning that the Protocol clearly explains and usefully emphasizes

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of the Production of Opium" in "The Situation at the End of World War II" and the sections on "The Opium Poppy", the "Coca Bush" and the "Cannabis Plant" in "The Single Convention on Narcotic Drugs, 1961".

[781] United Nations document E/OB/21, paragraphs 108 and 109.

[782] Text reproduced in United Nations documents E/CONF.63/8 and E/CONF.63/9.

[783] Article 19, paragraph 1, sub-paragraph (e) of the amended text; see the Section "Establishment of a Comprehensive System of Control of the Cultivation of the Opium Poppy for the Production of Opium and of the Production of Opium" in the "Situation at the End of World War II".

[784] Article 20, paragraph 1, sub-paragraph (g) of the amended text.

[785] Article 19, paragraph 1, sub-paragraphs (g) and (h) of the amended Convention; see the "Limitation of Narcotics Supplies" of "The Single Convention on Narcotic Drugs, 1961".

[786] Article 19, paragraph 2, sub-paragraphs (b) and (c).

[787] See article 19, paragraph 2, article 21, paragraph 4 and article 31, paragraph 1, sub-paragraph (b) of the amended Single Convention.

[788] See "Authorization of Possession of Narcotic Drugs" and "Penal Laws to be Applied to Violations of Laws Enacted to Implement the Single Convention" in "The Single Convention on Narcotic Drugs, 1961"; For different reasons the provision of article 19, paragraph 2, sub-paragraph (d) of the amended text would also remain inapplicable, see "Limitation of Narcotics Supplies."

[789] Article 10, paragraph 1 as amended.

[790] Article 9, paragraph 1 as amended.

[791] Article 12 and 13, article 14 in its amended and unamended versions, and article 21, paragraph 4.

[792] Their discussion would be outside the scope of this paper.

[793] Article 16 as amended.

[794] Article 36, paragraph 2, sub-paragraph (b) of the new text.

[795] Article 9, paragraphs 4 and 5, article 35, paragraph (g) and article 38 bis of the new text; see also article 14, paragraph 1 sub-paragraph (c) of this text.

[796] Article 14, paragraph 1, sub-paragraph (a) and article 21 bis, paragraph 3 of the next text; see also article 14, paragraph 1 sub-paragraph (c) of the new text.

[797] Article 14, paragraph 1, sub-paragraph (d) of the new text; see also article 4, paragraph (b) and article 35, paragraph (c).

[798] Article 14 bis of the new text.

[799] Article 14, paragraph 1, sub-paragraph (c) of the new text.

[800] Article 38 of the new text; see, however, as regards the problem of drug abuse in foreign countries, "The national interest in international control of dangerous drugs",

the aims of the Convention and in general terms the part which the Board should play in this context.

It is suggested that for all those reasons it is in the interest of the United States to ratify the Protocol of 1972, especially since the United States has taken the diplomatic initiative in bringing about the conclusion of this treaty.

A SUMMARY APPRAISAL OF VIENNA CONVENTION OF 1971 ON PSYCHOTROPIC SUBSTANCES.[801]

When appraising the provisions of the Vienna Convention it would be useful to keep in mind:

- Many of the psychotropic substances which fall under the regime of the Vienna Convention are not only very useful medicines—as some narcotic drugs also are—but are also very widely used, often many times more than codeine, the most popular narcotic drug. It is the view of a number of countries, including in particular European countries with advanced medical services, that controls to prevent drug abuse should as little as possible reduce the ease of availability of needed medicines. Strict controls are, in their opinion, often incompatible with a desirable ease of availability of useful drugs. This is also the reason why even under the narcotics regime drugs in Schedule II, such as codeine, can be sold without medical prescription. Many public health services try to maintain in their policies a proper balance between the need for making easily available drugs, whose wide use for therapeutic purposes they consider desirable, and the need for fighting drug abuse. Some public health services give precedence to their desire to make easily available very useful drugs over considerations of preventing abuse. In maintaining a correct balance between these two considerations which determine public health policies toward drugs, the degree of harm which a drug may cause a person abusing it is, of course, also relevant. All this explains why the Vienna Convention provides rather weak controls with regard to substances in Schedule III which contain some widely used medicines. Its Schedule IV controls are even weaker because this Schedule was intended to include medicines which are even more widely used or considerably less dangerous, or both, than those listed in Schedule III.
- The Conference which adopted the Vienna Convention demonstrated that to provide for protective measures against future dangers, that is, to prevent the emergence of foreseeable, but not yet existing social evils, was even more difficult in the field of international legislation than in the field of domestic legislation.

The provisions of the Vienna Convention have been considered above in connection with corresponding provisions of the Single Convention, of the Protocol of 1972 amending this Convention and of earlier drug treaties. Apart from some special rules governing psychotropic substances in Schedule I and a few other rules, the Vienna Convention, in general, takes over administrative controls which are employed in the narcotic regime and applies them in varying degrees to four different categories of psychotropic substances, listed in four Schedules.

There are however some important differences:

- The Vienna Convention does not require Governments to furnish to the Board annual estimates of their requirements of psychotropic substances which each country may annually acquire by manufacture or import or both. It will be recalled that the Single Convention provides for such a limitation of narcotics supplies with the quantities of the supplies determined on the basis of the estimates of governments, drug requirements which sent to the Board each year. Reference may also be made to the criticism of the value of the estimates and of the limitations system based thereon.[802]
- The Vienna Convention also does not limit the amounts required for the normal conduct of the business the quantities of psychotropic substances which manufacturers or traders may possess. There is only one exception: parties to the Convention are required to restrict the quantities of substances in Schedule I supplied to a duly authorized person to the amounts needed for their authorized purposes.
- The Vienna Convention does not control the cultivation of plants from which psychotropic substances may be obtained or even of those plants which are grown for this purpose. This lack of control is motivated by a number of reasons. Some of the plants are not cultivated and the psychotropic substances in question are obtained from wild growing plants. The control of the cultivation of other plants in question would not be possible in practice. For example, ergot is a fungus disease of rye. It is not only a material from which LSD can be made, but it has itself effects on the functioning of the brain and may if used in large quantities or on a chronic basis lead to serious mental defects. However, according to available information it is not so used because it does not create a state of euphoria. Anyway it would of course be impossible to subject the cultivation of rye, which may yield ergot, to controls of the kind which are employed in the field of drugs. It is also possible that the lack of control of any plant from which psychotropic substances may be obtained is to some extent due to the speed with which the Vienna Convention was prepared, which would have made it impossible to select the plants which could be controlled and to elaborate a control regime, which could discriminate among different plants, depending on whether they are cultivated or grow wild.

The Vienna Convention does not use the term "production" or provide for the control of "production". As will be recalled "production" is defined in the Single Convention to mean the "separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained." [804] Separation of psychotropic substances from the plants from which they may be obtained would be covered by the term "manufacture" as used in the Vienna Convention [805] and would therefore be subject to all the controls which would apply to the manufacture of such substances.

- The Commission on Narcotic Drugs may change the Schedules of the Vienna Convention without following the recommendation of the World Health Organization. Such a recommendation must however in each case be obtained and is "determinative as to medical and scientific matters." [806]
- Preparations can be exempted from some controls by unilateral action of a party but only with respect to its *own* administration; under the Single Convention such exemptions can be made only by the Commission, but effective for *all* parties. The unilateral exemptions under the Vienna Convention can be terminated by the Commission partially or entirely while exemptions under the Single Convention can be ended by the Commission in the same way as it can make other changes in the Schedules of this Convention i.e. "in accordance with the recommendation of the World Health Organization." [807]
- Changes in the Schedules and partial or full termination of exemptions of preparations must under the Vienna Convention be adopted by a two-thirds majority of the total membership of the Commission [808] while under the Single Convention changes in its Schedules may be adopted by a simple majority of the members of the Commission present and voting.[659]
- Under the Vienna Convention parties have the possibility of refusing to carry out some of the obligations which would be imposed upon them by a decision of the Commission adding a previously uncontrolled substance to a Schedule or transferring a substance to a more strictly controlled Schedule.[809] Such a right of "non-acceptance" or "rejection", which is not provided for in the Single Convention, is of little interest to the United States because the decisions in question must be adopted by a two-thirds majority of the total membership of the Commission and because each party may by its unilateral action exempt preparations from some measures of control.
- The definition of dangerous substances in the Vienna Convention appears to permit it to place under its control only psychotropic substances which themselves have the dangerous properties in question and not those substances which by themselves do not have such properties but are convertible into such dangerous substances.[810] The Single Convention authorizes not only the control of dangerous drugs, but also of substances convertible into dangerous drugs.[811]
- The Vienna Convention authorizes parties to make reservations with respect to wild growing *plants* which contain such psychotropic substances in Schedule I which are "traditionally used by certain small clearly determined groups in magical or religious rites." Such a reservation could free the reserving party from the obligation to apply to the plants "the provisions of article 7, (which contain

[801] The text of the Convention is reproduced in United Nations document E/CONF. 58/6 and in the United Nations Bulletin on Narcotics, vol. XXIII, No. 3.

[802] See "Limitation of Narcotics Supplies" in "The Single Convention on Narcotic Drugs, 1961".

[803] Article 7, paragraph (d).

[804] Article 1, paragraph 1, sub-paragraph (t) of the Single Convention.

[805] Article 1, paragraph (i); it is submitted that the term "manufacture" was not intended to apply to the cultivation of plants, even though such cultivation may be one of the processes by which psychotropic substances may be obtained".

[806] See "Changes in the Schedules of the Single Convention" in "The Single Convention on Narcotic Drugs."

[807] Article 2 and 3 of the Vienna Convention and article 3 of the Single Convention.

[808] Article 17, paragraph 2.

[809] Article 2, paragraph 7.

[810] Article 2, paragraph 4; see, however, article 2, paragraph 9.

[811] Article 3, paragraph 3; sub-paragraph (iii).

the principal rules governing substances in Schedule I) except for the provisions relating to international trade." The interpretation of this provision [812] may cause some difficulties. The Vienna Convention does not control the plants and article 7 applies only to psychotropic substances in Schedule I which may be parts of plants. The authors of this provision permitting the reservation apparently wanted to permit the uncontrolled "manufacture" [813] of, domestic trade in, distribution and use of such parts of the plants with respect to which the reservation would be made. This reservation could be made for an unlimited period of time. The Single Convention expressly permits reservations regarding the non-medical use of some drugs only for defined limited periods of time.[813]

The measures which the Vienna Convention takes over from the Single Convention and applies to psychotropic substances may be described in general terms as follows: [814] limitation of all phases of the trade in psychotropic substances and of their use to medical and scientific purposes; requirement of governmental authorization of all phases of the trade in psychotropic substances; governmental authorization of establishments and premises in which such trade takes place; requirement of medical prescriptions for use of psychotropic drugs; application of the import certificate and export authorization system, but only to psychotropic substances in Schedules I and II; requirement of keeping records by manufacturers, traders and distributors; provisions regarding possession of psychotropic substances and regarding organs of domestic control; requirement of penalizing actions of illicit traffickers in violation of laws promulgated to carry out the Convention; obligation of parties to make reports to international organs; international supervision of the implementation of the treaty by the Commission on Narcotic Drugs and the International Narcotics Control Board including measures to be taken by the Board to ensure the implementation of provisions of the Convention; provision for extending control to additional substances, for freeing substances from control, for exempting preparations from some controls and for rescinding such exemptions.

A few details concerning these measures may be recalled because they may be of particular importance for evaluating the Vienna Convention:

The use of psychotropic substances in Schedule I is permitted only to scientific and *very limited* medical purposes. The restriction of the use to *very limited* purposes is without any value from the viewpoint of international drug control. The possibility that a substance in Schedule I might be found to be very effective in curing a frequently occurring serious disease cannot be discounted. Should a government not permit the wide use of such a substance until the Commission has transferred it to a different Schedule?

The use of psychotropic substances in Schedule I would be permitted only "in medical or scientific establishments which are directly under control of their government or specifically approved by them." The American delegation at the Vienna Conference which adopted the Convention expressly declared that it would consider offices of doctors to be such establishments. This provision [815] will therefore be less burdensome for our country than its text would appear to be.

The import certificate and export authorization system would not apply to substances in Schedules III and IV. International transactions in such substances would normally not require any specific government authorization. However, exporters of substances in Schedule III, but not in Schedule IV would have to declare each export [816] to the authorities of their own country.

The additional measures which would be required for international transactions in substances in Schedule I are hardly very meaningful.[817] A government which would authorize a person or enterprise to import and/or export such substances would grant the *specific* authorization required by the Convention. If it applies, in addition, the import certificate and export authorization system to such transactions it would carry out all the obligations which it would have in this connection.

The records which would have to be kept by manufacturers of, traders in and distributors of psychotropic drugs in Schedules I and II would differ very little if at all from those to be kept under the Single Convention with regard to drugs in Schedule I.[818] The Vienna Convention also requires [illegible]

[812] Article 32, paragraph 4.

[813] Article 49, see, however, article 50, paragraph 3.

[814] As mentioned above the details of these provisions were discussed in connection with the corresponding provisions of the Single Convention and sometimes also in connection with those of earlier drug treaties.

[815] Article 7, paragraph (a).

[816] Article 12.

[817] Article 7, paragraph (f).

[818] Article 11, paragraphs 1, 2 and 3 of the Vienna Convention and article 34, paragraph (b) of the Single Convention.

[819] Article 7, paragraph (e).

persons performing medical or scientific functions with substances in Schedule I keep records concerning the acquisition of the substances and the details of their use. It will be recalled that under the Single Conventions medical practitioners are not required to keep any records. It may also be assumed that the records to be kept by scientists under the Single Convention with regard to drugs in Schedule I may be a little less detailed than the records of scientists using psychotropic substances.

The records to be kept by manufacturers of, wholesale traders in, wholesale distributors and exporters and importers of psychotropic substances in Schedule III would be the same as those to be kept with regard to Schedules I and II drugs under the Single Convention. The provision regarding the records to be kept with regard to substances in Schedule III by retail distributors, institutions for hospitalization and care and by scientific institutions are rather vague and would be less detailed than the records to be kept by retail distributors and such institutions with respect to Schedules I or II drugs of the Single Convention.

The provisions of the Vienna Convention regarding records to be kept with regard to substances in Schedule IV would only require manufacturers, exporters and importers to show the quantities manufactured, exported and imported.[820]

While the records to be kept with respect to psychotropic substances in Schedules I and II and the records to be kept by manufacturers, wholesalers, exporters and importers of psychotropic substances in Schedule III would be as satisfactory for the purposes of control as those records kept under the Single Convention, the record requirements for psychotropic drugs are generally less strict than for drugs under the Single Convention, but this is considered by many countries to be a practical necessity in view of the extensive use of many psychotropic substances in Schedules III and IV.

It may however be added that governments theoretically could be compelled to require the keeping of more extensive records than those expressly prescribed by the Vienna Convention. This would be the case if the Commission would require [821] parties to furnish information which they could obtain only from enterprises engaged in the trade in psychotropic drugs which would keep records for this purpose.

While the Single Convention requires [822] parties to permit the possession of narcotic drugs without legal authority the Vienna Convention makes this requirement only with respect to substances in Schedule I.[823] The Vienna Convention only declares it to be "desirable" that parties do not permit possession of Schedules II–IV substances, except under legal authority.[824]

Contrary to the Single Convention, the Vienna Convention does not make obligatory the maintenance of "a special administration" for the execution of its provisions. It declares only that it would be desirable to maintain and establish such an administration.[825]

The Penal Provisions of the Vienna Convention [826] are nearly the same as those of the unamended Single Convention,[827] except that the former provides for the application of measures of treatment and rehabilitation either as an alternative of conviction or punishment or in addition to punishment, in the case of all offenders who are abusers of psychotropic drugs, including the most criminal illicit traffickers.[828] The same provision would be introduced into the Single Convention by the Protocol of 1972.[829]

The Vienna Convention requires parties to furnish to the Board much less *statistical data* than does the Single Convention; but the Commission theoretically could require parties to supply all the statistical figures which are expressly provided for in the Single Convention; but not in the Vienna Convention,[830] if it finds this necessary for the performance of its functions. It could forward these figures to the Board. One must not overlook in this context that the Commission is authorized to consider all matters pertaining to the aims and to the implementation of the Vienna Convention [831] just as it is authorized to do under the Single Convention.[832]

The provisions of the Vienna Convention regarding the measures to be taken by the Board to assure the

[820] Article 11, paragraph 5.

[821] Article 16, paragraphs 1 and 6.

[822] Article 33.

[823] Article 7, paragraph (b).

[824] Article 5, paragraph 3.

[825] Article 6.

[826] Article 22.

[827] Article 36 and 37.

[828] Article 22, paragraph 1, sub-paragraph (b).

[829] Article 36, para. 1, sub-para. (b); for a discussion and criticism of this provision see the Section "Panel Laws to be Applied to Violators of Laws Enacted to Implement the Single Convention" in the Chapter "The Single Convention on Narcotic Drugs, 1961"; see also the Section "The Evolution of Penal Law in the Field of International Drug Law" in the Chapter "The Gradual Evolution of the International Drug Treaty System."

[830] Article 16, paragraphs 1 and 6.

[831] Article 17, paragraph 1 of the Vienna Convention.

[832] Article 8, introductory paragraph of the Single Convention.

execution of provisions of the Vienna Convention (Sanctions)[833] are with the exception of one paragraph[834] *mutatis mutandis* literally the same as the "sanction" provisions of the unamended Single Convention.[835] This paragraph authorizes the Board to apply the sanction procedure also if it has reason to believe that the aims of the Vienna Convention are being seriously endangered as a result of a party's "non-acceptance" ("rejection")[836] of a decision by the Commission to place an uncontrolled substance under control or to transfer a substance to a more strictly controlled Schedule.

The authors of the Vienna Convention thought they could not provide for very strict controls of very widely employed medicines because it would reduce the ease of their availability for therapeutic purposes. Instead, they emphasized the usefulness of knowledge of the dangerous properties of the substances involved and of education in the fight against drug abuse.

Therefore they included in the Convention a provision under which the parties, taking into account any relevant regulations or recommendations of the World Health Organization, are bound to require such directions for use, including cautions and warnings, to be indicated on labels where practicable and in any case on the accompanying leaflet of retail packages of psychotropic substances, as in their opinion, are necessary for the safety of the user. Parties would also be bound, with due regard to their constitutional provisions, to prohibit the advertisement of psychotropic substances to the general public.[837]

Such measures are certainly valuable and should be included in domestic public health regulations. However, the provision regarding the contents of the labels and of the leaflets accompanying the retail packages are very vague and leave the individual governments very wide discretion. It certainly does not do any harm to include such a provision in the Convention. However, the view that the way in which a country deals with its problems of drug abuse is—from the viewpoint of international drug control—normally no international interest as long as that country effectively prevents the illegal export of internationally controlled drugs from its territory into other countries.

These considerations apply also to another provision of the Vienna Convention which requires Parties to take all practicable measures for the prevention of the abuse of psychotropic substances and for the early treatment and rehabilitation of abusers of such substances and to coordinate their efforts to this end, to promote, as far as possible the training of personnel in such treatment and rehabilitation and to assist persons whose work so requires to acquire an understanding of the problems of abuse of psychotropic substances and to promote such understanding also by the general public if there is a risk that such abuse will become widespread.[838] A very similar provision regarding narcotic drugs would be introduced by the Protocol of 1972 into the Single Convention.[839]

It may be concluded that the controls which the Vienna Convention would apply to psychotropic substances in Schedule II which includes the amphetamines would be approximately as effective as those which would be offered by the Single Convention if it were applied to these substances.

However, one cannot be sufficiently sure that the Vienna Convention would give better protection against the abuse of psychotropic substances in Schedule I than the Single Convention if its application were extended to them. The Office of Legal Affairs of the United Nations did not exclude the hallucinogenic drugs from the scope of the Single Convention. Such drugs could therefore be placed by the Commission on Narcotic Drugs in Schedules I and IV of that Convention in accordance with article 3 of this treaty.[840]

The value of the provision of the Vienna Convention restricting the use of substances in Schedule I to scientific and "very limited" medical purposes has been criticized from the viewpoint of drug control. Its compatibility with sound medical policies has also been questioned. Under the Single Convention parties are required to prohibit the production, manufacture, export and import of, trade in, possession or use of drugs in Schedule IV, except for amounts which may be necessary for medical and scientific research, only if, in their opinion, the prevailing conditions in their countries render such a prohibition the most appropriate means of protecting public health and welfare.[841]

The requirement of a "special" license or prior authorization for engaging in any phase of the trade in psychotropic substances in Schedule I does not necessarily provide better protection than the requirement of licensing under the Single Convention. Manufacturers of narcotic drugs which must be allocated manufacturing quotas by their governments for each drug in order to enable their countries not to exceed their drug supplies as required by the Single Convention in fact also have "special licenses" or "prior authorizations".[842]

The provision of the Vienna Convention regarding the international trade in psychotropic substances in Schedule I by government agencies are not mandatory. Governments are entitled to permit such trade to "specifically authorized" private persons or enterprises. In both cases the import certificate and export authorization system has to be applied.[843] The Single Convention requires that the international trade in narcotic drugs be carried out by state enterprises or under license and that the import certificate and export authorization system be applied to each international transaction.[844] The provisions of both treaties are nearly the same.

The Vienna Convention's provision restricting the amount of psychotropic drugs to be supplied to a duly authorized person to that required for his authorized purpose,[845] may be compared with the provisions of the Single Convention requiring parties to prevent the accumulation of drugs in Schedule I and II in the possession of manufacturers, traders, distributors and persons duly authorized to perform therapeutic or scientific function in excess of that needed for their normal business needs.[846] There is one strong provision in the Vienna Convention worthwhile mentioning which was already indicated above and which does not have its counterpart in the Single Convention. The former treaty requires persons performing medical functions with substances in Schedule I to keep records concerning the acquisition of these substances and the details of their use while medical practitioners are not required by the Single Convention to keep any records; but one may assume that a doctor will hardly unduly prescribe a dangerous hallucinogenic substance such as those in Schedule I of the Vienna Convention and certainly not in quantities which could be significant for purposes of illicit trafficking. In any event, such a doctor would be quickly discovered by reason of the amounts which he would have to buy. As was stated above the other records which would to be kept under the Vienna Convention with regard to substances in Schedule I differ very little if at all from those required by the Single Convention with regard to drugs in Schedule I.

It may also be maintained that the Vienna Convention provides that the establishments and premises in which manufacture, trade or distribution may of Schedules II, III and IV substances take place to be controlled "under license or other similar control measure", while all use "for scientific or very limited medical purposes by duly authorized persons" of Schedule I take place "in medical or scientific establishments which are directly under the control of their governments or specifically approved by them". This omission of requiring licensing of establishment and premises in which manufacture of, trade in or distribution of psychotropic substances in Schedule I may take place is certainly an oversight.[847] The Single Convention, on the other hand, requires control under license of all establishments and premises in which the manufacture of drugs or preparations or the trade in, or distribution of drugs (but not preparations) may take place.[848]

This omission of the Vienna Convention does not free governments from an obligation to exercise strict controls over establishments and premises in which the manufacture, trade in or distribution of substances in Schedule I may take place, since they are bound to provide for close supervision of such manufacture, trade and distribution. These controls may include control of the establishments and premises under license or other similar control measure

[833] Article 19.
[834] Article 19, paragraph 7.
[835] Article 14.
[836] Article 2, paragraph 7 of the Vienna Convention.
[837] Article 10.

[838] Article 20 of the Vienna Convention.
[839] Article 38 of the Single Convention as amended; see also the Chapter "A Summary Appraisal of the Protocol of 1972 Amending the Single Convention on Narcotic Drugs 1961"; see also the reference in footnote 838.
[840] See "Changes in the Schedules of the Single Convention" in "The Single Convention on Narcotic Drugs".

[841] See "The Gradual Evolution of the International Drug Treaty System".
[842] Article 7, paragraph (a) of the Vienna Convention; article 29 of the Single Convention; see "Limitation of Narcotics Supplies" in "The Single Convention on Narcotic Drugs, 1931".
[843] Article 7, paragraph (f).
[844] Article 31, see, in particular, paragraph 3, sub-paragraph (a) of this article.
[845] Article 7, paragraph (d).
[846] Article 29, paragraph 3 and article 30, paragraph 2, sub-paragraph (a). The requirement to limit the amount of drugs does not apply to the retail trade in drugs in Schedule II of the Single Convention, article 30, paragraph 6.

[847] Article 7, paragraph (a) and article 8, paragraph 2, sub-paragraph (b) of the Vienna Convention.
[848] Article 29, paragraph 2, sub-paragraph (b) and article 30, paragraph 1, sub-paragraph (b), clause (ii); only the premises of persons duly authorized to perform and while performing therapeutic or scientific functions are excepted, article 30, paragraph 1, sub-paragraph (c).

and other security measures such as those which parties are bound to apply with regard to substances in other Schedules.[849]

Without going into further details,[850] words like "special" or "close supervision" which are used in the Vienna Convention in provisions regarding psychotropic substances in Schedule I are not precise enough to assure the required strict controls. Much will depend, of course, on the interpretation of these terms by the individual governments.

One may safely assume that the provisions of the Single Convention governing drugs in Schedule I which are effective in preventing diversion from legal trade into the illicit traffic would be equally effective with regard to the psychotropic substances in Schedule I of the Vienna Convention. It might perhaps be useful to consider the advisability of placing hallucinogenic substances in Schedule I (and IV) of the Single Convention if the Vienna Convention should not come into force for a long time. When the latter treaty enters into force one could remove these substances from the Schedule(s) of the Single Convention.

In any event it will be very difficult to fight the illicit traffic in *some* of these hallucinogenic drugs because of their high potency in extremely small quantities and of their ease of manufacture.

The provisions of the Vienna Convention regarding substances in Schedules III and IV will hardly be effective in preventing the illicit importation of such substances obtained from the legal trade. The United States could of course prohibit the importation of such substances with the exception of those quantities which it would expressly authorize by "a special import license" in individual cases.[851] Our country could assure that the import certificate and export authorization system would be applied to such "prohibited" substances by parties to the Vienna Convention. Manufacturers of substances in Schedule IV would not be required to keep any records of their domestic sales [852] and international shipments of these substances would not be subject to any controls. Exporters of substances in Schedule III will have to record their foreign shipments; [853] but it may be very difficult if not impossible to check the accuracy of these records if the substances are sent to a party which does not require the importer to transmit to its control authorities a copy of the export declaration which accompanies the shipment. The importing party is not bound to provide for such a requirement.[854] In the case of legally manufactured substances in Schedules III and IV, they could easily be sent abroad to be diverted into the illicit traffic and then smuggled into the United States or other victim countries. However, it can hardly be foreseen whether a significant *international* illicit traffic will develop in Schedules III or IV substances, since they can be obtained easily on medical prescription or otherwise from domestic sources.

There are a number of reasons why it is in the interest of the United States to ratify the Vienna Convention. Some of them may be indicated:

- The international control of amphetamines is highly desirable because some quantities of them are diverted from licit channels into the illicit traffic and are illegally imported into other countries. They have become a real international problem because defective control in some countries prevents effective control in other countries. If no party to the Single Convention objects, amphetamines could be placed under the international narcotics regime; but such a procedure would have some disadvantages.[855]
- The fact that under the Vienna Convention the Commission could place a substance in a Schedule other than that recommended by the World Health Organization should not be an obstacle to ratification. All decisions of the Commission regarding Schedules must be adopted by a two-thirds majority of its *total* membership. It is highly improbable that under these circumstances the Commission would place a substance in a Schedule against the determined opposition of the United States. The American policy in such cases could be adopted by a procedure which would be agreed upon by the departments concerned in a way similar to that which is followed in domestic legislation with regard to the control regime of a drug;[856]

[849] Article 7, paragraph (e); Article 8, paragraph 2, sub-paragraphs (b) and (e).

[850] The provisions controlling psychotropic substances in Schedule I were described in connection with the corresponding provisions of the Single Convention and occasionally in connection with the discussion of earlier drug treaties.

[851] Article 13 of the Vienna Convention.

[852] Article 11, paragraph 5.

[853] Article 11, paragraph 2.

[854] Article 12, paragraph 2, sub-paragraph (d).

[855] See "The Possibility of Placing Amphetamines under the International Narcotics Regime" in "Changes in the Schedules of the Single Convention" in "The Single Convention on Narcotic Drugs, 1961".

[856] See Section 201 of the "Comprehensive Drug Abuse Prevention and Control Act of 1970".

- The limited right of "non-acceptance" ("rejection") is no longer of any importance to the United States.[857] It lost its former importance by including in the Convention the provision regarding the two-thirds majority of the total membership of the Commission for decisions regarding changes in the Schedules and also by the inclusion of the unilateral right of the parties to exempt preparations from important controls. These exemptions can be terminated only by a two-thirds majority of the total membership of the Commission;
- The refusal of the United States to ratify the Vienna Convention would seriously weaken its international efforts to improve the opium situation; and
- The Vienna Convention would not impose any particular burdens upon the United States which has stricter controls than those which would be required by the Convention.

FURTHER DESIRABLE AMENDMENTS OF DRUG TREATIES

In the near future it would not be very easy to obtain the necessary number of States to agree to the convocation of an international conference for the purpose of amending the Single Convention or the Vienna Convention on Psychotropic Drugs. Moreover, at present the principal American interest in the international drug field is to eliminate or at least to reduce the opium supplies which are available to clandestine manufacturers of morphine and heroin. Improvement of the Single Convention could make only a minor contribution to the achievement of this aim. The flow of illicit opium from uncontrolled or illicit production cannot be suppressed by the present treaties or any amendments.

But this does not mean that some improvements in the drug treaties are not desirable and that the United States should not attempt to bring them about at an appropriate moment. Some of the possible amendments may be mentioned as follows:

- Conclusion of a *Single Treaty* to replace the existing 12 treaties in the field (10 in force plus the Vienna Convention on Psychotropic Drugs and the Protocol of 1972 amending the Single Convention).[858]

[857] Article 2, paragraph 7.

[858] Two of them, namely, the opium smoking agreements of 1925 and 1931 are completely obsolete and nowhere in force any more; a third, the 1936 Convention (except its article 9), was not intended to be replaced by the Single Convention, article 44 of the Single Convention.

The Single Convention on Narcotic Drugs, which entered into force in 13 December 1964 has not yet terminated any of the earlier drug treaties, except as between parties to the Single Convention. However desirable the conclusion of the Single Treaty under consideration might be, it may be assumed that in view of the rules of international treaty law the conclusion of this treaty would for a long time only have the effect of adding a thirteenth treaty to the already existing twelve drug treaties. Therefore, the adoption of such a Single Treaty should not constitute an aim of American policy in the drug field in the foreseeable future. However, this does not mean that the idea of concluding a Single Treaty should not be taken up if at some time in the future a favorable international atmosphere should develop.

- Amendment of the provisions of the *Single Convention* concerning the *control of opium production*. It is impossible to prevent diversion by licensed private individual cultivators of a part of their opium crops even in countries which are capable of applying the provisions of the Single Convention governing opium production.[859] It would therefore be desirable to amend the Single Convention to the effect that cultivation of the poppy for opium production by private farmers be prohibited and that only state farms or relatively large corporate bodies should obtain licenses to engage in the cultivation of the poppy for the production of opium. It might be easier in the present international atmosphere to provide in the amendment that only state farms or cooperatives (collective farms) may be licensed to produce opium.
- Amendment of the provisions of the Single Convention governing the cultivation of the coca bush.[860] The regime which the Single Convention applies to the cultivation of the opium poppy is not adequate for the coca bush. It has been proposed that the United States should enter into negotiations with the countries interested in the cultivation of this plant with a view to achieving an agreement to revise the Single Convention provision concerning the coca bush. Such an agreement, if proposed to the Economic and Social Council under article 47 of the Single Convention as an amendment to that treaty, would be circulated by the Council to the parties to the Convention asking them whether they accept the proposed amendment. It is probable that no party, within the eighteen months foreseen in article 47, would object to an amendment agreed upon by all interested parties and

[859] Article 23.

[860] Articles 26 and 27 in connection with article 23.

that the amendment would thus enter into force without any need for having it adopted by a Plenipotentiary Conference. Without being able to anticipate the results of the suggested negotiations, it would again be necessary to prohibit the cultivation of the plant by private farmers who could not be prevented, even by a very good administration, from diverting part of their crops into illicit channels. If coca leaf chewing would be ended—and without the suppression of coca leaf chewing an effective control of the cultivation of the bush is hardly possible—the amounts needed for the manufacture of cocaine and of a flavoring agent for beverages would be very small. It is very probable that it would not be very difficult to obtain the agreement that the cultivation of the coca bush and the trade in the leaves should become a monopoly which could be exercised either by a government agency or by a large private corporate body to which the government could grant the monopoly rights.

• Amendment of the provisions Single Convention governing the provision of the cannabis plant.[861] It would be unduly optimistic to assume that in the foreseeable future such an amendment of the Single Convention's provisions regarding the cannabis plant which would be generally acceptable and adequate for purposes of drug control could be obtained. The Single Convention's application of the poppy regime to the cultivation of the plant and only to that cultivation which is undertaken for the purpose of obtaining the drugs is not satisfactory. Such a regime cannot prevent the diversion of drugs by private cultivators, who are authorized to produce cannabis and cannabis resin, nor the clandestine production of the drugs by cultivators of the plant for industrial purposes. It is suggested that a really effective control system would have to prohibit the private cultivation of the cannabis plant for any purpose (excepting drug free varieties)[350] and to provide for the destruction of all wild growth wherever it can be found, which would be extremely difficult. Not only the cultivation of the plant but also the trade in all parts of the plant would have to be a government monopoly (excluding perhaps the ready fiber and the oil obtained from the seeds). This monopoly could also be exercised by a large private corporate body authorized by the government.

• Amendment of the provisions of the Single Convention and the Vienna Convention regarding the enforcements measures (sanctions) by the International Narcotics Board to assure the execution of the provisions of these conventions.[862]

The sanction of an import or export embargo of drugs is obsolete and even questionable from the viewpoint of public health. The idea of discontinuation of the export of drugs to an offending country was conceived under conditions which were entirely different from today's. It is therefore suggested that the provisions of the Single Convention and of the Vienna Convention authorizing the International Narcotics Control Board to recommend an export or import embargo, or both, of narcotic drugs or psychotropic substances should be amended. The Board would usefully be replaced by the right of the Board to propose to the Economic and Social Council to recommend some economic sanctions against an offending country.

• Introduction of a provision into the Single Convention and into the Vienna Convention which would make it possible to use the Convention for the purpose of bringing pressure to bear with a view to prohibiting the manufacture of narcotic drugs and psychotropic substances in those countries which are not capable of exercising control and from which manufacture or wholesale trade diversion of narcotic drugs or psychotropic substances into the illicit traffic takes place.

The principal success of the international narcotics regime consists of the fact that no significant diversion of narcotic drugs currently occurs. This success would be endangered if countries which do not have an effective administration would enter the field of manufacturing basic narcotic drugs. It is highly probable that in the present international atmosphere and in the foreseeable future a provision would be adopted which would require governments whose administration would be defective, not to permit the manufacture of narcotic or psychotropic drugs. Such a provision would be rejected on the ground that it would be contrary to the present policy of the international society regarding economic development. Moreover, a country desiring to commence manufacturing narcotic drugs or psychotropic substances would not admit that it has a defective administration. Therefore it is suggested that the provision to be introduced into the Single Convention and into the Vienna Convention should be placed after article 22 of the Single Convention. The provision should stipulate that whenever the prevailing conditions in the country or territory

[861] Article 28 of the Convention in connection with article 23.

[862] Article 14, paragraph 2 of the Single Convention, article 19, paragraph 2 of the Vienna Convention.

party render the prohibition of the manufacture of narcotic drugs and/or of psychotropic substances the most suitable measure for preventing the diversion of narcotic drugs and/or psychotropic substances into the illicit traffic, the party should be required to prohibit the manufacture of such drugs and substances. Such a treaty provision would of course have to be carried out in good faith and the party's denial rather than its alleged opinion would be relevant. Such a provision could be used to exercise pressure on the party not to commence manufacture, to improve its controls if it has already started manufacture and finally to prohibit manufacture

• Introduction into the Single Convention and into the Vienna Convention of a provision that in countries in which the manufacture of, wholesale trade in, export and import of, narcotic drugs and psychotropic substances is not carried out by State enterprises, the number of manufacturing, wholesale, export and import licenses [863] should be limited to such a minimum as would be compatible with some degree of competition and with promotion of research. An oligopolitical system of the trade in narcotic drugs and psychotropic substances is advantageous from the viewpoint of control.

QUESTION OF TREATY PROVISIONS PREVENTING POLICY OPTIONS ON CERTAIN CONTROVERSIAL QUESTIONS

• Punishment of the Acquisition (including Purchase) and Possession of Narcotic Drugs or Psychotropic Substances for Personal Consumption

The terms "possession" and "purchase" used in penal provisions of the Single Convention [864] concern only possession and purchase for the purpose of illicit traffic. Consequently unauthorized possession and acquisition (purchase) of narcotic drugs for personal consumption need not be treated under the Single Convention either as punishable offenses or as serious offenses. If a government does not accept this view, they may consider purchase and possession for personal use to be offenses punishable by fines, censure or the confiscation of the drugs, or to be serious offenses punishable by deprivation of liberty, including imprisonment.[865]

The provisions of the Protocol of 1972 permitting the substitution of treatment and rehabilitation for conviction or punishment of addicted offenders will remain ineffective for the United States at least for a very long time.[866]

However, nothing in the Single Convention would prevent the United States from imposing on illegal purchase and possession of narcotic drugs for personal consumption penalties it considers advisable.

The Vienna Convention does not require parties to prohibit the possession of psychotropic substances in Schedules II, III or IV without legal authority,[867] but only to provide that the possession of substances in Schedule I should be prohibited without a special license or prior authorization.[868] The penal provisions of the Vienna Convention [869] are patterned after those of the Single Convention although the former define the punishable offenses in general terms instead of using the largely enumerative method of the latter. The penal provisions of the Vienna Convention aim at the illicit traffic; illicit acquisition (purchase) and possession of *all* psychotropic substances for personal consumption are not punishable offenses under the Vienna Convention, even though the government concerned might not permit the possession of substances in Schedules II, III and IV without legal authority. Here again a government which does not share this view, could in any event treat such purchase and possession as offenses which are not serious and which are punishable by fines, censure or even only by confiscation of the substances involved. The liberty of governments to impose heavy penalties would not be restricted by the Vienna Convention.

These legal considerations are of less importance in the Vienna Convention than in the Single Convention because the provision of the former, permitting the substitution of measures of treatment and rehabilitation for offenders who abuse psychotropic substances for their conviction or punishment, could be applied by the United States.

• Distribution and Sale of Narcotic Drugs and Psychotropic Substances

Illicit distribution and sale of narcotic drugs and

[863] Article 29, paragraph 1, article 30, paragraph 1, sub-paragraph (a) and article 31, paragraph 3, sub-paragraph (f) of the Single Convention; article 7, paragraphs (b) and article 8, paragraph 1 of the Vienna Convention.

[864] Article 36, paragraph 1 of the unamended version and paragraph 1, sub-paragraph (a) of the amended version.

[865] Article 33 and (if considered to be punishable offenses) article 37.

[866] Article 36, paragraph 1, sub-paragraph (b) of the amended text.

[867] Article 5, paragraph 3.

[868] Article 7, paragraph (b).

[869] Article 22.

psychotropic substances would be treated as serious punishable offenses subject to appropriate punishment, particularly by deprivation of liberty, including imprisonment. However, governments would be permitted to treat them as non-serious offenses and to punish them by fines, by censure or by confiscation. Such a case would include possession or distribution of a small amount of a relatively less dangerous drug for distribution to a friend without consideration or without profit.

Under the Vienna Convention, treatment and rehabilitation of all distributors of psychotropic substances, who abuse such substances, could be substituted for their conviction or punishment.

The corresponding provision of the amended Single Convention would remain ineffective for the United States, at least for a very long time.

- Legalization of the Non-Medical Use of Cannabis and Cannabis Resin

As long as cannabis and cannabis resin remain in the Schedules I and IV of the Single Convention, or are removed only from Schedule IV or are transferred to Schedule II, which involves deletion from Schedule IV, the United States is bound by the Single Convention to prohibit their non-medical use.

In accordance with a recommendation of the World Health Organization, the Commission, by a simple majority of its members present and voting, could remove cannabis and cannabis resin from the Schedules of the Single Convention. Cannabis and cannabis resin would thus cease to be drugs within the meaning of this Convention and would be freed from all drug control provisions.[870] No longer considered drugs, cannabis and cannabis resin could be produced, exported, imported, distributed, traded, used and possessed for non-medical purposes without any controls, except those which the United States would wish to maintain or establish. However, a somewhat anomalous situation would exist because article 28, paragraph 1 of the Single Convention would continue to be in force, except if deleted by an amendment of this treaty. It would continue to require that the cultivation of the cannabis plant for the production of cannabis and cannabis resin be controlled as is the cultivation of the poppy for the production of opium; but despite these controls the cannabis and cannabis resin could be produced for any purpose, including non-medical consumption.

The legalization of the non-medical use of cannabis and cannabis resin presupposes that these substances would not be included in a Schedule of the Vienna Convention.

- The Non-Medical Use of the Leaves of the Cannabis Plant.

The Single Convention [871] does not prohibit the non-medical use of the leaves of the cannabis plant if they are not accompanied by the tops of the plant.[872] Parties are required to adopt such measures as might be necessary to prevent the misuse of and illicit traffic in the leaves. The measures required to prevent misuse might include the prohibition of the sale of very potent leaves, of the sale of excessive quantities to one individual and of the sale to persons below a certain age. These are only a few examples of what parties might have to do under the vague provisions of the Convention. The obligation to prevent the illicit traffic in the leaves may be carried out by limiting the trade in the leaves to government shops or licensed traders. Generally speaking such measures as are adopted in many countries to prevent excessive consumption of alcohol and illegal trade in alcohol may be sufficient.

- Maintenance Programs

The treaty provision limiting the use of drugs to "medical and scientific purposes" [873] has always been interpreted by some governments to permit consumption by persons whose addiction has proved to be incurable of the minimum quantities of addictive drugs required to prevent painful withdrawal symptoms and to make it possible for these addicts to lead a "normal" life. No party to the drug treaties has objected to this interpretation. However, the use of drugs in maintenance programs must in all cases be determined by *medical considerations*, which exclude the desire to *help* the addicts or other abusers of controlled drugs.[874]

MEASURES WHICH WOULD BE POSSIBLE WITHOUT TREATY AMENDMENT AND WHICH MIGHT BE DESIRABLE

- Opium

Opium producing countries which have an effective administration and which apply the provisions of the Single Convention governing opium production should be induced through diplomatic efforts not to authorize private individual farmers to cultivate the poppy for the production of opium or any purpose, since even the best administration cannot prevent the diversion. Such authorizations should be granted only to state farms or to large private corporate bodies.

Opium-producing countries which cannot prevent diversion of a significant part of their legal opium crop into illicit channels and which are not willing to adopt the above measure should be pressed to prohibit the cultivation of the poppy. They should be told that it was impossible not to be of the opinion that such prohibition would be the most suitable measure for preventing the diversion of opium into the illicit traffic [875] if such diversion from their territories in significant quantities has taken place for many years.[876] Such pressure should be exercised only with due consideration to the necessity of maintaining adequate legal supplies of opium. A shortage of opium for medical purposes must be avoided.

Countries which because of their *low wage level* would be able to produce opium for the legal market should be discouraged from commencing opium production as long as they are not able to establish a competent control machinery and are not willing to authorize only state farms or big corporate bodies to cultivate the opium poppy and to produce opium.

Countries which do not have an effective administration and are not able to exercise full governmental controls over their poppy growing districts should be made to recognize that the opium question is not only a problem of the United States and a few other countries, but a universal problem of interest to the whole family of nations.

All steps should be taken to prepare a plan of economic and social modernization for each district in which uncontrolled or illicit opium production takes place and whose economy depends on such production.

- The Coca Bush

The abolition of coca leaf chewing and the required economic and social reforms should be pressed because, without the suppression of coca leaf chewing, effective control of the coca bush cultivation and elimination of the clandestine manufacture of cocaine is hardly possible. Necessary foreign aid for this purpose should be favored.

Negotiations should be initiated with the primarily interested countries to achieve an agreement on an amendment of the Single Convention with a view of providing the special controls which would be adequate for the cultivation of the coca bush.

- The Cannabis Plant

The program of breeding a drug-free variety of the plant should be undertaken.[359]

Pressure should be brought to bear on those countries which are the principal foreign sources of cannabis drugs in our country to prohibit the cultivation of the cannabis plant for any purpose, to destroy, as far as possible, any wild growth, to improve their enforcement services and to co-operate closely with our own enforcement services. Foreign aid to the countries concerned should be favored for this purpose.

- *Question of Placing Hallucinogenic Substances Under the Single Convention*

According to the Office of Legal Affairs of the United Nations, amphetamines barbitures and tranquilizers are outside the scope of the Single Convention. However, the Office maintains that a drug belonging to one of these three groups could be placed under the Single Convention if no party to the Convention objects. This legal opinion does not relate to hallucinogenic substances, which are included in Schedule I of the Vienna Convention. The question arises whether one should not consider the advisability of placing the hallucinogenics under the Single Convention, by operation of article 3 of this treaty, pending the Vienna Convention's coming into force. After this Convention comes into force and has been accepted by a sufficiently large number of countries, the hallucinogens could be removed from the control of the Single Convention.[877] In the interval, parties to both treaties could apply the relevant provisions of both Conventions. In examining whether it would be advisable to place the hallucinogens under the Single Convention, it may be important to consider whether it would delay the coming into force of the Vienna Convention.

- *The Question of Placing Amphetamines under the Single Convention*

The Office of Legal Affairs of the United Nations maintains that even though amphetamines, barbiturates and tranquilizers are excluded from the scope

[870] Article 1, paragraph 1, sub-paragraph (j) and article 2, paragraphs 1–5; see also article 4, paragraph (c).

[871] Nor the Vienna Convention as long as the leaves are not included in one of its Schedules.

[872] Article 1, paragraph 1, sub-paragraph (b) and article 28, paragraph 3.

[873] The first drug treaty which uses this term is the 1925 Convention; the 1912 Convention uses the phrase "medical and legitimate purposes".

[874] The same would apply to the Vienna Convention when in force, which also limits the use of psychotropic substances to "medical and scientific purposes".

[875] Article 22 of the Single Convention.

[876] As has been stated above this is the case of all opium-producing countries permitting the production of opium by private individual farmers, including India which has a good administration.

[877] If placed under the Single Convention the hallucinogens would probably be in Schedule I and IV of this treaty.

of the Single Convention according to an understanding of the participants in the Conference of 1961 which adopted this Convention, it is possible to place a drug, belonging to any of these three groups, under the Single Convention, if no party to the Convention objects.

It is widely believed that amphetamines should be placed under the narcotics regime. This opinion is in particular also shared by a number of European countries. There were at least two serious arguments against attempting to place, by agreement of all parties, amphetamines under the Single Convention. First, such an action would most probably delay and perhaps prevent the coming into force of the Vienna Convention. Second, it would create an undesirable precedent and might increase considerably the pressure of those who have taken the position that barbiturates and tranquilizers should also be placed under the international narcotics regime. This would be undesirable from the viewpoint of public health, particularly in the case of very valuable drugs, the wide use of which is desirable because of its therapeutic effect.

Nevertheless if it is decided to attempt to place the amphetamines under the Single Convention, the following procedure could be followed:

A resolution could be introduced in the Economic and Social Council requesting the parties to the Single Convention not to object to the placing under the Single Convention of amphetamines. The resolution should also state that parties which do not make their objection in writing within a period to be indicated in the resolution would be considered to consent to setting aside the understanding reached at the Conference of 1961 regarding amphetamines. It might also be necessary to take the necessary diplomatic measures to frustrate the efforts of vested interests to induce uninformed or otherwise influenced governments to object to the Council resolution. Such diplomatic efforts could be made not only by the United States, but also by other interested countries, such as Sweden. It may be assumed that the World Health Organization would in the required procedure pursuant to article 3 of the Single Convention recommend the placing of amphetamines in Schedule I of this Convention, since it appears to hold that not technical reasons but only those of a legal nature render this action impossible.

Another possible course of action involves placing the amphetamines under the Single Convention by revising the Convention's Schedule under article 47, paragraph 1, sub-paragraph (b) and paragraph 2. This would also require that no party to the Single Convention objects.

- Prosecution of Crimes of Illicit Traffic Committed Abroad

The Single Convention as well as the Vienna Con-wide perspective, the question of the illicit traffic is of the illicit traffic committed abroad, if extradition to a party which would have jurisdiction in the case cannot be carried out.[878] But this obligation is "subject to the constitutional provisions", the "legal system" and the "domestic law" of the party concerned. A number of countries strictly adhere to the principle that crimes committed abroad should not be tried by their courts; but many of them make exceptions for strong national interests and all of them make an exception for piracy. From a world-wide perspective the question of the illicit traffic is probably at present a much more serious problem than piracy. The reasons for exempting serious crimes of the illicit traffic from the principle of territorial jurisdiction are perhaps now more cogent than those for exempting piracy. If this view is acceptable to the United States and its component states and if our country decides to prosecute serious offenses of the illicit traffic committed abroad, it is suggested that diplomatic efforts should be made to persuade other states which are strong adherents of the principle of territorial jurisdiction in criminal matters, to assume the same position. Such efforts may include resolutions of the Commission on Narcotic Drugs, the Economic and Social Council and of the General Assembly to treat, for purposes of criminal jurisdiction, serious offenses of the illicit traffic similar to piracy.

It is admitted that the definition of a crime of illicit traffic committed abroad in violation of foreign law, but punishable by other countries, may create some difficulty of legislative technique; but this difficulty can be overcome.

The aim of achieving universal criminal jurisdiction in grave cases of the illicit traffic should—at least for the present—be pursued by the suggested diplomatic means and not by an attempt to amend the Single Convention and Vienna Convention or to conclude a new treaty to this effect.

- Changes in the Composition of the Commission on Narcotic Drugs

It has been reported above that the Economic and Social Council has full authority to determine the

[878] Article 36, paragraph 2, sub-paragraph (a) clause (iv) of the Single Convention; article 22, paragraph 2, sub-paragraph (a) clause (iv) of the Vienna Convention.

composition of the Commission. It would be useful to add to the government, representatives of which the Commission consists at present, a number of "assessors".[879] These assessors should be independent from their governments, appointed by the Secretary General for a long term of office to strengthen their independence, and receive no payment,[880] except their travel expenses and a daily subsistence allowance. They should have the same right as other members of the Commission to participate in the discussion, but no right to vote or to be elected as officers. Public discussion of the failure of a government to carry out its treaty obligations may be very useful. Appeal to public opinion can be a strong force in the field of drug control. The institution of assessors would assure public discussion in the Commission of defective national control regimes in cases where government representatives would be prevented from criticizing publicly another government. Important political considerations may compel a government not to question in public the drug situation in another country. The League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs had "assessors" of the kind of those proposed above. They were however not as useful in the pre-War atmosphere as they would be to-day.

It may be emphasized that under present conditions public criticism by an independent expert may sometimes be even more effective than by a government representative.

- Ratification of Treaties

It is in the interest of the United States to ratify the Vienna Convention of 1971 on Psychotropic Substances as well as the Protocol of 1972, Amending the Single Convention on Narcotic Drugs, 1961.[881] It would be useful to include in the instrument of ratification of the Vienna Convention a declaration that it is the understanding of the United States that the word "establishments" in article 7, paragraph (a) also includes offices of doctors. This declaration was already made by the U.S. delegation at the Vienna Conference which adopted the Convention.

[879] Three would probably be an appropriate number.

[880] This would probably make it easier to obtain the adoption of this proposal by the Economic and Social Council.

[881] The Protocol has been ratified by the United States after the present paper was completed.

APPENDIX 5

90TH CONGRESS
1st Session

SENATE

EXECUTIVE
G

CONVENTION ON NARCOTIC DRUGS, 1961

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961, OPEN FOR SIGNATURE AT NEW YORK, MARCH 30, 1961, TO AUGUST 1, 1961, ALONG WITH THE FINAL ACT OF THE UNITED NATIONS CONFERENCE AT WHICH THE CONVENTION WAS ADOPTED

MARCH 8, 1967.—Convention was read the first time and, together with the message and accompanying papers, was referred to the Committee on Foreign Relations and was ordered to be printed for use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1967

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *March 8, 1967.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to accession to the Single Convention on Narcotic Drugs, 1961, open for signature at New York, March 30, 1961 to August 1, 1961, I transmit herewith a copy of the convention along with the final act of the United Nations Conference at which the convention was adopted.

For nearly 60 years the United States has taken a leading part in international cooperation for the control of narcotic drugs. We should continue this cooperation to the fullest possible extent in combating the scourge of drug abuse.

After a survey by a special task force on the contribution of the convention to the control of illegal international drug traffic, I have concluded that the national and international interest in drug control will be significantly advanced by U.S. accession.

I recommend that the Senate give the convention early and favorable consideration.

LYNDON B. JOHNSON.

(Enclosures: (1) Report of the Secretary of State. (2) Copy of convention, together with final act.)

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, February 15, 1967.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you a copy of the Single Convention on Narcotic Drugs, 1961, with the recommendation that the convention be transmitted to the Senate for its advice and consent to accession.

The convention was adopted at the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, held in New York from January 24, 1961, through March 25, 1961. The final act of that Conference, which is bound along with the convention, is transmitted for the information of the Senate.

The convention was designed to replace by a single instrument the existing multilateral treaties in the field of narcotic drugs, to reduce the number of treaty organs exclusively concerned with the control of narcotic drugs, and to make provision for the control of the production of raw materials of narcotic drugs.

During the period March 30 to August 1, 1961, when the convention was open for signature it was signed for 64 countries. Thirty-four of those countries have deposited ratifications of the convention and 20 other countries have acceded to it.

The convention was not signed for the United States for several reasons. The principal reason was a concern that omission from the convention of the "closed list" provision embodied in the 1953 protocol (10 UST 10), under which only seven named countries could engage in the production of opium for export, would result in many additional countries engaging in such production and a consequent spiraling of the amount of opium that would be diverted into illicit traffic.

Another principal reason for not signing the convention was a concern that the provisions permitting reservations would result in States making reservations that would cripple the international measures necessary for the control of narcotic drugs.

Because of the concerns noted, it was considered that if the 1953 protocol for limiting and regulating the cultivation of the poppy plant, the production of, international and wholesale trade in, and use of opium were brought into force, it would provide more effective international control of narcotic drugs than would be possible under the Single Convention. However, even though that protocol was brought into force on March 8, 1963, only five states have become party to it since that date. Three of those five states were newly independent states that gave notification that they continued to consider themselves bound by the protocol by reason of its ratification on their behalf prior to independence. At present, 14 years after the date it was signed, only 50 states are parties to the protocol.

Neither the omission of the "closed list" provision from the Single Convention nor the provisions permitting reservations appear to be affecting the application of the Single Convention.

Although under a provision of article 24, of the convention any country can undertake the production of opium for export in amounts not exceeding 5 tons annually, there appears to be no record of any country having undertaken the production of opium for export under that provision since the convention entered into force on December 13, 1964.

The reservations that have been made to the convention have been modest and of little apparent effect when compared with the reservations that are permitted under its provisions. Experience under the convention during the past 2 years has not shown that the reservations made have resulted in any apparent weakening of the international controls provided in the convention.

The above-mentioned "closed list" provision of the 1953 protocol as compared with the provisions of the 1961 convention on the limitation on production of opium for international trade, and the effect of the provisions of the 1961 convention permitting reservations are discussed in detail in the enclosed "Report on the Single Convention on Narcotic Drugs, 1961, and Comparative Analysis of the Single Convention, 1961 and the Protocol of 1953." That report and analysis also outline the background of the convention, its principal merits, and discuss the international controls and prohibitions provided therein. The substance of the report and comparative analysis was transmitted to the chairman of the Senate Committee on Foreign Relations with a letter dated October 24, 1961, from the Department of State in response to a request from the chairman.

It appears from the relatively large number of ratifications and accessions to the Single Convention that have taken place in the few years since it was signed that it will become the most widely accepted of the narcotics control treaties. Because of this, and because all international controls will soon be exercised through the organs specified in the Single Convention, accession to the Single Convention would be in keeping with the longstanding leadership exercised by the United States in the international control of narcotic drugs. All international narcotic controls will be exercised through the international control organs specified in that convention, namely, the existing Commission on Narcotic Drugs of the Economic and Social Council, and the new International Narcotics Control Board established by the convention (art. 5).

Under the transitional provisions of the convention (art. 45) the functions of the Board are being provisionally carried out by the Permanent Central Narcotics Board (PCNB) constituted under chapter VI of the International Opium Convention signed at Geneva February 19, 1925, and by the Drug Supervisory Body (DSB) constituted under chapter II of the Geneva Convention of July 13, 1931. The Economic and Social Council of the United Nations, pursuant to the provisions of paragraph 2 of article 45 of the 1961 convention, has fixed March 2, 1968, as the date upon which the new Board will enter upon its duties and replace the PCNB (on which the United States has long been represented) and the DSB. The Board will consist of 11 members to be elected by the Economic and Social Council (art. 9). The United States, as a member of the World Health Organization, has a voice in

the nomination of three of the members and also, as a member of the United Nations, has a voice in the nomination of eight of the members. It is considered desirable that the United States be represented on the Board and it may be expected that a U.S. member would be elected by the Council. Effective participation by the U.S. member in the work of the Board would, however, be materially advanced by accession to the convention by the United States.

The Secretary of the Treasury and the Secretary of Health, Education, and Welfare concur in my recommendation that the convention be transmitted to the Senate for its advice and consent to accession.

Respectfully submitted.

NICHOLAS DEB. KATZENBACH.

(Enclosures: (1) Copy of convention, together with final act. (2) Report and Analysis.)

UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A SINGLE CONVENTION ON NARCOTIC DRUGS

SINGLE CONVENTION ON NARCOTIC DRUGS, 1961

(United Nations, 1961)

PREAMBLE

The Parties,

Concerned with the health and welfare of mankind,

Recognizing that the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes,

Recognizing that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind,

Conscious of their duty to prevent and combat this evil,

Considering that effective measures against abuse of narcotic drugs require co-ordinated and universal action,

Understanding that such universal action calls for international co-operation guided by the same principles and aimed at common objectives,

Acknowledging the competence of the United Nations in the field of narcotics control and desirous that the international organs concerned should be within the framework of that Organization,

Desiring to conclude a generally acceptable international convention replacing existing treaties on narcotic drugs, limiting such drugs to medical and scientific use, and providing for continuous international co-operation and control for the achievement of such aims and objectives,

Hereby agree as follows:

ARTICLE 1

Definitions

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

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

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

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

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

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

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

(*g*) "Commission" means the Commission on Narcotic Drugs of the Council.

(*h*) "Council" means the Economic and Social Council of the United Nations.

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

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

(*k*) "General Assembly" means the General Assembly of the United Nations.

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

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

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

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

(*p*) "Opium" means the coagulated juice of the opium poppy.

(*q*) "Opium poppy" means the plant of the species *Papaver somniferum L.*

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

(*s*) "Preparation" means a mixture, solid or liquid, containing a drug.

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

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

(*v*) "Secretary-General" means the Secretary-General of the United Nations.

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

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

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

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

(iii) Export;

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

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

(v) As "special stocks".

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

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

Article 2

Substances under control

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

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

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

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

5. The drugs in Schedule IV shall also be included in Schedule I and subject to all measures of control applicable to drugs in the latter schedule, and in addition thereto:

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

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

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

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

8. The Parties shall use their best endeavours to apply to substances which do not fall under this Convention, but which may be used in the illicit manufacture of drugs, such measures of supervision as may be practicable.

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

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

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

Article 3

Changes in the scope of control

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

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

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

(i) The Parties shall examine in the light of the available information the possibility of the provisional application to the substance of all measures of control applicable to drugs in Schedule I;

(ii) Pending its decision as provided in sub-paragraph (iii) of this paragraph, the Commission may decide that the Parties apply provisionally to that substance all measures of control applicable to drugs in Schedule I. The Parties shall apply such measures provisionally to the substance in question;

(iii) If the World Health Organization finds that the substance is liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or Schedule II or is convertible into a drug, it shall communicate that finding to the Commission which may, in accordance with the recommendation of the World Health Organization, decide that the substance shall be added to Schedule I or Schedule II.

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

dation of the World Health Organization, add that preparation to Schedule III.

5. If the World Health Organization finds that a drug in Schedule I is particularly liable to abuse and to produce ill effects (paragraph 3) and that such liability is not offset by substantial therapeutic advantages not possessed by substances other than drugs in Schedule IV, the Commission may, in accordance with the recommendation of the World Health Organization, place that drug in Schedule IV.

6. Where a notification relates to a drug already in Schedule I or Schedule II or to a preparation in Schedule III, the Commission, apart from the measure provided for in paragraph 5, may, in accordance with the recommendation of the World Health Organization, amend any of the Schedules by:

(*a*) Transferring a drug from Schedule I to Schedule II or from Schedule II to Schedule I; or

(*b*) Deleting a drug or a preparation as the case may be, from a Schedule.

7. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, to the World Health Organization and to the Board. Such decision shall become effective with respect to each Party on the date of its receipt of such communication, and the Parties shall thereupon take such action as may be required under this Convention.

8. (*a*) The decisions of the Commission amending any of the schedules shall be subject to review by the Council upon the request of any Party filed within ninety days from receipt of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based;

(*b*) The Secretary-General shall transmit copies of the request for review and relevant information to the Commission, the World Health Organization and to all the Parties inviting them to submit comments within ninety days. All comments received shall be submitted to the Council for consideration;

(*c*) The Council may confirm, alter or reverse the decision of the Commission, and the decision of the Council shall be final. Notification of the Council's decision shall be transmitted to all States Members of the United Nations, to non-member States Parties to this Convention, to the Commission, to the World Health Organization, and to the Board.

(*d*) During pendency of the review the original decision of the Commission shall remain in effect.

9. Decisions of the Commission taken in accordance with this article shall not be subject to the review procedure provided for in article 7.

ARTICLE 4

General obligations

1. The Parties shall take such legislative and administrative measures as may be necessary:

(*a*) To give effect to and carry out the provisions of this Convention within their own territories;

(*b*) To co-operate with other States in the execution of the provisions of this Convention; and

(*c*) Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.

ARTICLE 5

The international control organs

The Parties, recognizing the competence of the United Nations with respect to the international control of drugs, agree to entrust to the Commission on Narcotic Drugs of the Economic and Social Council, and to the International Narcotics Control Board, the functions respectively assigned to them under this Convention.

ARTICLE 6

Expenses of the international control organs

The expenses of the Commission and the Board will be borne by the United Nations in such manner as shall be decided by the General Assembly. The Parties which are not members of the United Nations shall contribute to these expenses such amounts as the General Assembly finds equitable and assess from time to time after consultation with the Governments of these Parties.

ARTICLE 7

Review of decisions and recommendations of the Commission

Except for decisions under article 3, each decision or recommendation adopted by the Commission pursuant to the provisions of this Convention shall be subject to approval or modification by the Council or the General Assembly in the same way as other decisions or recommendations of the Commission.

ARTICLE 8

Functions of the Commission

The Commission is authorized to consider all matters pertaining to the aims of this Convention, and in particular:

(*a*) To amend the Schedules in accordance with article 3;

(*b*) To call the attention of the Board to any matters which may be relevant to the functions of the Board;

(*c*) To make recommendations for the implementation of the aims and provisions of this Convention, including programmes of scientific research and the exchange of information of a scientific or technical nature; and

(*d*) To draw the attention of non-parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith.

ARTICLE 9

Composition of the Board

1. The Board shall consist of eleven members to be elected by the Council as follows:

(*a*) Three members with medical, pharmacological or pharmaceutical experience from a list of at least five persons nominated by the World Health Organization; and

(*b*) Eight members from a list of persons nominated by the Members of the United Nations and by Parties which are not Members of the United Nations.

2. Members of the Board shall be persons who, by their competence, impartiality and disinterestedness, will command general confidence. During their term of office they shall not hold any position or engage in any activity which would be liable to impair their impartiality in the exercise of their functions. The Council shall, in consultation with the Board, make all arrangements necessary to ensure the full technical independence of the Board in carrying out its functions.

3. The Council, with due regard to the principle of equitable geographic representation, shall give consideration to the importance of including on the Board, in equitable proportion, persons possessing a knowledge of the drug situation in the producing, manufacturing, and consuming countries, and connected with such countries.

ARTICLE 10

Terms of office and remuneration of members of the Board

1. The members of the Board shall serve for a period of three years, and shall be eligible for re-election.

2. The term of office of each member of the Board shall end on the eve of the first meeting of the Board which his successor shall be entitled to attend.

3. A member of the Board who has failed to attend three consecutive sessions shall be deemed to have resigned.

4. The Council, on the recommendation of the Board, may dismiss a member of the Board who has ceased to fulfill the conditions required for membership by paragraph 2 of article 9. Such recommendation shall be made by an affirmative vote of eight members of the Board.

5. Where a vacancy occurs on the Board during the term of office of a member, the Council shall fill such vacancy as soon as possible and in accordance with the applicable provisions of article 9, by electing another member for the remainder of the term.

6. The members of the Board shall receive an adequate remuneration as determined by the General Assembly.

ARTICLE 11

Rules of procedure of the Board

1. The Board shall elect its own President and such other officers as it may consider necessary and shall adopt its rules of procedure.

2. The Board shall meet as often as, in its opinion, may be necessary for the proper discharge of its functions, but shall hold at least two sessions in each calendar year.

3. The quorum necessary at meetings of the Board shall consist of seven members.

ARTICLE 12

Administration of the estimate system

1. The Board shall fix the date or dates by which, and the manner in which, the estimates as provided in article 19 shall be furnished and shall prescribe the forms therefor.

2. The Board shall, in respect of countries and territories to which this Convention does not apply, request the Governments concerned to furnish estimates in accordance with the provisions of this Convention.

3. If any State fails to furnish estimates in respect of any of its territories by the date specified, the Board shall, as far as possible, establish the estimates. The Board in establishing such estimates shall, to the extent practicable, do so in co-operation with the Government concerned.

4. The Board shall examine the estimates, including supplementary estimates, and, except as regards requirements for special purposes, may require such information as it considers necessary in respect of any country or territory on behalf of which an estimate has been furnished, in order to complete the estimate or to explain any statement contained therein.

5. The Board shall as expeditiously as possible confirm the estimates, including supplementary estimates, or, with the consent of the Government concerned, may amend such estimates.

6. In addition to the reports mentioned in article 15, the Board shall, at such times as it shall determine but at least annually, issue such information on the estimates as in its opinion will facilitate the carrying out of this Convention.

ARTICLE 13

Administration of the statistical returns system

1. The Board shall determine the manner and form in which statistical returns shall be furnished as provided in article 20 and shall prescribe the forms therefor.

2. The Board shall examine the returns with a view to determining whether a Party or any other State has complied with the provisions of this Convention.

3. The Board may require such further information as it considers necessary to complete or explain the information contained in such statistical returns.

4. It shall not be within the competence of the Board to question or express an opinion on statistical information respecting drugs required for special purposes.

ARTICLE 14

Measures by the Board to ensure the execution of provisions of the Convention

1. (*a*) If, on the basis of its examination of information submitted by Governments to the Board under the provisions of this Conven-

tion, or of information communicated by United Nations organs and bearing on questions arising under those provisions, the Board has reason to believe that the aims of this Convention are being seriously endangered by reason of the failure of any country or territory to carry out the provisions of this Convention, the Board shall have the right to ask for explanations from the Government of the country or territory in question. Subject to the right of the Board to call the attention of the Parties, the Council and the Commission to the matter referred to in sub-paragraph (*c*) below, it shall treat as confidential a request for information or an explanation by a Government under this sub-paragraph.

(*b*) After taking action under sub-paragraph (*a*) above, the Board, if satisfied that it is necessary to do so, may call upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.

(*c*) If the Board finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under sub-paragraph (*a*) above, or has failed to adopt any remedial measures which it has been called upon to take under sub-paragraph (*b*) above, it may call the attention of the Parties, the Council and the Commission to the matter.

2. The Board, when calling the attention of the Parties, the Council and the Commission to a matter in accordance with paragraph 1(*c*) above, may, if it is satisfied that such a course is necessary, recommend to Parties that they stop the import of drugs, the export of drugs, or both, from or to the country or territory concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or territory. The State concerned may bring the matter before the Council.

3. The Board shall have the right to publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. If the Board publishes in this report a decision taken under this article or any information relating thereto, it shall also publish therein the views of the Government concerned if the latter so requests.

4. If in any case a decision of the Board which is published under this article is not unanimous, the views of the minority shall be stated.

5. Any State shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.

6. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

ARTICLE 15

Reports of the Board

1. The Board shall prepare an annual report on its work and such additional reports as it considers necessary containing also an analysis of the estimates and statistical information at its disposal, and, in appropriate cases, an account of the explanations, if any, given by or required of Governments, together with any observations and recommendations which the Board desires to make. These reports shall be

submitted to the Council through the Commission, which may make such comments as it sees fit.

2. The reports shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.

ARTICLE 16

Secretariat

The secretariat services of the Commission and the Board shall be furnished by the Secretary-General.

ARTICLE 17

Special administration

The Parties shall maintain a special administration for the purpose of applying the provisions of this Convention.

ARTICLE 18

Information to be furnished by Parties to the Secretary-General

1. The Parties shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions, and in particular:

(*a*) An annual report on the working of the Convention within each of their territories;

(*b*) The text of all laws and regulations from time to time promulgated in order to give effect to this Convention;

(*c*) Such particulars as the Commission shall determine concerning cases of illicit traffic, including particulars of each case of illicit traffic discovered which may be of importance, because of the light thrown on the source from which drugs are obtained for the illicit traffic, or because of quantities involved or the method employed by illicit traffickers; and

(*d*) The names and addresses of the governmental authorities empowered to issue export and import authorizations or certificates.

2. Parties shall furnish the information referred to in the preceding paragraph in such manner and by such dates and use such forms as the Commission may request.

ARTICLE 19

Estimates of drug requirements

1. The Parties shall furnish to the Board each year for each of their territories, in the manner and form prescribed by the Board, estimates on forms supplied by it in respect of the following matters:

(*a*) Quantities of drugs to be consumed for medical and scientific purposes;

(*b*) Quantities of drugs to be utilized for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;

(c) Stocks of drugs to be held as at 31 December of the year to which the estimates relate; and

(d) Quantities of drugs necessary for addition to special stocks.

2. Subject to the deductions referred to in paragraph 3 of article 21, the total of the estimates for each territory and each drug shall consist of the sum of the amounts specified under sub-paragraphs (a), (b) and (d) of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in sub-paragraph (c) of paragraph 1.

3. Any State may during the year furnish supplementary estimates with an explanation of the circumstances necessitating such estimates.

4. The Parties shall inform the Board of the method used for determining quantities shown in the estimates and of any changes in the said method.

5. Subject to the deductions referred to in paragraph 3 of article 21, the estimates shall not be exceeded.

ARTICLE 20

Statistical returns to be furnished to the Board

1. The Parties shall furnish to the Board for each of their territories, in the manner and form prescribed by the Board, statistical returns on forms supplied by it in respect of the following matters:

(a) Production or manufacture of drugs;

(b) Utilization of drugs for the manufacture of other drugs, of preparations in Schedule III and of substances not covered by this Convention, and utilization of poppy straw for the manufacture of drugs;

(c) Consumption of drugs;

(d) Imports and exports of drugs and poppy straw;

(e) Seizures of drugs and disposal thereof; and

(f) Stocks of drugs as at 31 December of the year to which the returns relate.

2. (a) The statistical returns in respect of the matters referred to in paragraph 1, except sub-paragraph (d), shall be prepared annually and shall be furnished to the Board not later than 30 June following the year to which they relate.

(b) The statistical returns in respect to the matters referred to in sub-paragraph (d) of paragraph 1 shall be prepared quarterly and shall be furnished to the Board within one month after the end of the quarter to which they relate.

3. In addition to the matters referred to in paragraph 1 of this article the Parties may as far as possible also furnish to the Board for each of their territories information in respect of areas (in hectares) cultivated for the production of opium.

4. The Parties are not required to furnish statistical returns respecting special stocks, but shall furnish separately returns respecting drugs imported into or procured within the country or territory for special purposes, as well as quantities of drugs withdrawn from special stocks to meet the requirements of the civilian population.

ARTICLE 21

Limitation of manufacture and importation

1. The total of the quantities of each drug manufactured and imported by any country or territory in any one year shall not exceed the sum of the following:

(a) The quantity consumed, within the limit of the relevant estimate, for medical and scientific purposes;

(b) The quantity used, within the limit of the relevant estimate, for the manufacture of other drugs, of preparations in Schedule III, and of substances not covered by this Convention;

(c) The quantity exported;

(d) The quantity added to the stock for the purpose of bringing that stock up to the level specified in the relevant estimate; and

(e) The quantity acquired within the limit of the relevant estimate for special purposes.

2. From the sum of the quantities specified in paragraph 1 there shall be deducted any quantity that has been seized and released for licit use, as well as any quantity taken from special stocks for the requirements of the civilian population.

3. If the Board finds that the quantity manufactured and imported in any one year exceeds the sum of the quantities specified in paragraph 1, less any deductions required under paragraph 2 of this article, any excess so established and remaining at the end of the year shall, in the following year, be deducted from the quantity to be manufactured or imported and from the total of the estimates as defined in paragraph 2 of article 19.

4. (a) If it appears from the statistical returns on imports or exports (article 20) that the quantity exported to any country or territory exceeds the total of the estimates for that country or territory, as defined in paragraph 2 of article 19, with the addition of the amounts shown to have been exported, and after deduction of any excess as established in paragraph 3 of this article, the Board may notify this fact to States which, in the opinion of the Board, should be so informed;

(b) On receipt of such a notification, Parties shall not during the year in question authorize any further exports of the drug concerned to that country or territory, except:

(i) In the event of a supplementary estimate being furnished for that country or territory in respect both of any quantity overimported and of the additional quantity required, or

(ii) In exceptional cases where the export, in the opinion of the government of the exporting country, is essential for the treatment of the sick.

ARTICLE 22

Special provision applicable to cultivation

Whenever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of the opium poppy, the coca bush or the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit cultivation.

ARTICLE 23

National opium agencies

1. A Party that permits the cultivation of the opium poppy for the production of opium shall establish, if it has not already done so, and maintain, one or more government agencies (hereafter in this article referred to as the Agency) to carry out the functions required under this article.

2. Each such Party shall apply the following provisions to the cultivation of the opium poppy for the production of opium and to opium:

(*a*) The Agency shall designate the areas in which, and the plots of land on which, cultivation of the opium poppy for the purpose of producing opium shall be permitted.

(*b*) Only cultivators licensed by the Agency shall be authorized to engage in such cultivation.

(*c*) Each licence shall specify the extent of the land on which the cultivation is permitted.

(*d*) All cultivators of the opium poppy shall be required to deliver their total crops of opium to the Agency. The Agency shall purchase and take physical possession of such crops as soon as possible, but not later than four months after the end of the harvest.

(*e*) The Agency shall, in respect of opium, have the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of opium alkaloids, medicinal opium or opium preparations. Parties need not extend this exclusive right to medicinal opium and opium preparations.

3. The governmental functions referred to in paragraph 2 shall be discharged by a single government agency if the constitution of the Party concerned permits it.

ARTICLE 24

Limitation on production of opium for international trade

1. (*a*) If any Party intends to initiate the production of opium or to increase existing production, it shall take account of the prevailing world need for opium in accordance with the estimates thereof published by the Board so that the production of opium by such Party does not result in over-production of opium in the world.

(*b*) A Party shall not permit the production of opium or increase the existing production thereof if in its opinion such production or increased production in its territory may result in illicit traffic in opium.

2. (*a*) Subject to paragraph 1, where a Party which as of 1 January 1961 was not producing opium for export desires to export opium which it produces, in amounts not exceeding five tons annually, it shall notify the Board, furnishing with such notification information regarding:

(i) The controls in force as required by this Convention respecting the opium to be produced and exported; and

(ii) The name of the country or countries to which it expects to export such opium;

and the Board may either approve such notification or may recommend to the Party that it not engage in the production of opium for export.

(*b*) Where a Party other than a Party referred to in paragraph 3 desires to produce opium for export in amounts exceeding five tons annually, it shall notify the Council, furnishing with such notification relevant information including:

(i) The estimated amounts to be produced for export;

(ii) The controls existing or proposed respecting the opium to be produced;

(iii) The name of the country or countries to which it expects to export such opium;

and the Council shall either approve the notification or may recommend to the Party that it not engage in the production of opium for export.

3. Notwithstanding the provisions of subparagraphs (*a*) and (*b*) of paragraph 2, a Party that during ten years immediately prior to 1 January 1961 exported opium which such country produced may continue to export opium which it produces.

4. (*a*) A Party shall not import opium from any country or territory except opium produced in the territory of:

(i) A Party referred to in paragraph 3;

(ii) A Party that has notified the Board as provided in sub-paragraph (*a*) of paragraph 2; or

(iii) A Party that has received the approval of the Council as provided in sub-paragraph (*b*) of paragraph 2.

(*b*) Notwithstanding sub-paragraph (*a*) of this paragraph, a Party may import opium produced by any country which produced and exported opium during the ten years prior to 1 January 1961 if such country has established and maintains a national control organ or agency for the purposes set out in article 23 and has in force an effective means of ensuring that the opium it produces is not diverted into the illicit traffic.

5. The provisions of this article do not prevent a Party:

(*a*) From producing opium sufficient for its own requirements; or

(*b*) From exporting opium seized in the illicit traffic, to another Party in accordance with the requirements of this Convention.

ARTICLE 25

Control of poppy straw

1. A Party that permits the cultivation of the opium poppy for purposes other than the production of opium shall take all measures necessary to ensure:

(*a*) That opium is not produced from such opium poppies; and

(*b*) That the manufacture of drugs from poppy straw is adequately controlled.

2. The Parties shall apply to poppy straw the system of import certificates and export authorizations as provided in article 31, paragraphs 4 to 15.

3. The Parties shall furnish statistical information on the import and export of poppy straw as required for drugs under article 20, paragraphs 1(*d*) and 2(*b*).

ARTICLE 26

The coca bush and coca leaves

1. If a Party permits the cultivation of the coca bush, it shall apply thereto and to coca leaves the system of controls as provided in article 23 respecting the control of the opium poppy, but as regards paragraph 2(*d*) of that article, the requirements imposed on the Agency therein referred to shall be only to take physical possession of the crops as soon as possible after the end of the harvest.

2. The Parties shall so far as possible enforce the uprooting of all coca bushes which grow wild. They shall destroy the coca bushes if illegally cultivated.

ARTICLE 27

Additional provisions relating to coca leaves

1. The Parties may permit the use of coca leaves for the preparation of a flavouring agent, which shall not contain any alkaloids, and, to the extent necessary for such use, may permit the production, import, export, trade in and possession of such leaves.

2. The Parties shall furnish separately estimates (article 19) and statistical information (article 20) in respect of coca leaves for preparation of the flavouring agent, except to the extent that the same coca leaves are used for the extraction of alkaloids and the flavouring agent, and so explained in the estimates and statistical information.

ARTICLE 28

Control of cannabis

1. If a Party permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin, it shall apply thereto the system of controls as provided in article 23 respecting the control of the opium poppy.

2. This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes.

3. The Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant.

ARTICLE 29

Manufacture

1. The Parties shall require that the manufacture of drugs be under licence except where such manufacture is carried out by a State enterprise or State enterprises.

2. The Parties shall:

(*a*) Control all persons and enterprises carrying on or engaged in the manufacture of drugs;

(*b*) Control under licence the establishments and premises in which such manufacture may take place; and

(*c*) Require that licensed manufacturers of drugs obtain periodical permits specifying the kinds and amounts of drugs which they shall be entitled to manufacture. A periodical permit, however, need not be required for preparations.

3. The Parties shall prevent the accumulation, in the possession of drug manufacturers, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions.

ARTICLE 30

Trade and distribution

1. (*a*) The Parties shall require that the trade in and distribution of drugs be under licence except where such trade or distribution is carried out by a State enterprise or State enterprises.

(*b*) The Parties shall:

(i) Control all persons and enterprises carrying on or engaged in the trade in or distribution of drugs;

(ii) Control under licence the establishments and premises in which such trade or distribution may take place. The requirement of licensing need not apply to preparations.

(*c*) The provisions of sub-paragraphs (*a*) and (*b*) relating to licensing need not apply to persons duly authorized to perform and while performing therapeutic or scientific functions.

2. The Parties shall also:

(*a*) Prevent the accumulation in the possession of traders, distributors, State enterprises or duly authorized persons referred to above, of quantities of drugs and poppy straw in excess of those required for the normal conduct of business, having regard to the prevailing market conditions; and

(*b*)(i) Require medical prescriptions for the supply or dispensation of drugs to individuals. This requirement need not apply to such drugs as individuals may lawfully obtain, use, dispense or administer in connexion with their duly authorized therapeutic functions; and

(ii) If the Parties deem these measures necessary or desirable, require that prescriptions for drugs in Schedule I should be written on official forms to be issued in the form of counterfoil books by the competent governmental authorities or by authorized professional associations.

3. It is desirable that Parties require that written or printed offers of drugs, advertisements of every kind or descriptive literature relating to drugs and used for commercial purposes, interior wrappings of packages containing drugs, and labels under which drugs are offered for sale indicate the international nonproprietary name communicated by the World Health Organization.

4. If a Party considers such measure necessary or desirable, it shall require that the inner package containing a drug or wrapping thereof shall bear a clearly visible double red band. The exterior wrapping of the package in which such drug is contained shall not bear a double red band.

5. A Party shall require that the label under which a drug is offered for sale show the exact drug content by weight or percentage. This

requirement of label information need not apply to a drug dispensed to an individual on medical prescription.

6. The provisions of paragraphs 2 and 5 need not apply to the retail trade in or retail distribution of drugs in Schedule II.

ARTICLE 31

Special provisions relating to international trade

1. The Parties shall not knowingly permit the export of drugs to any country or territory except:

(*a*) In accordance with the laws and regulations of that country or territory; and

(*b*) Within the limits of the total of the estimates for that country or territory, as defined in paragraph 2 of article 19, with the addition of the amounts intended to be reexported.

2. The Parties shall exercise in free ports and zones the same supervision and control as in other parts of their territories, provided, however, that they may apply more drastic measures.

3. The Parties shall:

(*a*) Control under licence the import and export of drugs except where such import or export is carried out by a State enterprise or enterprises;

(*b*) Control all persons and enterprises carrying on or engaged in such import or export.

4. (*a*) Every Party permitting the import or export of drugs shall require a separate import or export authorization to be obtained for each such import or export whether it consists of one or more drugs.

(*b*) Such authorization shall state the name of the drug, the international non-proprietary name if any, the quantity to be imported or exported, and the name and address of the importer and exporter, and shall specify the period within which the importation or exportation must be effected.

(*c*) The export authorization shall also state the number and date of the import certificate (paragraph 5) and the authority by whom it has been issued.

(*d*) The import authorization may allow an importation in more than one consignment.

5. Before issuing an export authorization the Parties shall require an import certificate, issued by the competent authorities of the importing country or territory and certifying that the importation of the drug or drugs referred to therein, is approved and such certificate shall be produced by the person or establishment applying for the export authorization. The Parties shall follow as closely as may be practicable the form of import certificate approved by the Commission.

A copy of the export authorization shall accompany each consignment, and the Government issuing the export authorization shall send a copy to the Government of the importing country or territory.

7. (*a*) The Government of the importing country or territory, when the importation has been effected or when the period fixed for the importation has expired, shall return the export authorization, with an endorsement to that effect, to the Government of the exporting country or territory.

(*b*) The endorsement shall specify the amount actually imported.

(*c*) If a lesser quantity than that specified in the export authorization is actually exported, the quantity actually exported shall be stated by the competent authorities on the export authorization and on any official copy thereof.

8. Exports of consignments to a post office box, or to a bank to the account of a party other than the party named in the export authorization, shall be prohibited.

9. Exports of consignments to a bonded warehouse are prohibited unless the government of the importing country certifies on the import certificate, produced by the person or establishment applying for the export authorization, that it has approved the importation for the purpose of being placed in a bonded warehouse. In such case the export authorization shall specify that the consignment is exported for such purpose. Each withdrawal from the bonded warehouse shall require a permit from the authorities having jurisdiction over the warehouse and, in the case of a foreign destination shall be treated as if it were a new export within the meaning of this Convention.

10. Consignments of drugs entering or leaving the territory of a Party not accompanied by an export authorization shall be detained by the competent authorities.

11. A Party shall not permit any drugs consigned to another country to pass through its territory, whether or not the consignment is removed from the conveyance in which it is carried, unless a copy of the export authorization for such consignment is produced to the competent authorities of such Party.

12. The competent authorities of any country or territory through which a consignment of drugs is permitted to pass shall take all due measures to prevent the diversion of the consignment to a destination other than that named in the accompanying copy of the export authorization unless the Government of that country or territory through which the consignment is passing authorizes the diversion. The Government of the country or territory of transit shall treat any requested diversion as if the diversion were an export from the country or territory of transit to the country or territory of new destination. If the diversion is authorized, the provision of paragraph 7 (*a*) and (*b*) shall also apply between the country or territory of transit and the country or territory which originally exported the consignment.

13. No consignment of drugs while in transit, or whilst being stored in a bonded warehouse, may be subjected to any process which would change the nature of the drugs in question. The packing may not be altered without the permission of the competent authorities.

14. The provisions of paragraphs 11 to 13 relating to the passage of drugs through the territory of a Party do not apply where the consignment in question is transported by aircraft which does not land in the country or territory of transit. If the aircraft lands in any such country or territory, those provisions shall be applied so far as circumstances require.

15. The provisions of this article are without prejudice to the provisions of any international agreements which limit the control which may be exercised by any of the Parties over drugs in transit.

16. Nothing in this article other than paragraphs 1 (*a*) and 2 need apply in the case of preparations in Schedule III.

ARTICLE 32

Special provisions concerning the carriage of drugs in first-aid kits of ships or aircraft engaged in international traffic

1. The international carriage by ships or aircraft of such limited amounts of drugs as may be needed during their journey or voyage for first-aid purposes or emergency cases shall not be considered to be import, export or passage through a country within the meaning of this Convention.

2. Appropriate safeguards shall be taken by the country of registry to prevent the improper use of the drugs referred to in paragraph 1 or their diversion for illicit purposes. The Commission, in consultation with the appropriate international organizations, shall recommend such safeguards.

3. Drugs carried by ships or aircraft in accordance with paragraph 1 shall be subject to the laws, regulations, permits and licences of the country of registry, without prejudice to any rights of the competent local authorities to carry out checks, inspections and other control measures on board ships or aircraft. The administration of such drugs in the case of emergency shall not be considered a violation of the requirements of article 30, paragraph 2 (*b*).

ARTICLE 33

Possession of drugs

The Parties shall not permit the possession of drugs except under legal authority.

ARTICLE 34

Measures of supervision and inspection

The Parties shall require:

(*a*) That all persons who obtain licences as provided in accordance with this Convention, or who have managerial or supervisory positions in a State enterprise established in accordance with this Convention, shall have adequate qualifications for the effective and faithful execution of the provisions of such laws and regulations as are enacted in pursuance thereof; and

(*b*) That governmental authorities, manufacturers, traders, scientists, scientific institutions and hospitals keep such records as will show the quantities of each drug manufactured and of each individual acquisition and disposal of drugs. Such records shall respectively be preserved for a period of not less than two years. Where counterfoil books (article 30, paragraph 2(*b*)) of official prescriptions are used, such books including the counterfoils shall also be kept for a period of not less than two years.

ARTICLE 35

Action against the illicit traffic

Having due regard to their constitutional, legal and administrative systems, the Parties shall:

(*a*) Make arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination;

(*b*) Assist each other in the campaign against the illicit traffic in narcotic drugs;

(*c*) Co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;

(*d*) Ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner; and

(*e*) Ensure that where legal papers are transmitted internationally for the purposes of a prosecution, the transmittal be effected in an expeditious manner to the bodies designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that legal papers be sent to it through the diplomatic channel.

ARTICLE 36

Penal provisions

1. Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

(*a*) (i) Each of the offences enumerated in paragraph 1, if committed in different countries, shall be considered as a distinct offence;

(ii) Intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in connexion with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;

(iii) Foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism; and

(iv) Serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgement given.

(*b*) It is desirable that the offences referred to in paragraph 1 and paragraph 2 (*a*) (ii) be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the Parties, and, as between any of the Parties

which do not make extradition conditional on the existence of a treaty or on reciprocity, be recognized as extradition crimes; provided that extradition shall be granted in conformity with the law of the Party to which application is made, and that the Party shall have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.

3. The provisions of this article shall be subject to the provisions of the criminal law of the Party concerned on questions of jurisdiction.

4. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.

Article 37

Seizure and confiscation

Any drugs, substances and equipment used in or intended for the commission of any of the offences, referred to in article 36, shall be liable to seizure and confiscation.

Article 38

Treatment of drug addicts

1. The Parties shall give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts.

2. If a Party has a serious problem of drug addiction and its economic resources permit, it is desirable that it establish adequate facilities for the effective treatment of drug addicts.

Article 39

Application of stricter national control measures than those required by this Convention

Notwithstanding anything contained in this Convention, a Party shall not be, or be deemed to be, precluded from adopting measures of control more strict or severe than those provided by this Convention and in particular from requiring that preparations in Schedule III or drugs in Schedule II be subject to all or such of the measures of control applicable to drugs in Schedule I as in its opinion is necessary or desirable for the protection of the public health or welfare.

Article 40

Languages of the Convention and procedure for signature, ratification and accession

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be open for signature until 1 August 1961 on behalf of any Member of the United Nations, of any non-member State which is a Party to the Statute of the International Court of Justice or member of a specialized agency of the United Nations, and also of any other State which the Council may invite to become a Party.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General.

3. This Convention shall be open after 1 August 1961 for accession by the States referred to in paragraph 1. The instruments of accession shall be deposited with the Secretary-General.

Article 41

Entry into force

1. This Convention shall come into force on the thirtieth day following the date on which the fortieth instrument of ratification or accession is deposited in accordance with article 40.

2 In respect of any other State depositing an instrument of ratification or accession after the date of deposit of the said fortieth instrument, this Convention shall come into force on the thirtieth day after the deposit by that State of its instrument of ratification or accession.

Article 42

Territorial application

This Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible, except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when that consent is obtained the Party shall notify the Secretary-General. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

Article 43

Territories for the purposes of articles 19, 20, 21 and 31

1. Any Party may notify the Secretary-General that, for the purposes of articles 19, 20, 21 and 31, one of its territories is divided into two or more territories, or that two or more of its territories are consolidated into a single territory.

2. Two or more Parties may notify the Secretary-General that, as the result of the establishment of a customs union between them, those Parties constitute a single territory for the purposes of articles 19, 20, 21 and 31.

3. Any notification under paragraph 1 or 2 above shall take effect on 1 January of the year following the year in which the notification was made.

ARTICLE 44

Termination of previous international treaties

1. The provisions of this Convention, upon its coming into force, shall, as between Parties hereto, terminate and replace the provisions of the following treaties:

(*a*) International Opium Convention, signed at The Hague on 23 January 1912;

(*b*) Agreement concerning the Manufacture of, Internal Trade in and Use of Prepared Opium, signed at Geneva on 11 February 1925;

(*c*) International Opium Convention, signed at Geneva on 19 February 1925;

(*d*) Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931;

(*e*) Agreement for the Control of Opium Smoking in the Far East, signed at Bangkok on 27 November 1931;

(*f*) Protocol signed at Lake Success on 11 December 1946, amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, except as it affects the last-named Convention;

(*g*) The Conventions and Agreements referred to in sub-paragraphs (*a*) to (*e*) as amended by the Protocol of 1946 referred to in sub-paragraph (*f*);

(*h*) Protocol signed at Paris on 19 November 1948 Bringing under International Control Drugs outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success on 11 December 1946;

(*i*) Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, should that Protocol have come into force.

2. Upon the coming into force of this Convention, article 9 of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signed at Geneva on 26 June 1936, shall, between the Parties thereto which are also Parties to this Convention, be terminated, and shall be replaced by paragraph 2(*b*) of article 36 of this Convention; provided that such a Party may by notification to the Secretary-General continue in force the said article 9.

ARTICLE 45

Transitional provisions

1. The functions of the Board provided for in article 9 shall, as from the date of the coming into force of this Convention (article 41, paragraph 1), be provisionally carried out by the Permanent Central Board constituted under chapter VI of the Convention referred to in article 44(*c*) as amended, and by the Supervisory Body constituted

under chapter II of the Convention referred to in article 44(*d*) as amended, as such functions may respectively require.

2. The Council shall fix the date on which the new Board referred to in article 9 shall enter upon its duties. As from that date that Board shall, with respect to the States Parties to the treaties enumerated in article 44 which are not Parties to this Convention, undertake the functions of the Permanent Central Board and of the Supervisory Body referred to in paragraph 1.

ARTICLE 46

Denunciation

1. After the expiry of two years from the date of the coming into force of this Convention (article 41, paragraph 1) any Party may, on its own behalf or on behalf of a territory for which it has international responsibility, and which has withdrawn its consent given in accordance with article 42, denounce this Convention by an instrument in writing deposited with the Secretary-General.

2. The denunciation, if received by the Secretary-General on or before the first day of July in any year, shall take effect on the first day of January in the succeeding year, and, if received after the first day of July, shall take effect as if it had been received on or before the first day of July in the succeeding year.

3. This Convention shall be terminated if, as a result of denunciations made in accordance with paragraph 1, the conditions for its coming into force as laid down in article 41, paragraph 1, cease to exist.

ARTICLE 47

Amendments

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated to the Secretary-General who shall communicate them to the Parties and to the Council. The Council may decide either:

(*a*) That a conference shall be called in accordance with Article 62, paragraph 4, of the Charter of the United Nations to consider the proposed amendment; or

(*b*) That the Parties shall be asked whether they accept the proposed amendment and also asked to submit to the Council any comments on the proposal.

2. If a proposed amendment circulated under paragraph 1(*b*) of this article has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If however a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

ARTICLE 48

Disputes

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the

said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed shall be referred to the International Court of Justice for decision.

ARTICLE 49

Transitional reservations

1. A Party may at the time of signature, ratification or accession reserve the right to permit temporarily in any one of its territories:

(*a*) The quasi-medical use of opium;

(*b*) Opium smoking;

(*c*) Coca leaf chewing;

(*d*) The use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes; and

(*e*) The production and manufacture of and trade in the drugs referred to under (*a*) to (*d*) for the purposes mentioned therein.

2. The reservations under paragraph 1 shall be subject to the following restrictions:

(*a*) The activities mentioned in paragraph 1 may be authorized only to the extent that they were traditional in the territories in respect of which the reservation is made, and were there permitted on 1 January 1961.

(*b*) No export of the drugs referred to in paragraph 1 for the purposes mentioned therein may be permitted to a non-party or to a territory to which this Convention does not apply under article 42.

(*c*) Only such persons may be permitted to smoke opium as were registered by the competent authorities to this effect on 1 January 1964.

(*d*) The quasi-medical use of opium must be abolished within 15 years from the coming into force of this Convention as provided in paragraph 1 of article 41.

(*e*) Coca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41.

(*f*) The use of cannabis for other than medical and scientific purposes must be discontinued as soon as possible but in any case within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41.

(*g*) The production and manufacture of and trade in the drugs referred to in paragraph 1 for any of the uses mentioned therein must be reduced and finally abolished simultaneously with the reduction and abolition of such uses.

3. A Party making a reservation under paragraph 1 shall:

(*a*) Include in the annual report to be furnished to the Secretary-General, in accordance with article 18, paragraph 1(*a*), an account of the progress made in the preceding year towards the abolition of the use, production, manufacture or trade referred to under paragraph 1; and

(*b*) Furnish to the Board separate estimates (article 19) and statistical returns (article 20) in respect of the reserved activities in the manner and form prescribed by the Board.

4. (*a*) If a Party which makes a reservation under paragraph 1 fails to furnish:

(i) The report referred to in paragraph 3(*a*) within six months after the end of the year to which the information relates;

(ii) The estimates referred to in paragraph 3(*b*) within three months after the date fixed for that purpose by the Board in accordance with article 12, paragraph 1;

(iii) The statistics referred to in paragraph 3(*b*) within three months after the date on which they are due in accordance with article 20, paragraph 2,

the Board or the Secretary-General, as the case may be, shall send to the Party concerned a notification of the delay, and shall request such information within a period of three months after the receipt of that notification.

(*b*) If the Party fails to comply within this period with the request of the Board or the Secretary-General, the reservation in question made under paragraph 1 shall cease to be effective.

5. A State which has made reservations may at any time by notification in writing withdraw all or part of its reservations.

ARTICLE 50

Other reservations

1. No reservations other than those made in accordance with article 49 or with the following paragraphs shall be permitted.

2. Any State may at the time of signature, ratification or accession make reservations in respect of the following provisions of this Convention: article 12, paragraphs 2 and 3; article 13, paragraph 2; article 14, paragraphs 1 and 2; article 31, paragraph 1(*b*), and article 48.

3. A State which desires to become a Party but wishes to be authorized to make reservations other than those made in accordance with paragraph 2 of this article or with article 49 may inform the Secretary-General of such intention. Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned, this reservation has been objected to by one third of the States that have ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood however that States which have objected to the reservation need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation.

4. A State which has made reservations may at any time by notification in writing withdraw all or part of its reservations.

ARTICLE 51

Notifications

The Secretary-General shall notify to all the States referred to in paragraph 1 of article 40:

(*a*) Signatures, ratifications and accessions in accordance with article 40;

(*b*) The date upon which this Convention enters into force in accordance with article 41;

(*c*) Denunciations in accordance with article 46; and

(*d*) Declarations and notifications under articles 42, 43, 47, 49 and 50.

IN WITNESS THEREOF, the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments:

DONE at New York, this thirtieth day of March one thousand nine hundred and sixty-one, in a single copy, which shall be deposited in the archives of the United Nations, and of which certified true copies shall be transmitted to all the Members of the United Nations and to the other States referred to in article 40, paragraph 1.

For Afghanistan:
ABDUL H. TABIBI

For Albania:
———

For Argentina: [1]
M. AMADEO
31 de julio de 1961

For Australia:
H. S. WARREN

For Austria:
———

For Belgium:
WALTER LORIDAN
28 juillet 1961

For Bolivia:
———

For Brazil:
ALUYSIO GUEDES REGIS BITTENCOURT
Ad referendum

For Bulgaria: [2]
A. GEORGIEV
31 July 1961

[1] [*Translation by the Secretariat of the United Nations:*]
Reservation to article 48, paragraph 2: The Argentine Republic does not recognize the compulsory jurisdiction of the International Court of Justice.
Reservation to article 49: The Argentine Republic reserves the rights conferred by paragraph 1 (*c*) "Coca leaf chewing" and paragraph 1 (*e*) "Trade in the drug referred to under (*c*) for the purposes mentioned therein".

[2] With reservations concerning article 12, points 2 and 3; article 13, point 2; article 14, points 1 and 2; article 31, sub-point 1 (*b*); and article 48, point 2.
Text of reservations:
(1) The Government of the People's Republic of Bulgaria accepts the provision of paragraph 2 of article 48 with the reservation that for any dispute to be referred to the International Court of Justice for decision, the agreement of all parties to the dispute shall be necessary in each individual case.
(2) As regards countries which have been deprived of the opportunity of becoming parties, on the basis of the provisions of article 40 of the Single Convention on Narcotic Drugs, 1961, to the Convention, the Government of the People's Republic of Bulgaria does not consider as obligatory upon herself points 2 and 3 of article 12, point 2 of article 13, points 1 and 2 of article 14 and sub-point 1 (*b*) of article 31.

For Burma: [3]
TIN MAUNG

For the Byelorussian Soviet Socialist Republic: [4]
F. GRYAZNOV
31 July 1961

For Cambodia:
NONG KIMNY
Sous réserve de la ratification par le Parlement cambodgien.

For Cameroun:
———

For Canada:
R. E. CURRAN

For the Central African Republic:
———

For Ceylon:
———

For Chad:
J. CHARLOT
Sous réserve de ratification

For Chile:
D. SCHWEITZER
Sujeto a ratificación

For China:
WEI HSIOH-REN

For Colombia:
———

For the Congo (Brazzaville):
E. DADET

For the Congo (Leopoldville):
GERVAIS P. BAHIZI
28/4/1961

For Costa Rica:
G. ORTIZ MARTÍN

[3] I declare that my signature to this Single Convention is subject to the understanding that the Shan State is being allowed to have reservation of the right:
(1) to allow addicts in the Shan State to smoke opium for a transitory period of 20 years with effect from the date of coming into force of this Single Convention;
(2) to produce and manufacture opium for the above purpose;
(3) to furnish list of opium consumers in the Shan State after the Shan State Government has completed the taking of such list on the 31st December, 1963

[4] [*Translation by the Secretariat of the United Nations:*]
With reservation to article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1 (*b*).
Text of the reservation:
The Government of the Byelorussian Soviet Socialist Republic will not consider itself bound by the provisions of article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1 (*b*) of the Single Convention on Narcotic Drugs as applied to States not entitled to become Parties to the Single Convention on the basis of the procedure provided for in article 40 of that Convention.

For Cuba:

For Cyprus:

For Czechoslovakia: [5]
DR. ZDENĚK ČERNÍK
31 July 1961

For Dahomey:
LOUIS IGNACIO-PINTO

For Denmark:
A. HESSELUND JENSEN

For the Dominican Republic:

For Ecuador:

For El Salvador:
M. RAFAEL URQUÍA

For Ethiopia:

For the Federal Republic of Germany:
FRANK
31st July 1961

For the Federation of Malaya:

For Finland:
HENRIK BLOMSTEDT

For France:

For Gabon:

For Ghana:
ALEX SACKEY
Ad referendum

[5] Signature with the reservation to the following articles: article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1 (*b*).
Text of the reservation:
The Government of the Czechoslovak Socialist Republic is not bound by the provisions of article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1 (*b*) of the Single Convention on Narcotic Drugs, 1961, concerning those States, which have been deprived of the possibility to become Parties of the Single Convention on Narcotic Drugs, 1961, according to the procedure embodied in the article 40 of the aforesaid Convention.

For Greece:

For Guatemala:
ANTONIO ARÍS
July 26, 1961

For Guinea:

For Haiti:
ERNEST JEAN-LOUIS
3 avril 1961

For the Holy See:
JAMES H. GRIFFITHS
Subject to ratification

For Honduras:

For HUNGARY: [6]
LÖRINC TAMÁS
31 July 1961

For Iceland:

For India: [7]
B. N. BANERJI

For Indonesia: [8]
S. WIRJOPRANOTO
28 July 1961

[6] With reservations concerning: article 12, points 2 and 3; article 13, point 2 article 14, points and article 31, sub-point 1 (*b*); and article 48, point 2.
Text o the reservations:
1. The Government of the Hungarian People's Republic accepts the provision of paragraph 2 of article 48 with the reservation that for any dispute to be referred to the International Court of Justice for decision, the agreement of all parties to the dispute shall be necessary in each individual case.
2. As regards countries which have been deprived of the possibility of becoming parties, on the basis of the provisions of article 40 of the Single Convention on Narcotic Drugs, 1961, to the Convention, the Government of the Hungarian People's Republic does not consider as obligatory upon herself points 2 and 3 of article 12, point 2 of article 13, points 1 and 2 of article 14 and sub-point 1 (*b*) of article 31.
[7] Subject to ratification and to the reservations provided for in Art. 49, paragraph 1 (*a*), (*b*), (*d*) and (*e*). The Government of India will, in accordance with the second sub-alinea of Article 42, endeavour to secure, within the shortest time possible, the consent of Sikkim to the application of the Convention to that territory.
[8] Subject to ratification and to reservation to article 48, para. 2 and to a declaration of intention to make reservations to articles 40 and 42 in accordance with the attached statement.
Text of the statement:
1. With respect to article 40, paragraph 1, the Indonesian Government does not agree to the present formulation which does not permit any State which wishes to become a Party to this Convention to do so.
2. With respect to article 42, the Indonesian Government does not agree to the present formulation which may prevent the application of this Convention to non-metropolitan territories.
3. With respect to article 48, paragraph 2, the Indonesian Government does not consider itself bound by the provisions of this paragraph which provide for a mandatory reference to the International Court of Justice of any dispute which cannot be resolved according to the terms of paragraph 1. The Indonesian Government takes the position that for any dispute to be referred to the International Court of Justice for decision the agreement of all the parties to the dispute shall be necessary in each individual case.

For Iran:
Dr. AZARAKHSH
Sous réserve de ratification ultérieure

For Iraq:
ADNAN PACHACHI
Subject to ratification

For Ireland:
———— ————

For Israel:
———— ————

For Italy:
G. ORTONA
April 4, 1961
Subject to ratification

For the Ivory Coast:
———— ————

For Japan:
BUNSHICHI HOSHI
July 26, 1961

For Jordan:
J. JOURY
Subject to ratification

For Kuwait:
———— ————

For Laos:
———— ————

For Lebanon:
GEORGES HAKIM
Subject to ratification

For Liberia:
ARCHIBALD JOHNSON, M.D.
Subject to ratification

For Libya:
———— ————

For Liechtenstein:
OLIVIER EXCHAQUET
14 juillet 1961

For Luxembourg:
M. STEINMETZ
28 juillet 1961

For Madagascar:
ANDRIAMAHARO

For Mali:
———— ————

For Mauritania:
———— ————

For Mexico:
J. CASTAÑEDA
July 24, 1961

For Monaco:
———— ————

For Morocco:
———— ————

For Nepal:
———— ————

For the Netherlands:[9]
J. POLDERMAN
31 juillet 1961

For New Zealand:
D. P. KENNEDY
R. W. SHARP

For Nicaragua:
LUIS MANUEL DEBAYLE

For the Niger:
———— ————

For Nigeria:
ALHAJI MUHAMMAD

For Norway:
SIVERT A. NIELSEN
Subject to ratification

For Pakistan:
M. ASLAM

For PANAMA:
CÉSAR A. QUINTERO

For Paraguay:
MIGUEL SOLANO LÓPEZ

[9] *Translation by the Secretariat of the United Nations:*
In view of the equality from the point of view of public law between the Netherlands, Surinam and the Netherlands Antilles, the term "non-metropolitan" mentioned in article 42 of this Convention no longer has its original meaning so far as Surinam and the Netherlands Antilles are concerned, and will consequently be deemed to mean "non-European".

For Peru: [10]
M. F. MAÚRTUA

For the Philippines:
F. A. DELGADO

For Poland: [11]
B. LEWANDOWSKI
31.VII.1961

For Portugal:
LUÍS SOARES DE OLIVEIRA
Ad referendum

For the Republic of Korea:
MOON D. C.

For the Republic of Viet-Nam:

For Romania:

For San Marino:

For Saudi Arabia:

For Senegal:

For Somalia:

For Spain:
JAIME DE PINIÉS
27 julio 1961

For the Sudan:

For Sweden:
AGDA RÖSSEL
April 3, 1961

[10] [*Translation by the Secretariat of the United Nations:*]
Ad referendum with reservation regarding article 49, paragraphs 2 (*b*) and 4 (*b*).

[11] With the reservations to article 12, paragraphs 2 and 3; article 13, paragraph 2; article 14, paragraphs 1 and 2; article 31, paragraph 1 (*b*)—as explained in the attached note.
Text of the reservations:
The Government of the Polish People's Republic does not consider itself being bound by the provisions of article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1 (*b*) of the Single Convention on Narcotic Drugs, 1961, and concerning States deprived of the opportunity to participate in the above Convention.
In the opinion of the Government of the Polish People's Republic it is inadmissible to impose obligations contained in the mentioned provisions, upon States, which in result of other provisions of the same Convention may be deprived of the opportunity to adhere to it.

For Switzerland:
MICHAEL VON SCHENCK
20 avril 1961

For Thailand:
S. ANUMAN-RAJADHON
24th July 1961

For Togo:

For Tunisia:
AYARI

For Turkey:

For the Ukrainian Soviet Socialist Republic: [12]
L. KIZIA
31 July 1961

For the Union of South Africa:

For the Union of Soviet Socialist Republics: [13]
PLATON MOROZOV
31 July 1961

For the United Arab Republic:
Dr. AMIN ISMAIL
Subject to ratification

For the United Kingdom of Great Britain and Northern Ireland:
PATRICK DEAN

For the United States of America:

For the Upper Volta:

For Uruguay:

[12] [*Translation by the Secretariat of the United Nations:*]
With reservation to article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1 (*b*).
Text of the reservation:
The Government of the Ukrainian Soviet Socialist Republic will not consider itself bound by the provisions of article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1 (*b*) of the Single Convention on Narcotic Drugs as applied to States not entitled to become Parties to the Single Convention on the basis of the procedure provided for in article 40 of that Convention.

[13] [*Translation by the Secretariat of the United Nations:*]
With reservation to article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2. and article 31, paragraph 1 (*b*).
Text of the reservation:
The Government of the Union of Soviet Socialist Republics will not consider itself bound by the provisions of article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1(*b*) of the Single Convention on Narcotic Drugs as applied to States not entitled to become Parties to the Single Convention on the basis of the procedure provided for in article 40 of that Convention.

For Venezuela:
RAFAEL DARÍO BERTI
Ad referendum

For Yemen:
_____ _____

For Yugoslavia:
DRAGAN NIKOLIĆ

SCHEDULES

LIST OF DRUGS INCLUDED IN SCHEDULE I

ACETYLMETHADOL (3-acetoxy-6-dimethylamino-4,4-diphenylheptane)
ALLYLPRODINE (3-allyl-1-methyl-4-phenyl-4-propionoxypiperidine)
ALPHACETYLMETHADOL (alpha-3-acetoxy-6-dimethylamino-4,4-diphenylheptane)
ALPHAMEPRODINE (alpha-3-ethyl-1-methyl-4-phenyl-4-propionoxypiperdine)
ALPHAMETHADOL (alpha-6-dimethylamino-4,4-diphenyl-3-heptanol)
ALPHAPRODINE (alpha-1,3-dimethyl-4-phenyl-4-propionoxypiperidine)
ANILERIDINE (1-*para*-aminophenethyl-4-phenylpiperidine-4-carboxylic acid ethyl ester)
BENZETHIDINE (1-(2-benzyloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)
BENZYLMORPHINE (3-benzylmorphine)
BETACETYLMETHADOL (beta-3-acetoxy-6-dimethylamino-4,4-diphenylheptane)
BETAMEPRODINE (beta-3-ethyl-1-methyl-4-phenyl-4-propionoxypiperidine)
BETAMETHADOL (beta-6-dimethylamino-4,4-diphenyl-3-heptanol)
BETAPRODINE (beta-1,3-dimethyl-4-phenyl-4-propionoxypiperidine)
CANNABIS and CANNABIS RESIN and EXTRACTS and TINCTURES of CANNABIS
CLONITAZENE (2-*para*-chlorbenzyl-1-diethylaminoethyl-5-nitrobenzimidazole)
COCA LEAF
COCAINE (methyl ester of benzoylecgonine)
CONCENTRATE OF POPPY STRAW (the material arising when poppy straw has entered into a process for the concentration of its alkaloids, when such material is made available in trade)
DESOMORPHINE (dihydrodeoxymorphine)
DEXTROMORAMIDE ((+)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl) butyl] morpholine)
DIAMPROMIDE (N-[2-methylphenethylamino) propyl] propionanilide)
DIETHYLTHIAMBUTENE (3-diethylamino-1,1-di-(2′-thienyl)-1-butene)
DIHYDROMORPHINE
DIMENOXADOL (2-dimethylaminoethyl-1-ethoxy-1,1-diphenylacetate)
DIMEPHEPTANOL (6-dimethylamino-4,4-diphenyl-3-heptanol)
DIMETHYLTHIAMBUTENE (3-dimethylamino-1,1-di-(2′thienyl)-1-butene)
DIOXAPHETYL BUTYRATE (ethyl 4-morpholino-2,2-diphenylbutyrate)
DIPHENOXYLATE 1-(3-cyano-3,3-diphenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)
DIPIPANONE (4,4-diphenyl-6-piperidine-3-heptanone)
ECGONINE, its esters and derivatives which are convertible to ecgonine and cocaine

ETHYLMETHYLTHIAMBUTENE (3-ethylmethylamino-1,1-di-(2′-thienyl)-1-butene)
ETONITAZENE (1-diethylaminoethyl-2-*para*-ethoxybenzyl-5-nitro-benzimidazole)
ETOXERIDINE (1-[2-(2-hydroxyethoxy) ethyl]-4-phenylpiperidine-4-carboxylic acid ethyl ester)
FURETHIDINE (1-(2-tetrahydrofurfuryloxyethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)
HEROIN (diacetylmorphine)
HYDROCODONE (dihydrocodeinone)
HYDROMORPHINOL (14-hydroxydihydromorphine)
HYDROMORPHONE (dihydromorphinone)
HYDROXYPETHIDINE (4-*meta*-hydroxyphenyl-1-methylpiperidine-4-carboxylic acid ethyl ester)
ISOMETHADONE (6-dimethylamino-5-methyl-4,4-diphenyl-3-hexanone)
KETOBEMIDONE (4-*meta*-hydroxyphenyl-1-methyl-4-propionylpiperidine)
LEVOMETHORPHAN* ((—)-3-methoxy-N-methylmorphinan)
LEVOMORAMIDE ((—)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl) butyl] morpholine)
LEVOPHENACYLMORPHAN ((—)-3-hydroxy-N-phenacylmorphinan)
LEVORPHANOL* ((—)-3-hydroxy-N-methylmorphinan)
METAZOCINE (2′-hydroxy-2,5,9-trimethyl-6,7-benzomorphan)
METHADONE (6-dimethylamino-4,4-diphenyl-3-heptanone)
METHYLDESORPHINE (6-methyl-delta 6-deoxymorphine)
METHYLDIHYDROMORPHINE (6-methyldihydromorphine)
1-Methyl-4-phenylpiperidine-4-carboxylic acid
METOPON (5-methyldihydromorphinone)
MORPHERIDINE (1-(2-morpholinoethyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)
MORPHINE
MORPHINE METHOBROMIDE and other pentavalent nitrogen morphine derivatives
MORPHINE-N-OXIDE
MYROPHINE (myristylbenzylmorphine)
NICOMORPHINE (3,6-dinicotinylmorphine)
NORLEVORPHANOL ((—)-3-hydroxymorphinan)
NORMETHADONE (6-dimethylamino-4,4-diphenyl-3-hexanone)
NORMORPHINE (demethylmorphine)
OPIUM
OXYCODONE (14-hydroxydihydrocodeinone)
OXYMORPHONE (14-hydroxydihydromorphinone)
PETHIDINE (1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester)
PHENADOXONE (6-morpholino-4,4-diphenyl-3-heptanone)
PHENAMPROMIDE (N-(1-methyl-2-piperidinoethyl) propionanilide)
PHENAZOCINE (2′-hydroxy-5,9-dimethyl-2-phenethyl-6,7-benzomorphan)
PHENOMORPHAN (3-hydroxy-N-phenethylmorphinan)
PHENOPERIDINE (1-(3-hydroxy-3-phenylpropyl)-4-phenylpiperidine-4-carboxylic acid ethyl ester)
PIMINODINE (4-phenyl-1-(3-phenylaminopropyl) piperidine-4-carboxylic acid ethyl ester)

*Dextromethorphan ((+)-3-methoxy-N-methylmorphinan) and dextrorphan ((+)-3-Hydroxy-N-methylmorphinan) are specifically excluded from this Schedule.

PROHEPTAZINE (1,3-dimethyl-4-phenyl-4-propionoxyazacycloheptane)
PROPERIDINE (1-methyl-4-phenylpiperidine-4-carboxylic acid isopropyl ester)
RACEMETHORPHAN ((±)-3-methoxy-N-methylmorphinan)
RACEMORAMIDE ((±)-4-[2-methyl-4-oxo-3,3-diphenyl-4-(1-pyrrolidinyl) butyl] morpholine)
RACEMORPHAN ((±)-3-hydroxy-N-methylmorphinan)
THEBACON (acetyldihydrocodeinone)
THEBAINE
TRIMEPERIDINE (1,2,5-trimethyl-4-phenyl-4-propionoxypiperidine); and

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation;

The esters and ethers, unless appearing in another Schedule, of the drugs in this Schedule whenever the existence of such esters or ethers is possible;

The salts of the drugs listed in this Schedule, including the salts of esters, ethers and isomers as provided above whenever the existence of such salts is possible.

LIST OF DRUGS INCLUDED IN SCHEDULE II

ACETYLDIHYDROCODEINE
CODEINE (3-methylmorphine)
DEXTROPROPOXYPHENE ((+)-4-dimethylamino-3-methyl-1,2-diphenyl-2-propionoxy-butane)
DIHYDROCODEINE
ETHYLMORPHINE (3-ethylmorphine)
NORCODEINE (N-demethylcodeine)
PHOLCODINE (morpholinylethylmorphine); and

The isomers, unless specifically excepted, of the drugs in this Schedule whenever the existence of such isomers is possible within the specific chemical designation;

The salts of the drugs listed in this Schedule, including the salts of the isomers as provided above whenever the existence of such salts is possible.

LIST OF PREPARATIONS INCLUDED IN SCHEDULE III

1. Preparations of:
   Acetyldihydrocodeine
   Codeine
   Dextropropoxyphene,
   Dihydrocodeine,
   Ethylmorphine,
   Norcodeine, and
   Pholcodine

when

(a) Compounded with one or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse, and in such a way that the drug cannot be recovered by readily applicable means or in a yield which would constitute a risk to public health; and

(*b*) Containing not more than 100 milligrammes of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations.

2. Preparations of cocaine containing not more than 0.1 per cent of cocaine calculated as cocaine base and preparations of opium or morphine containing not more than 0.2 per cent of morphine calculated as anhydrous morphine base and compounded with one or more other ingredients in such a way that the preparation has no, or a negligible, risk of abuse, and in such a way that the drug cannot be recovered by readily applicable means or in a yield which would constitute a risk to public health.

3. Solid dose preparations of diphenoxylate containing not more than 2.5 milligrammes of diphenoxylate calculated as base and not less than 25 microgrammes of atropine suphate per dosage unit.

4. *Pulvis ipecacuanhac etopii compositus*

10 per cent opium in powder
10 per cent ipecacuanha root, in powder well mixed with
80 per cent of any other powdered ingredient containing no drug.

5. Preparations conforming to any of the formulae listed in this Schedule and mixtures of such preparations with any material which contains no drug.

List of Drugs Included in Schedule IV

Cannabis and cannabis resin
Desomorphine (dihydrodeoxymorphine)
Heroin (diacetylmorphine)
Ketobemidone (4-*meta*-hydroxyphenyl-1-methyl-4-propionylpiperidine); and

The salts of the drugs listed in this Schedule whenever the formation of such salts is possible.

United Nations Office at Geneva

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to communicate the following amendments to Schedule III of the Single Convention on Narcotic Drugs, 1961, which were adopted by the Commission on Narcotic Drugs of the Economic and Social Council at its twenty-first session, 5–21 December 1966, following upon recommendations made by the World Health Organization:

List of Preparations Included in Schedule III

1. Section 1 (a) and (b) are deleted and replaced by the following: "When compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations".

2. In section 2 delete the words "in such a way that the preparation has no, or a negligible risk of abuse, and", so that the paragraph reads as follows: "Preparations of cocaine containing not more than 0.1 per cent of cocaine calculated as cocaine base and preparations of opium or morphine containing not more than 0.2 per cent of morphine calculated as anhydrous morphine base and compounded with one or more other ingredients in such a way that the drug cannot be recovered by readily applicable means or in a yield which would constitute a risk to public health."

3. In section 3 delete the words "Solid dose".

The Secretary-General has the honour to invite attention to Article 3, paragraph 7 of the 1961 Convention whereby the above decisions would become effective with respect to each Party on the date of its receipt of such communication, and the Parties would thereupon take such action as might be required under the Convention.

P.I.

20 January 1967.

EUROPEAN OFFICE OF THE UNITED NATIONS

1. The Secretary-General of the United Nations presents his compliments to the Secretary of State and with reference to the Secretary-General's circular note, reference C.N.212.1964.TREATIES-17 of 20 November 1964, advising that the Single Convention on Narcotic Drugs, 1961, will come into force on 13 December 1964, has the honour to communicate the attached amendments to the Schedules of the Single Convention on Narcotic Drugs, 1961. These amendments were adopted by the Commission on Narcotic Drugs of the Economic and Social Council at its nineteenth session (see Official Records of the Economic and Social Council, Thirty-seventh Session, document E/3893, paragraphs 157 and 158), pursuant to recommendations by the World Health Organization.

2. It was understood that in accordance with Article 3, paragraph 7, of the 1961 Convention, this decision should be communicated as soon as the Convention comes into force by the Secretary-General to all States Members of the United Nations, to Non-Member States Parties to this Convention, to the World Health Organization and to the Permanent Central Opium Board and Drug Supervisory Body, and that the decision would become effective with respect to each Party on the date of its receipt of such communication. The Parties would thereupon take such action as might be required under the Convention.

D.A.C.

11 December 1964

Schedule I

The following items should be added:

Fentanyl [1-phenethyl-4-N-propionylanilinopiperidine];

Methadone-intermediate [4-cyano-2-dimethylamino-4, 4-diphenylbutane];

Moramide-intermediate [2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid];

Noracymethadol [(±)-alpha-3-acetoxy-6-methylamino-4, 4-diphenylheptane];

Norpipanone [4,4-diphenyl-6-piperidine-3-hexanone];

Pethidine-intermediate-A [4-cyano-1-methyl-4-phenylpiperidine];

Pethidine-intermediate-B [4-phenylpiperidine-4-carboxylic acid ethyl ester];

Pethidine-intermediate-C [1-methyl-4-phenylpiperidine-4-carboxylic acid];

Schedule II

Nicocodine (6-nicotinylcodeine) should be added.

Dextropropoxyphene [(+)-4-dimethylamino-3-methyl-1,2-diphenyl-2-propionoxybutane] should be deleted.

Schedule III

Of the substances listed in section (1), dextropropoxyphene should be deleted.

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EUROPEAN OFFICE OF THE UNITED NATIONS

The Secretary-General of the United Nations presents his compliments to the Secretary of State and has the honour to communicate, in accordance with article 3, paragraph 7, of the Single Convention on Narcotic Drugs, 1961, an amendment to Schedule I of this Convention, namely, the addition to that Schedule of the following substance:

1-(3-cyano-3,3-diphenylpropyl)-4-(1-piperidino)piperidine-4-carboxylic acid amide (the proposed international non-proprietary name of which is piritramide) and its salts.

This amendment was adopted by the Commission on Narcotic Drugs of the Economic and Social Council at its twentieth session (document E/4140, paragraph 54).

The attention of Governments is drawn to article 3, paragraph 7, of the Convention under which such decision of the Commission shall become effective with respect to each Party on the date of its receipt of such communication, and the Parties shall thereupon take such action as may be required under this Convention.

2 February 1966

S.P.S.

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United Nations Office at Geneva

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and with reference to his note dated 17 June 1966 (NAR/CL.5/1966) has the honour to state that the Commission on Narcotic Drugs has decided that the substances M.183 (the proposed international non-proprietary name of which is acetorphine) and M.99 (the proposed international non-proprietary name of which is etorphine) should be added to Schedule I of the Single Convention on Narcotic Drugs, 1961, and that the substance M.285 (the proposed international non-proprietary name of which is cyprenorphine) should not be placed on any of the Schedules of the 1961 Convention.

The decision of the Commission was taken pursuant to the recommendations of the World Health Organization under Article 3 of the 1961 Convention and in accordance with the procedure adopted by the Commission at its twentieth session (Official Records of the Economic and Social Council, Fortieth session, Supplement No. 2; document E/4140, Resolution 1 (XX)).

The attention of governments is drawn to Article 3, paragraph 7, of the 1961 Convention by which such decision "shall become effective with respect to each Party on the date of its receipt of such communication, and the Parties shall thereupon take such action as may be required under this Convention".

19 October 1966.

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FINAL ACT, UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A SINGLE CONVENTION ON NARCOTIC DRUGS

United Nations, 1961

1. The Economic and Social Council of the United Nations, by resolution 689 J (XXVI) of 28 July 1958, decided to convene in accordance with Article 62, paragraph 4, of the Charter of the United Nations, and with the provisions of General Assembly resolution 366 (IV) of 3 December 1949, a plenipotentiary conference for the adoption of a single convention on narcotic drugs to replace by a single instrument the existing multilateral treaties in the field, to reduce the number of international treaty organs exclusively concerned with control of narcotic drugs, and to make provision for the control of the production of raw materials of narcotic drugs.

2. The United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs met at United Nations Headquarters from 24 January to 25 March 1961.

3. The following seventy-three States were represented by representatives at the Conference:

Afghanistan
Albania
Argentina
Australia
Bolivia
Brazil
Bulgaria
Burma
Byelorussian Soviet Socialist Republic
Cambodia
Canada
Chad
Chile
China
Congo (Leopoldville)
Costa Rica
Czechoslovakia
Dahomey
Denmark
Dominican Republic
El Salvador
Finland
France
Germany, Federal Republic of
Ghana
Greece
Guatemala
Haiti
Holy See
Hungary
India
Indonesia
Iran
Iraq
Israel
Italy
Japan
Jordan
Korea, Republic of
Lebanon
Liberia
Madagascar
Mexico
Monaco
Morocco
Netherlands
New Zealand
Nicaragua
Nigeria
Norway
Pakistan
Panama
Paraguay
Peru
Philippines

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Poland
Portugal
Romania
Senegal
Spain
Sweden
Switzerland
Thailand
Tunisia
Turkey
Ukrainian Soviet Socialist Republic
Union of Soviet Socialist Republics
United Arab Republic
United Kingdom of Great Britain and Northern Ireland
United States of America
Uruguay
Venezuela
Yugoslavia

4. The following State was represented by an observer at the Conference:

Ceylon

5. The following specialized agencies were represented at the Conference:

Food and Agriculture Organization of the United Nations;
International Civil Aviation Organization;
International Labour Organisation;
World Health Organization.

6. The following international bodies were represented at the Conference:

Permanent Central Opium Board;
Drug Supervisory Body.

7. The following non-governmental organizations were also represented at the Conference:

International Conference of Catholic Charities;
International Criminal Police Organization;
International Federation of Women Lawyers.

8. General Safwat, Director of the Permanent Anti-Narcotics Bureau of the League of Arab States, at the invitation of the Conference, also attended in a personal capacity.

9. In accordance with the resolution of the Economic and Social Council referred to in paragraph 1 and with the rules of procedure adopted by the Conference, the observers and the representatives of the above-mentioned organizations and bodies participated in the work of the Conference without the right to vote.

10. The Conference elected Mr. Carl Schurmann (Netherlands) as President, and as Vice-Presidents the representatives of the following States:

Afghanistan
Brazil
Dahomey
France
Hungary
India
Iran
Japan
Mexico
Pakistan
Peru
Switzerland
Thailand
Turkey
United Arab Republic
United Kingdom of Great Britain and Northern Ireland
Union of Soviet Socialist Republics
United States of America

11. The Executive Secretary of the Conference was Mr. G. E. Yates, and the Deputy Executive Secretary was Mr. Adolf Lande.

12. The Conference had before it, in accordance with the resolution of the Economic and Social Council, the third draft of a single convention on narcotic drugs prepared by the Commission on Narcotic Drugs of the Council and a compilation of the comments thereon; it also had before it other documentation prepared by the Secretariat.

13. The Conference set up the following committees:

General Committee
Chairman: The President of the Conference

Ad Hoc *Committee on articles 2 and 3 of the Third Draft* (Scope of the Convention and Method of Bringing Additional Substances under Control)
Chairman: Mr. A. Tabibi (Afghanistan)

Ad Hoc *Committee on articles 25, 30 and 40–43* (National Control in General)
Chairman: Mr. B. Banerji (India)

Ad Hoc *Committee on articles 31–34* (National Control of Opium Poppy and Poppy Straw)
Chairman: Mr. L. Ignacio-Pinto (Dahomey)
Vice-Chairman: Mr. J. Koch (Denmark)

Ad Hoc *Committee on articles 35–38* (National Control of Coca Leaf)
Chairman: Mr. K. Chikaraishi (Japan)

Ad Hoc *Committee on article 39* (National Control of Cannabis)
Chairman: Mr. B. Grinberg (Bulgaria)

Ad Hoc *Committee on articles 26, 27–29, 20–21, 4* (Information to be furnished by Governments; the system of estimates and statistics; obligations of Governments in general)
Chairman: Mr. E. Rodríguez Fabregat (Uruguay)
Vice-Chairman: Mr. J. Bertschinger (Switzerland)

Ad Hoc *Committee on article 22* (Measures exercisable by the Board in case of noncompliance)
Chairman: Mr. A. Gurinovich (Byelorussian SSR)

Ad Hoc *Committee on articles 5–11, 13–19, 23* (Constitution, Functions and Secretariat of International Organs)
Chairman: Mr. H. Blomstedt (Finland)

Ad Hoc *Committee on articles 44–46* (Direct Measures against the Illicit Traffic)
Chairman: Mr. A. Bittencourt (Brazil)

Technical Committee
Chairman: Mr. A. Johnson (Australia)
Vice-Chairman: Mr. A. Ismael (United Arab Republic)

Drafting Committee
Chairman: Mr. R. Curran (Canada)
Vice-Chairman: Mr. D. Nikolić (Yugoslavia)

Credentials Committee
Chairman: Mr. G. Ortiz (Costa Rica)

14. As the result of its deliberations, as recorded in the summary records of the Plenary and the summary records and reports of the committees, the Conference adopted [1] and opened for signature the Single Convention on Narcotic Drugs, 1961. In addition the Conference adopted the five resolutions annexed to this Final Act.

IN WITNESS WHEREOF the representatives have signed this Final Act.

DONE at New York, this thirtieth day of March one thousand nine hundred and sixty-one, in a single copy in the Chinese, English,

[1] The Conference took note that the Convention was approved without prejudice to decisions or declarations in any relevant General Assembly resolutions.

French, Russian and Spanish languages, each text being equally authentic. The original texts shall be deposited with the Secretary-General of the United Nations.

For Afghanistan:
ABDUL H. TABIBI

For Albania:[2]
R. MALILE

For Argentina:
C. ORTIZ

For Australia:
H. S. WARREN

For Bolivia:

For Brazil:
ALUYSIO GUEDES REGIS BITTENCOURT

For Bulgaria:[3]
Y. TCHOBANOV

For Burma:
TIN MAUNG

For the Byelorussian Soviet Socialist Republic:[4]
K. SHADURSKY

For Cambodia:
NONG KIMNY

For Canada:
R. E. CURRAN

For Chad:
J. CHARLOT

For Chile:
D. SCHWEITZER

For China:
WEI HSIOH-REN

[2] [*Translation by the Secretariat of the United Nations:*]
In signing this Act, the Albanian delegation declares that it does not recognize the validity of the credentials presented by the so-called representative of China and the representative of the Congo (Léopoldville). The only legal Government of China is the Central Government of the People's Republic of China.

[3] [*Translation by the Secretariat of the United Nations:*]
With a reservation as to paragraph 3 in respect of the validity of the representation of China and the Republic of the Congo (Léopoldville). On behalf of the Government of the People's Republic of Bulgaria, it is expressly stated that only the Government of the Peoples Republic of China is competent to act in the name of China in international affairs and that the Republic of the Congo can be validly represented only by the Government invested by Parliament and at present headed by Mr. Antoine Gizenga.

[4] [*Translation by the Secretariat of the United Nations:*]
Signature of this Act by the representative of the Byelorussian SSR may not be interpreted as implying agreement with the statement in paragraph 3 of the Act that China was represented at the Conference, since no representatives appointed by the Government of the People's Republic of China took part in it. This declaration also applies to the representation of the Republic of the Congo at the Conference, inasmuch as the credentials of the Congolese delegation were not issued by the Government headed by Antoine Gizenga.

For the Congo (Léopoldville):

For Costa Rica:
G. ORTIZ MARTÍN

For Czechoslovakia:[5]
DR. ZDENĚK ČERNÍK

For Dahomey:
LOUIS IGNACIO-PINTO

For Denmark:
A. HESSELUND JENSEN

For the Dominican Republic:

For El Salvador:
M. RAFAEL URQUÍA

For the Federal Republic of Germany:
G. BRUNNER

For Finland:
HENRIK BLOMSTEDT

For France:
P. MILLET
A. MABILEAU

For Ghana:
ALEX SACKEY

For Greece:
P. ECONOMOU-GOURAS

For Guatemala:

For Haiti:

For the Holy See:
JAMES H. GRIFFITHS

For Hungary:[6]
MÓD PÉTER

[1] The signing of the Final Act on our part does not represent a recognition of the so-called "credentials" issued by the Chiang Kai-shek authorities on Taiwan nor that of the "credentials" of the Congolese delegation (Léopoldville). The only legitimate Government of China entitled to issue credentials is the Central Government of the People's Republic of China in Peking. The only legitimate Government of the Republic of the Congo is its Central Government in Stanleyville.

[6] The signing of this Act does not imply the recognition by the Hungarian Government of the representatives of Chiang Kai-shek and the Congo (Léopoldville) present at this Conference.

For India:
B. N. BANERJI

For Indonesia:
S. WIRJOPRANOTO
Subject to ratification and reservations to articles 40, 42 and 48.

For Iran:
DR. AZARAKHSH

For Iraq:
ADNAN PACHACHI

For Israel:
———

For Italy:
———

For Japan:
KOTO MATSUDAIRA

For Jordan:
J. JOURY

For Lebanon:
GEORGES HAKIM

For Liberia:
ARCHIBALD JOHNSON, M.D.

For Madagascar:
ANDRIAMAHARO

For Mexico:
———

For Monaco:
MARCEL A. PALMARO

For Morocco:
———

For the Netherlands:
C. SCHURMANN

For New Zealand:
D. P. KENNEDY
R. W. SHARP

For Nicaragua:
LUIS MANUEL DEBAYLE

For Nigeria:
ALAHAJI MUHAMMAD

For Norway:
SIVERT A. NIELSEN

For Pakistan:
M. ASLAM

For Panama:
CÉSAR A. QUINTERO

For Paraguay:
MIGUEL SOLANO LÓPEZ

For Peru:
M. F. MAÚRTUA

For the Philippines:
F. A. DELGADO

For Poland:[7]
B. LEWANDOWSKI

For Portugal:[8]
LUÍS SOARES DE OLIVERIA

For the Republic of Korea:
MOON D. C.

For Romania:
———

For Senegal:
O. S. DIOP

For Spain:
JAIME DE PINIÉS

For Sweden:
———

For Switzerland:
MICHAEL V. R. VON SCHENCK

For Thailand:
SIRIVAT VISESHSIRI
PRASIT PUNNAPAYAK

For Tunisia:
AYARI

[7] The above signature does not in any way imply a recognition of credentials of those persons who signed the present Final Act for China and the Republic of the Congo (Léopoldville).
[8] On the understanding that footnote to paragraph 14 is juridically irrelevant and, in no case, will prejudice reservations made by Member States to the Resolutions or other decisions of the General Assembly.

For Turkey:

For the Ukranian Soviet Socialist Republic:[9]
OLEG BOGOMOLETS

For the Union of Soviet Socialist Republics:[10]
KONSTANTIN RODIONOV

For the United Arab Republic:
DR. AMIN ISMAIL

For the United Kingdom of Great Britain and Northern Ireland:
PATRICK DEAN

For the United States of America:
CARL DE BAGGIO

For Uruguay:

For Venezuela:
RAFAEL DARÍO BERTI G.

For Yugoslavia:
DRAGAN NIKOLIĆ

The President of the Conference:
C. SCHURMANN

The Executive Secretary of the Conference:
G. E. YATES

The Deputy Executive Secretary of the Conference:
ADOLF LANDE

[9] [*Translation by the Secretariat of the United Nations:*]
Signature of this Act by the representative of the Ukrainian SSR may not be interpreted as implying agreement with the statement in paragraph 3 of the Act that China was represented at the Conference, since no representatives appointed by the Government of the People's Republic of China took part in it. This declaration also applies to the representation of the Republic of the Congo at the Conference, inasmuch as the credentials of the Congolese delegation were not issued by the Government headed by Antoine Gizenga.

[10] [*Translation by the Secretariat of the United Nations:*]
Signature of this Act by the representative of the USSR may not be interpreted as implying agreement with the statement in paragraph 3 of the Act that China was represented at the Conference, since no representatives appointed by the Government of the People's Republic of China took part in it. This declaration also applies to the representation of the Republic of the Congo at the Conference, inasmuch as the credentials of the Congolese delegation were not issued by the Government headed by Antoine Gizenga.

RESOLUTIONS ADOPTED BY THE UNITED NATIONS CONFERENCE FOR THE ADOPTION OF A SINGLE CONVENTION ON NARCOTIC DRUGS

(*United Nations, 1961*)

RESOLUTION I

Technical assistance on narcotic drugs

The Conference,

Welcoming the establishment by General Assembly resolution 1395 (XIV) of special arrangements for technical assistance in the field of narcotics control,

Noting that the United Nations and the specialized agencies concerned have already provided a limited amount of assistance under the Expanded Programme of Technical Assistance and in their regular programmes,

Welcoming also the co-operation of the International Criminal Police Organization in the execution of technical assistance projects,

Expresses the hope that adequate resources will be made available to provide assistance in the fight against the illicit traffic, to those countries which desire and request it, particularly in the form of expert advisers and of training, including training courses for national officials.

RESOLUTION II

Treatment of drug addicts

The Conference,

Recalling the provisions of article 38 of the Convention concerning the treatment and rehabilitation of drug addicts,

1. *Declares* that one of the most effective methods of treatment for addiction is treatment in a hospital institution having a drug-free atmosphere;

2. *Urges* Parties having a serious drug addiction problem, and the economic means to do so, to provide such facilities.

RESOLUTION III

Illicit traffickers

The Conference,

1. *Calls attention* to the importance of the technical records on international traffickers kept at present by the International Criminal Police Organization;

2. *Recommends* that these records be completed as far as possible by all parties and be widely used for the circulation of description of the traffickers by that Organization.

RESOLUTION IV

Membership on the Commission on Narcotic Drugs

The Conference,

Invites the Economic and Social Council to examine at its thirty-second session the question of an increase in the membership of the Commission on Narcotic Drugs, in the light of the terms of this Convention and of the views expressed on this question at this Conference.

RESOLUTION V

International control machinery

The Conference,

Considering the importance of facilitating the transitional arrangements provided for in article 45 of the Single Convention on Narcotic Drugs, 1961,

Invites the Economic and Social Council to study the possibility of taking measures which would ensure the rapid and smooth carrying out of the simplification of the international control machinery.

REPORT ON THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961 AND COMPARATIVE ANALYSIS OF THE SINGLE CONVENTION, 1961 AND THE PROTOCOL OF 1953

REPORT ON THE SINGLE CONVENTION

The Single Convention on Narcotic Drugs, 1961 was formulated by the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs held at New York from January 24 to March 25, 1961. The Convention was opened for signature at the United Nations Headquarters at New York on March 30, 1961 and remained open for signature until August 1, 1961. During that period it was signed on behalf of 64 countries. The Single Convention was not signed for the United States. The Convention remains open for accession.

Background

The Convention is the result of many years of effort within the United Nations. The suggestion was made as early as the Second Session of the General Assembly in 1947 that some measure be taken to remedy the extreme complexity of the system of international narcotics control existing under several multilateral agreements. On August 3, 1948, the United Nations Economic and Social Council (ECOSOC), at the request of the Commission on Narcotic Drugs, following a United States initiative, adopted a resolution inviting the Secretary General of the United Nations to begin work on drafting a single convention.

Early in 1950 the first draft, prepared by the United Nations Secretariat, was circulated to the members of the Commission. During the ensuing six years the Commission was engaged in considering various questions raised by that draft. At its tenth session in 1955 the Commission requested the Secretariat to prepare a second draft incorporating the Commission's decisions for review and for submission to governments for their comments.

The Commission's 1957 and 1958 sessions were devoted to consideration of the second draft and the comments by governments.

Following a recommendation by the Commission, ECOSOC, on July 28, 1958, adopted a resolution requesting the Secretary General to transmit the Commission's new draft (the third) to all members of the United Nations, of the specialized agencies, and of the International Atomic Energy Agency, to those agencies themselves, and to the Permanent Central Opium Board, the Drug Supervisory Body, and the International Criminal Police Organization. These states and organizations were invited by the Council to send their comments on the third draft to the Secretary General for compilation and retransmittal to them by the end of 1959. The Council also requested the Secretary General to convene "within a reasonable period" a Plenipotentiary Conference for the Adoption of a Single Convention, and to invite the states, agencies, and organizations referred to above.

The third draft referred to above served as the basis of discussion in the formulation of the Single Convention by the Conference convened at New York on January 24, 1961. Considerable revision was made in that draft in the Conference. A large part of the revision was brought about by the view of most of the governments represented that adequate national controls would make unnecessary some of the international controls provided for in existing agreements, particularly several of the controls in the 1953 Protocol which had not yet entered into force. The international supervisory organs retain essentially the same functions as under existing agreements except that, as indicated below in the comparative analysis, the authority of those organs to recommend a local inquiry and to impose an embargo (never invoked), has been dropped, and reservations are permitted in derogation of some of the authority exercised by those organs.

COMPARATIVE ANALYSIS OF THE SINGLE CONVENTION AND THE 1953 PROTOCOL

The basic differences between the Single Convention and the 1953 Protocol are that the convention, being intended to replace existing agreements, is, in general, much broader in coverage than the Protocol, but certain limitations on production of opium for export and some of the enforcement measures provided for in the Protocol are omitted from the convention. Certain reservations are permitted by the Single Convention that are not permitted by the Protocol.

The broader coverage of the Single Convention as to subject matter follows from its purpose of consolidating in one document the most desirable features of the existing multilateral agreements for the control of narcotic drugs and of providing such additional measures as will attain more effective international control. The Single Convention will replace eight existing multilateral agreements in their entirety and the provisions of one article in a ninth agreement. Those agreements are listed in Annex A.

While the scope of the Protocol is confined to limiting and regulating the cultivation of the poppy plant and the production of, international and wholesale trade in, and use of opium, there are a few salient matters in the Protocol which are not carried over into the Single Convention.

New Provisions in Single Convention

New provisions included in the Single Convention which are not covered in the 1953 Protocol or in any of the other earlier international narcotics agreements are as follows:

1. A new schedule (Schedule IV) is established to include the most dangerous drugs, such as heroin, which are generally considered to possess no substantial therapeutic advantages not possessed by the less dangerous drug, and it is recommended that the parties prohibit the production, manufacture, export and import or trade in, possession or use of such drugs except for amounts which may be necessary for medical and scientific research only (Articles 2(5) and 3(5)).

2. Provision is made in the Single Convention for the review by the Economic and Social Council, upon the request of a Party, of decisions by the Commission on Narcotic Drugs with respect to whether particular drugs shall be subject to international controls under the convention and the extent of such controls (Article 3(8)).

3. The Single Convention is the first international agreement that specifies conditions under which the parties shall prohibit the cultivation of the opium poppy, the coca bush or the cannabis plant. Whether the prohibition is to be applied is left to the opinion of the party in each instance (Article 22).

4. The Single Convention is the first international instrument to require the establishment of a national agency to supervise and control the cultivation of the coca bush and the cannabis plant to take possession of the harvests, and to deal in exports, imports, and maintain stocks.

5. The Single Convention contains, for the first time in any international instrument, a requirement that the system of import and export certificates shall apply to poppy straw (Article 25).

6. The Single Convention is the first international agreement to contain a specific exception with respect to coca leaves, permitting the production, import, export, trade in and possession of such leaves for the preparation of a flavoring agent (Article 27).

7. The Single Convention contains, for the first time in any international narcotics agreement, a recommendation and a requirement on the use of international non-proprietary names communicated by the World Health Organization. The Convention recommends that the international non-proprietary name be indicated on written or printed offers of drugs, advertisements of every kind or descriptive literature relating to drugs and used for commercial purposes, interior wrappings of packages containing drugs, and labels under which drugs are offered for sale (Article 30(3)): Import and export authorizations for a drug are required to state, along with the name of the drug, the international nonproprietary name if one has been established for that drug (Article 31(4)(b)).

8. Provision is made for the first time in any international agreement on narcotic drugs regarding the carriage of drugs in first-aid kits of ships or aircraft engaged in international traffic (Article 32).

9. The Single Convention is the first international agreement for the control of narcotic drugs that expresses the desirability of the establishment of adequate facilities for the effective treatment of drug addicts (Article 38).

10. The Single Convention provides that it shall, as between the parties thereto, terminate and replace the provisions of all the existing multilateral agreements on narcotic drugs (Article 44) except for the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signed at Geneva June 26, 1936. Neither the 1953 Protocol nor any earlier multilateral agreement for the control of narcotic drugs provides that it shall replace earlier agreements.

11. The Single Convention permits in Article 49 not only the transitional reservations specified in Article 19 of the 1953 Protocol and in the provisions of earlier narcotics control agreements but also permits in Article 50 reservations to several specified provisions in the convention and, if not objected to by one-third of the States which have ratified or acceded, other reservations.

Provisions of 1953 Protocol Omitted from Single Convention

The most important of the provisions of the 1953 Protocol that were omitted from the Single Convention are the provisions establishing a "closed-list" of countries permitted to produce opium for export. Other provisions of the Protocol omitted from the Convention relate to limitation of stocks, estimates and statistics on areas cultivated for opium, local inquiry, and a mandatory embargo.

Closed-List of Exporting Countries

In view of the importance of the "closed-list" provisions, they will be considered first.

Paragraph 2 of Article 6 of the 1953 Protocol provides as follows:

2(a) . . . the Parties shall not permit the import and export of opium other than opium produced in any one of the following States which at the time of the import or export in question shall be a Party to this Protocol:

Bulgaria
Greece
India
Iran
Turkey
Union of Soviet Socialist Republics
Yugoslavia.

(b) The Parties shall not permit the import of opium from any state which is not a party to this Protocol.

Under Article 24 of the Single Convention Parties which, during the ten years preceding January 1, 1961, exported opium which they produced may continue exporting opium they produce. Other Parties desiring to export opium they produce may export up to five tons annually by notification to the Board. If these other Parties desire to export more than five tons of opium annually they must first obtain the approval of the Economic and Social Council. Parties engaging in the export of opium would, of course, be required to do so in accordance with the provisions of the Convention.

Because of the length and complexity of Article 24, it is quoted for purpose of reference in connection with the comment below.

ARTICLE 24

Limitation on Production of Opium for International Trade

1. (a) If any Party intends to initiate the production of opium or to increase existing production, it shall take account of the prevailing need for opium in accordance with the estimates thereof published by the Board so that the production of opium by such Party does not result in over-production of opium in the world.

(b) A Party shall not permit the production of opium or increase the existing production thereof if in his opinion such production or increased production in its territory may result in illicit traffic in opium.

2. (a) Subject to paragraph 1, where a Party which as of January 1, 1961 was not producing opium for export desires to export opium which it produces, in amounts not exceeding five tons annually, it shall notify the Board, furnishing with such notification information regarding:

(i) the controls in force as required by this Convention respecting the opium to be produced and exported; and

(ii) the name of the country or countries to which it expects to export such opium;

and the Board may either approve such notification or may recommend to the Party that it not engage in the production of opium for export.

(b) Where a Party other than a Party referred to in paragraph 3 desires to produce opium for export in amounts exceeding five tons annually, it shall notify the Council, furnishing with such notification relevant information including:

(i) the estimated amount to be produced for export;

(ii) the controls existing or proposed respecting the opium to be produced;

(iii) the name of the country or countries to which it expects to export such opium;

and the Council shall either approve the notification or may recommend to the Party that it not engage in the production of opium for export.

3. Notwithstanding the provisions of sub-paragraphs (a) and (b) of paragraph 2, a Party that during the ten years immediately prior to 1 January 1961 exported opium which such country produced may continue to export opium which it produces.

4. (a) A Party shall not import opium from any country or territory except opium produced in the territory of:

(i) a Party referred to in paragraph 3;

(ii) a Party that has notified the Board as provided in sub-paragraph (a) of paragraph 2; or

(iii) a Party that has received the approval of the Council as provided in sub-paragraph (b) of paragraph 2.

(b) Notwithstanding sub-paragraph (a) of this paragraph, a Party may import opium produced by any country which produced and exported opium during the ten years prior to 1 January 1961 if such country has established and maintains a national control organ or agency for the purposes set out in Article 23 and has in force an effective means of ensuring that the opium it produces is not diverted into the illicit traffic.

5. The provisions of this article do not prevent a Party: (a) from producing opium sufficient for its own requirements; or

(b) from exporting opium seized in the illicit traffic, to another Party in accordance with the requirements of this Convention.

Both parts of paragraph 1 of Article 24 are recommendatory in character.

Paragraph 2 would permit any Party to the Convention, which was not producing opium for export as of January 1, 1961, to enter the field of exporting opium which it produces in amounts up to five tons annually. Before engaging in such export, the Party desiring to export the opium would be required to inform the Board of the controls it was applying in accordance with the Single Convention. Such controls would include those specified in Article 23 regarding national opium agencies, those of Article 18 regarding information to be furnished by Parties to the Secretary-General, those of Article 20 regarding statistical returns to be furnished to the Board, the provisions of Article 30 regarding trade and distribution, Article 31 regarding special provisions relating to international trade, the provisions of Article 35 regarding action against the illicit traffic, and the penal provisions of Article 36.

The information to be supplied under paragraph 2(a)(ii) of Article 24 would enable the Board to determine whether the contemplated export to the country or countries named would be within the estimates furnished to the Board with respect to the country or countries under Article 19 and the limitations specified in Article 21.

The Board may recommend under the provisions of paragraph 2(a) of Article 24 that a Party not engage in the production of opium for export, but neither that Party nor any Party desiring to import the opium involved is required by the Convention to observe that recommendation.

Under sub-paragraph (b) of paragraph 2, Parties desiring to produce opium for export in amounts in excess of five tons annually must, unless they have exported opium they produced within the 10 years prior to January 1, 1961, so notify the Economic and Social Council, and submit relevant information, and the Council may approve or recommend against such export. This provision establishes a basis for control of the entry of additional countries into the field of production on a large scale for export. If the Council recommends against such export, other Parties are prohibited by the provisions of paragraph 4 from importing opium from the Party giving the notification.

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Paragraph 3 of Article 24 permits a Party that, during 10 years immediately prior to January 1, 1961, exported opium which it produced to continue to export opium which it produces. This provision would permit countries additional to the seven specified in the 1953 Protocol to continue or to resume the production of opium for export without any international inhibitions other than those of paragraph 1 of Article 24 and the controls established under other provisions of the Single Convention referred to above in connection with paragraph 2 of that article.

Parties are permitted under sub-paragraph (b) of paragraph 4 to import opium from a country not a party to the Single Convention provided such country meets the three conditions specified, namely (1) it has produced and exported opium during the ten years prior to January 1, 1961, (2) it has established and maintains a national control organ or agency for the purposes set out in Article 23, and (3) it has in force an effective means of ensuring that the opium it produces is not diverted into the illicit traffic. The provisions of this sub-paragraph are an example of conditions required to be fulfilled by states not parties to the convention in dealing with States Parties to the Convention.

The provision of sub-paragraph (a) of paragraph 5 that the provisions of Article 24 do not prevent a party from producing opium for its own requirements is merely declaratory of existing international law. No principle of international law nor any provision of any existing international agreement for the control of opium, including the 1953 Protocol, prohibits any country from producing opium for its own requirements.

Under the provisions of sub-paragraph (b) of paragraph 5 Parties are given broader freedom than is permitted under the 1953 Protocol with respect to the export to another Party of opium seized in the illicit traffic. Under the provisions of Article 7 of the 1953 Protocol all opium seized in the illicit traffic is required, subject to certain exceptions, to be destroyed. Those exceptions permit the exportation of such opium to another Party (1) by one of the seven named countries in Article 6(2)(a) permitted to produce opium for export, and (2) where a Party permits neither the production of opium nor the manufacture of alkaloids it may, with the permission of the Board, export a specified quantity in exchange for opium alkaloids or drugs containing opium alkaloids, or for the purpose of extracting such alkaloids for that Party's own medical or scientific needs; any surplus opium is to be destroyed.

Limitation on Stocks

The 1953 Protocol contains a limitation on stocks that is not contained in the Single Convention. Article 5 of the Protocol provides that "With a view to limiting to medical and scientific needs the quantity of opium produced in the world: 1. The Parties shall regulate the production, export and import of opium in such a way as to ensure that the stocks held by any Party shall not, on 31 December of any year" exceed the amounts set forth in the paragraphs that follow. In those paragraphs of Article 5 there are set forth the maximum stocks permitted to be held by the producing States named on the closed list in Article 6, by manufacturing States, and by other States.

These provisions would not limit the amount of opium a State could produce during the year if it succeeded in disposing of enough by the end of the year to be within the limitations on stocks at that time.

Estimates and Statistics on Areas Cultivated for Opium.—Article 8(3) of the 1953 Protocol requires that each Party which permits the production of opium shall forward annually to the Board an estimate of the extent of the area (in hectares) on which it proposes to cultivate the poppy for the purpose of harvesting opium, and estimates as accurate as practicable of the amount of opium to be harvested. Article 9 requires that the Parties furnish to the Board annually statistics showing the extent of the area on which poppy was cultivated with a view to harvesting opium and the amount of opium harvested thereon.

Statistics on the production of drugs (including harvest of opium, coca leaves and cannabis) are required under paragraph 1 of Article 20 of the Single Convention.

Local Inquiry.—Under Article 11(1)(d) of the 1953 Protocol the Permanent Central Opium Board may, if it considers that a local inquiry into a given situation would be helpful, propose to the government concerned that a person or committee of inquiry designated by the Board be sent to the country in question. If the government expressly consents, the inquiry is to be made in collaboration with officials designated by that government.

The Mandatory Embargo.—Paragraph 3 of Article 12 of the 1953 Protocol provides that the Board may, under certain specified circumstances, impose an embargo on the import of opium or the export of opium, or both, from or to the country or territory concerned.

The power under the existing 1931 Convention and the 1953 Protocol to impose an embargo on exports to a country has never been used by the Board.

Reservations to the Single Convention

The Single Convention permits three categories of reservations.

In the first category a reservation may be made to certain matters of a transitional character. This reservation permits, subject to certain restrictions, the quasi-medical use of opium, opium smoking, coca leaf chewing, and the use of cannabis, cannabis resin, extracts and tinctures for non-medical purposes (Article 49). The activities are authorized only to the extent that they were traditional in the territories in respect of which the reservation is made and were there permitted on January 1, 1961. Similar transitional reservations were permitted in the 1953 Protocol.

The second category of reservations appears to be the one which could have the most effect upon the operation of the Single Convention as a whole. It relates to the administration of the estimates and statistics system and to the settlement of disputes relating to the interpretation or application of the convention. Under the provisions of paragraph 2 of Article 50 of the single Convention any state may at the time of signature, ratification or accession make reservations in respect of the following provisions:

Article 12, paragraphs 2 and 3
Article 13, paragraph 2
Article 14, paragraphs 1 and 2
Article 31, paragraph 1(b)
Article 48.

In considering the effect of the reservations to Articles 12–14, and 31, which are directed at the estimates and statistics systems, a brief statement regarding the operation of those systems may be helpful.

Under existing agreements governments must declare each year their drug requirements in advance through estimates. These estimates are examined by the international organ known as the Drug Supervisory Body with a view to assuring that they represent as nearly as possible the real requirements for medical and scientific purposes. The Parties to those agreements have undertaken not to exceed their estimates. They are, however, permitted to submit supplementary estimates. The governments also submit annual statistics on all drug transactions except exports and imports with respect to which statistics must be submitted quarterly. By comparing statistics with the estimates the international organ known as the Permanent Central Opium Board can ascertain how governments live up to their obligations not to exceed their estimates, and whether there is a dangerous accumulation of narcotics in any place or places. The Single Convention establishes the International Narcotics Control Board to perform the functions entrusted to the Drug Supervisory Body and the Permanent Central Opium Board under the earlier agreements.

The over-all effect of an exercise of the reservations permitted with respect to Articles 12–14, and 31 of the Single Convention would be to deprive the International Narcotics Control Board of its authority under those articles to exercise control over the amounts of drugs exported or imported by a Party making the reservations and by non-parties with which that country deals. There are various other treaty obligations, outlined below, which all parties undertake without reservations. It should be noted in considering the comments below regarding the reservations permitted to Articles 12–14, and 31 that, of the 64 States which signed the Single Convention, only 7 States availed themselves at the time of signature of the right to make reservations to those articles. Furthermore, each of those reserving States limited the effect of its reservations to relations with countries which are not permitted to become parties to the Convention. (See Annex B.) Accordingly, while the comments below are addressed to the full extent of reservations permitted to Articles 12–14, and 31, the actual reservations that have been made to those Articles are much narrower in their effect.

Article 12, paragraphs 2 and 3

Article 12, which is entitled "Administration of the Estimate System", provides as follows in paragraph 2:

> The Board shall, in respect of countries and territories to which this Convention does not apply, request the governments concerned to furnish estimates in accordance with the provisions of this Convention.

The principal objective of reservation to this paragraph appears to be that the reserving State does not recognize the right of the Board to make demands of non-contracting governments. A reservation to this paragraph would not, however, preclude the Board from requesting non-contracting governments to furnish estimates. Such a reservation could, of course, permit a Party making it to withhold its support from an action by the Board to request such estimates. The Board could appropriately request the estimates if the required majority of its members voted in favor of such action.

Paragraph 3 of Article 12 reads as follows:

> If any State fails to furnish estimates in respect of any of its territories by the date specified, the Board shall, as far as possible, establish the estimates. The Board in establishing such estimates shall to the extent practicable do so in co-operation with the government concerned.

A reservation to this paragraph would not preclude the Board from establishing an estimate with respect to any state other than the Party making the reservation. A reservation could permit any state making it to refuse to observe an estimate established by the Board with respect to it or any other state. The reserving State would be free, so far as action by the Board is concerned, to import as much opium and other drugs as it desired or to export as much as it desired to any state with respect to which an estimate was established by the Board. The reserving State would, however, have a treaty obligation under Article 19 to submit estimates.

Article 13, paragraph 2

Article 13, which is entitled "Administration of the Statistical Returns System", provides in paragraph 2 as follows:

"The Board shall examine the returns with a view to determining whether a Party or any other State has complied with the provisions of this Convention."

The reservation permitted to this paragraph is understood to be directed primarily against the application of the estimates and statistics system to states not parties to the Convention. A reservation to this provision could deprive the Board of its authority to examine the statistics with a view to determining whether a Party making the reservation was complying with the provisions of the Convention or that a non-party with which the reserving party deals is complying with the requirements of the Convention. It appears, however, that under the provisions of paragraph 4 of Article 21 the Parties could be required to cease exports of drugs to a country where estimates are being exceeded.

Article 14, paragraphs 1 and 2

Article 14, entitled "Measures by the Board to Ensure the Execution of Provisions of the Convention" provides in paragraphs 1 and 2 as follows:

> 1(a). If, on the basis of its examination of information submitted by governments to the Board under the provisions of this Convention, or of information communicated by United Nations organs and bearing on questions arising under those provisions, the Board has reason to believe that the aims of this Convention are being seriously endangered by reason of failure of any country or territory to carry out the provisions of this Convention, the Board shall have the right to ask for explanations from the government of the country or territory in question. Subject to the right of the Board to call the attention of the parties, the Council and the Commission to the matter referred to in sub-paragraph (c) below, it shall treat as confidential a request for information or an explanation by a government under this sub-paragraph.
>
> (b) After taking action under sub-paragraph (a) above, the Board, if satisfied that it is necessary to do so, may call upon the government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.
>
> (c) If the Board finds that the Government has failed to give satisfactory explanations when called upon to do so under sub-paragraph (a) above, or has failed to adopt such remedial measures which it has been called upon to take under sub-paragraph (b) above, it may call the attention of the Parties, the Council and the Commission to the matter.

2. The Board, when calling the attention of the Parties, the Council and the Commission to a matter in accordance with paragraph 1(c) above, may, if it is satisfied that such a course is necessary, recommend to the Parties that they stop the import of drugs, the export of drugs, or both, from or to the country or territory concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or territory. The State concerned may bring the matter before the Council.

As indicated by the title to Article 14, that article specifies measures that may be applied by the Board with respect to a Party to require that it comply with the provisions and the aims of the convention. Neither the right of the Board to request explanations of an offending country under paragraph 1(a), the Board's right to call upon such a country to adopt remedial measures under 1(b) nor the Board's right under 1(c) could be exercised with respect to a Party making a reservation to the full extent permitted with respect to paragraph 1 of Article 14.

A reservation to paragraph 2 of Article 14 could deprive the Board of its authority thereunder to recommend to Parties that they stop the import or the export of drugs to or from any offending Party which made such a reservation but it would not derogate from the authority given the Board under paragraph 4 of Article 21.

Article 31, paragraph 1

These provisions read as follows:

1. The Parties shall not knowingly permit the export of drugs to any country or territory except:
(a) in accordance with the laws and regulations of that country or territory; and
(b) within the limits of the total of the estimates for that country or territory, as defined in paragraph 2 of Article 19, with the addition of the amounts to be re-exported.

A reservation to paragraph 1 of Article 31 to the full extent permitted would permit the reserving State to ignore the requirement of those provisions that exportation shall be in accordance with the laws and regulations of the importing country and that the estimates of that country shall be observed. The effect of such a reservation would be limited by certain other provisions of the Convention. Paragraph 5 of Article 31, which requires that a Party shall not issue an export authorization until after an import certificate for the drugs involved has been issued by the competent authorities of the importing country, would assure that drugs are exported to a country only with the permission of its government. The provisions of paragraph 4 of Article 21 would also remain applicable. It should be observed, however, that a Party making a reservation to paragraph 3 of Article 12 to the full extent permitted would not be required to observe such a notification if the estimate involved were one established by the Board rather than one submitted voluntarily.

Article 48

A reservation to this article would permit a state to avoid the procedure provided therein for the settlement of disputes relating to the interpretation or application of the Convention, particularly the provision for the referral of such disputes to the International Court of Justice.

Provisions similar to those of Article 48 are included in several of the existing agreements on the control of narcotic drugs but none of those provisions have ever been invoked.

Other Reservations under Article 50

The third category of reservations permitted to the Convention are those referred to in paragraph 3 of Article 50. That paragraph reads as follows:

3. A State which desires to become a Party but wishes to be authorized to make reservations other than those made in accordance with paragraph 2 of this article or with Article 49 may inform the Secretary-General of such intention. Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned, this reservation has been objected to by one third of the States that have ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood however that the States which have objected to the reservation need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation.

The transitional reservations, which are provided for in Article 49, and the reservations permitted by paragraph 2 of Article 50 have been discussed above.

As for the reservations that might be made under paragraph 3 of Article 50, it is impossible to anticipate at what provisions those reservations might be directed but the provision regarding objection by one-third of the States that have ratified or acceded would seem to afford adequate protection against any unjustified reservations being made pursuant to that paragraph.

CONCLUSIONS

The Single Convention embodies many of the desirable features of existing agreements in force with respect to the international control of narcotic drugs and embodies a number of improvements. It omits a number of salient features of the 1953 Protocol, particularly, international control measures (closed list of producers for export, limitations on stocks, estimates and statistics on areas cultivated for opium, local inquiry, and mandatory embargo). The Single Convention, however, embodies the requirement of the 1953 Protocol (Article 3) that every opium producing State shall establish, if it has not already done so, and maintain, a national agency to strictly regulate the cultivation of the opium poppy for opium, take possession of the harvest, and exercise the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers licensed to manufacture alkaloids from opium. Similar control is required by the Single Convention to be applied also to the coca bush and coca leaves, and cannabis.

While the reservations permitted with respect to the provisions regarding administration of the estimates and statistics systems materially could derogate from the long-standing authority of the international organ responsible for supervision of that system, all Parties have a treaty obligation to submit estimates and statistics (Articles 19 and 20) as well as many other obligations with respect to both national and international measures which are not affected by those reservations. Among those other obligations are those of Articles 2 and 3 specifying the controls to be applied by the Parties to various drugs; those of Article 4 requiring the Parties to take such legislative and administrative measures as may be necessary to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession

of drugs; those of Article 18 regarding information to be furnished by the Parties to the Secretary General, particularly with respect to cases of illicit traffic; those of Article 21 regarding limitation of manufacture and importation; the special provisions in Article 22 applicable to cultivation of the opium poppy, the coca bush, and the cannabis plant; the requirement of the establishment of national agencies to supervise production, take possession of, and carry on trade in opium (Article 23), the coca bush (Article 26), and cannabis (Article 28); the special provisions of Article 31 relating to international trade which, while not maintaining the closed list concept of the 1953 Protocol, give a measure of control over and beyond that provided by agreements now in force; and the provisions of Articles 29–31 imposing requirements with respect to manufacture and to trade and distribution, particularly the special provisions in Article 31 relating to international trade, which maintain the export and import authorization systems.

ANNEX A

EXISTING TREATIES ON NARCOTIC DRUGS WHICH WILL BE REPLACED BY THE SINGLE CONVENTION

The following is a list of the existing treaties referred to in paragraph 1 of Article 44 of the Single Convention as being replaced by that Convention. Following the listing of the treaties replaced and a statement regarding the 1936 Convention is a chart showing the States which have ratified or adhered to the existing treaties on narcotic drugs.

(a) *International Opium Convention signed at The Hague January 23, 1912.*—Entered into force for the United States February 11, 1915. [Text: 38 Stat. 1912; TS 612: III Redmond 3025: 8 LNTS 187.]

(b) *Agreement concerning the Manufacture of, International Trade in and Use of Prepared Opium, signed at Geneva February 11, 1925.*—Not ratified by the United States; entered into force July 28, 1926 with respect to the British Empire, India, and France, and subsequently with respect to Portugal and the Netherlands. [Text: 51 LNTS 337; 123 BFSP 690.]

(c) *International Opium Convention, signed at Geneva February 19, 1925.*—Not ratified by the United States. [Text: 81 LNTS 317.]

(d) *Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva July 13, 1931.*—Entered into force for the United States July 9, 1933 [Text: 48 Stat. 1543; TS 863; IV Trenwith 5351; 139 LNTS 301.]

(e) *Agreement for the Control of Opium Smoking in the Far East, signed at Bangkok November 27, 1931.*—Not ratified by the United States; entered into force April 22, 1937 with respect to other States which ratified or adhered. [Text: 177 LNTS 373.]

(f) *Protocol signed at Lake Success on December 11, 1946, amending the Agreements, Conventions and Protocols on Narcotic Drugs concluded at The Hague January 23, 1912, at Geneva February 11, 1925 and February 19, 1925 and July 13, 1931 at Bangkok November 27, 1931 and at Geneva June 26, 1936, and Annex.*—Protocol entered into force for the United States August 12, 1947; Annex, November 21, 1947. [Text: 61 Stat. 2230; 62 Stat. 1796; TIAS 1671, 1859; 12 UNTS 179.]

(g) *Protocol signed at Paris November 19, 1948 Bringing under International Control Drugs outside the Scope of the Convention of July 13, 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed on December 11, 1946.*—Entered into force for the United States September 11, 1950. [Text: 2 UST 1629; TIAS 2308; 44 UNTS 277.]

(h) *Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade*

in, and Use of Opium, signed at New York June 23, 1953.—Not in force; ratified by the United States and by 38 other States—but ratification by one more exporting State is required to bring the Protocol into force. [Text: Senate Executive C, 83d Congress, 2d Session.]

Paragraph 2 of Article 44 of the Single Convention provides as follows:

Upon the coming into force of this Convention, article 9 of the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signed at Geneva on June 26, 1936, shall, as between the Parties thereto which are also Parties to this Convention, be terminated, and shall be replaced by paragraph 2(b) of article 36 of this Convention; provided that such a Party may by notification to the Secretary-General continue in force the said article 9.

The 1936 Convention was not ratified by the United States. That Convention entered into force on October 26, 1939 and remains in force with respect to the 29 countries which have ratified or adhered to it.

The text of the 1936 Convention is printed in volume 198 of the League of Nations Treaty Series, page 299.

Status of existing narcotics treaties

States which are parties	1912	Feb. 11, 1925	Feb. 19, 1925	July 13, 1931	Nov. 27, 1931	1936	1946	1948	1953
United States	X		X	X [1]			X	X	X.
Afghanistan	X			X			X	X	
Albania	X			X					
Algeria				X			X		X.
Argentina	X		X	X			X	X	X.
Australia	X		X	X		X	X	X	
Austria	X		X	X		X	X	X	X.
Belgium	X		X [2]				X		
Bolivia	X		X	X		X	X	X	X.
Brazil	X		X	X					
Bulgaria	X		X	X		X		X	
Burma	X	X	X						
Byelorussian Soviet Socialist Republic							X		
Cambodia	X	X	X	X	X	X		X	X. [3]
Cameroun	X			X		X	X	X	X.
Canada	X		X	X		X		X	X.
Central African Republic				X			X		X.
Ceylon	X		X	X		X		X	X.
Chile	X		X	X		X	X	X	X.
China	X			X		X	X	X	
Colombia	X		X	X					X.
Congo (Brazzaville)	X			X			X	X	X.
Congo (Léopoldville)	X	X		X					
Costa Rica	X		X	X			X		X.
Cuba	X		X	X					
Cyprus	X			X			X	X	
Czechoslovakia	X	X	X	X				X	X.
Dahomey				X			X	X	X.
Denmark	X		X	X		X	X	X	X.
Dominican Republic	X		X	X				X	
Ecuador	X		X	X					
El Salvador	X		X	X					
Estonia	X		X	X		X		X	
Ethiopia	X		X	X			X	X	X.
Finland	X	X	X [5]	X [6]	X	X	X	X	X.
France	X		X [7]	X			X	X	
Germany, Federal Republic of									
Ghana	X		X	X			X	X	X.
Greece	X					X			
Guatemala	X			X		X			
Guinea									
Haiti	X		X	X		X	X		
Honduras	X		X	X			X	X	
Hungary	X								

See footnotes at end of table, pp. 69–71.

Status of existing narcotic treaties—Continued

States which are parties	1912	Feb. 11, 1925	Feb. 19, 1925	July 13, 1931	Nov. 27, 1931	1936	1946	1948	1953
Iceland	X								
India	X	X	X	X	X	X	X	X	X. [9]
Indonesia	X		X	X		X		X	X.
Iran				X			X		X. [10]
Iraq	X		X	X			X	X	
Ireland	X		X	X			X	X	
Israel	X		X	X		X		X	X.
Italy	X		X	X		X [11]	X	X	X.
Ivory Coast	X			X		X		X	X.
Jamaica	X			X				X	
Japan	X	X	X	X [12]	X	X	X	X	X.
Jordan	X		X	X		X		X	X.
Korea									X.
Laos	X	X	X	X	X	X		X	
Latvia	X		X	X					
Lebanon	X			X			X	X	
Liberia	X						X		
Liechtenstein	X		X	X		X	X	X	X.
Lithuania			X	X					
Luxembourg	X		X	X		X	X	X	X.
Madagascar									X.
Malawi	X			X		X		X	
Malaya, Federation of	X	X	X	X				X	
Malta	X								
Mexico	X			X [13]		X [14]	X	X	
Monaco	X		X	X			X	X	X.
Morocco			X	X				X	
Netherlands	X	X	X	X	X	X [15]	X	X	
New Zealand	X		X	X			X	X	X.
Nicaragua	X			X			X	X	X.
Niger	X		X	X				X	X.
Nigeria	X		X	X				X	
Norway	X	X	X	X			X	X	
Pakistan							X	X	X. [16]
Panama	X			X			X		X.
Paraguay	X		X	X					
Peru	X			X					
Philippines	X			X			X	X	X.
Poland	X		X	X			X	X	
Portugal	X	X [17]	X	X [18]	X				
Rumania	X		X	X			X	X	
Rwanda	X			X					X.
San Marino			X	X					
Saudi Arabia	X			X			X	X	
Senegal	X			X					X.
Sierra Leone	X			X				X	
South Africa	X		X	X			X	X	X.
Spain	X		X	X			X	X	X.
Sudan			X	X					
Sweden	X [19]		X	X			X	X	X.
Switzerland	X [20]		X [21]	X			X	X	X.
Syria	X			X			X		
Thailand	X [22]	X [23]	X	X [24]	X [25]		X		
Togo				X			X	X	
Trinidad and Tobago	X			X					
Tanzania				X					
Tunisia				X					
Turkey	X		X	X			X	X	
Uganda								X	X.
Ukrainian Soviet Socialist Republic							X	X	
Union of Soviet Socialist Republics			X	X					
United Arab Republic	X		X	X			X	X	X.
United Kingdom	X	X	X	X	X			X	
Upper Volta				X					
Uruguay	X		X	X					
Venezuela	X		X	X					
Vietnam	X	X	X	X	X			X	
Yemen								X	
Yugoslavia	X		X	X			X	X	

[1] With the following reservations:
(1) The Government of the United States of America reserves the right to impose, for purpose of internal control and control of import into, and export from, territory under its jurisdiction, of opium, coca leaves, all of their derivatives and similar substances produced by synthetic process, measures stricter than the provisions of the Convention.
(2) The Government of the United States of America reserves the right to impose, for purposes of controlling transit through its territories of raw opium, coca leaves, all of their derivatives and similar substances produced by synthetic process, measures by which the production of an import permit issued by

the country of destination may be made a condition precedent to the granting of permission for transit through its territory.

(3) The Government of the United States of America finds it impracticable to undertake to send statistics of import and export to the Permanent Central Opium Board short of 60 days after the close of the three-months period to which such statistics refer.

(4) The Government of the United States of America finds it impracticable to state separately amounts of drugs purchased or imported for Government purposes.

(5) Plenipotentiaries of the United States of America formally declare that the signing of the Convention for limiting the manufacture and regulating the Distribution of Narcotic Drugs by them on the part of the United States of America on this date is not to be construed to mean that the Government of the United States of America recognizes a régime or entity which signs or accedes to the Convention as the Government of a country when that régime or entity is not recognized by the Government of the United States of America as the Government of that country.

(6) The plenipotentiaries of the United States of America further declare that the participation of the United States of America in the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs, signed on this date, does not involve any contractual obligation on the part of the United States of America to a country represented by a régime or entity which the Government of the United States of America does not recognize as the government of that country until such country has a government recognized by the Government of the United States of America.

[2] With the following reservations:

(1) Bolivia does not undertake to restrict the home cultivation or production of coca, or to prohibit the use of coca leaves by the native population.

(2) The exportation of coca leaves shall be subject to control by the Bolivian Government, by means of export certificates.

(3) The Bolivian Government designates the following as places from which coca may be exported: Villazon, Yucuiba, Antofagasta, Arica and Mollendo.

[3] With the following declaration: The Royal Government of Cambodia expresses its intention of availing itself of the provisions of article 19 of the Protocol.

[4] With the following reservations:

(a) The Republic of Salvador does not agree to the provisions of Article 26, on the ground that there is no reason why the High Contracting Parties should be given the option of not applying the Convention to their colonies, protectorates, and overseas mandated territories.

(b) The Republic of Salvador states that it disagrees with the reservations embodied in Nos. 5 and 6 of the declarations made by the plenipotentiaries of the United States of America regarding Governments not recognized by the Government of that country; in its opinion, those reservations constitute an infringement of the national sovereignty of Salvador, whose present Government, though not as yet recognized by the United States Government, has been recognized by the majority of the civilized countries of the world. Their recognition is due to their conviction that that Government is a perfectly constitutional one and affords a full and complete guarantee of the performance of its international duties, inasmuch as it enjoys the unanimous, decided and effective support of all the inhabitants of the Republic, whether citizens of the country or foreigners resident therein.

As it respects the internal regimes of other nations, the Republic of Salvador considers that the Convention in question, being of a strictly hygienic and humanitarian character, does not offer a suitable occasion to formulate such political reservations as have called forth this comment.

[5] With the following reservation: The French Government is compelled to make all reservation, as regards the Colonies, Protectorates and mandated territories under its authority, as to the possibility of regularly producing, within the strictly prescribed time-limit, the quarterly statistics provided for in paragraph [illegible] of Article 22.

[6] The French Government makes every reservation, with regard to the Colonies, Protectorates and Mandated Territories under its authority, as to the possibility of regularly producing the quarterly statistics referred to in Article 13 within the strict time-limit laid down.

[7] With the following declaration and reservation:

It is expressly declared that the French Government reserves the right, in respect of French establishments in India, to apply the transitional measures of article 19 of this Protocol, it being understood that the period mentioned in paragraph 1, sub-paragraph (b) (iii) of that article shall be fifteen years after the coming into effect of this Protocol.

The French Government likewise reserves the right in accordance with the transitional measures of article 19 to authorize the export of opium to French establishments in India for the same period of time.

[8] Subject to the reservation annexed to the Proces-verbal of the plenary meeting of February 16th, 1925.

(The validity of the signature and ratification of this Convention are subject to the condition that a German expert will be appointed as a member of the Central Board.)

[9] With the following declaration and reservation:

(1) It is hereby expressly declared that the Government of India, in accordance with the provisions of article 19 of this Protocol, will permit

(i) The use of opium for quasi-medical purposes until 31 December 1959;

(ii) The production of opium and the export thereof, for quasi-medical purposes, to Pakistan, Ceylon, Aden and the French and Portuguese possessions on the subcontinent of India for a period of fifteen years from the date of the coming into force of this Protocol; and

(iii) The smoking of opium, for their lifetime, by addicts not under 21 years of age, registered by the appropriate authorities for that purpose.

(2) The Government of India expressly reserve to themselves the right to modify this declaration or to make any other declaration under article 19 of this Protocol, at the time of the deposit by them of their instrument of ratification.

[10] With the following declaration: The Imperial Government of Iran, in accordance with article 25 of the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, done at New York on 23 June 1953, and in accordance with article 16 of the Bill approved by the Iranian Parliament on 16 Bahman 1337, declares its ratification of the Protocol, and hereby further specifies that its ratification of the Protocol will in no way affect the status of the Law providing for the Prohibition of the Poppy Cultivation, as approved by Parliament on 7 Aban 1334.

[11] With the following declaration: . . . in exercise of the right accorded to it by article 13, paragraph 2, of the said Convention, the Government of Italy desires that, in the case of letters of request concerning narcotic drugs, the procedure hitherto followed in previous relations with the other Contracting States should continue to be used and, failing that, the diplomatic channel, provided, however, that the method specified in article 13, paragraph 1, sub-paragraph (c), should be adopted in cases of emergency.

[12] The Japanese Government declare that, in view of the necessity of close co-operation between the High Contracting Parties in order to carry out most effectively the provisions of the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931, they understand that the present position of Japan, regardless of whether she be a Member of the League of

Nations or not, is to be maintained in the matter of the composition of the organs and the appointment of the members thereof mentioned in the said Convention.

[13] The Government of the United States of Mexico reserves the right to impose in its territory—as it has already done—measures more severe than those laid down by the Convention itself, for the restriction of the cultivation or the preparation, use, possession, importation, exportation and consumption of the drugs to which the present Convention refers.

[14] In accepting the provisions of articles 11 and 12 of this Convention, the Government of the United States of Mexico wishes to state explicitly that its Central Office will exercise the powers granted to it by the said Convention unless such powers have been expressly conferred by the General Constitution of the Republic on an agency of a constituent State, being an agency established before the date of the entry into force of this Convention, and that the Government of the United States of Mexico reserves the right to impose in its territory—as it has already done—measures more severe than those laid down by the Convention itself, for the restriction of the cultivation or the manufacture, extraction, possession, offering for sale, importation or exportation of or traffic in the drugs to which the present Convention refers.

[15] With the following reservation: The Netherlands make their acceptance of the Convention subject to the reservation that, according to the basic principles of penal law in the Netherlands, they are able to comply with sub-paragraph (c) of article 2 only in circumstances where there is a commencement of execution. Convention denounced by the Netherlands Dec. 11, 1965.

[16] With the following declaration: The Government of Pakistan will permit for a period of fifteen years after the coming into effect of the said Protocol: (i) the use of opium for quasi-medical purposes; and (ii) the production of opium and/or import thereof from India or Iran for such purposes.

[17] With the following reservations:

While accepting the principle of a monopoly as formulated in Article I, does so, as regards the moment at which the measures provided for in the first paragraph thereof shall come into force, subject to the limitations contained in the second paragraph of the article.

The Portuguese Government being bound by a contract consistent with the provisions of the Hague Convention of 1912, will not be able to put into operation the provisions of paragraph 1 of Article VI of the present Agreement so long as its obligations under this contract are in force.

[18] With the following reservation: The Portuguese Government makes every reservation with regard to its colonies as to the possibility of regularly producing the quarterly statistics referred to in Article 13 within the strict time-limit laid down.

[19] Subject to the following declaration: Opium not being manufactured in Sweden, the Swedish Government will for the moment confine themselves to prohibiting the importation of prepared opium, but they declare at the same time that they are ready to take the measures indicated in article 8 of the Convention if experience proves their expediency.

[20] Subject to ratification and with the declaration that the Swiss Government will be unable to issue the necessary legal enactments within the terms fixed by the Convention.

[21] With reference to the declaration made by the Swiss delegation at the 36th plenary meeting of the Conference concerning the forwarding of the quarterly statistics provided for in Article 22, paragraph 2.

[22] With the reservation of articles 15, 16, 17, 18 and 19 (Thailand having no treaty with China).

[23] Under reservation of Article I, paragraph 3(a), with regard to the time when this provision shall come into force, and of Article V. The reason for these reservations had been stated by the First Delegate of Thailand on November 14th, 1924. The Thai Government is hoping to put into force the system of registration and rationing within the period of three years. After that date, the reservation in regard to Article I, paragraph 3(a), will fall to the ground.

[24] As its harmful-habit-forming-drugs law goes beyond the provisions of the Geneva Convention and the present Convention on certain points, the Thai Government reserves the right to apply its existing law.

[25] With the following reservation: In accordance with the declaration made at the Conference, the Siamese Delegation signs this Agreement with a reservation to Article I.

ANNEX B

Status of the single convention on narcotic drugs, 1961

Signatory states	*Ratification deposited*
Afghanistan	Mar. 19, 1963
Argentina	Oct. 10, 1963
Australia	
Belgium	
Brazil	June 18, 1964
Bulgaria	
Burma	July 29, 1963
Byelorussia	Feb. 20, 1964
Cambodia	
Canada	Oct. 11, 1961
Chad	Jan. 29, 1963
Chile	
China	
Congo (Brazzaville)	
Congo (Léopoldville)	
Costa Rica	
Czechoslovakia	Mar. 20, 1961
Dahomey	Apr. 27, 1962
Denmark	Sept. 15, 1964
El Salvador	
Finland	July 6, 1965
German FR	
Ghana	Jan. 15, 1964
Guatemala	
Haiti	
Holy See	
Hungary	Apr. 24, 1964
India	Dec. 13, 1964
Indonesia	
Iran	
Iraq	Aug. 29, 1962
Italy	
Japan	July 13, 1964
Jordan	Nov. 15, 1962
Republic of Korea	Feb. 13, 1962
Lebanon	Apr. 23, 1965
Liberia	
Lichtenstein	
Luxembourg	
Madagascar	
Mexico	
Netherlands	July 16, 1965
New Zealand	Mar. 26, 1963
Nicaragua	
Nigeria	
Norway	
Pakistan	July 9, 1965
Panama	Dec. 4, 1963
Paraguay	
Peru	July 22, 1964
Philippines	
Poland	Mar. 16, 1966
Portugal	
Spain	Mar. 1, 1966
Sweden	Dec. 18, 1964
Switzerland	
Thailand	Oct. 31, 1961
Tunisia	Sept. 8, 1964
Ukranian SSR	Apr. 15, 1964
USSR	Feb. 20, 1964
UAR	July 20, 1966
United Kingdom	Sept. 2, 1964
Venezuela	
Yugoslavia	Aug. 27, 1963

Accessions deposited

Algeria	Apr. 7, 1965	Kuwait	Apr. 16, 1962
Cameroun	Jan. 15, 1962	Mali	Dec. 15, 1964
Ceylon	July 11, 1963	Malawi	June 8, 1965
Cuba	Aug. 30, 1962	Morocco	Dec. 4, 1961
Ecuador	Jan. 14, 1964	Niger	Apr. 18, 1963
Ethiopia	Apr. 29, 1965	Senegal	Jan. 24, 1964
Israel	Nov. 23, 1962	Syria	Aug. 22, 1962
Ivory Coast	July 10, 1962	Togo	May 6, 1963
Jamaica	Apr. 29, 1964	Trinidad and Tobago	June 22, 1964
Kenya	Nov. 13, 1964	Zambia	Aug. 12, 1965

Single Convention on Narcotic Drugs, 1961—Declarations and Reservations

ALGERIA

The Democratic and Popular Republic of Algeria does not approve the present wording of article 42 which might prevent the application of the Convention to "non-metropolitan" territories.[1]

ARGENTINA

Reservation to article 48, paragraph 2: The Argentine Republic does not recognize the compulsory jurisdiction of the International Court of Justice.

Reservation to article 49: The Argentine Republic reserves the rights conferred by paragraph 1(c) "Coca leaf chewing" and paragraph 1(e) "Trade in the drug referred to under (c) for the purposes mentioned therein".[1]

BULGARIA

"(1) The Government of the People's Republic of Bulgaria accepts the provision of paragraph 2 of article 48 with the reservation that for any dispute to be referred to the International Court of Justice for decision, the agreement of all parties to the dispute shall be necessary in each individual case.

"(2) As regards countries which have been deprived of the opportunity of becoming parties, on the basis of the provisions of article 40 of the Single Convention on Narcotic Drugs, 1961, to the Convention, the Government of the People's Republic of Bulgaria does not consider as obligatory upon herself points 2 and 3 of article 12, point 2 of article 13, points 1 and 2 of article 14 and sub-point 1(b) of article 31."

BURMA

"I declare that my signature to this Single Convention is subject to the understanding that the Shan State is being allowed to have reservation of the right:

"(1) to allow addicts in the Shan State to smoke opium for a transitory period of 20 years with effect from the date of coming into force of this Single Convention;

"(2) to produce and manufacture opium for the above purpose;

"(3) to furnish list of opium consumers in the Shan State after the Shan State Government has completed the taking of such list on the 31st December, 1963."

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

The Government of the Byelorussian Soviet Socialist Republic will not consider itself bound by the provisions of article 12, paragraphs 2

[1] Translation by the United Nations Secretariat.

and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1 (b) of the Single Convention on Narcotic Drugs as applied to States not entitled to become Parties to the Single Convention on the basis of the procedure provided for in article 40 of that Convention."

CZECHOSLOVAKIA

"The Government of the Czechoslovak Socialist Republic is not bound by the provisions of article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1(b) of the Single Convention on Narcotic Drugs, 1961, concerning those States, which have been deprived of the possibility to become Parties to the Single Convention on Narcotic Drugs, 1961, according to the procedure embodied in the article 40 of the aforesaid Convention."

HUNGARY

"(1) The Government of the Hungarian People's Republic accepts the provision of paragraph 2 of article 48 with the reservation that for any dispute to be referred to the International Court of Justice for decision, the agreement of all parties to the dispute shall be necessary in each individual case.

"(2) As regards countries which have been deprived of the possibility of becoming parties, on the basis of the provisions of article 40 of the Single Convention on Narcotic Drugs, 1961, to the Convention, the Government of the Hungarian People's Republic does not consider as obligatory upon herself points 2 and 3 of article 12, point 2 of article 13, points 1 and 2 of article 14 and sub-point 1(b) of article 31."

INDIA

Reservations made upon ratification:

"The reservations referred to in Article 49 (1) (a), (b), (d) and (e) of the Convention, namely, subject to the right of the Government of India to permit temporarily in any of its territories;

"(a) the quasi-medical use of opium,

"(b) opium smoking,

"(d) the use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes, and

"(e) the production and manufacture of and trade in the drugs referred to under (a), (b) and (d) above for the purposes mentioned therein."

Declaration made upon ratification:

"Since the Government of India do not recognise the Nationalist Chinese authorities as the competent Government of China, they cannot regard signature of the said Convention by a Nationalist Chinese Representative as a valid signature on behalf of China."

INDONESIA

"Subject to ratification and to reservations to article 48, para. 2 and to a declaration of intention to make reservations to articles 40 and 42 in accordance with the attached text."

[2] Translated by the United Nations Secretariat.

"(1) With respect to article 40, paragraph 1, the Indonesian Government does not agree to the present formulation which does not permit any State which wishes to become a Party to this Convention to do so.

"(2) With respect to article 42, the Indonesian Government does not agree to the present formulation which may prevent the application of this Convention to non-metropolitan territories.

"(3) With respect to article 48, paragraph 2, the Indonesian Government does not consider itself bound by the provisions of this paragraph which provide for a mandatory reference to the International Court of Justice of any dispute which cannot be resolved according to the terms of paragraph 1. The Indonesian Government takes the position that for any dispute to be referred to the International Court of Justice for decision the agreement of all the parties to the dispute shall be necessary in each individual case."

NETHERLANDS

In view of the equality from the point of view of public law between the Netherlands, Surinam and the Netherlands Antilles, the term "non-metropolitan" mentioned in article 42 of this Convention no longer has its original meaning so far as Surinam and the Netherlands Antilles are concerned, and will consequently be deemed to mean "non-European".[3]

PAKISTAN

"* * * the Government of the Islamic Republic of Pakistan will permit temporarily in any of its territories:

"(i) the quasi-medical use of opium;

"(ii) the use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes, and

"(iii) the production and manufacture of and trade in the drugs referred to under (i) and (ii) above."

PERU

Ad referendum with reservations regarding article 49, paragraphs 2(*b*) and 4(*b*).[4] Reservation withdrawn at time of ratification.

POLAND

"The Government of the Polish People's Republic does not consider itself being bound by the provisions of article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1(b) of the Single Convention on Narcotic Drugs, 1961, and concerning States deprived of the opportunity to participate in the above Convention.

"In the opinion of the Government of the Polish People's Republic it is inadmissible to impose obligations contained in the mentioned provisions, upon States which in result of other provisions of the same Convention may be deprived of the opportunity to adhere to it."

UKRAINIAN SOVIET SOCIALIST REPUBLIC

The Government of the Ukrainian Soviet Socialist Republic will not consider itself bound by the provisions of article 12, paragraphs 2 and

[3] Translation by the United Nations Secretariat.

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3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1(b) of the Single Convention on Narcotic Drugs as applied to States not entitled to become Parties to the Single Convention on the basis of the procedure provided for in article 40 of that Convention.[4]

UNION OF SOVIET SOCIALIST REPUBLICS

The Government of the Union of Soviet Socialist Republics will not consider itself bound by the provisions of article 12, paragraphs 2 and 3, article 13, paragraph 2, article 14, paragraphs 1 and 2 and article 31, paragraph 1(b) of the Single Convention on Narcotic Drugs as applied to States not entitled to become Parties to the Single Convention on the basis of the procedure provided for in article 40 of that Convention.[5]

UNITED ARAB REPUBLIC

"It is understood that ratification by the United Arab Republic of this Convention does not mean in any way a recognition of Israel by the Government of the United Arab Republic. Furthermore, no treaty relations will arise between the United Arab Republic and Israel."

[4] Translation by the Secretariat.
[5] Translation by the Secretariat.

APPENDIX 6

90TH CONGRESS, 1st Session } SENATE { EXECUTIVE REPT. No. 11

CONVENTION ON NARCOTIC DRUGS, 1961

MAY 3, 1967.—Ordered to be printed

Mr. FULBRIGHT, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Ex. G, 90th Cong., first sess.]

The Committee on Foreign Relations, to which was referred the Single Convention on Narcotic Drugs, 1961, open for signature at New York, March 3, 1961 to October 1, 1961 (Ex. G, 90th Cong., first sess.), having considered the same, reports favorably thereon without reservation and recommends that the Senate give its advice and consent to accession thereto.

BACKGROUND AND PURPOSE

The Single Convention on Narcotic Drugs (1961) was formulated at a United Nations Conference held in New York from January 24 through March 25, 1961. It is designed to terminate and replace the provisions of eight existing multilateral treaties, to simplify international narcotic control machinery, and to provide additional measures for the international control of narcotic drugs.

During the period the convention was open for signature (Mar. 30 to Aug. 1, 1961), it was signed by 64 countries, *not* including the United States. As of this date, 34 of those countries have deposited their instruments of ratification and 20 other countries have acceded to it. The main reason the convention was not signed for the United States in 1961 was because the convention permits any country to produce and export up to 5 tons of opium and it was feared that this would result in increased illicit drug traffic. In addition, it was felt that the provisions permitting reservations would have a crippling effect on international narcotics control measures. According to the Department of State, however, neither of these concerns has materialized and now it is believed that the "national and international interest in drug control will be significantly advanced" by U.S. accession to the single convention.

Provisions of Convention

The Single Convention of 1961 contains detailed provisions relating to the control of narcotic drugs ranging from their production, sale, and distribution to recommendations involving the medical treatment, care, and rehabilitation of drug addicts. For example it lists four schedules of narcotic drugs classified according to the degree of their addicting liability; it requires the establishment of a national agency to supervise and control the cultivation of the coca bush and the cannabis plant; and it provides for the carriage of drugs in first-aid kits aboard ships and aircraft engaged in international traffic.

In addition, the convention limits the production, manufacture, sale, and distribution of narcotic drugs to medical and scientific needs. All parties to the convention are required to furnish annually to the International Control Board estimates of their requirements for narcotic drugs and statistical returns showing the production or manufacture of drugs, and the stocks on hand as of the end of each year. Parties are also required to exercise control over persons engaged in the trade or distribution of narcotic drugs and to license manufacturers and distributors of such drugs.

Under the terms of article 41, the single convention will enter into force for the United States 30 days after its instrument of accession is deposited.

A comprehensive explanation and analysis of the convention is contained in a statement submitted by the Treasury Department which has been incorporated in the appendix to this report.

Committee Action and Recommendation

The Committee on Foreign Relations held a public hearing on the pending convention on April 27, 1967, at which time testimony in support of it was received from Mr. Walter M. Kotschnig, Deputy Assistant Secretary of State for International Organization Affairs, Mr. James Pomeroy Hendrick, Special Assistant to the Secretary of the Treasury (for enforcement), and Mr. H. J. Anslinger, former Commissioner of the Bureau of Narcotics. Their statements are reprinted in the appendix for the information of the Senate and the public. No witness testified against the convention and the committee has received no indication of opposition to it at this time from any source in this country.

The convention was considered in executive session on May 2, 1967, and it was ordered reported favorably with the recommendation that the Senate give its advice and consent to accession thereto.

APPENDIX

STATEMENT BY WALTER M. KOTSCHNIG, DEPUTY ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL ORGANIZATION AFFAIRS, ON PROPOSED ACCESSION BY THE UNITED STATES OF AMERICA TO THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961

Mr. Chairman, members of the committee; I should like to express my appreciation for the opportunity to present the views of the Department of State concerning the Single Convention on Narcotic Drugs, 1961.

The Department of State strongly hopes the Senate will give advice and consent to accession to this convention. The Department firmly believes that it is in the interest of the United States that we become a party thereto.

The steps which led up to the convention which is now before the Senate may be briefly described.

BACKGROUND OF THE CONVENTION

In 1948, on the proposal of the U.S. representative, Mr. Harry J. Anslinger, the Commission on Narcotic Drugs recommended to the Economic and Social Council of the United Nations that it adopt a resolution requesting the Secretary General to begin work on the drafting of a single convention.

The Council, on July 28, 1958, adopted a resolution requesting the Secretary General to convene a plenipotentiary conference for the adoption of a single convention on narcotic drugs to replace the existing multilateral treaties in the field.

The Conference met from January 24 to March 25, 1961, at United Nations headquarters in New York. Seventy-four governments participated.

The Conference adopted the convention by a vote of 46 to none, with eight abstentions, and the convention was open for signature from March 30 to August 1, 1961, during which period it was signed for 64 countries. It entered into force on December 13, 1964. Fifty-five countries are now parties to it.

The convention represents an important step forward in the international narcotics control system. It terminates and replaces, as between the parties thereto, eight existing multilateral agreements in their entirety and the provisions of one article in a ninth agreement. It reduces the number of treaty organs exclusively concerned with the control of narcotic drugs, and makes provision for a comprehensive system of control of cultivation of the opium poppy, cannabis, and coca leaves. For the first time in any treaty, the convention contains a provision relative to treatment of drug addicts.

RECORD OF UNITED STATES EFFORTS

The United States did not sign the convention for several reasons. The principal reason was a concern that omission from the convention of the "closed list" provision embodied in the 1953 protocol, under which only seven named countries could engage in the production of opium for export, might result in many additional countries engaging in such production and a consequent spiraling of the amount of opium that would be diverted into the illicit traffic.

Another reason for not signing the convention was a concern that the provisions permitting reservations would result in States making reservations that would cripple the international measures necessary for the control of narcotic drugs.

We had looked to the 1953 protocol, which for the first time provided for the control of production of opium, and which was negotiated as an interim measure pending negotiation of the single convention, to provide effective controls, In the meantime, the single convention, which was much greater in scope, was negotiated,

Contrary to our apprehensions, neither the omission of the "closed list" provision from the single convention nor the provisions permitting reservations have affected the application of the convention, nor does it seem they are likely to do so in the future.

Although under a provision of article 24 of the convention any country can undertake the production of opium for export in amounts not exceeding 5 tons annually, there is no record of any country having undertaken the production of opium for export under that provision since the convention entered into force.

The reservations that have been made to the convention have been modest and of little apparent effect when compared with the reservations that are permitted under its provisions. Experience under the convention during the past 2 years has not shown that the reservations made have resulted in any apparent weakening of the international controls provided in the convention.

It is evident from the relatively large number of ratifications and accessions to the single convention that have taken place in the few years since it was signed that it will become the most widely accepted of the narcotics control treaties.

Since the early part of the 20th century the United States has been a leader in efforts aimed at the international control of narcotics, and we should endeavor to maintain that longstanding leadership.

Experience has now shown that the concerns that had first been felt regarding the single convention have not been realized. As is well known, the United States is the chief target of the illicit traffic. Because of this it is in our own interest that we become a party to the single convention, which extends controls farther than any previous agreement.

I urge, therefore, that the committee give favorable consideration to this convention.

STATEMENT OF JAMES POMEROY HENDRICK, SPECIAL ASSISTANT TO THE SECRETARY OF THE TREASURY (FOR ENFORCEMENT), IN CONNECTION WITH THE RATIFICATION OF THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961

The Treasury Department supports ratification of the 1961 Single Convention on Narcotic Drugs.

In candor it must be said that this support has not been given by Treasury in the past. The circumstances which prompted that negative position, however, have changed. In 1964, 3 years after its adoption, the single convention was brought into force by the deposit of a sufficient number of ratifications or accessions. The fear that the convention would weaken the system of international narcotic control, however justifiable this fear may have been several years ago, has not been realized. There is nothing to be gained by standing off any longer from the single convention. This convention binds the states which are parties thereto to more obligations respecting more drugs than any single multilateral agreement in the history of international narcotic control.

Even though it is not a party, the United States is already bound by earlier multilateral agreements to most of the obligations imposed by the convention, and it is satisfying voluntarily those obligations to which it is not legally bound.

Moreover, by acquiring the status of a party, the United States would improve its standing to insist on compliance by other states with the provisions of the convention. It would have a more effective voice in the application of the convention and it would also be in a position to propose and participate in the consideration of amendments to the convention.

PURPOSES AND ADOPTION OF THE SINGLE CONVENTION

In 1948 the United Nations Economic and Social Council, following a U.S. initiative and a request by the Commission on Narcotic Drugs, adopted a resolution inviting the Secretary General of the United Nations to begin work on drafting a single convention. The original purposes with which the idea of a single convention was conceived were to combine existing multilateral agreements on narcotic drugs into a single instrument, to revise and strengthen these agreements where necessary, and to simplify the machinery of international control. These were all commendable purposes. To a large extent they were well served by the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs held in New York in 1961. Seventy-four states, including the United States, were represented at that Conference. Several international bodies and specialized agencies, including the World Health Organization, were also represented. The Conference, convened under a 1958 resolution of the Economic and Social Council, had before it the third draft of a single convention, a compilation of comments thereon, and other documentation prepared by the Secretariat.

The agreement adopted by the Conference differed in several respects from the draft under consideration. It did, however, consolidate in one comprehensive treaty the most important obligations of the separate multilateral agreements then in force. Among these were the obligations of parties to furnish annual estimates of drug re-

quirements, not to exceed these estimates and not to export drugs to States that did exceed these estimates, to furnish periodic statistical data relative to production, export and import, and consumption of drugs, to limit the manufacture and distribution of drugs, to condition the import and export of drugs on the issuance of import certificates and export authorizations, and many others. A complete summary of the provisions of the 1961 single convention is attached to this statement. The convention also contained a stipulation in article 44 that it would, upon its coming into force and as between the parties thereto, terminate and replace in their entirety the provisions of eight multilateral treaties as well as article 9 of the 1936 Convention for the Suppression of Illicit Traffic in Dangerous Drugs.

In these respects the convention was a forward step; it was the codification of existing international law which it had taken three drafts, representing 15 years of effort and a United Nations Conference, to produce. Moreover the convention not only continued existing treaty obligations but created important new ones, as for example those found in articles 25 to 28 respecting cultivation of poppy straw (from which morphine may be derived), the coca bush and coca leaves (from which cocaine is derived), and the cannabis plant (from which marihuana and hashish are derived), and the requirement in article 38 that the parties give special attention to the provision of facilities for the medical care and treatment and rehabilitation of drug addicts. There was also created by articles 2(5) and 3(5) a new schedule or regimen of control (schedule IV) for drugs found by the World Health Organization to produce ill effects and to have a particular liability for abuse where such liability is not offset by therapeutic advantages not possessed by other substances. It is strongly recommended that production, trade, and use of drugs in this category, which already includes heroin and cannabis, be limited to amounts necessary for medical and scientific research. In respect to these and other new obligations and procedures enjoined upon parties, the convention was progressive and entirely worthy of support. A summary of the provisions in the single convention not found in any earlier multilateral agreements is attached to this statement.

Finally, the convention streamlined the machinery of international control, principally by the provision of articles 9 and 45 establishing one body, the International Narcotics Control Board, to assume the combined functions which previously had been separately discharged by the Permanent Central Narcotics Board and the Drug Supervisory Body.

Clearly there was much to recommend the single convention. At the same time there were points against it, reasonable ones in their historical context, which heretofore caused the Treasury Department to oppose ratification of the convention by the United States.

THE SINGLE CONVENTION AND THE 1953 OPIUM PROTOCOL

The fundamental idea of all narcotics control is to limit narcotic supplies and uses to legitimate medical and scientific needs. The history of international control can be traced through a series of multilateral agreements dating back to 1912. The process has been a gradual one, each agreement adding new obligations and binding new parties to the control system. Without giving a full account of this long process, it may be said that by 1953 one of the principal weaknesses of the system was the lack of any limitation on the production of the natural raw materials used in the manufacture of narcotic drugs. Without such limitations world production of opium often outstripped by a wide margin the world's medical and scientific needs for opium, and a considerable part of the excess production was flowing into the illicit traffic in the form of morphine, heroin, and other opium derivatives. The need to close this gap led to the convening of a United Nations Opium Conference and ultimately to the adoption of the 1953 Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade In, and Use of Opium.

The 1953 protocol, which was ratified by the United States in 1954, required 25 ratifications or accesssions, including at least three of the designated producing states and three of the designated manufacturing states, to come into force. This condition of entry into force was not met until March 1963. Thus the 1953 protocol was a pending matter when the single convention was adopted in 1961.

At the Conference for the Adoption of a Single Convention, the U.S. delegation, which included Treasury representatives, took the position that all substantive provisions of the 1953 protocol, even though this agreement was not yet in force, should be incorporated in the single convention. Many of these provisions were in fact carried over. Others, however, were either modified or omitted. The most important provisions of the 1953 protocol which were modified in the 1961 single convention or excluded entirely are as follows:

"(1) THE 'CLOSED LIST' OF OPIUM EXPORTING COUNTRIES

"Article 6 of the 1953 Protocol established a 'closed list' of seven States permitted to produce opium for export. The authorized producing States were Bulgaria, Greece, India, Iran, Turkey, Yugoslavia, and the U.S.S.R. The Parties to the Protocol were prohibited from importing opium from any State which was not both a Party to and an authorized producer under the Protocol. However, among the authorized producers, only Greece, India, Iran, and Turkey became Parties to the Protocol. Of these Iran has prohibited production, and Greece produces very little, leaving in effect only two producing countries that are Parties—India and Turkey.

"Article 24 of the 1961 Single Convention requires a Party intending to initiate the production of opium to take account of the prevailing world need for opium, and further not to initiate such production if it might result in illicit traffic. Subject to these obligations, any Party may produce opium for export, in amounts not exceeding five tons annually, upon notice to the International Narcotics Control Board. The Board can recommend against such production by a Party, but neither that Party nor any Party desiring to import the opium involved is bound to observe the recommendation. A Party desiring to produce opium for export in amounts exceeding five tons annually must notify the Economic and Social Council. The Council may either approve or recommend against such production. If the Council recommends against, other Parties are prohibited from importing opium from the Party giving the notification. Special provision is made for production and export by Parties which were producing and exporting for ten years prior to January 1, 1961.

"(2) LIMITATIONS ON OPIUM STOCKS

"Article 5 of the 1953 Protocol requires Parties to limit stocks of opium held as of December 31 of any year to specified maximum amounts. This provision was designed to prevent accumulations of opium in excess of any foreseeable world needs. The maximum permissible holdings of opium stocks were fixed at high levels. Countries not Parties to the 1953 Protocol are free to purchase opium from any country not a Party to that Protocol. That Protocol does not prohibit any country from producing opium except for export.

"The only provisions in the 1961 Single Convention relating to stocks are the requirements in Articles 19 and 20 that Parties furnish the Board with estimates and statistical returns concerning stocks of drugs, including opium.

"(3) ESTIMATES AND STATISTICS ON AREAS CULTIVATED FOR OPIUM

"Articles 8 and 9 of the 1953 Protocol require opium producing Parties to furnish annual estimates and statistics concerning the extent of the area under poppy cultivation.

"As stated above, Article 20 of the 1961 Single Convention requires Parties to furnish annual statistical data on the production of drugs, including opium. Parties may, but need not, furnish data on the area under cultivation for the production of opium.

"(4) LOCAL INQUIRY

"Article 11 of the 1953 Protocol authorizes the Permanent Central Narcotics Board, when it considers that a local inquiry would be helpful in supervising the operation of the Protocol, to propose that a person or committee of inquiry be sent to the State in question. The inquiry can be made only upon the express consent of such State, and then only in collaboration with designated officials of that State.

"The 1961 Single Convention makes no provision for a local inquiry.

"(5) RECOMMENDED AND MANDATORY EMBARGO

"Article 12 of the 1953 Protocol empowers the Permanent Central Narcotics Board, if it finds that a Party has failed substantially to carry out its obligations under the Protocol, or that any State is seriously impeding the effective administration of the Protocol, or that excessive quantities of opium are accumulating in any State, to (a) recommend to the Parties an embargo on the import or export of opium, or both, from or to the State concerned, or (b) announce its intention to impose an embargo in the State concerned, and, if the announcement does not remedy the situation and if lesser measures such as a public statement do not suffice, impose a mandatory embargo on the import or export of opium, by Parties, from or to the State concerned.

"Article 14 of the 1961 Single Convention empowers the International Narcotics Control Board, if it has reason to believe that the aims of the Convention are being seriously endangered by the failure of any State to carry out the provisions of the Convention, to request explanations from that State and propose such remedial actions as seem necessary. If the explanations are not satisfactory and the

proposed remedial actions are not adopted, the Board may recommend to Parties that they stop the import or export of drugs, including opium, from or to the State concerned."

Following adoption of the 1961 single convention at the Plenipotentiary Conference, the United States took the position that a system of international narcotics control consisting of several separate treaties, including the 1953 opium protocol, was preferable to a system consisting of a single treaty which did not incorporate important provisions of the 1953 opium protocol. Accordingly, it became official U.S. policy to encourage and support ratifications of the 1953 opium protocol and at the same time to discourage and oppose ratifications of the 1961 single convention. This policy succeeded in one respect but failed in another. The opium protocol became effective in 1963, but the single convention became effective the following year. The single convention will be in full operation when the International Narcotics Control Board enters upon its functions in March 1968. Until that time these functions are being performed by the Permanent Central Narcotics Board and the Drug Supervisory Body.

Whatever the imperfections of the single convention with respect to the control of opium production, the Treasury Department is now persuaded that they are far outweighted by the broad coverage of the treaty, both as to states and as to drugs, and by the fact that it is becoming the foremost instrument of international narcotic control. Moreover the imperfections of the convention do not appear as real or sugnificant as they did a few years ago. There has not been a rush of states into the business of producing opium either for their own needs or for export, and it seems unlikely that there will be. As the Permanent Central Narcotics Board has pointed out in its reports for the years 1965 and 1966, formidable difficulties await any party that would embark on the cultivation of poppies for the purpose of producing opium. They would first have to take account of the world need for opium to insure against overproduction, and there is in fact no present need for additional opium. They would, second, have to establish the complex and expensive internal administrative machinery (a national agency, licensing of cultivators, purchase and possession to the total harvest, maintenance of stocks, etc.) required by the convention. And, third, if they wanted to produce more than 5 tons annually for export (this is the only kind of production that would make any possible economic sense) they would risk an adverse recommendation by the Economic and Social Council, which would be binding on other parties. The net result of all this is that, even without the "closed list" of exporting countries established by the 1953 opium protocol, there are adequate legal and practical controls on the production of opium.

Similarly the absence of a mandatory embargo provision in the single convention is not a fatal weakness. The real authority of the Board derives not so much from its legal power to impose sanctions as from the consent of parties to abide by the spirit and stipulations of the convention. Therefore a recommendation by the Board that parties stop the import or export of drugs from or to an offending state, authorized by the single convention, should have the same force and effect as a mandatory embargo imposed under the 1953 opium protocol. It should also be noted that no form of embarbo has ever been recommended or imposed under either treaty.

There is a further point to be made in connection with the 1953 opium protocol. That is that obligations under this treaty were not automatically terminated by the single convention. Upon its coming into force and as between parties thereto, the convention did terminate and replace the provisions of existing multilateral treaties. But as between states only one of which, or neither of which, is a party to the single convention, existing obligations were not affected. This means that all parties to the 1953 opium protocol, including the United States, will remain bound by that treaty unless they denounce it or until they all become parties to the 1961 single convention. At present there are some 50 states which are parties to the 1953 opium protocal or consider themselves bound by it because its application had been extended to their territory prior to independence. At least half of these 50 states have not yet become parties to the single convention.

RESERVATIONS

An apparent potential weakness of the single convention was the opportunity created in articles 49 and 50 for states, at the time of signature, ratification, or accession, to make reservations to certain provisions of the convention. There are three categories of permissible reservations:

(1) *Transitional reservations.*—Parties may reserve the right to permit temporarily, in territories where these activities were traditional and actually permitted as of January 1, 1961, the quasi-medical use of opium, opium smoking, coca leaf chewing, the nonmedical use of cannabis (marihuana), and production and distribution of the drugs involved for these purposes. Specified conditions must be observed during the transitional period, and the activities must be discontinued entirely in a fixed number of years. Similar reservations respecting opium were permissible under the 1953 opium protocol. Transitional reservations under the single convention have been made by Argentina, Burma, India, and Pakistan.

The aims of the convention and the operations of the international control system are not endangered by transitional reservations. Such reservations look to the ultimate prohibition of harmful nonmedical uses of drugs, and they are granted only on very restrictive terms.

(2) *Other reservations by parties.*—Parties may also declare reservations to provisions of the convention dealing with the administration of the estimates system, administration of the statistical returns systems, the Board's powers of enforcement, international trade, and the settlement of disputes. If exercised to the fullest possible extent, these reservations would deprive the Board, as to any party making the reservations, of its authority to establish estimates, to examine statistical returns with a view to determining compliance with the convention, to call for explanations or the adoption of remedial measures or to recommend an embargo, and to require certain limitations on the export of drugs. Another permissible reservation enables states to avoid the procedure for referring disputes which cannot be settled by mutual consultation to the International Court of Justice.

It can readily be seen that if enough states availed themselves of their right to make reservations to their full permissible extent, the authority of the Board and thus the operation of the international control system would be crippled. In fact, however, only a small minority of the parties to the convention have made any reservations

whatever and these have been narrow and limited in effect. Six parties (Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Poland, and the U.S.S.R.) have declared that they do not consider themselves obligated, in their relations with states which are not entitled to become parties to the convention, by any of the provisions to which reservations are possible. Several other parties (Argentina, Bulgaria, Hungary, and Indonesia) have made reservations to the effect that they do not recognize the compulsory jurisdiction of the International Court of Justice.

The few reservations made by parties have not materially impaired the authority of the Board and have had no apparent effect on the functioning of the control system.

(3) *Other reservations by states desiring to become parties.*—If states wish to become parties to the convention subject to reservations which the convention does not permit, they may propose such reservations. Unless one-third of the parties object within a year, such reservations are permitted. No state has yet resorted to this procedure.

The Treasury Department does not propose that any reservations be made by the United States at the time of accession to the single convention.

REASONS FOR ACCEDING TO THE 1967 SINGLE CONVENTION

The 1961 single convention is the culmination of more than 55 years of effort and progress in the field of international narcotics control. It embodies the fundamental principles of control which have evolved during this time; namely, that the production and use of narcotic drugs should be restricted to medical and scientific purposes, that their manufacture and import should be limited to quantities necessary for such purposes, and that every step from the cultivation of the basic raw materials to the final retail distribution of the manufactured drug should be carefully regulated and supervised. Mutual obligations among states based on these principles have been undertaken in the past and are evidenced by a series of separate multilateral agreements. These various agreements bind states to establish national control agencies, to license persons and establishments engaged in handling narcotic drugs, to submit periodic reports to international agencies, to control exports and imports by authorizations, and to do many other things. The single convention, however, for the first time brought these obligations together in one instrument commanding wide acceptance among states, and this is a fundamental reason for accession.

The single convention is not only the most comprehensive of all international narcotic treaties in the sense that it binds the parties to the greatest number of obligations respecting narcotic substances. It is also the most comprehensive in the sense that it extends coverage of the control system to substances never covered before. The raw materials from which cocaine and marihuana are derived, for example, are placed under international control for the first time, as are the drugs themselves. This too is a fundamental reason for accession to the single convention.

There are numerous subsidiary but important reasons for accession. The single convention broadens the coverage of the estimates system and the system of export and import authorizations, simplifies the statistical returns system, recommends that drugs with particular

abuse liability be made available only for purposes of research, improves the procedure for placing new drugs under international control and for changing applicable controls, reorganizes the international control agencies, and urges states for the first time to provide adequate facilities for the medical treatment and rehabilitation of drug addicts. In each of these respects the single convention represents an advance on existing international treaty law.

The single convention is not yet universally accepted. Nevertheless it is anticipated that as the single convention gathers more adherents and approaches universality of application, states which are not parties will feel morally bound by its spirit and intent even though they are not legally bound by its provisions. The United States can add to this force of world opinion by its accession to the single convention.

Traditionally the United States has taken the lead in international narcotic control. To assert that position of leadership today, and to participate effectively in the control system and agencies, the United States should become a party to the most comprehensive of all international control agreements. Particularly is this course of action indicated by the fact that the single convention imposes no obligations not already being satisfied by the United States.

Analysis of the 1961 Single Convention

Most of the provisions of the 1961 single convention were contained in one or another of the earlier multilateral agreements on narcotic drugs. Together they had never appeared before in any single instrument.

Article 1. Definitions.

Article 2. Substances under control: The drugs and preparations covered by the convention are arranged in four schedules, with different measures of control applicable to each. Drugs in schedule I are subject to all the controls in the convention; drugs in schedule II are exempted from certain controls respecting the retail trade; preparations in schedule III are exempted from certain controls respecting estimates, statistics, and international trade. Drugs in schedule IV are also included in schedule I but are subject to additional measures of control.

Opium, the coca leaf, and cannabis, and the plants from which they come, are subject to special additional controls respecting production and cultivation.

Article 3. Changes in the scope of control: Procedures are provided for amending the schedules where findings about a drug or preparation justify a change in its status. New drugs may be added to the schedules. Decisions amending the schedules are made by the Commission on Narcotic Drugs upon recommendation by the World Health Organization and are subject to review by the Economic and Social Council at the request of any Party.

Article 4. General obligations: The parties undertake to carry out the provisions of the convention in their own territories, to cooperate with other states in executing the convention, and to limit the availability and use of drugs exclusively to medical and scientific purposes.

Articles 5–7. The international control organs, their expenses, and review of their decisions: The parties recognize the Commission on

Narcotic Drugs of the Economic and Social Council, and the International Narcotics Control Board, as competent to carry out the functions assigned by the convention. Provision is made for their expenses and for review of their decisions.

Article 8. Functions of the Commission: To amend the schedules, make recommendations for implementing the convention, and communicate decisions and recommendations to nonparties.

Articles 9–11. Composition of the Board, terms of office and remuneration of members, and rules of procedure: The Board consists of 11 members elected by the Council from lists of persons nominated by the World Health Organization, by members of the U.N., and by parties which are not members of the U.N. The term of office is 3 years. The Board meets at least twice a year and elects its own officers.

Article 12. Administration of the estimate system: Estimates are submitted at times and in a manner prescribed by the Board. The Board establishes estimates for states which are not parties and which do not furnish estimates on request. The Board examines the estimates, requests additional information where necessary, and confirms or amends such estimates. The Board issues information on the estimates at least annually.

Article 13. Administration of the statistical returns system: Statistical returns are submitted in the form and manner prescribed by the Board. The Board examines the returns to determine compliance with the convention. Additional information may be required by the Board to complete or explain the returns.

Article 14. Measures by the Board to insure execution of the provisions of the convention: Where the Board has reason to believe that the aims of the convention are seriously endangered by the failure of any state to carry out its provisions, it may first request confidential explanations and then call upon the state concerned to adopt necessary remedial measures. If the explanations are not satisfactory and the proposed remedial measures are not adopted, the Board may call the situation to the attention of the parties, the Council, and the Commission, and, if necessary, recommend to parties that they stop the import or export of drugs, or both, from or to the state concerned.

The Board may publish reports on matters dealt with under this article. States directly interested in decisions under this article may be represented at meetings of the Board.

Articles 15–16. Reports of the Board and Secretariat: The Board prepares annual reports on its work and additional reports if necessary. The Secretary General supplies secretariat services to the Commission and the Board.

Article 17. Special administrations: Parties must maintain special administrations to apply the provisions of the convention.

Article 18. Information to be furnished by parties: Parties furnish annual reports on the working of the convention within their territories, the text of implementing laws and regulations, and particulars concerning the illicit traffic.

Article 19. Estimates of drug requirements: Parties furnish the Board with annual estimates of the quantities of drugs to be consumed for medical and scientific purposes, to be used in the manufacture of other drugs, to be held in stock at the end of the year, and to be added to special stocks. Supplementary estimates with explanations may be furnished. The method of determining the estimates must be shown.

Article 20. Statistical returns to be furnished to the Board: Parties furnish quarterly statistical returns respecting imports and exports of drugs and poppy straw, and annual statistical returns respecting production, manufacture, consumption, seizure and disposal, use in the manufacture of other drugs, and stocks on hand at the end of the year. Returns may be furnished respecting the area under poppy cultivation.

Article 21. Limitation of manufacture and importation: The total quantity of any drug manufactured or imported by any state in any year may not exceed the total estimated drug requirements of such state. If it appears that such total has been exceeded, the Board gives notice of this fact and parties may not thereafter during the year authorize exports of the drug in question to the state in question.

Article 22. Special provision applicable to cultivation: Parties must prohibit the cultivation of the opium poppy, the coca bush, or the cannabis plant where, in their opinion, this is the most suitable measure for protecting the public health and welfare, and for preventing the diversion of drugs into the illicit traffic.

Article 23. National opium agencies: Parties permitting the cultivation of the poppy for the production of opium (the United States does not permit such cultivation) must establish and maintain a government agency to designate areas for cultivation, license cultivators, take control of the entire opium crop, and exercise exclusive control over exports, imports, and stocks of opium.

Article 24. Limitation of production of opium for international trade: Parties intending to initiate or increase the production of opium must take account of the prevailing world needs and the risks of overproduction. If they desire to produce opium for export in amounts not exceeding 5 tons annually, they must notify the Board of the controls in force and the intended destination of the opium. The Board may approve the production or recommend against it, but parties are not bound by an adverse recommendation.

Parties desiring to produce opium for export in amounts exceeding 5 tons annually must notify the Economic and Social Council of the controls in force, the destination of the opium, and the estimated amount of production. The Council may either approve the production or recommend against it, and in the event of an adverse recommendation other parties are bound not to import opium from the party giving the notification.

Parties that produced and exported opium for 10 years prior to January 1, 1961, may continue to produce for export. Parties may also continue to import from any state that produced and exported opium for 10 years prior to January 1, 1961, and has the proper internal controls in force. Opium seized in the illicit traffic may be exported.

The article does not prevent, and no international agreement has ever prevented, a party from producing opium sufficient for its own requirements.

Article 25. Control of poppy straw: Parties that permit cultivation of opium poppies for straw must insure that opium is not produced from such poppies and that the manufacture of drugs from the straw is adequately controlled. Statistical data must be furnished respecting import and export of poppy straw, and the system of import certificates and export authorizations applies.

Articles 26–27. The coca bush and coca leaves: Parties which permit the cultivation of the coca bush must apply to it and to coca leaves the system of control made applicable to opium poppies by article 23, and must eradicate wild cultivation. The use of coca leaves for the preparation of a flavoring agent is permitted, but separate estimates and statistics must be submitted.

Article 28. Control of cannabis: Parties which permit the cultivation of the cannabis plant for the production of cannabis or cannabis resin must apply the system of control made applicable to the opium poppy by article 23. Steps to prevent misuse and illicit traffic must also be taken. The system need not be applied where parties cultivate cannabis exlusively for industrial purposes (fiber and seed).

Articles 29–30. Manufacture, trade, and distribution: Parties must license all manufacture, trade, or distribution of drugs, control the persons or enterprises engaged in these activities, license the establishments or premises where these activities take place, require that manufacturers obtain periodical permits specifying the kinds and amounts of drugs authorized to be manufactured, and prevent excessive accumulations of drugs in the hands of manufacturers, traders, and distributors. Medical and scientific personnel need not be licensed under these provisions when authorized to perform and while performing therapeutic and scientific functions.

Parties must require that drugs supplied to individuals (except medical personnel) be under medical prescriptions written, if necessary, on official forms. (No official prescription form is required by Federal law in the United States.)

Parties are urged to require that all advertisements, interior wrappings, and labels of drugs indicate the international nonproprietary name. (This would necessitate slight modifications of present U.S. procedures.) If desirable, parties are also urged to require that all inner packages of drugs or wrappings thereof shall bear a visible double red band. (An effective and informative, although not identical marking system is followed in the United States.) Labels must show the exact drug content by weight or percentage.

Article 31. Special provisions relating to international trade: Parties must not knowingly permit export of drugs to a country except in accordance with the laws and regulations of that country and within the total estimates for that country. Parties must license import and export, and control persons and enterprises engaged in these activities. Each import or export, whether it consists of one or more drugs, requires authorization by competent government authority. The authorization must state the name of the drug, international nonproprietary name, if any, quantity involved, names and addresses of parties to the transaction, and period within which transaction must be effected. Before issuing an export authorization the parties must require an import certificate issued by the importing country certifying that the importation referred to is approved. One copy of the export authorization must be sent to the importing country and one must accompany the consignment. Other provisions relate to the handling of authorizations and consignments.

Article 32. Special provisions concerning the carriage of drug by ships or aircraft in international traffic: Limited amounts of drugs necessary for medical purposes may be carried by ships or aircraft in international traffic. This is not considered import or export. Safeguards to prevent misuse or diversion are required.

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Article 33. Possession of drugs: Parties shall not permit possession of drugs except under legal authority.

Article 34. Measures of supervision and inspection: Parties shall require that persons licensed in accordance with the convention or responsible for its execution be properly qualified. They shall require that records of manufacture, acquisition, and disposal be maintained by appropriate persons and preserved for a period of not less than 2 years.

Articles 35–37. Action against the illicit traffic, penal provisions, seizure, and confiscation: Parties having regard for their constitutional and legal systems, shall make arrangements at the national level for coordinating preventive and repressive action against the illicit traffic. They are required to cooperate with each other and with competent international agencies. They shall make willful acts contrary to the provisions of the convention punishable offenses and provide adequate penalties. Attempts and conspiracies shall also be made punishable offenses. Parties are urged to make serious offenses extradition crimes. All drugs, substances, and equipment used or intended for use in the commission of relevant offenses shall be subject to seizure and confiscation.

Article 38. Treatment of drug addicts: Parties are required to give special attention to treatment, care, and rehabilitation of drug addicts, and parties with serious addiction problems are urged to establish adequate treatment facilities. (In the United States there are two Federal narcotic hospitals, many State facilities, and more facilities contemplated by the Narcotic Addict Rehabilitation Act of 1966.)

Article 39. Application of stricter national controls: Parties are not precluded from adopting stricter measures of control than those provided in the convention.

Article 40. Procedure for signature, ratification, and accession: Specifies the states that may become parties to the convention and the procedures. The convention was open for signature until August 1, 1961. Thereafter it has remained open for accession by eligible states.

Article 41. Entry into force: The convention came into force on the 30th day following the deposit of the 40th instrument of ratification or accession. This occurred in December 1964. The convention would become effective respecting the United States on the 30th day after the deposit of its instrument of accession.

Articles 42–43. Territories and territorial application: The convention applies to all nonmetropolitan territories for the international relations of which any party is responsible, and if the consent of such territories is required the party concerned shall attempt to obtain the needed consent. Parties may notify the Secretary General that one of its territories constitutes two or more, or that two or more of its territories constitute one, for certain purposes under the convention.

Article 44. Termination of previous international treaties: Upon coming into force, and as between parties, the convention terminated and replaced the provisions of all prior multilateral narcotic treaties in their entirety except one, the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, and the provisions of this treaty were terminated and replaced in part. Each of the existing treaties can be denounced in accordance with their provisions. After March 8, 1968, 5 years after the date of its entry into force, the 1953 opium protocol can be denounced by parties thereto.

In the opinion of the State Department, based on established principles of international law, this article terminates obligations under prior treaties only as between parties to the convention. Each party to the convention which is also a party to any of the prior treaties must continue to observe its obligations under such prior treaties as to every other state which is a party thereto and which has not become a party to the single convention. The only way a party to the convention can be relieved of its obligations under prior treaties, so long as there remains any state which is a party to such prior treaties but not to the single convention, is by denouncing the earlier treaties.

This opinion has particular relevance in connection with the 1953 opium protocol, which the United States is a party to and which is the only one of the earlier treaties containing important provisions not incorporated in the 1961 single convention. Under the opinion every party to the 1953 opium protocol, including the United States, would be bound to its obligations under that protocol until and unless every party also became a party to the single convention.

Article 45. Transitional provisions: Provides that the International Narcotic Control Board established by the convention shall enter upon its duties on a date fixed by the Economic and Social Council (the date has already been fixed as March 1968). Until such time the Permanent Central Narcotics Board and the Drug Supervisory Body shall continue to function.

Articles 46–48. Denunciation, amendments, and disputes: Parties may denounce the convention after it has been in force for 2 years, and the convention will be terminated if such denunciations destroy the conditions for its coming into force. Amendments may be proposed only by parties and are considered by other parties either singly or in conference. If not objected to by any party within 18 months after being communicated to the parties, an amendment enters into force. Disputes between parties regarding the interpretation or application of the convention shall be settled by mutual consultation or if necessary by resort to the International Court of Justice.

Articles 49–50. Transitional and other reservations: Parties in whose territories these activities have been traditional may at the time of ratification or accession to the convention reserve the right to permit temporarily the quasi-medical use of opium, opium smoking, coca leaf chewing, the nonmedical use of cannabis, and production of and trade in these drugs for nonmedical purposes. Progress in phasing out these activities must be reported annually.

At the time of ratification or accession, parties may also make reservations respecting certain provisions of the convention dealing with the Board's administration of the estimates and statistical returns systems, with the Board's powers to enforce the convention, and with settlement of disputes.

Of the 54 states which had become parties to the 1961 single convention by January 1967, only a small minority made reservations of any kind at the time of ratification or accession. Argentina reserved the right to permit coca leaf chewing temporarily. Burma, India, and Pakistan reserved the right to permit temporarily nonmedical uses of opium and cannabis and the production of these drugs for these purposes. The Byelorussia S.S.R., Czechoslovakia, Hungary, Poland, the Ukrainian S.S.R., and the U.S.S.R., made reservations to the

effect that they did not consider themselves obligated, as to countries not eligible to become parties to the single convention under the terms of article 40, by the provisions of the convention which empower the Board to fix estimates, examine statistical returns, and enforce the treaty. Several parties have also made a reservation respecting the referral of disputes to the International Court of Justice, signifying by such reservations that they do not recognize compulsory jurisdiction on the part of the Court.

Article 51. Notifications: The Secretary General must notify all states eligible to become parties of ratifications and accessions by other states, dates of entry into force as to such other states, and denunciations and declarations by such other states.

Summary of New Provisions in the 1961 Single Convention

The following provisions are found in the 1961 single convention but not in any earlier multilateral agreement on narcotic drugs.

THE SYSTEM OF INTERNATIONAL CONTROL

1. The system of control is applied for the first time to the coca bush and coca leaves (from which cocaine is derived), and to the cannabis plant (from which marihuana and hashish are derived). For the first time conditions are stated under which cultivation of these plants shall be prohibited by parties. For the first time production and consumption of, and commerce in, the derivative drugs for other than medical or scientific purposes is prohibited. See articles 4, 22, 26, 27, and 28.

2. Import certificates and export authorizations are required in connection with poppy straw. See article 25.

3. More flexible procedures are created for amending the schedules of control, either by the addition of new drugs or by changing or eliminating existing controls applicable to a particular drug. See article 3.

4. A separate schedule (schedule IV) is established for drugs found by the World Health Organization to produce ill effects and to have a particular liability for abuse which is not offset by any substantial therapeutic advantages not possessed by less dangerous substances. Parties are urged to adopt special measures of control respecting drugs in this category, which already includes heroin and cannabis (the source of marihuana and hashish). Parties are also urged to prohibit the production, manufacture, export and import, trade, possession, and use of these drugs except for amounts necessary for medical and scientific research. See articles 2(5) and 3(5).

5. Where the World Health Organization finds that a substance is liable to similar abuse or productive of similar ill effects as the drugs in schedule I or schedule II, it may communicate such finding to the Commission on Narcotic Drugs with the recommendation that such substance be placed under control. This provision is new in the sense that drugs which are not narcotic and not addiction forming may now be brought for the first time within the control system. Cannabis, for example, is included in schedule I. It is not a narcotic and does not produce addiction as that term is defined by the World Health Organization. Substances which produce similar ill effects may now be placed

under control. Decisions amending any of the schedules are subject to review by the Economic and Social Council at the request of any party. See articles 3(3) and 3(8).

6. The estimates and statistical returns systems have been both simplified, so that fewer forms are now required to be submitted at longer intervals, and extended, so that more data on more drugs is now required. In addition, parties are now required to report statistical data on all seizures of illicit drugs, including those made within the interior of the country, whereas under the old treaties they were required to report data only on drugs confiscated as a result of illicit import or export. See articles 19 and 20.

7. Broadens the licensing requirements of premises and persons involved in the manufacture or distribution of narcotic drugs. Also broadens the requirement that records be kept of individual transactions. See articles 29, 30, and 34.

8. A requirement is imposed that drug manufacturers shall periodically obtain permits specifying the kinds and amounts of drugs they are authorized to manufacture. See article 29(2)(c).

ENFORCEMENT

1. The International Narcotic Control Board may, in the event the aims of the convention appear to be seriously endangered by the activities of a state, call upon that state to adopt necessary remedial measures. Under the terms of the 1953 opium protocol, the Board could only call upon states to study the possibility of adopting remedial measures, and even this power existed only in respect to opium. Of course the Board's embargo powers respecting opium were greater under the 1953 opium protocol than under the single convention. But under the single convention the Board may exercise its more limited embargo powers over a far wider range of drugs. See article 14.

ADDICTION

1. For the first time parties are urged to give special attention to the provision of adequate facilities for the effective medical treatment, care and rehabilitation of drug addicts. See article 38.

MISCELLANEOUS

1. The use of international nonproprietary names of drugs, as communicated by the World Health Organization, is recommended in connection with advertisements, interior wrappings, and labels. It is required in connection with import certificates and export authorizations. Labels must show the exact drug content by weight or percentage, and the use of double red bands on interior wrappings of packages is recommended. See articles 30(3), 30(4), 30(5), and 31(4).

2. The carriage of drugs by ships or aircraft in international traffic is authorized subject to conditions. See article 32.

3. The agreement, upon coming into force and as between parties thereto, replaces and terminates the provisions of all (with one exception in the case of the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs) existing multilateral agreements respecting narcotic drugs. Previous treaties on narcotic drugs, except

for the first one in 1912, supplemented rather than replaced existing ones.

STATEMENT OF H. J. ANSLINGER, FORMER COMMISSIONER OF THE BUREAU OF NARCOTICS

Mr. Chairman, and honorable members of the committee, it has always been the policy of the U.S. Government to endeavor to limit the production of opium to medical and scientific needs. We have not been without failures in our efforts to gain world acceptance of this principle.

The United States did not ratify the 1925 convention, as it would not include a provision for opium production. Also, we did not ratify the 1936 convention because it failed to include a provision for penalties for unlawful opium production. By 1953 a sufficient unanimity had been placed on the general principle of limiting production to bring about the opium protocol of 1953. For 9 years the protocol lay dormant. The requisite countries had not ratified.

In all drafts of the single convention and at the Plenipotentiary Conference we continued to press for restricted measures to limit production. Many countries were not in wholehearted agreement. The 1953 protocol became effective in 1963, but was never widely accepted by a large number of the states. Production was confined to seven countries.

The 1961 convention, as Mr. Kotschnig informed you, contained a provision for permitting any country to produce 5 tons for export. Several countries have already tried to take advantage of this provision but have been dissuaded.

The United States has always had an uphill climb over the issue of limiting opium production. Our difficulties have been encountered at times when the United States was traditionally the leader in obtaining international narcotic agreements. We can expect to accomplish even less if we are on the outer perimeter.

At the 20th session of the United Nations Commission on Narcotic Drugs, that was in December, the U.S. representative stated that the time had arrived to consider complete prohibition of opium production as synthetic narcotic drugs were available to replace opium and its alkaloids. We already have support for this policy from the several countries.

Another important reason for becoming a party to the 1961 convention is the marihuana problem. The United States has gained support from all countries for international and national controls for cannabis. Every country in the world has very strict legislation on cannabis. Several groups in the United States are loudly agitating to liberalize controls and, in fact, to legalize its use.

In the convention it is very specific that we must prevent its misuse. If the United States becomes a party to the 1961 convention we will be able to use our treaty obligations to resist legalized use of marihuana. This discussion is going on all over the country, in many universities, and in fringe groups, and it is rather disturbing.

The Supreme Court ruled in the case of *Missouri* v. *Holland*—that is on the protection of migratory birds—that the Constitution, the laws thereunder, and the treaties are the laws of the land.

At the 21st session of the United Nations Commission on Narcotic Drugs it was decided to invite the Secretary General to explore means of bringing LSD and other drugs, such as barbiturates and amphetamines under international control, and the Secretary General has been asked urgently to study the best legal and administrative means of bringing this about because, at the time the 1961 convention was negotiated, this question was not contemplated. LSD is causing serious concern in many nations, and there is a possibility that the Secretary General will recommend that it should be brought within the 1961 convention as a prohibited drug. This possibility indicates a further need for the United States to accede to this convention. We have already passed a resolution which will go to the Economic and Social Council next month to control this drug internationally.

The Government of France which, along with the United States has held out against becoming a party to the 1961 convention, recently announced it would accede to the convention. The French withheld this news until they had the assurance that the United States would accede, and both countries struggled hand in hand at the Conference to improve the convention.

With the coming establishment of the new International Narcotics Control Board, which will be voted on next month at the Economic and Social Council, our accession to the convention will allow us to have a proper voice in securing fulfillment by other countries of their treaty obligations and, at the same time, urge stronger controls to suppress the abuse of narcotic drugs throughout the world.

92D CONGRESS, 2d Session | SENATE | EXECUTIVE REPT. No. 92-33

PROTOCOL AMENDING THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961 (*)

SEPTEMBER 8, 1972.—Ordered to be printed

Mr. STONG, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Ex. J, 92d Cong., second sess.]

The Committee on Foreign Relations, to which was referred the Protocol Amending the Single Convention on Narcotic Drugs, 1961, signed for the United States at Geneva on March 25, 1972 (Ex. J, 92d Cong., 2d Sess.), having considered the same, reports favorably thereon without reservation and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The Protocol provides for a three-fold approach to the problem of preventing illicit traffic in narcotic drugs and the abuse of those drugs: (1) it strengthens the international control machinery to enable it more effectively to uncover and curb both the excess and the illicit cultivation of the opium poppy, as well as the illicit production, manufacture, and trafficking in narcotic drugs; (2) it expands the provisions of existing bilateral extradition treaties with a view to assuring that offenders of narcotic laws will find no haven from prosecution; and (3) it establishes guidelines for avoiding drug abuse and for the treatment of individuals.

BACKGROUND

The Single Convention on Narcotic Drugs, 1961, is the basic multilateral treaty governing international control of narcotic drugs, including opium, heroin, and cocaine. It was adopted in New York in 1961 to consolidate earlier treaties on this subject. It entered into force for adhering states in 1964. To date, 90 countries have ratified the Convention and additional countries are in the process of becoming parties.

2

For the United States, the Senate gave advice and consent to accession on May 8, 1967; and the Convention entered into force for the United States on June 24, 1967.

The process of amending the Single Convention was initiated by the United States in March 1971. This year, from March 6–24, a U.N. Conference was held in Geneva to consider that subject. In all there were ninety-seven participants at the conference, including three observer countries. The United States Delegation was headed by the Secretary of State's Senior Adviser and Coordinator for International Narcotics Matters. After extensive pre-conference consultations between the United States and many other interested countries, a set of proposals was introduced by nineteen cosponsors shortly before the Conference convened. (An additional eleven countries became cosponsors during the Conference.) The Conference voted 71 in favor, none against, with 12 abstentions to adopt an amending protocol which is now open to signature by countries which have either signed or become parties to the 1961 Single Convention. The Protocol will enter into force for adhering countries when 40 have accepted it. Thus far, more than forty countries have signed the Protocol subject to ratification.

Provisions of the Protocol

Strengthened international control machinery

The International Narcotics Control Board is a body of independent technical experts established by the 1961 Single Convention. Heretofore the Board's authority has been concentrated primarily on the *licit* cultivation, production, manufacture, trade, and use of narcotic drugs. Under the terms of the Protocol, the Board will now be explicitly directed to join the fight against illicit trafficking and will be given additional powers toward that end:

The Board will be charged with limiting cultivation, production, manufacture, and use of drugs to an adequate amount required for medical and scientific purposes and with preventing illicit cultivation, production and manufacture of, and illicit trafficking in and use of, narcotic drugs (Article 2).

The Board will now have at its disposal information from a wider range of sources, including the U.N. and its specialized agencies and certain inter-governmental and non-governmental organizations having direct competence in the drug field (Article 6). (In the past, the Board has generally been limited to basing action solely on information supplied by the government immediately concerned and in whose territory a problem was suspected.)

The Board will be reorganized and strengthened by enlarging its membership (Article 6), by extending each member's tenure (Article 3), by assuring continuity through staggered terms (Article 20), and by strengthening the independence of its administrative staff (Article 8).

The Board will be authorized to recommend to competent U.N. organs and specialized agencies that technical and financial assistance be provided to governments in support of their efforts to carry out their obligations under the Single Convention (Article 7).

3

Each party will submit annual reports to the Board detailing that party's domestic production of opium and synthetic narcotic drugs (Article 9).

Heretofore, the Board has been authorized to amend, with the consent of the government concerned, estimates submitted by a government of its requirements for narcotic drugs. Now, in addition, the Board may establish, communicate, and publish its own estimates in case of disagreement between the Board and a government (Article 5).

If the Board has reason to believe that the aims of the Single Convention are seriously endangered by the failure of a country to carry out its obligations or if there is evidence that a country has become or is in danger of becoming an important center of illicit cultivation, production, manufacture or consumption of narcotics, the Board will be able to ask the government in question for explanations, or consultations, or take the initiative in proposing an on-the-spot study of the situation designed to develop remedial measures where those appear necessary (Article 6).

If a country fails to provide satisfactory explanations or to adopt remedial measures when requested to do so, or if the Board believes a serious situation exists which requires cooperative remedial action, it may call this to the attention of the parties to the Single Convention, the U.N. Economic and Social Council, and the U.N. Commission on Narcotic Drugs, with appropriate recommendations. This process could also include consideration of the matter by the U.N. General Assembly. In addition, the Board is now *required* to make a reference to the ECOSOC if the aims of the Convention are endangered and the matter has not been satisfactorily resolved (Article 6).

If in any country producing licit opium there is evidence of diversion into illicit traffic, the Board may, 90 days after notifying the government concerned, require that country to reduce its production in the following year (Article 11).

Expanded extradition powers

The Protocol strengthens extradition machinery for drug offenders in a manner similar to that employed with respect to airplane hijacking. In other words, narcotics offenses shall be deemed to be included in any extradition treaty existing between the parties to the Single Convention, and in cases where no extradition treaty exists, the parties may, at their option, consider the Single Convention as a legal basis for extradition (Article 14).

Guidelines for the prevention of drug abuse

The Protocol commits all parties to give special attention to the prevention of drug abuse and to the treatment, education, rehabilitation, and social reintegration of persons affected by drugs (Article 15).

Date of Entry Into Force

The Protocol will enter into force on the thirtieth day after the instruments of ratification or accession have been deposited by forty

of the States party to the Single Convention. The Protocol will not require any implementing or consequential legislation.

COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on this Protocol on June 27, 1972, at which time testimony was received from Mr. John E. Ingersoll, Director, Bureau of Narcotics and Dangerous Drugs; Mr. Eugene T. Rossides, Assistant Secretary for Enforcement, Trade and Operations, Department of the Treasury and Mr. Charles I. Bevans, Assistant Legal Advisor, Department of State. Copies of the transcript of these hearings are available to the Senators and the public.

Thereafter, the Committee met in executive session and ordered the Protocol reported favorably to the Senate for advice and consent to ratification.

TEXT OF RESOLUTION OF RATIFICATION

Resolved (*two-thirds of the Senators present concurring therein*), That the Senate advise and consent to the ratification of the Protocol Amending the Single Convention on Narcotic Drugs, 1961, signed for the United States at Geneva on March 25, 1972 (Ex. J, 92–2).

APPENDIX 8

SEYMOUR HALPERN
6TH DISTRICT, NEW YORK

Congress of the United States
House of Representatives
Washington, D.C. 20515

October 27, 1971

Senator Birch Bayh
363 Old Senate Building
Washington, D.C.

Dear Senator:

The attached report on the International Narcotics Trade is the result of an 11-nation fact-finding mission, and extensive research on the subject.

I am sure you will find its contents of interest, particularly the Summary of Findings and Recommendations on pages 85 through 100.

Most sincerely,

Seymour Halpern
Member of Congress

SH:a

92d Congress
1st Session } COMMITTEE PRINT

THE INTERNATIONAL NARCOTICS TRADE
And Its Relation To The United States

REPORT OF SPECIAL STUDY MISSION

BY

Hon. SEYMOUR HALPERN, New York

COMMITTEE ON FOREIGN AFFAIRS

PURSUANT TO

H. Res. 143

AUTHORIZING THE COMMITTEE ON FOREIGN AFFAIRS TO CONDUCT THOROUGH STUDIES AND INVESTIGATIONS OF ALL MATTERS COMING WITHIN THE JURISDICTION OF THE COMMITTEE

OCTOBER 24, 1971

Printed for the use of the Committee on Foreign Affairs

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

RECOMMENDATIONS

. . . .

(54) The U. S. Senate should approve the Convention on Psychotropic Substances as promptly as possible. (page 97).

. . . .

APPENDIX 9

Union Calendar No. 868

91st Congress, 2d Session - - - - - - House Report No. 91-1807

AMPHETAMINES

FOURTH REPORT

BY THE

SELECT COMMITTEE ON CRIME

JANUARY 2, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

53-976 O WASHINGTON : 1971

33-535 O - 74 - 33

[1] Mr. Sam Steiger of Arizona, appointed July 30, 1970, to fill the vacancy caused by the resignation of Mr. Robert V. Denney, of Nebraska.

[2] Mr. Larry Winn, Jr., of Kansas, appointed November 16, 1970, to fill the vacancy caused by the resignation of Mr. Albert W. Watson, of South Carolina.

Part V. - RECOMMENDATIONS

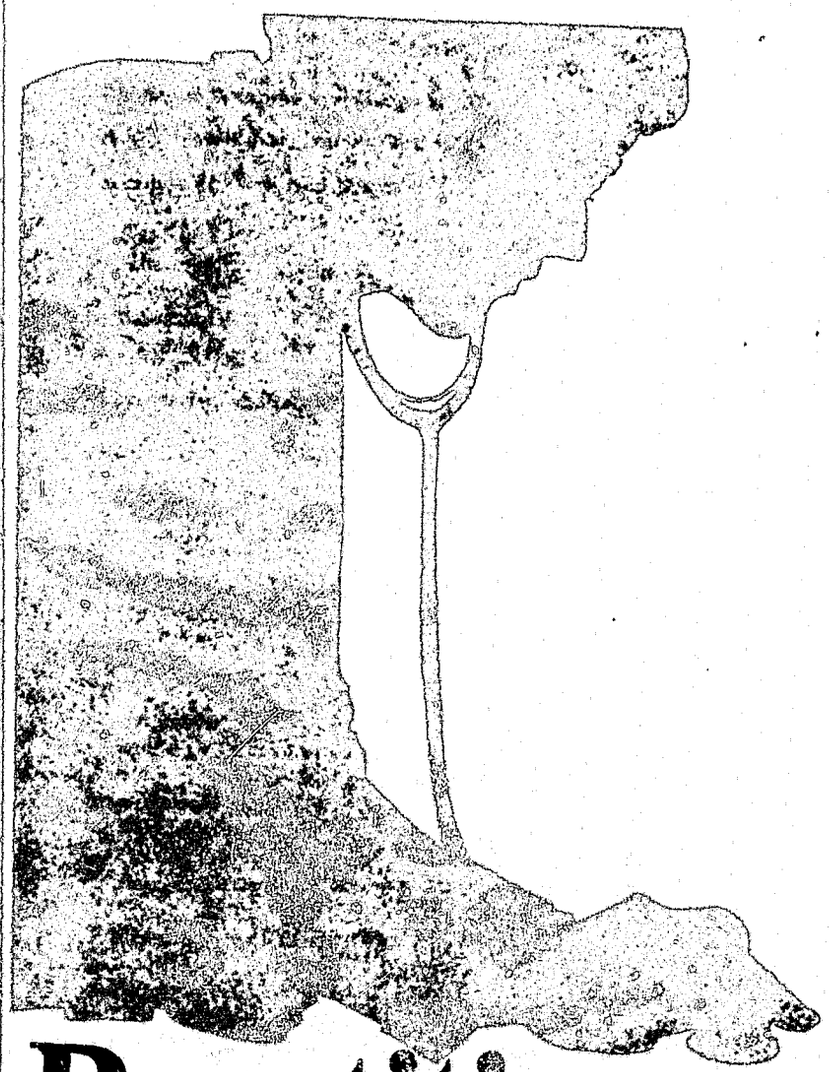
. . . .

2. The United States Should Press for Immediate Adoption of the Proposed Draft Protocol on Psychotropic Substances

As is the case with heroin, effective domestic control of speed cannot be accomplished without international cooperation. The provisions of the draft protocol will not only help us solve our problem here at home, but will also be of assistance to other nations.

The protocol should be signed by the United States and ratified by the Senate as soon as possible. (page 35)

. . . .



Practitioners

Informational Outline of the Controlled Substances Act of 1970

For Physicians, Dentists, Veterinarians and Other Practitioners

Contents

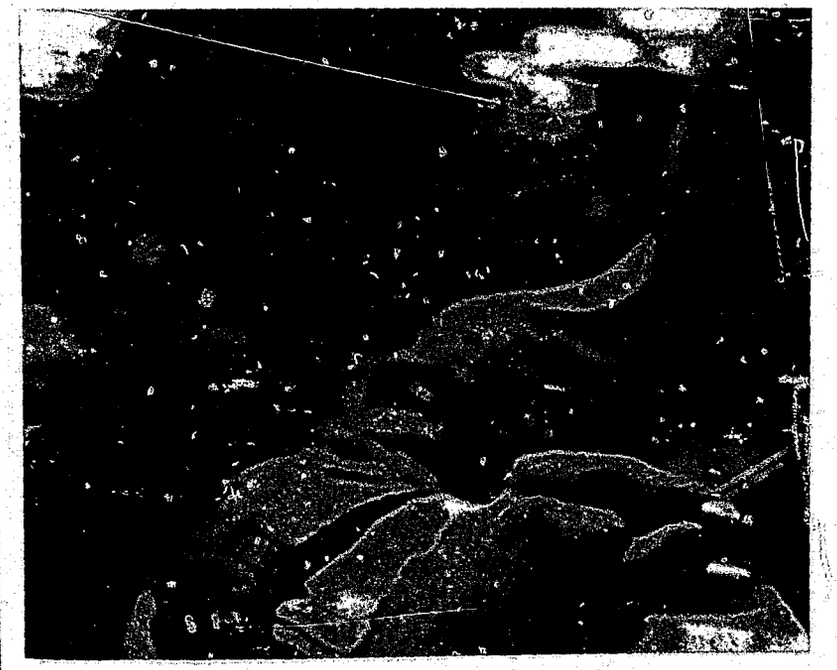
Bureau of Narcotics and Dangerous Drugs

In the years prior to April 1968, physicians were accustomed to practicing their professions primarily under the Narcotic Acts and the Drug Abuse Control Amendments. Under the Harrison Narcotic Act, physicians formerly registered with the Internal Revenue Service. IRS issued the Narcotic Stamps with the physician's registration number and also issued the order form books to physicians.

On April 8, 1968, the Federal Bureau of Narcotics in the Treasury Department and the Bureau of Drug Abuse Control in the Food and Drug Administration were merged into a new agency by Presidential reorganizational plan. The new Bureau is known as the Bureau of Narcotics and Dangerous Drugs, and is located in the Department of Justice.

The new Bureau operated from the time of the merger in April 1968, to May 1, 1971, utilizing the laws and regulations of the two former agencies.

On May 1, 1971, the new Controlled Substances Act of 1970 became fully effective. This Act replaced the former Narcotic Acts and the Drug Abuse Control Amendments. The Internal Revenue Service *no longer registers*



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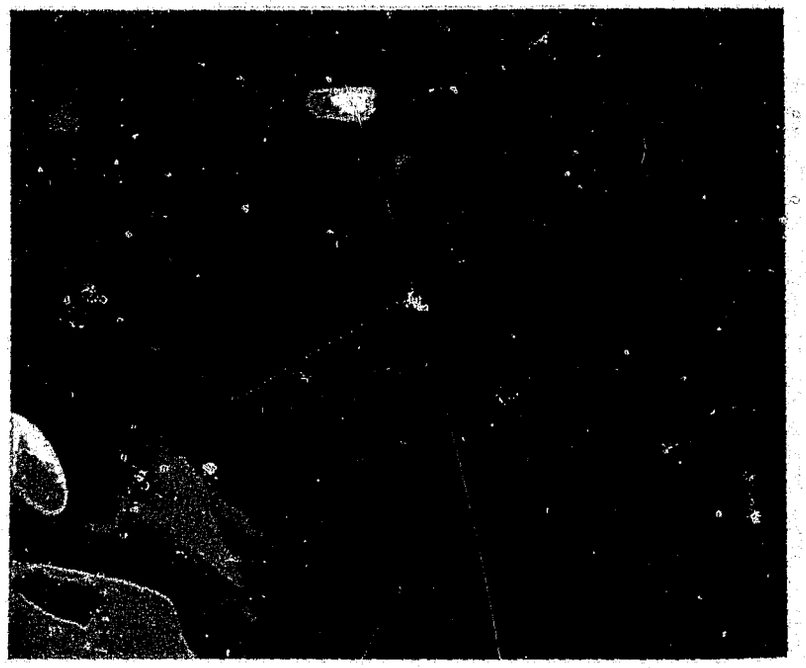
physicians, nor do they issue order forms. Both of these functions are now carried out by the Bureau of Narcotics and Dangerous Drugs.

Since 1914, the Congress has enacted more than 50 pieces of legislation relating to control and diversion of drugs. The Controlled Substances Act collects and conforms most of these diverse laws into one piece of legislation. The new law is designed to improve the administration and regulation of manufacturing, distribution, and the dispensing of Controlled Substances by providing a "closed" system for legitimate handlers of these drugs. Such a closed system should help reduce the widespread diversion of these drugs out of legitimate channels that find their way into the illicit market.

This informational outline has been prepared to acquaint the physician with requirements set up under the Controlled Substances Act of 1970, as they affect various classes of practitioners.

The drugs and drug products that come under the jurisdiction of the Controlled Substances Act are divided into five Schedules. Some examples in each Schedule are outlined below. For a complete listing of all the controlled drugs, contact any Regional Office of the Bureau of Narcotics and Dangerous Drugs. The addresses are listed in the back portion of this outline.

NOTE: The word "physician" as used in this booklet, means any physician, dentist, veterinarian, or other practitioner authorized to administer, dispense, and prescribe Controlled Substances.



Application of State Law and Federal Law

Nothing in this pamphlet shall be construed as authorizing or permitting any person to do any act which he is not authorized or permitted to do under other Federal or State laws. In addition, none of the policy and information in this pamphlet may be construed as authorizing or permitting any person to do any act which he is not authorized, or refuse to meet any requirements imposed under the regulations published in the most recent publication of Title 21, Chapter II, of the Federal Register.

Schedule of Controlled Drugs

Schedule I

Drugs in this Schedule are those that have *no* accepted medical use in treatment in the United States. *Some* examples are:

Alphacetylmethadol
Dextromoramide
Phenampromide
Acetorphine (M–285)
Bufotenine
Phenadoxone
Racemoramide
Etorphine (M–99)
Ibogaine
Heroin
Marihuana
Peyote
Mescaline
Ketobemidone
LSD (lysergic acid diethylamide)
DET (diethyltryptamine)
DMT (dimethyltryptamine)
THC (tetrahydrocannabinols)

A physician will have no concern with Schedule I drugs in his practice unless he is involved in conducting research with such drugs.

Schedule II

Drugs in this Schedule include those formerly known as "Class A Narcotics," and, in addition, the amphetamines and methamphetamines. Some examples of narcotic drugs in this Schedule are:

Opium
Morphine
Codeine
Dilaudid (dihydromorphinone)
Numorphan (oxymorphone)
Dolophine (methadone)

Percodan (oxycodone)
Pantopon
Cocaine
Percobarb
Edrisal with Codeine

Demerol (meperidine)
Leritine (anileridine)
Mepergan (meperidine)
Levodromoran (racemorphan)
Alvodine (piminodine)

Some examples of amphetamine drugs in this Schedule are:

Benzedrine
Dexedrine
Dexamyl
D.A.S.
Bamadex
Eskatrol

AmPlus
Dexobarb
Amvicel
Obocell
Biphetamine

Some examples of methamphetamine drugs in this Schedule are:

Syndrox
Desoxyn
Methedrine
Obedrin

D.O.E.
Desbutal
Norodin
Ambar

The drugs phenmetrazine (Preludin) and methylphenidate (Ritalin) are now in Schedule II. *Schedule II requirements will apply to these two drugs as of January 1, 1972*

Schedule III

Drugs in this Schedule include in part those formerly known as "Class B Narcotics." Some examples are:

Empirin with Codeine
A.S.A. with Codeine
Codempiral #2
Tylenol with Codeine
Hycodan

Tussionex
Phenaphen with Codeine
Hycomine
Soma with Codeine
Donnagesic #1

Paregoric, formerly known as an "exempt narcotic," is now listed in this Schedule.

In addition to the above narcotic drugs, the following are some examples of non-narcotic drugs in Schedule III.

Noludar (methyprylon)
Chlorhexidol
Alurate
Doriden (glutethimide)
Carbrital

Amytal (amobarbital)
Seconal (secobarbital)
Tuinal (amobarbital & secobarbital)
Nembutal (pentobarbital)
Butisol (butabarbital)
Fiorinal

Schedule IV

Some examples of drugs in this Schedule are:

Barbital
Phenobarbital
Noctec, Felsules, Kessodrate, Somnos } (chloral hydrate)
Valmid (ethinamate)
Paraldehyde

Methohexital
Methylphenobarbital
Beta-Chlor (chloral betaine)
Placidyl (ethchlorvynol)
Equanil, Miltown, Kesso-Bamate } (meprobamate)
Petrichloral

The drugs Librium and Valium are being reviewed by the courts to determine if they are to be included as Controlled Substances. If so, they will be placed in Schedule IV.

Schedule V

Drugs in this Schedule include those drug preparations formerly known as "exempt narcotics," such as the cough syrups containing codeine. *Some* examples are:

Robitussin-AC
Terpin Hydrate with Codeine

Cheracol (with codeine)
Cosadein

Registration of Practitioners

Every physician who administers, prescribes, or dispenses any of the drugs listed in the five Schedules must be registered with the Bureau of Narcotics and Dangerous Drugs.

"Administer" means to instill a drug into the body of the patient.

"Prescribe" means to issue a prescription for the patient.

"Dispense" means the giving of drugs in some type of bottle, box or other container to the patient.

(Under the act, the definition of "dispense" also includes the administering of Controlled Substances)

The Internal Revenue Service no longer registers physicians (narcotic tax stamps). Physicians are *now* required to register with the Bureau of Narcotics and Dangerous Drugs, Registration Branch, P. O. Box 28083, Central Station, Washington, D.C. 20005. Any physician who has not received a registration form or who becomes eligible for registration should contact the Registration Branch immediately.

If a physician has more than one office in which he administers and/or dispenses any of the drugs listed in the five Schedules, he then is required to register at each office. However, if a physician only administers and/or dispenses at his principal office and only writes prescriptions at the other office or offices, he then is only required to register at his principal office where he administers and/or dispenses.

The registration fee is $5.00 annually for each place of registration.

Registration Regarding Interns, Residents, and Foreign Physicians

Any physician who is an intern, resident, or foreign physician may dispense and prescribe controlled drugs under the registration of a hospital or other institution which is registered and by whom the physician is employed, provided that:

1. The dispensing or prescribing is in the usual course of his professional practice;

2. The physician is authorized or permitted to do so by the jurisdiction in which he is practicing;

3. The hospital or institution has determined that the physician is permitted to dispense or prescribe drugs by the jurisdiction;

4. The physician acts only within the scope of his employment in the hospital or institution;

5. The hospital or institution authorizes the intern, resident, or foreign physician to dispense or prescribe under its registration and assigns a specific code number for each physician so authorized. An *example* of code number is as follows:

APO–123456	012
BNDD Registration Number	Hospital Code Number

Records

In order for the Bureau of Narcotics and Dangerous Drugs to curtail the diversion of controlled drugs, it is necessary for manufacturers, wholesalers, pharmacies, hospitals, and certain physicians, among others, to keep records of drugs purchased, distributed and dispensed. Having this closed system, a controlled drug can be traced from the time it was manufactured to the time it was dispensed to the ultimate user.

Narcotic Drugs

A physician who *prescribes* and/or *administers* narcotic drugs in the course of his professional practice is *not* required to keep records of those transactions. If a physician *dispenses* a narcotic drug to a patient, he *is* required to keep a record of such dispensing.

Some examples of narcotic drugs are listed on page 4 of this outline under Schedule II. Some additional narcotic drugs are listed on page 5 under Schedule III.

Non-Narcotic Drugs

A physician who regularly engages in dispensing any of the non-narcotic drugs listed in the Schedules to his patients *as a regular part of his professional practice*, and for which he charges his patients either separately or together with other professional services, must keep records of all such drugs received and dispensed. The records must be kept for a period of two years and are subject to inspection by the Bureau of Narcotics and Dangerous Drugs. *(Dispensed as used above includes administering)*

A physician who occasionally dispenses a non-narcotic controlled drug to a patient (such as a physician's sample) is not required to maintain records of such dispensing.

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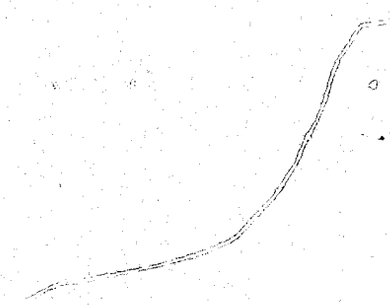
Inventory

A physician who regularly engages in dispensing drugs and is required to keep records as stated above must take an inventory every two years of all stocks of controlled drugs on hand. The first inventory was required on May 1, 1971. A physician who registered after May 1, 1971, and who plans to dispense drugs regularly, is requested to take the initial inventory when he first engages in dispensing. A physician must keep this record for two years and is *not* required to submit a copy to the Bureau.

Order Forms

A physician who has need for controlled drugs in Schedule II for use in his office or medical bag, must obtain these drugs by the use of a triplicate order form. He may use the IRS order forms now in his possession until April 1972, or he may obtain new order forms now issued only by the Bureau of Narcotics and Dangerous Drugs, Registration Branch, P. O. Box 28083, Central Station, Washington, D. C. 20005. Former Class B Narcotics are no longer required to be obtained by the use of the Federal order forms. *No charge* is made for order forms.

The Federal Triplicate Order Forms should not be confused with the triplicate prescription blanks that are required by some states. The Federal order forms are to be used by a physician when he has a need for a drug in Schedule II which is to be used in his office. For example, a physician must fill out a Triplicate Order Form in order to obtain Demerol or Morphine, etc. from his normal source of supply.



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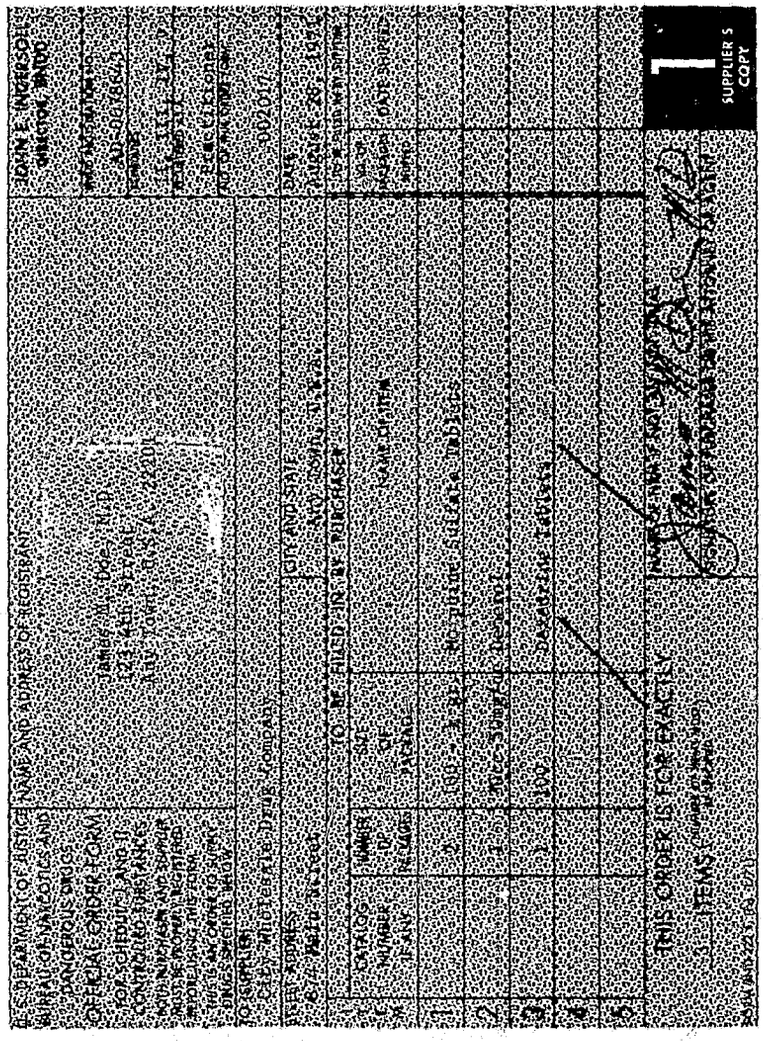
Sample Order Form

Below is a sample format of a completed order form.

For instructions on completing and executing order forms, see the inside front page of the Order Form Book.



Prescriptions

Who May Issue

A prescription for a controlled substance may be issued only by a physician, dentist, veterinarian, or other registered practitioner who is:

(1) Authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession; and

(2) Either registered under the Controlled Substances Act or exempted from registration (military and Public Health Service physicians).

Execution of Prescriptions by Physicians

All prescriptions for controlled substances must be dated as of, and signed on, the day when issued and must bear the full name and address of the patient, and the name, address and registration number of the physician. Where an oral order is not permitted, prescriptions must be written in ink or indelible pencil or typewriter and must be manually signed by the practitioner. The prescriptions may be prepared by a nurse or secretary for the signature of the physician, but the prescribing physician is responsible in case the prescription does not conform in all essential respects to the law and regulations.

A written prescription is required for drugs in Schedule II and must be signed by the physician. The refilling of Schedule II prescriptions is prohibited.

A prescription for drugs in Schedules III (including most former Class B Narcotics), IV, and V may be issued either orally or in writing and may be refilled *if so authorized* on the prescription. However, the prescription may only be refilled up to five times within six months after the date of issue. After five refills or after six months, a new prescription is required either orally or in writing from the physician.

Emergency Telephone Prescription for Schedule II Drugs

In the case of a bonafide emergency, a physician may telephone a prescription to a pharmacist for a drug in Schedule II. In such a case, the drug prescribed must be limited to the amount needed to treat his patient during the emergency period. The physician must furnish, within 72 hours, a written, signed prescription to the pharmacy for the drug prescribed. The pharmacist is required by law to notify BNDD if he has not received the prescription within the 72 hours.

"Emergency" means that the immediate administration of the drug is necessary for proper treatment, that no alternative treatment is available and it is not possible for the physician to provide a written prescription for the drug at that time.

Discontinuance of Practice by a Physician

A physician who discontinues his practice must return his Registration Certificate and any unused order forms to the nearest office of the Bureau. A physician having Controlled Substances in his possession at the time of discontinuing practice should obtain information from the Regional Office of the Bureau in his area on how to dispose of these drugs.

Security

A physician who has Controlled Substances stored in his office or clinic must keep these drugs in a locked cabinet or safe.

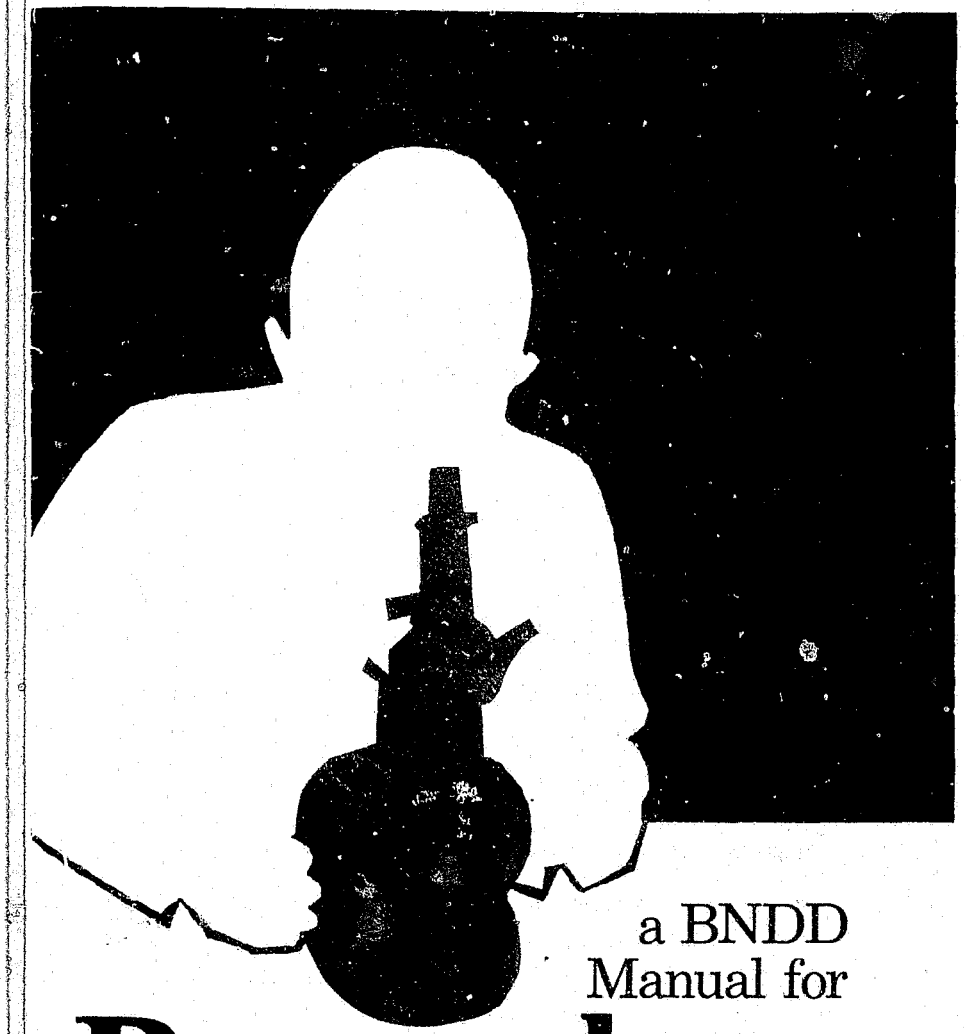
Drug Theft

A physician involved in the loss of Controlled Drugs by theft must notify the Regional Office of the Bureau in his area at the time the theft is discovered. The Regional Office will provide information on what reports are required of the physician. The physician should also notify his local police department of such theft.

Below is a listing of the Bureau of Narcotics and Dangerous Drugs Regional District, and Resident Offices, and the States in their jurisdiction. For matters concerning theft, registration, recordkeeping, security, etc., contact the nearest office in your area.

REGIONAL OFFICE	DISTRICT OFFICES	STATES COVERED
Boston Regional Office JFK Federal Building Room G-64 Boston, Mass. 02203 617-223-2170	Hartford—203-244-3348	Conn., Maine, Mass., N.H., R.I., Vermont
New York Regional Office 90 Church Street Suite 605 New York, N.Y. 10007 212-264-7181	Buffalo—716-843-3218 Newark—201-645-2637	N.Y., Northern N. Jersey
Philadelphia Regional Office 400 Market Street Suite 1000 Philadelphia, Pa. 19106 215-597-9530	Pittsburgh—412-644-3390	Delaware, Southern N. Jersey, Pa.
Baltimore Regional Office 31 Hopkins Place Room 955 Baltimore, Md. 21201 301-962-4800	Charleston—304-343-1384 Greensboro—919-275-9458 Norfolk—703-627-7775 Washington, D.C.—202-755-7940	D.C., Md., N.C., W. Va.
Miami Regional Office 201 Northeast 12th Street Miami, Florida 33132 305-350-4441	Atlanta—404-526-3111 Columbia—803-253-3251 Jacksonville—904-791-3566	Fla., Ga., S.C., Puerto Rico
Detroit Regional Office 357 Federal Building & U.S. Courthouse 231 West Lafayette Detroit, Mich. 48226 313-226-6725	Cincinnati—513-684-3671 Cleveland—216-522-3705 Louisville—502-582-5908	Ky., Mich., Ohio

REGIONAL OFFICE	DISTRICT OFFICES	STATES COVERED
Chicago Regional Office Suite 1800 219 South Dearborn St. Everett M. Dirksen Federal Office Building Chicago, Illinois 60604 312-353-7875	Indianapolis—317-633-7662 Milwaukee—414-272-3395	Ill., Indiana, Wisc.
New Orleans Regional Office 546 Carondelet Street New Orleans, La. 70130 504-527-6841	Birmingham—205-325-3497 Jackson—601-948-2484 Little Rock—501-375-8605 Nashville—615-242-5988 Memphis—901-534-3396	Ala., Ark., La., Miss., Tenn.
Kansas City Regional Office 811 Grand Avenue Suite 231 Kansas City, Mo. 64106 816-374-2631	Des Moines—515-284-4587 Minneapolis—612-725-2783 Omaha—402-221-4720 St. Louis—314-622-4891	Minn., N. Dakota, S. Dakota, Iowa, Kansas, Mo., Neb.
Dallas Regional Office Room 4A5 1100 Commerce Street Dallas, Texas 75202 214-749-3631	Houston—713-226-4331 Oklahoma—405-236-2611 San Antonio—512-225-4324 Tulsa—918-584-7611 McAllen—512-225-4297 Laredo—512-723-5531 El Paso—915-533-5261	Oklahoma, Texas
Denver Regional Office 1950 Stout Street U.S. Customs House Denver, Colorado 80202 303-837-4291	Albuquerque—505-843-2056 Phoenix—602-261-4866 Salt Lake City—801-524-4156	Ari., Col., New Mexico, Utah, Wyo.
Seattle Regional Office 221 First Avenue, West Room 200 Seattle, Wash. 98104 206-442-5443	Anchorage—907-272-7638 Portland—503-226-3361	Alaska, Idaho, Montana, Ore., Wash.
Los Angeles Regional Office 1340 West 6th Street Los Angeles, Calif. 90017 213-688-2650	Honolulu—808-546-5995 Las Vegas—702-385-6343 San Diego—714-293-6654 San Francisco—415-556-6771	Calif., Hawaii, Nevada



a BNDD Manual for

Researchers

The Controlled Substances Act of 1970

The Controlled Substances Act of 1970

A BNDD MANUAL FOR RESEARCHERS

Contents

History on Researchers

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The new Bureau operated from the time of the merger in April 1968, to May 1, 1971, utilizing the laws and regulations of the two former agencies.

On May 1, 1971, the new Controlled Substances Act of 1970 became fully effective. This Act replaced the former Narcotic Acts and the Drug Abuse Control Amendments. The Internal Revenue Service *no longer registers* researchers, nor do they issue order forms. Both of these functions are now carried out by the Bureau of Narcotics and Dangerous Drugs.

Since 1914, the Congress has enacted more than 50 pieces of legislation relating to research, control and diversion of drugs. The Controlled Substances Act collects and conforms most of these diverse laws into one piece of legislation. The new law is designed to improve the administration and regulation of manufacturing, distribution, and the dispensing of Controlled Substances by providing a "closed" system for legitimate handlers of these drugs. Such a closed system should help reduce the widespread diversion of these drugs out of legitimate channels that find their way into the illicit market.

This booklet has been prepared to acquaint the researcher with requirements set up under the Controlled Substances Act of 1970, when conducting research with Controlled Substances.

The drugs that come under the jurisdiction of the Controlled Substances Act are divided into five Schedules. Included are drugs such as heroin, marihuana, peyote, LSD, mescaline, narcotics, amphetamines, barbiturates and others. See page 9 for a more complete listing of Controlled Substances by Schedules.

Registration

Who Must Register

Every person who engages in research with Controlled Substances or who proposes to engage in research, must be registered with the Bureau of Narcotics and Dangerous Drugs.

One registration may provide for Schedule I Controlled Substances. A second registration is required for Schedule II through V Controlled Substances.

Schedule I Controlled Substances

Any person wishing to conduct research with Controlled Substances in Schedule I must apply on BND Form 225, with three copies of a research protocol describing the research project attached to BND Form 225 (to obtain registration forms see page 12).

The Director of BNDD will refer the applicant's application to the Secretary of Health, Education and Welfare, who will determine the qualifications and competency of the applicant as well as the merits of the research protocol.

A person registered to conduct research with Controlled Substances listed in Schedule I may conduct research with any substance listed in Schedule I for which he has filed and had approved a research protocol.

The research protocol should contain information such as the objective; material; security; procedures (such as species and number of animals, daily dose regimen and route of administration, etc.); investigators (if any) and any other pertinent information.

If the Secretary finds the applicant qualified and competent, and the research protocol meritorious the Director will register the applicant unless he finds registration should be denied on grounds such as falsifying his application, or, having been convicted of a felony relating to any Controlled Substance, or; having had his state license or registration suspended, revoked, or denied and is no longer authorized by state law to engage in handling Controlled Substances, or the applicant has not provided adequate safeguards against diversion of the controlled substances from legitimate medical or scientific use.

Schedule II through V Narcotic Controlled Substances

Persons wishing to conduct research with narcotic Controlled Substances in Schedules II through V must apply to BND Form 225.

An individual will be registered to conduct research with narcotic Controlled Substances in Schedule II through V *if* he is authorized to *dispense*

or conduct research under the laws of the state in which he practices.

Schedule II Through V NonNarcotic Controlled Substances

Separate registration for an individual engaging in research with nonnarcotic Controlled Substances in Schedules II through V will *not* be required, *if* he is already registered with BNDD to administer, dispense or prescribe those substances.

Each application for registration to conduct research with any narcotic Controlled Substance listed in Schedule II shall include the Bureau Controlled Substances Code Number, as set forth in Section 308.03 of the Regulations, for each basic class or substance to be covered by the registration.

A person registered to conduct research with a basic class of Controlled Substance listed in Schedule I will be authorized to manufacture that class if and to the extent that such manufacture is set forth in the research protocol filed with the application for registration.

Records

Every person registered to conduct research with Controlled Substances must maintain records with the following information for each Controlled Substance:

1. Name of the substance.
2. Each finished form (such as 10 mg. tablet, or 10 mg. concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container.
3. The number of commercial containers of such finished form received from other persons, including the date of and number of containers in each receipt, and the name, address, and registration number of the person from whom the containers were received.
4. The amount of such finished form dispensed, including the name and address of the person to whom it was dispensed, the date of dispensing, and the written or typewritten name or initials of the individual who dispensed or administered the substance.
5. The number of units or volume of the finished forms and/or commercial containers disposed of in any other manner by the researcher, including the date and manner of disposal.

A registered person using any Controlled Substance in Research conducted in conformity with an exemption granted under Section 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i) or 360b(j)) at a registered establishment which maintains records in accordance with either of those sections is not required to keep records if he notifies the Bureau of Narcotics and Dangerous Drugs of the name, address and registration number of the establishment maintaining the records.

Exempt Officials

The Director will exempt from payment of the registration fee any person engaged in research in the *course of his official duties or employment*, who is an official, employee or other civic officer of the United States, any state, or any political subdivision or agency thereof.

Exemption from payment of a registration or reregistration fee does not relieve the researcher of any other requirements or duties prescribed by law.

Inventories of Researchers

Each person registered to conduct research with Controlled Substances and required to keep records; must include in his inventory the following information:

A. For each Controlled Substance in finished form:

1. Name of the substance.
2. Size and/or strength of the substance.
3. The number of units or volume of each commercial container.

B. For each substance not listed above (e.g., damaged, defective or impure substances awaiting disposal or substances held for research purposes.)

1. Name of the substance.
2. The total quantity of the substance.
3. The reason for the substance being maintained by the researcher.

In determining the number of units of each finished form of a Controlled Substance in a commercial container which has been opened, the researcher

must do as follows:

1. If the substance is listed in Schedules I or II, he must make an *exact* dosage unit count.
2. If the substance is listed in Schedules III, IV, or V, he must make a tablet, capsule or dosage unit count, unless the container is so graduated to reflect its content, in which case he may make an estimate based on the graduations. Researchers must take an inventory of all stocks of Controlled Substances on hand every two years. The inventory must be kept for a period of *two years* and the researcher is *not* required to submit a copy to the Bureau.

Procurement of Controlled Substances for Conducting Research

Any person registered to conduct research with Controlled Substances in Schedules I and II must utilize the triplicate order forms to obtain the substance that is to be used in his research program.

To procure a substance in Schedules I or II that is commercially available, researchers will execute the Federal Order Form to their normal supplier or distributor for the substance which they are registered and qualified to conduct research.

To procure a substance in Schedule I that is not commercially available, such as heroin, LSD, marihuana, etc., the researcher must make his request to the National Institute of Mental Health, along with the properly-executed Federal Order Form.

Confidentiality of Research Subjects

Any person registered to conduct research with Controlled Substances under the Controlled Substances Act, who wishes to maintain the confidentiality of the subjects of his research, must, upon registration or within a reasonable

time thereafter, submit to the Director a separate request for each research project involving Controlled Substances, which must contain the following:

1. The researcher's registration number for that project;
2. The location of the research project;
3. A general description of the research or a copy of the research protocol;
4. A specific request to withhold the names and/or any other identifying characteristics of the research subjects; and
5. The reasons supporting the request.

The Director will issue a letter within 30 days from the date of receipt of the request either granting confidentiality, requesting additional information, or denying confidentiality, in which case the reasons for the denial will be included. A grant of confidentiality will be limited solely to the specific research project indicated in the request.

No later than 30 days after the date of completion of the research project, the researcher must notify the Director.

Exemption from Prosecution for Researcher

Upon registration of a practitioner to engage in research in Controlled Substances under the Controlled Substances Act, the Director, on his own motion or upon request in writing from the Secretary or from the practitioner, may exempt the registrant when acting within the scope of his registration, from prosecution under Federal, state, or local laws for offenses relating to possession, distribution or dispensing of those Controlled Substances within the scope of his exemption. However, the exemption will not diminish any requirement of compliance with the Federal Food, Drug and Cosmetic Act.

The exemption will consist of a letter issued by the Director, which will include:

1. The researcher's name and address;
2. The researcher's registration number from the research project;
3. The location of the research project;
4. A concise statement of the scope of the researcher's registration; and
5. The limits of the exemption.

The exemption will apply to all acts done in the scope of the exemption while the exemption is in effect. The exemption will remain in effect until completion of the research project or until the registration of the researcher is either revoked or suspended or his renewal of registration is denied. Within 30 days of the date of completion of the research project, the researcher *must* notify the Director and *return* the letter of exemption.

Security

Researchers must keep Controlled Substances in a securely locked, substantially constructed cabinet or safe.

The degree of security necessary depends upon the actual circumstances involving the nature and quantity of substance stored and the accessability of the area. Consult nearest representative of the Bureau for more detailed guidance.

Schedules of Controlled Substances

The drugs that come under the jurisdiction of the Controlled Substances Act are divided into five Schedules. Some examples of drugs in each Schedule are outlined below. For a more complete listing of controlled drugs, contact any Regional Office of the Bureau of Narcotics and Dangerous Drugs. The addresses are listed in the back portion of this booklet.

Schedule I

Drugs in this Schedule are those that have *no* accepted medical use in

treatment in the United States. *Some* examples are:

Alphacetylmethadol
Dextromoramide
Phenampromide
Acetorphine (M-285)
Bufotenine
Phenadoxone
Racemoramide
Etorphine (M-99)
Ibogaine
Heroin
Marihuana
Peyote
Mescaline
Ketobemidone
LSD (lysergic acid diethylamide)
DET (diethyltryptamine)
DMT (dimethyltryptamine)
THC (tetrahydrocannabinols)

Schedule II

Drugs in this Schedule include those formerly known as "Class A Narcotics," and, in addition, the amphetamines and methamphetamines. The drugs phenmetrazine (Preludin) and methylphenidate (Ritalin) are also in this Schedule.

Some examples of narcotic drugs in this Schedule are:

Opium
Morphine
Codeine
Percodan (oxycodone)
Pantopon
Cocaine
Percobarb
Edrisal with Codeine
Dilaudid (dihydromorphinone)
Numorphan (oxymorphone)
Dolophine (methadone)
Demerol (meperidine)
Leritine (anileridine)
Mepergan (meperidine)
Levodromoran (racemorphan)
Alvodine (piminodine)

Some examples of amphetamine drugs in this Schedule are:

Benzedrine
Dexedrine
Dexamyl
D.A.S.
Bamadex
Dex-sule
Eskatrol
AmPlus
Dexobarb
Amvicel
Obocell
Biphetamine

Some examples of methamphetamine drugs in this Schedule are:

Syndrox
Desbutal

Desoxyn
Obedrin
D.O.E.

Methedrine
Ambar

Schedule III

Drugs in this Schedule include those most formerly known as "Class B Narcotics." Some examples are:

Empirin with Codeine
A.S.A. with Codeine
Codempiral #2
Tylenol with Codeine
Hycodan
Paregoric

Tussionex
Phenaphen with Codeine
Hycomine
Soma with Codeine
Donnagesic #1

In addition to the above narcotic drugs, the following are some examples of non-narcotic drugs in Schedule III.

Noludar (methyprylon)
Chlorhexidol
Alurate
Doriden (glutethimide)
Carbrital
Amytal (amobarbital)

Seconal (secobarbital)
Tuinal (amobarbital & Secobarbital)
Nembutal (pentobarbital)
Butisol (butabarbital)
Fiorinal

Schedule IV

Some examples of drugs in this Schedule are:

Barbital
Phenobarbital
Notec, Felsules, Kessodrate, Somnos } (chloral hydrate)
Valmid (ethinamate)
Paraldehyde

Methohexital
Methylphenobarbital
Beta-Chlor (chloral betaine)
Placidyl (ethchlorvynol)
Equanil, Miltown, Kesso-Bamate } (meprobamate)
Petrichloral

The drugs Librium and Valium are now being reviewed by the courts to determine if they are to be included as Controlled Substances. If so, they will be placed in Schedule IV.

Schedule V

Drugs in this Schedule include those drug preparations formerly known as "exempt narcotics," such as the cough syrups containing codeine. *Some* examples are:

Robitussin-AC
Terpin Hydrate with Codeine

Cheracol (with codeine)
Cosadein

Symbols and Labeling

Each commercial container of Controlled Substances has on its label a symbol designating to which Schedule it belongs. The symbol for Schedule I through V Controlled Substances is as follows: (I) or C-I; (II) or C-II; (III) or C-III, (IV) or C-IV; and (V) or C-V. The symbols are at least twice as large as the largest letter printed on the label.

Registration Forms

To conduct research with narcotic Controlled Substances listed in Schedules II through V, apply on BND Form 225. To conduct research with a Controlled Substance listed in Schedule I, apply on BND Form 225, with three copies of a research protocol describing the research project attached to the form.

To conduct instructional activities with controlled substances listed in Schedules II through V, apply on BND Form 224.

To conduct instructional activities with a Controlled Substance listed in Schedule I, apply as a researcher on BND Form 225 with two copies of a

statement describing the nature, extent, and duration of such instructional activities attached to the form.

BND Forms 224 and 225 may be obtained at any Regional Office of the Bureau or by writing to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Post Office Box 28083, Central Station, Washington, D.C. 20005.

Reregistration Forms

If any person is registered and is applying for reregistration:

1. To conduct research with narcotic Controlled Substances listed in Schedules II through V, apply on BND Form 227.
2. To continue to conduct research with a Controlled Substance listed in Schedule I under an approved research protocol, apply on BND Form 227.
3. To continue to conduct instructional activities with Controlled Substances listed in Schedule I under an approved instructional statement, apply as a researcher on BND Form 227.
4. To conduct research or instructional activities with controlled substances listed in Schedules II through V, apply on BND Form 226.

BND Forms 226 and 227 will be mailed, as applicable, to each registered person approximately 60 days before the expiration date of his registration; if any registered person does not receive such forms within 45 days before the expiration date of his registration, he must promptly give notice of such fact and request the forms by writing to the Registration Branch of the Bureau at the above address.

Application of State Law and Other Federal Law

Nothing in this pamphlet shall be construed as authorizing or permitting any person to do any act which he is not authorized or permitted to do under other Federal or State laws. Ih addition, none of the policy and information in this pamphlet may be construed as authorizing or permitting any person to do any act which he is not authorized or permitted to do, or refuse to meet any requirements imposed under the regulations published in the most recent publication of Title 21 of the Federal Register.

Below is a listing of the Bureau of Narcotics and Dangerous Drugs Regional, District, and Resident Offices, and the States in their jurisdiction. For matters concerning theft, registration, recordkeeping, security, etc., contact the nearest office in your area.

Regional Office	District Offices	States Covered
Boston Regional Office JFK Federal Building Room G-64 Boston, Mass. 02203 617-223-2170	Hartford—203-244-3348	Conn., Maine, Mass., N.H., R.I., Vermont
New York Regional Office 90 Church Street Suite 605 New York, N.Y. 10007 212-264-7181	Buffalo—716-843-3218 Newark—201-645-2637	N.Y., Northern N. Jersey
Philadelphia Regional Office 400 Market Street Suite 1000 Philadelphia, Pa. 19106 215-597-9530	Pittsburgh—412-644-3390	Delaware, Southern N. Jersey, Pa.
Baltimore Regional Office 31 Hopkins Place Room 955 Baltimore, Md. 21201 301-962-4800	Charleston—304-343-1384 Greensboro—919-275-9458 Norfolk—703-627-7775 Washington D.C.—202-755-7940	D.C., Md., N.C., Va., W.Va.
Miami Regional Office 201 Northeast 12th Street Miami, Florida 33132 305-350-4441	Atlanta—404-526-3111 Columbia—803-253-3251 Jacksonville—904-791-3566	Fla., Ga., S.C., Puerto Rico
Detroit Regional Office 602 Federal Building & U.S. Courthouse 231 West Lafayette Detroit, Mich. 48226 313-226-6110	Cincinnati—513-684-3671 Cleveland—216-522-3705 Louisville—502-582-5821	Ky., Mich., Ohio

Chicago Regional Office Suite 1800 219 South Dearborn St. Everett M. Dirksen Federal Office Building Chicago, Illinois 60604 312-353-7875	Indianapolis—317-633-7662 Milwaukee—414-272-3395	Ill., Indiana, Wisc.
New Orleans Regional Office 546 Carondelet Street New Orleans, La. 70130 504-527-6841	Birmingham—205-325-3497 Jackson—601-948-2484 Little Rock—501-375-8605 Nashville—615-242-5988 Memphis—901-534-3396	Ala., Ark., La., Miss., Tenn.
Kansas City Regional Office 811 Grand Avenue Suite 231 Kansas City, Mo. 64106 816-374-2631	Des Moines—515-284-4587 Minneapolis—612-725-2783 Omaha—402-221-4720 St. Louis—314-622-4891	Minn., N. Dakota, S. Dakota, Iowa, Kansas, Mo., Neb.
Dallas Regional Office Room 4A5 1100 Commerce Street Dallas, Texas 75202 214-749-3631	Houston—713-226-4331 Oklahoma—405-231-4141 San Antonio—512-225-4324 Tulsa—918-584-7611 McAllen—512-225-4297 Laredo—512-723-5531 El Paso—915-533-5261	Oklahoma, Texas
Denver Regional Office 1950 Stout Street U.S. Customs House Denver, Colorado 80202 303-837-4291	Albuquerque—505-843-2056 Phoenix—602-261-4866 Salt Lake City—801-524-4156	Ari., Col., New Mexico, Utah, Wyo.
Seattle Regional Office 221 First Avenue, West Room 200 Seattle, Wash. 98104 206-442-5443	Anchorage—907-272-7638 Portland—503-226-3361	Alaska, Idaho, Montana, Ore., Wash.
Los Angeles Regional Office 1340 West 6th Street Los Angeles, Calif. 90017 213-688-2650	Honolulu—808-546-5995 Las Vegas—702-385-6343 San Diego—714-293-6654 San Francisco—415-556-6771	Calif., Hawaii, Nevada

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