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COMMENTARY on the PROTOCOL AMENDING the SINGLE CONVENTION on NARCOTIC DRUGS, 1961

Done at Geneva on 25 March 1972

UNITED NATIONS

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New York, 1976

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FOREWORD

This Commentary was prepared as a project of the United Nations Fund for Drug Abuse Control and was financed by that Fund. It was written by Mr. Adolf Lande, former Secretary of the Permanent Central Narcotics Board and Drug Supervisory Body, under the responsibility of the United Nations Office of Legal Affairs.

ABBREVIATIONS

The following abbreviations are used in the Commentary:

The "1972 Protocol", for the Protocol amending the Single Convention on Narcotic Drugs, 1961, done at Geneva on 25 March 1972, text in document E/CONF.63/9.

The "Single Convention", for the Single Convention on Narcotic Drugs, 1961, done at New York on 30 March 1961, reproduced in United Nations, *Treaty Series*, vol. 520, p. 151.

The "Amended Single Convention", for the Single Convention as amended by the 1972 Protocol.

The "Vienna Convention", for the Convention on Psychotropic Substances, done at Vienna on 21 February 1971, text in document E/CONF.58/6.

The "1912 Convention", for the International Opium Convention, signed at The Hague on 23 January 1912, referred to in article 44, para. 1, subpara. *(a)* of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. VIII, p. 187.

The "1925 Convention", for the International Opium Convention, signed at Geneva on 19 February 1925, referred to in article 44, para. 1, subpara. *(c)* of the Single Convention, and reproduced in League of Nations, *Treaty Series*, vol. LXXXI, p. 317.

The "1931 Convention", for the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931, referred to in article 44, para. 1, subpara. *(d)* of the Single Convention and reproduced in League of Nations, *Treaty Series*, vol. CXXXIX, p. 301.

The "1936 Convention", for the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signed at Geneva on 26 June 1936, referred to in article 44, para. 2 of the Single Convention and reproduced in League of Nations, *Treaty Series*, vol. CXCVIII, p. 299.

The "1946 Protocol", for the Protocol amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at The Hague on 23 January 1912, at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931, at Bangkok on 27 November 1931 and at Geneva on 26 June 1936, signed at Lake Success, New York, on 11 December 1946, referred to in article 44, para. 1 subpara. *(f)* of the Single Convention, and reproduced in United Nations, *Treaty Series*, vol. 12, p. 179.

The "1953 Protocol", for the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at New York on 23 June 1953, referred to in article 44, para. 1 subpara. *(i)* of the Single Convention, and reproduced in United Nations, *Treaty Series*, vol. 456, p. 3.

The "1961 Conference", for the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, which met in New York from 24 January to 25 March 1961.

The "1971 Conference", for the United Nations Conference for the Adoption of a Protocol on Psychotropic Substances, which met in Vienna from 11 January 1971 to 21 February 1971.

The "1972 Conference", for the United Nations Conference to consider amendments to the Single Convention on Narcotic Drugs, 1961, which met in Geneva from 6 to 25 March 1972.

The "1961 Records", for the Official Records of the United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, documents E/CONF.34/24, and E/CONF.34/24/Add.1, reproduced respectively in United Nations publications, Sales Nos. 63.XI.4 and 63.XI.5.

The "1971 Records", for the Official Records of the United Nations Conference for the Adoption of a Protocol on Psychotropic Substances, documents E/CONF.58/7 and E/CONF.58/7/Add.1, reproduced respectively in United Nations publications, Sales Nos. E.73.XI.3 and E.73.XI.4.

The "1972 Records", for the Official Records of the United Nations Conference to consider amendments to the Single Convention on Narcotic Drugs, 1961, documents E/CONF.63/10 and E/CONF.63/10/Add.1, reproduced respectively in United Nations publications, Sales Nos. E.73.XI.7 and E.73.XI.8.

The "1931 Commentary", for the publication entitled "Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of July 13th, 1931, Historical and Technical Study by the Opium Traffic Section of the Secretariat of the League of Nations", League of Nations, document C.191.M.136.1937.XI.

The "1961 Commentary", for the Commentary on the Single Convention on Narcotic Drugs, 1961, United Nations, New York, 1973; United Nations publication, Sales No. E.73.XI.1.

The "1971 Commentary" for the Commentary on the Convention on Psychotropic Substances, 1971, Sales No. E.76.XI.5.

The "Board", for the International Narcotics Control Board set up under articles 9 and 10 of the Single Convention.

The "Commission", for the Commission on Narcotic Drugs of the Economic and Social Council.

The "Council", for the Economic and Social Council.

The "Secretary-General", for the Secretary-General of the United Nations.

"WHO", for the World Health Organization.

PROTOCOL AMENDING THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961

PREAMBLE

The Parties to the Present Protocol,

Considering the provisions of the Single Convention on Narcotic Drugs, 1961, done at New York on 30 March 1961 (hereinafter called the Single Convention),

Desiring to amend the Single Convention,

Have agreed as follows:

Article 1

AMENDMENTS TO ARTICLE 2, PARAGRAPHS 4, 6 AND 7 OF THE SINGLE CONVENTION

Introductory paragraph of article 1 of the 1972 Protocol and paragraph 4 of article 2 of the amended Single Convention

Article 2, paragraphs 4, 6 and 7, of the Single Convention shall be amended to read as follows:

"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 3 to 15 *and, as regards their acquisition and retail distribution, article 34, paragraph* (b), need not apply, and that for the purpose of estimates (article 19) and statistics (article 20) the information required shall be restricted to the quantities of drugs used in the manufacture of such preparations.

Commentary

1. Article 1 of the 1972 Protocol brings two amendments to article 2, paragraph 4 of the Single Convention, one only to the English version of that provision, and another one to all of its five language versions.

2. Paragraph 4 presents a synopsis of the provisions of the Single Convention relating to preparations in Schedule III. Its unamended English text differs from article 31, paragraph 16 of the Single Convention by excluding preparations in Schedule III from the application of article 31, paragraph 1, subparagraph *(b)* and paragraphs 4 to 15 while paragraph 16 of that article makes that exclusion in respect of article 31, paragraph 1, subparagraph *(b)* and paragraphs 3 to 15. The French and Spanish language versions do not show that discrepancy, excluding in both of their provisions in question article 31, paragraph 3 from application to preparations in Schedule III. The 1972 Protocol therefore corrects an error in the English text of article 2, paragraph 4 by substituting the figure 3 for the figure 4 and thus bringing the English text in line with the French and Spanish texts.[1] There was no need for making corresponding changes in other language versions.

3. The unamended Single Convention, taken literally,[2] would obligate Parties to require retail traders to record each individual sale of a preparation

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1 *1961 Commentary,* para. 5 of the comments on article 31, para. 3, subpara. *(a)* on the Single Convention and para. 18 of the comments on article 2, para. 4 (pp. 354-355 and 64 respectively).

2 Article 2, para. 4 in connexion with article 34, para. *(b)* of the unamended text.

in Schedule III. The view has however been expressed in the *1961 Commentary* that a general understanding exists that Parties to the unamended Convention need not require retail traders (pharmacists, chemists, druggists or other retail distributors) to keep such records.[3] The 1972 Protocol by expressly exempting the retail distribution of preparations in Schedule III from the scope of article 34, paragraph *(b)* transforms that understanding into treaty law. It is submitted that the term "retail distribution" as used in the amended paragraph 4 includes also the therapeutic use in hospitals as well as the use for research by hospitals, scientific institutions and scientists. It should however not be concluded from that inclusion in the Single Convention of a rule concerning preparations in Schedule III, formerly accepted only on the basis of a general understanding, that the same understanding concerning drugs in Schedule II and their preparations has lost its validity. Parties to the unamended Single Convention as well as Parties to its amended text need not require retail traders to keep records of individual sales of drugs in Schedule II or of their preparations.[4]

4. Sale by a retail trader of a preparation in Schedule III which he compounds himself is to be considered for the purposes of the Single Convention as sale of the drug contained in the preparation and not of the preparation. Each supply or dispensation by a retail trader (pharmacist) to an individual of a preparation listed in Schedule III and containing a drug in Schedule I, which the retail trader has himself compounded, must be recorded under article 2, paragraphs 1 and 3 in connexion with article 34, paragraph *(b)*.[5] The amendment of article 2, paragraph 4 by the 1972 Protocol does not affect the obligation of Parties to require the keeping of such records.

5. The English text of article 2, paragraph 4 as amended seems to exclude from the requirement of recording all acquisitions of preparations in Schedule III, not only those by retail traders and other retail distributors (including acquisitions by hospitals for therapeutic use and by scientific institutions or scientists for research), but also acquisitions by wholesalers for the purpose of resale. It appears however to have been the intention of the 1972 Conference to free from the recording requirements only acquisitions of preparations in Schedule III on the retail level and not those of wholesale traders.[6] Maintenance of such records would not impose a very onerous

3 *1961 Commentary,* para. 13 and 14 of the comments on article 2, para. 4 of the Single Convention (p. 63); see also para. 11 of the comments on article 2, para. 2 (pp. 57 to 58).

4 Para. 11 of the comments on article 2, para. 2 referred to in the preceding foot-note (pp. 57-58).

5 Para. 15 of the comments on article 2, para. 4, referred to in foot-note 3 (p. 63).

6 *1972 Records,* vol. I, Part Two, Section D, document E/CONF.63/L.2 (pp. 111-112); vol. II, paras. 29 and 42 of the summary records of the twelfth meeting of Committee II (pp. 207 and 208), vol. I, Part II, Section F, document E/CONF.63/L.5/Add.1 (pp. 121 to 122), vol. II, paras. 73, 74 and 77 of the summary records of the seventh plenary meeting (p. 23) and para. 2 of the summary records of the eighth plenary meeting (pp. 23-24).

burden upon wholesale traders, and would also be in accord with existing business customs.

6. The French and Spanish texts of the amended paragraph 4 seem to be ambiguous. *"Au détail"* may refer to *"acquisition"* as well as to *"délivrance"* or only to *"délivrance"*, and *"al por menor"* may refer to *"adquisición"* as well as to *"distribución"* or only to *"distribución"*. In view of the intention of the 1972 Conference, it may however be assumed that *"au détail"* was intended to refer also to *"acquisition"* and *"al por menor"* to refer also to *"adquisición"*.[7] It is submitted that preference should be given to the French and Spanish texts as interpreted in accord with the intention of the 1972 Conference, and that consequently only acquisition for retail purposes of any kind, i.e. that by retail traders, and by hospitals, scientific institutions and scientists for their use, but not acquisition by wholesale traders, may be exempted from the recording requirement of article 34, paragraph *(b)*. The suggested scope of exemption from the recording requirement is also based on the view that the words *"au détail"* and *"al por menor"* include any kind of retail purpose, i.e. not only retail trade, but also therapeutic use by hospitals and research by scientific institutions or scientists. It has been suggested in paragraph 3 above that the term "retail distribution" in the English text also covers all those retail purposes. The relevant amendment which was accepted was proposed orally in French.[8]

7. The 1972 Protocol also adds to the French text of article 2, paragraph 4 the word *"nécessairement"*. It replaces the words *"sauf que"* by the word *"Toutefois"*, the words *"que pour les évaluations"* by the words *"aux fins des évaluations"* and the words *"les statistiques"* by *des statistiques"*. These changes, made for reasons of style and clarification, do not affect the accepted meaning of paragraph 4.

7 Article 32, para. *(a)*, article 33, para. 4 and article 31, para. 1 of the Vienna Convention on the Law of Treaties, document A/CONF.39/27.

8 *1972 Records*, vol. II, paras. 1 and 3 of the summary records of the eighth plenary meeting (pp. 23-24).

Paragraph 6 of article 2 of the amended Single Convention

6. In addition to the measures of control applicable to all drugs in Schedule I, opium is subject to the provisions of *article 19, paragraph 1, sub-paragraph* (f), *and of articles 21* bis, 23 and 24, the coca leaf to those of articles 26 and 27 and cannabis to those of article 28.

Commentary

Paragraph 6, being *inter alia* a synopsis of the provisions of the Single Convention applicable to opium, was amended to take into account additional provisions introduced by the 1972 Protocol in respect of opium.[1]

1 Article 49 and article 25, para. 1, subpara. *(a)* also apply to opium; see *1961 Commentary* on article 2, para. 6 (p. 69).

Paragraph 7 of article 2 of the amended Single Convention

> **"7. The opium poppy, the coca bush, the cannabis plant, poppy straw and cannabis leaves are subject to the control measures prescribed in *article 19, paragraph 1, sub-paragraph* (e), *article 20, paragraph 1, sub-paragraph* (g), *article 21* bis and in articles 22 to 24; 22, 26 and 27; 22 and 28; 25; and 28, respectively."**

Commentary

1. Paragraph 7, intended to present *inter alia* a synopsis of the provisions of the Single Convention concerning the opium poppy, was amended to take into account additional provisions introduced by the 1972 Protocol in respect of the opium poppy.

2. The French text should have a semi-colon after 25.

3. The Spanish text erroneously refers to the entire articles 19 and 20. The figures "19, 20" between *"los artículos"* and "21 *bis*" should not have been included.[1]

[1] As regards omissions, see *1961 Commentary* on article 2, para. 7 (p. 70).

Article 2

AMENDMENTS TO THE TITLE OF ARTICLE 9 OF THE SINGLE CONVENTION AND ITS PARAGRAPH 1 AND INSERTION OF NEW PARAGRAPHS 4 AND 5

Introauctory paragraph of article 2 of the 1972 Protocol, title of article 9 of the amended Single Convention, paragraph of the 1972 Protocol introducing paragraph 1 of article 9 of the amended Single Convention and paragraph 1 of article 9 of the amended Single Convention

The title of article 9 of the Single Convention shall be amended to read as follows:

"Composition and Functions of the Board"

Article 9, paragraph 1, of the Single Convention shall be amended to read as follows:

"1. The Board shall consist of *thirteen* 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) Ten* members from a list of persons nominated by the Members of the United Nations and by Parties which are not Members of the United Nations."

Commentary

1. The unamended text of article 9 together with articles 10 and 11 contains the provisions on the constitution of the Board. These articles do not provide for its functions, which are laid down elsewhere.[1] The addition of the words "and Functions" to the title of the unamended article 9 is consequential to the addition of paragraphs 4 and 5 to that article providing for functions of the Board.

2. The increase in the membership of the Board from eleven to thirteen is in accord with a general tendency in the evolution of "restricted"

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1 Articles 12 to 15, 19, 20, article 21, para 3 and para. 4, subpara. *(a)*, article 24, para. 2, subpara. *(a)*, article 45, para. 2 and article 49, paras. 3 and 4; the 1972 Protocol adds functions of the Board in article 9, new paras. 4 and 5, the revised para. 5 of article 12, in the revised provisions of article 14, the new article 14 *bis*, the revised article 16, the new article 19, para. 1, subparas. *(e)* to *(h)*, the new article 20, para. 1, subpara. *(g)*, the new article 21 *bis*, the new paras. *(f)* and *(g)* of article 35, the new article 38 *bis* of the Single Convention and in article 20 of the 1972 Protocol.

international organs, i.e. of organs on which not all members of the organization concerned or all Parties to the treaty involved are represented. That tendency is motivated by the growing number of members of many international organizations and of Parties to many multilateral treaties, that increase being caused by the accession to independence of numerous formerly dependent territories.

3. Amendments consequential to the increase in the membership of the Board were made by article 2 of the 1972 Protocol in article 9, paragraph 1, subparagraph *(b)* of the Single Convention, by article 3 of that Protocol in article 10, paragraph 4 of the Single Convention and by article 4 of the Protocol in article 11, paragraph 3 of the Convention.

4. Only at the first election of the Board constituted under the terms of the 1972 Protocol will that Board's total membership be chosen by the Council at a single session. At the following elections only a part of the Board's membership, six or seven members–as the case may be–will have to be chosen. The total membership of the Board will then be renewed in two partial elections taking place at intervals lasting alternatively three or two years.[2]

5. The terms of office of the three members of the Board chosen among the WHO candidates at the first election of that organ as constituted under the 1972 Protocol would under article 20, paragraph 4 of that Protocol be determined by lot, like those of the other members appointed at that election, and would either be three or five years.

6. If all three WHO-nominated members chosen by the Council at that first election obtain the same terms of office, i.e. either three or five years, the application of article 9, paragraph 1, subparagraph *(a)* would not give rise to particular problems. The terms of office of all of them, and also of all future WHO-nominated members serving a full term,[3] would in that case expire at the same time. Since all three WHO-nominated members of the Board would be chosen at the same election, they could be taken from the list of at least five persons nominated by the World Health Organization, as required by article 9, paragraph 1, subparagraph *(a)* of the Single Convention.

7. However, if as a result of the operation of article 20, paragraphs 3 and 4 of the 1972 Protocol the terms of office of the first three WHO-nominated members of the Board as constituted under that Protocol and consequently also of all future WHO-nominated members of that Board do not expire at the same time, the Council would at each of its regular elections[4] of the

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2 Article 20, paras. 3 and 4 of the 1972 Protocol.

3 i.e., excluding WHO-nominated members elected under article 10, para. 5 of the Single Convention for the remainder of the term of a member who left the Board before the expiration of his term.

4 i.e., at the elections, taking place in intervals of three or two years, at which six or seven members would be chosen for full five-years terms. They are referred to as "regular" elections to distinguish them from those at which the Council fills a vacancy occurring during the term of office of a member for the remainder of his term (article 10, para. 5 of the Single Convention).

members of the Board have to elect one or two WHO nominees. The question arises whether WHO would have to supply for each of those elections a list of at least five candidates for the Council's choice, although not three, but only two or one WHO-nominated members of the Board would have to be chosen.

8. It is obvious that the influence of WHO on the composition of the Board would not be as great if the Council could elect only two members or one member from a list of at least five WHO candidates, as it would be in the case in which the Council would have to choose three Board members from such a list. It is submitted that the 1972 Conference did not intend to reduce WHO's influence in the process of the Board's election.

9. It is held that the Council is required to choose three members of the Board from a single list of at least five persons nominated by the World Health Organization, no matter whether it chooses those members at one or at two different elections. A situation may thus occur in which the Council would have to elect two Board members from a list containing only four WHO nominees, or one Board member from a list consisting only of three WHO candidates. WHO should however be entitled at any time to substitute persons for those on the list or to increase their number.

10. It may be recalled that the *1961 Commentary* holds that if a seat on the Board becomes vacant during the term of office of a member who held that seat on the basis of his election as a WHO candidate, WHO should name at least two candidates for the vacancy.[5]

11. As regards the authority of the Board as constituted under the 1972 Protocol to exercise the functions of the Board constituted under the unamended text of the Single Convention, and under the earlier drug control treaties those of the Permanent Central Board constituted under chapter VI of the 1925 Convention as amended by the 1946 Protocol, and those of the Supervisory Body constituted under chapter II of the 1931 Convention as amended by that Protocol; see article 20 of the 1972 Protocol and below the comments thereon. As regards the authority of the Board as constituted under the 1972 Protocol, under the Vienna Convention, see also paragraphs 1 to 5 of the comments of the *1971 Commentary* on article 1, paragraph *(c)* of that Convention.

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5 *1961 Commentary*, para. 2 of the comments on article 10, para. 5 (pp. 146-147).

Paragraph of article 2 of the 1972 Protocol introducing the new paragraphs 4 and 5 of article 9 of the amended Single Convention and paragraph 4 of article 9 of the amended Single Convention

The following new paragraphs shall be inserted after paragraph 3 of article 9 of the Single Convention:

"4. The Board, in co-operation with Governments, and subject to the terms of this Convention, shall endeavour 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, production and manufacture of, and illicit trafficking in and use of, drugs.

Commentary

1. Paragraph 4 summarizes the basic aims of the Single Convention: To prevent or at least to reduce the misuse of drugs[1] by limiting the legal supplies of drugs whether obtained by cultivation,[2] production,[3] or manufacture[4] to the quantities required for medical and scientific purposes[5] and by preventing illicit supplies whether obtained by illicit cultivation, production, manufacture or illicit trafficking, while at the same time ensuring the availability of drugs for medical and scientific purposes.[6]

2. It may be noted that paragraph 4 does not explicitly refer to the limitation of drug supplies to be obtained by legal imports,[7] but this omission does not affect the important role which the Board is required to play in regard to that limitation under article 21 (and 19) of the Single Convention.[8]

3. The paragraph under consideration makes it quite clear that all aspects of the problem of drug abuse should be of concern to the Board; but this is to a very large extent only a confirmation of the practice of the Board under the unamended text of the Single Convention and of its interpretation

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1 Article 1, para. 1, subpara. *(j)* of the Single Convention.

2 Article 1, para. 1, subpara. *(i)* of that Convention.

3 Article 1, para. 1, subpara. *(t)* of that Convention.

4 Article 1, para. 1, subpara. *(n)* of that Convention.

5 Article 4, para. *(c)* and article 21 of that Convention; see also article 21 *bis*, para. 2 of the amended text of that Convention.

6 Second considerandum of the Preamble of the Single Convention.

7 Article 21 of the Single Convention. Para. 4 also does not refer to the limitation of exports, imports and trade to medical and scientific purposes (article 4, para. *(c)* of the Single Convention).

8 And in extreme cases under its article 14; see also article 31, para. 1, subpara. *(b)*. The language used in para. 4 as in other amendments introduced by the 1972 Protocol is not always consistent with the usage in the unamended Single Convention or with definitions in its article 1; the word "trafficking" as used in para. 4 has a narrower meaning than in article 1, para. 1, subpara (l); that applies also to the words *"trafic"* and *"trafico"* in the French and Spanish texts.

of its functions under that text in conformity with the views expressed in the *1961 Commentary*. Even under the unamended Single Convention the Board has actually been held to be authorized to deal with almost any problem of implementation of that treaty.[9] The Board has in particular taken a very broad view of what it may include in its reports under article 15, paragraph 1.[10]

4. Paragraph 4 requires the Board to "endeavour"[11] to achieve the aims of the Single Convention as laid down in that provision, "in co-operation with Governments" and "subject to the terms of this Convention". Since the Board has no power of direct administration on the territory of any country, the actions required to achieve the aims of the Single Convention must of course be taken by the national Governments concerned.

5. The Board therefore has always recognized that in order to be effective it must to the greatest extent possible co-operate with the Governments concerned, and that it has to maintain friendly relations with Governments, guided in carrying out the Convention by a spirit of co-operation rather than by a narrow view of the letter of the law.[12] When requiring the Board to endeavour to carry out its functions "in co-operation with Governments" paragraph 4 only prescribes what is indispensable for the Board's effectiveness and what has in any event been its practice.

6. The Board has the right to take some actions which do not require the co-operation or the consent of the Governments concerned;[13] not only in view of article 9, paragraphs 4 and 5, but also in view of the Board's past practice, it may be assumed that the Board would also in those cases normally seek the co-operation or at least the understanding of the Governments concerned.

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9 *1961 Commentary*, paras. 6 and 7 of the comments on article 12, para. 4 (pp. 163-164), paras. 3 to 7 of the comments on article 13, paras. 2 to 3 (pp. 171 to 173) and para. 6 of the comments on article 14, para. 1, subpara. *(a)* (pp. 179 and 180).

10 *1961 Commentary*, para. 6 of the comments on article 15, para. 1 (pp. 199-200); a member of one of the 31 delegations to the 1972 Conference which proposed the original version of para. 4 already providing for all the functions of the Board laid down in the final text of that provision actually stated that para. 4 did not attribute any new function to the Board but was confined to a clear statement of its objectives and to a definition of its role in controlling licit production (and manufacture) and in combating illicit traffic. He held that the inclusion in the treaty of such explanations was necessary; *1972 Records*, vol. II, para. 37 of the summary records of the tenth meeting of Committee I (p. 107) and document E/CONF.63/5, *1972 Records*, vol. I, Part Two, Section A (p. 95).

11 The word "endeavour" is used in the sense of "strive after".

12 *1961 Commentary*, para. 8 of the comments on article 12, para. 4 (p. 164); see also para. 3 of the comments on article 14, para. 1, subpara. *(a)* (pp. 178-179) and paras. 8 and 9 of the comments on article 14, para. 1, subpara. *(b)* (pp. 185-186).

13 Article 12, paras. 1, 4, and 6; article 13, paras. 1, 2 and 3, article 14; article 19, para. 1, introductory subpara.; article 20, para. 1, introductory subpara.; article 21, paras. 2 to 4; article 21 *bis*, paras. 2 and 4; article 24, para. 2, subpara. *(a)* (recommendation not to engage in the production of opium for export) and article 35, para. *(g)*.

7. The provision that the Board should carry out its endeavours under paragraph 4 "subject to the terms of this Convention" appears to restrict the scope of its endeavours to the exercise of its powers granted by the Convention. Those powers are however very wide. It has been submitted earlier in paragraph 3 of the present comments that even under the unamended text of the Single Convention the Board has actually been entitled to deal with almost any problem of implementation of that treaty. Several amendments brought to that treaty by the 1971 Protocol appear explicitly to authorize the Board not only to deal with problems of execution of specific treaty provisions, but also with any other aspect of the question of drug abuse, at least in discussions or consultations with the Governments concerned. Article 9, paragraph 5 does not limit the dialogue between Governments and the Board to the implementation of provisions of the Single Convention, but envisages as the purpose of that dialogue its possibility of assisting Governments in taking effective national action to attain *the aims* of the Single Convention. Article 14, paragraph 1, subparagraph *(a)* provides for consultation of the Board with the Government concerned not only in the case of treaty violations, but also in the event of serious drug control problems not caused by treaty violations. The new subparagraph *(c)* of that paragraph provides for the possibility of the Board's aid to and consultation with Governments in studying and assessing the nature of certain serious drug problems in their territory, no matter whether those problems are due to non-compliance with provisions of the Single Convention or not. It is also held that the Board's consultations with Governments under article 21 *bis*, paragraph 3 and its advice to Governments under article 35, paragraph *(g)* or under article 38 *bis* need not necessarily be limited to questions of implementing specific provisions of the Single Convention.

8. The Board, in acting under article 9, paragraph 4, "subject to the terms of this Convention", is of course also subject to the restrictions imposed upon its authority by that treaty. The Board may e.g. not recommend remedial measures to an individual Government without its consent, except in accordance with article 14, paragraph 1, subparagraph *(b)*.[14]

9. Article 9, paragraph 4 states the general principle of the Board's obligation to "endeavour" to achieve (i.e. to strive after achieving) the aims of the Convention in co-operation with Governments. The other provisions referred to in paragraph 7 of these comments refer to particular ways by which or to special situations in which that co-operation should be carried out,[15] but these special provisions are not exhaustive. They do not cover all the possibilities of the Board's co-operation with Governments under the Single Convention.

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14 *1961 Commentary*, para. 8 of the comments on article 14, para. 1, subpara. *(b)*; see also article 14, para. 1, subparas. *(c)* and *(d)* as amended; see furthermore article 14, para. 1, subpara. *(a)* regarding the restriction on the Board's right to publicity.

15 See also article 12, para. 3.

10. The Board may raise with any Government, whether that of a Party or non-Party, any question related to the aims of the Single Convention, e.g., it may suggest consultations on any aspect of the drug abuse problem, particularly with a view to its lending assistance to and facilitating that Government's effective national action to attain the aims of that treaty.[16] A Party so addressed by the Board would normally not be legally bound to engage in such consultations. It would however, in some cases provided for in specific rules of the Single Convention,[17] have some very weighty reasons for not refusing to enter into consultations with the Board, and would in all cases have to furnish to the Board information and explanations which it is bound to supply under specific treaty provisions.[18]

11. The Board may lend assistance or give advice only to a Government requesting it expressly[19] or by clear implication. As indicated in paragraph 8 of these comments, the Board may in particular not recommend remedial measures to a Government without its agreement except under article 14, paragraph 1, subparagraph *(b)*. A Government's consultations with the Board may however by themselves aid that Government in taking effective action to attain the aims of the Single Convention,[20] without the Board formally rendering assistance or giving advice.

12. The Board's right to lend requested assistance or give requested advice is not restricted to those cases for which the Single Convention expressly provides.[19] It has already been recognized under the terms of the unamended Single Convention that the Board is even authorized to render, to a Government requesting it, technical assistance in the improvement of its drug control system. That assistance must however be within the Board's competence, and should not overlap with assistance which might be given by other intergovernmental bodies; both requirements have been made the practice of the Board in the past.[21]

13. The Board may normally include in its reports under article 15, paragraph 1 résumés of its consultations with Governments. It may however not do so under the conditions of article 14, paragraph 1, subparagraph *(a)*.[22] It may also not report consultations which the Government concerned has requested to treat as confidential. The Board may report that

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16 Article 9, para. 5.

17 Article 14, para. 1, subpara. *(a)* and article 21 *bis*, para. 3.

18 Article 12 (particularly its para. 4), article 13 (particularly its para. 3), article 14, para. 1, subpara. *(a)*, article 19, article 20, article 21 *bis*, para. 2; see also article 31, paras. *(f)* and *(g)*; see *1961 Commentary* on the unamended versions of those provisions which existed already in the unamended text of the Single Convention.

19 See also article 14, para. 1, new subpara. *(c)*, article 35, para. *(g)* and article 38 *bis*.

20 Article 9, para. 5.

21 *1961 Commentary*, para. 9 of the comments on article 14, para. 1, subpara. *(b)* (pp. 185-186).

22 See also *1961 Commentary*, para. 17 of the comments on article 14, para. 1, subpara. *(a)* (p. 183).

its proposal to enter into consultations was rejected by a Government, as well as the reasons for its proposal, except under the conditions of article 14, paragraph 1, subparagraph *(a),* or in cases in which such a report might constitute a circumvention of the requirement of that subparagraph to treat as confidential proposals for consultations to which that provision refers.

Paragraph 5 of article 9 of the amended Single Convention

> ***"5. All measures taken by the Board under this Convention shall 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."***

Commentary

1. The Board must in all cases choose those measures which in its view are those most appropriate for the aims of the Convention which it is required to "endeavour" to achieve. Under paragraph 4 it is required to "endeavour" to co-operate in this task with Governments. Paragraph 5 emphasizes this requirement of co-operation with Governments and defines it in somewhat more detail by specifying that all measures taken by the Board under the Single Convention should be those most consistent with the intent to further the Board's co-operation with Governments and to provide the mechanism for a continuing dialogue between Governments and the Board.

2. It is submitted that paragraph 5 does not affect the requirement that the Board's first consideration in adopting a measure should be its suitability for achieving the aims of the Convention, although it might in a very few exceptional cases not necessarily appear to be that most consistent with the intent to further the Board's co-operation with a particular Government. There can however be no doubt, that normally those measures of the Board would be most effective which would be most consistent with the intent to promote the Board's co-operation with the Governments concerned.

3. The requirement that all measures taken by the Board under the Single Convention should also be "those most consistent with the intent ... to provide the mechanism for a continuing dialogue between Governments and the Board" is justified by the experience of the Board and accords with its practice. The Board exchanges annually several thousands of communications with Governments, often transmitting solicited information and giving requested advice. The continuous contact of the Board or its secretariat with Governments, and especially with their competent technical departments, is likely not only to lend them assistance and to facilitate effective national action, but also quite frequently to contribute to such solutions of national

questions as would be most in harmony with the interests of the family of nations as a whole.

4. Since the Board is not in continuous session and in facts meets only a few weeks each year, it has to delegate to its secretariat the required authority in order to maintain between its sessions "the mechanism for a continuing dialogue" with Governments. Its secretariat must have highly competent experts capable of carrying on a "dialogue" with Governments which would be useful to them. It may be noted in this context that article 16 of the Single Convention as amended by article 8 of the 1972 Protocol requires the Secretary-General to consult the Board on his appointment of its Secretary and thus grants that organ some influence on the quality of its secretariat services.[1]

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1 See also article 9, para. 2 of the Single Convention and Council resolutions 1196 (XLII) and 1755 (LIV); as regards the discussion of the matter at the 1972 Conference, see *1972 Records,* vol. I, document E/CONF.63/L.3 (p. 101) and document E/CONF.L.5/Add.4 (p. 123); vol. II, paras. 44-58 of the summary records of the nineteenth meeting of Committee I (pp. 152-153).

Article 3

AMENDMENTS TO ARTICLE 10, PARAGRAPHS 1 AND 4 OF THE SINGLE CONVENTION

Introductory paragraph of article 3 of the 1972 Protocol and paragraphs 1 and 4 of article 10 of the amended Single Convention

Article 10, paragraphs 1 and 4, of the Single Convention shall be amended to read as follows:

"1. The members of the Board shall serve for a period of *five* years, and *may be re-elected.*

"4. The Council, on the recommendation of the Board, may dismiss a member of the Board who has ceased to fulfil the conditions required for membership by paragraph 2 of article 9. Such recommendation shall be made by an affirmative vote of *nine* members of the Board."

Commentary

1. The International Narcotics Control Board has some judicial functions.[1] The full technical independence of the Board is also expressly recognized in article 9, paragraph 2.

2. It is generally accepted that lengthening the term of office of the members of an organ contributes to the organ's independence.

3. Some of the problems with which the Board has to deal may require its attention for a number of years. A longer term of office of its members may also contribute to the Board's competence to deal with difficult situations not amenable to quick solutions.

4. The increase in the number of votes from eight to nine required for a recommendation pursuant to paragraph 4 is related to the increase in the membership of the Board. Under the unamended as well as under the amended text of the Single Convention, a two-thirds majority of the total membership of the Board is required for such a recommendation.

5. The other textual changes brought by the 1972 Protocol to the English, French and Spanish texts of article 10, paragraph 1 do not affect the meaning of the unamended text of that provision.

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1 *1961 Commentary,* para. 1 of the comments on article 9, para. 2 (pp. 135-136); see also the references in foot-note 1 to those comments.

Article 4

AMENDMENT TO ARTICLE 11, PARAGRAPH 3 OF THE SINGLE CONVENTION

Introductory paragraph of article 4 of the 1972 Protocol and paragraph 3 of article 11 of the amended Single Convention

Article 11, paragraph 3, of the Single Convention shall be amended to read as follows:

"3. The quorum necessary at meetings of the Board shall consist of *eight* members."

Commentary

The increase in the Board's quorum from seven to eight of its members is related to the increase in the Board's membership from eleven to thirteen under the amended text of article 9, paragraph 1, introductory subparagraph.

Article 5

AMENDMENT TO ARTICLE 12, PARAGRAPH 5 OF THE SINGLE CONVENTION

Introductory paragraph of article 5 of the 1972 Protocol and paragraph 5 of article 12 of the amended Single Convention

Article 12, paragraph 5, of the Single Convention shall be amended to read as follows:

"5. The Board, ***with a view to limiting the use and distribution of drugs to an adequate amount required for medical and scientific purposes and to ensuring their availability for such purposes,*** **shall as expeditiously as possible confirm the estimates, including supplementary estimates, or, with the consent of the Government concerned, may amend such estimates. In case of a disagreement between the Government and the Board, the latter shall have the right to establish, communicate and publish its own estimates, including supplementary estimates."**

Commentary

1. The estimates as confirmed by the Board determine under the unamended Single Convention the amounts of drugs which each country or territory[1] may annually obtain by manufacture or import or both.[2] They do not determine the amounts of opium, cannabis, cannabis resin or coca leaves which may be produced.[3]

2. The amended Single Convention continues to provide for the determination of the annual limits of narcotics supplies by manufacture or import or both on the basis of estimates of drug requirements furnished by Governments or, in the event of their failure to supply them, established by the Board;[4] but in addition, it requires Parties to furnish to the Board each year estimates of the area and the geographic location of land to be used for the cultivation of the opium poppy, of the approximate quantity of opium to

1 Article 1, para. 1, subpara. *(y)*.

2 Article 21, see also article 31, para. 1, subpara. *(b)*.

3 Article 1, para. 1, subpara. *(t)*; see also article 4, para. *(c)* and as regards opium article 24; the 1953 Protocol also does not determine by the estimate system the amounts of opium which each country or territory may produce; see articles 8, 5 and 6 of the Protocol.

4 Article 12, para. 3

be produced, 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.[5] These additional estimates directly determine the limits of the quantities of the matters to which they relate, while the other estimates,[6] i.e. the estimates of narcotics requirements, form only the basis for computing the limits of narcotics supplies.

3. The 1972 Protocol brings two amendments to article 12, paragraph 5: one indicating the purpose of the Board's examination of the estimates, and a second stating the Board's right, in cases in which it disagrees on estimates or supplementary estimates with a Government which furnished them, to establish, communicate and publish its own "estimates".

4. The Board has always been guided by the view that the purpose of its examination of the estimates is to ensure as far as possible that they are neither overestimates nor underestimates, and thus to limit the legal supplies of narcotic drugs to quantities adequate for medical and scientific purposes. It has not only endeavoured to prevent excessive supplies which might contribute to a tendency of diversion of legal supplies into illicit channels, but also to ensure that its administration of the estimate system does not cause countries or territories difficulties in providing themselves with drugs which they need for medical purposes.[7] The first amendment of article 12, paragraph 5 thus only emphasizes what had already been the practice of the Board.

5. It is submitted that even under the unamended text of the Single Convention the Board is entitled to establish, communicate and publish "estimates"–i.e. figures which it thinks would be appropriate–which differ from those furnished by Governments. That authority is implied in the Board's right to issue pursuant to article 12, paragraph 6 such information on the estimates as in its opinion will facilitate the carrying out of the Single Convention.[8] The specific recognition of that right of the Board in the second amendment of article 12, paragraph 5 is obviously motivated by the consideration that it would be useful to emphasize that it would in some cases be advisable to communicate and publish those "estimates" which the Board considers adequate, in addition to those furnished by Governments which did not consent to the changes proposed by the Board.

6. It is submitted that only the estimates furnished by Governments[9] or amended with their consent determine the legally relevant quantities for the

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5 Article 19, para. 1, subparas. *(e)* to *(h)* and para. 5 in the form established by the 1972 Protocol.

6 Article 19, para. 1, subparas. *(a)* to *(d)*; see also article 19, para. 2.

7 *1961 Commentary*, paras. 1 and 2 of the comments on article 12, para. 4 (p. 162); the (Drug) Supervisory Body was also guided by the same view in its examination of the estimates under the 1931 Convention.

8 The Board could also publish the estimates which it considers appropriate, in a report issued under article 15, para. 1.

9 Or established by the Board pursuant to article 12, para. 3.

purposes of article 19, paragraphs 2 and 5, article 21, article 21 *bis,* paragraphs 1 and 2 and article 31, paragraph 1, subparagraph *(b).* Parties may however sometimes find it advisable to compute the limits of their exports to a country or territory under article 31, paragraph 1, subparagraph *(b)* on the basis of the different "estimates" furnished by the Board.[10]

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10 *1972 Records,* vol. II, para. 35 of the summary records of the nineteenth meeting of Committee I (p. 152); the difficult problems involved in applying article 31, para. 1, subpara. *(b)* have been discussed in the *1961 Commentary* paras. 7 to 12 of the comments on article 31, para. 1 (pp. 350-352).

Article 6

AMENDMENTS TO ARTICLE 14, PARAGRAPHS 1 AND 2 OF THE SINGLE CONVENTION

General comments

1. The unamended text of article 14 applies only to situations in which the aims of the Single Convention are seriously endangered by reason of a country or territory failing to carry out the provisions of that treaty. It provides for several means of persuasion or pressure intended to induce such a country or territory to implement the Single Convention.

2. The amendments of the 1972 Protocol extend the scope of article 14 to cover also situations in which a country or territory, although not failing to implement the Single Convention, has actually become or presents a serious risk of becoming an important centre of the illicit traffic.

3. The amendments do not affect the possibility of applying the measures of persuasion referred to in paragraph 1 of the present comments to situations mentioned in that paragraph; but they provide in addition for measures applicable to both kinds of situations, those referred to in paragraph 1 as well as those mentioned in paragraph 2 of the present comments, which may assist the Government concerned to assess the problems of their difficult drug situation or to cope with them. That new character of article 14 is supported by the provision of article 14 *bis* expressly authorizing the Board, to substitute, with the agreement of the Government concerned, for measures which it may take under article 14, paragraphs 1 and 2, or to add to such measures, recommendations of multilateral technical or financial assistance or of both.

4. It may be pointed out in this context that under paragraph 5 added by the 1972 Protocol to article 9, all measures taken by the Board under article 14, as under other provisions of the Single Convention, "shall be those most consistent with the intent to further the co-operation of Governments with the Board and to provide the mechanism for a continuous 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 submitted that this has always been the intention of the Board in applying the unamended article 14 as well as that of the Permanent Central (Narcotics) Board in its administration of the corresponding provisions of earlier drug control treaties.[1]

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1 *1961 Commentary,* para. 3 of the comments on article 14, para. 1, subpara. *(a)*, (pp. 178-179): for corresponding earlier provisions, see articles 24 and 26 of the 1925 Convention, article 14, para. 3, second subpara. of the 1931 Convention and articles 11 to 13 of the 1953 Protocol.

5. The 1972 Protocol extended the scope of information which the Board may use under article 14 as well as the range of sources from which the Board may obtain information for that purpose.

Introductory paragraph of article 6 of the 1972 Protocol and paragraph 1, subparagraph* (a) *of article 14 of the amended Single Convention

Article 14, paragraphs 1 and 2, of the Single Convention shall be amended to read 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 *or by specialized agencies or, provided that they are approved by the Commission on the Board's recommendation, 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,* the Board has *objective reasons* to believe that the aims of this Convention are being seriously endangered by reason of the failure of any *Party,* country or territory to carry out the provisions of this Convention, the Board shall have the right to *propose to the Government concerned the opening of consultations or to request it to furnish explanations. If, without any failure in implementing the provisions of the Convention, a Party or a country or territory has become, or if there exists evidence of a serious risk that it may become, an important centre of illicit cultivation, production or manufacture of, or traffic in or consumption of drugs, the Board has the right to propose to the Government concerned the opening of consultations.* Subject to the right of the Board to call the attention of the Parties, the Council and the Commission to the matter referred to in subparagraph *(d)* below, *the Board* shall treat as confidential a request for information *and* an explanation by a Government *or a proposal for consultations and the consultations held with a Government* under this subparagraph.

Commentary

1. The subparagraph under consideration as amended by the 1972 Protocol, and consequently other provisions of article 14, deal with two different difficult drug situations which may exist in a country or territory: one due to the failure of the country or territory concerned to carry out the provisions of the Single Convention, and the other existing in a country or territory not failing to implement that treaty.

2. The beginning of subparagraph *(a)* limits the sources of the information on which the Board may base a decision to initiate a procedure pursuant

to article 14 in the case of both kinds of situations referred to in the preceding paragraph of the present comments, although it appears by its terms to apply only where the country or territory concerned has failed to carry out the provisions of the Single Convention.

3. Under the unamended text of article 14, the Board may use only information obtained from Governments or from United Nations organs. The 1972 Protocol adds as sources of information which the Board may use: specialized agencies, and certain other intergovernmental organizations and some international non-governmental organizations which the amended subparagraph describes.

4. The addition of "specialized agencies" does not in fact increase the sources which the Board may use under the unamended text. The term "United Nations organs" was understood by the 1961 Conference which adopted the Single Convention to cover not only organs of the United Nations but also organs of other intergovernmental organizations which are members of the United Nations family.[1]

5. Only those intergovernmental organizations other than specialized agencies are admitted as sources of information under subparagraph *(a)* which are approved for that purpose by the Commission on the Board's recommendations.

6. Non-governmental organizations are admitted as sources of information only if they fulfil the following conditions:

(a) They must be "international";

(b) They must have "direct competence in the subject-matter". That requirement does not mean that the international non-governmental organizations concerned must work specifically in the field of narcotic drugs;[2] organizations having experience on one or more of the manifold aspects of the problem of drug abuse could be chosen by the Board and the Commission, such as organizations concerned with problems of alcoholism and drug addiction, medicine, chemistry, pharmacy, social defence, international transport by air, sea, railway, motor cars or other vehicles, or customs or other border control;[3]

(c) They must enjoy consultative status with the Council under Article 71 of the Charter of the United Nations[4] or a similar status by special

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1 *1961 Commentary*, para. 10 of the comments on article 14, para. 1, subpara. *(a)* (pp. 180-181).

2 *1972 Records*, vol. II, paras. 11 and 19 to 38 of the summary records of the sixteenth meeting of Committee I (pp. 134-136).

3 *1972 Records*, vol. II, para. 8 of the summary records of the twelfth meeting of Committee I (pp. 115-116).

4 Council resolution 1296 (XLIV), amended by resolution 1391 (XLVI); see also Council resolution 288 B (X).

agreement with the Council;[5] and

(d) They must be approved by the Commission on the Board's recommendation.

7. The Board may use not only information submitted by the Government of the country or territory in question, but also data supplied by other Governments.[6] Information furnished by Governments of non-Parties may also be used.

8. The Board may however use only such information obtained from Governments as was submitted under the provisions of the Single Convention,[7] including information received in the course of a procedure pursuant to article 14 itself. The 1961 Commentary points out that non-compliance with almost any of the provisions of the Single Convention can be revealed by the data furnished by Governments under provisions of the (unamended) Single Convention, or by the additional information or explanations which Governments may be required to supply in the course of the Board's examinations of their communications.[8] The 1972 Protocol has extended the scope of the information which the Board may receive from Governments, specifically in regard to the illicit traffic.[9] It may be assumed that information furnished to the Board by Governments under the provisions of the Single Convention will normally yield the data which the Board needs for making the factual determination required for the purposes of the subparagraph under consideration.

9. It will be noted that the information communicated by the other sources mentioned in subparagraph *(a)* which the Board may use, need not be submitted under the provisions of the Single Convention. With the exception of article 8, paragraph *(b)* authorizing the Commission to call the attention of the Board to matters relevant to its functions, and of subparagraph *(a)* itself, the Single Convention does not contain any provision dealing with the transmission to the Board of information by those other sources. The unamended text of that subparagraph restricts the information from United Nations organs[10] which the Board may use to that bearing on questions arising under provisions of the Single Convention providing for the supply by Governments of information to the Board. That text does not admit the use

5 The 1972 Conference appears to have been of the opinion that the International Criminal Police Organization (INTERPOL) is an international non-governmental organization enjoying such a status by special agreement with the Council; see *1972 Records*, vol. II, para. 4 of the summary records of the eleventh meeting of Committee I (pp. 109-110) and Council resolution 1579 (L).

6 *1961 Commentary*, para. 8 of the comments on article 14, para. 1, subpara. *(a)* (p. 180).

7 Articles 12, 13, 19, 20, 21 *bis*, paras. 2 and 3 and new para. *(f)* of the amended article 35; see also article 21 *bis*, para. 4.

8 Para. 6 of the comments on article 14, para. 1, subpara. *(a)* (pp. 179-180).

9 Article 13 of the 1972 Protocol, adding paras. *(f)* and *(g)* to article 35 of the Single Convention.

10 See para. 4 of the present comments.

of information furnished by intergovernmental organizations other than organs of the United Nations or specialized agencies, nor that supplied by any non-governmental organization. The elimination of that restriction, as well as the increase of the sources authorized to furnish information, may to some extent be explained by the fact that under the amended article 14 the Board not only has to deal with situations of non-compliance with provisions of the Single Convention, but also with dangerous drug situations not caused by a failure to implement those provisions.

10. It is submitted that the Board's action can be based not only on information which it receives, but also on the failure of a Government to furnish information which it is required to supply to the Board or the Commission under provisions of the Single Convention.[11]

11. In regard to the first of the two dangerous drug situations with which the Board has to deal, i.e. the one caused by a failure of a country or territory to carry out the Single Convention, the Board has to determine whether it has "*objective reasons* to believe that the aims of this Convention are seriously endangered by reason of the failure of any *Party*, country or territory to carry out the provisions of this Convention".

12. The 1972 Protocol substitutes the words "objective reasons" for the word "reason" in the language of the unamended text. It is held that the new wording does not change the meaning of subparagraph *(a)* in this context. The new phrase including the word "objective" was introduced in order to reassure some delegates to the 1972 Conference that the Board would have to base its actions on objective facts and not on purely subjective considerations; but this appears to be the law already under the unamended text.[12]

13. The amended text of subparagraph *(a)* has the words "any Party" before the phrase "country or territory" and the words "a Party or" before the phrase "a country or territory". The word "country" as used in the unamended text of that subparagraph refers to countries of Parties or non-Parties alike, and the word "territory" to all territories, no matter whether they belong to Parties or non-Parties, or whether they are parts of a non-metropolitan territory to which the Single Convention applies, or to those to which that Convention does not apply pursuant to its article 42 or 46. The addition of the word "Party" in those two phrases would make it appear that the word "country" as used in the amended text refers only to a country of a non-Party, while the meaning of the word "territory" would not be affected by the amendment.

14. In view of some misunderstandings expressed at the 1972 Conference,[13] it may be useful to state that the word "territory" as used in

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11 Para. 7 of the comments referred to in foot-note 1 (p. 180).

12 *1972 Records*, vol. II, paras. 2, 14, 15, 16 and 44 of the summary records of the sixteenth meeting of Committee I (pp. 133-134 and 136).

13 *1972 Records*, vol. II, para. 39 of the summary records of the eleventh meeting of Committee I (p. 112).

subparagraph *(a)* does not mean a non-metropolitan territory, but in accordance with its definition in article 1, paragraph 1, subparagraph *(y)* is used in the sense of "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", i.e. any part of a State which forms a separate entity for the application of the administrative controls of the Single Convention.

15. If the Board, on the basis of information admissible under subparagraph *(a)*, has objective reasons to believe that the aims of the Single Convention are seriously endangered by reason of non-compliance with the provisions of that treaty by a country or territory, it may, but is not bound to, adopt either of two measures. It may propose to the Government in question the opening of consultations, or request that Government to furnish explanations. Although the text does not state this, it is submitted that the Board may combine with its request for explanations a proposal of consultations.

16. In accordance with the understanding of the 1972 Conference,[14] it is held that a Government is in no event legally bound to accept the Board's proposal of consultations. A Party is however obligated to furnish the requested explanations unless the case of non-compliance with the Single Convention concerns a territory in the sense of article 1, paragraph 1, subparagraph *(y)* which is or is a part of a non-metropolitan territory to which the Single Convention does not apply pursuant to article 42 or article 46, paragraph 1.[15]

17. In regard to the second of the dangerous drug situations with which the Board has to deal under subparagraph *(a)*, i.e. one which is not due to a failure of a country or territory to implement the Single Convention, the Board has to determine on the basis of information admissible under that subparagraph whether the country or territory involved has become or according to existing evidence presents a serious risk of becoming an important centre of the illicit traffic or of illicit consumption of narcotic drugs.[16]

18. It is held that this second dangerous drug situation would also be one in which the aims of the Single Convention would normally be seriously endangered. The facts may in both dangerous drug situations described in

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14 *1972 Records,* vol. II, para. 10 of the summary records of the twelfth meeting of Committee I and paras. 3 and 58 of the summary records of the sixteenth meeting of that Committee (pp. 116, 134 and 137).

15 As regards the obligation of Members of the United Nations, which are not Parties to the Single Convention to co-operate with the Board in a procedure, pursuant to article 14, para. 1, subpara. *(a),* see *1961 Commentary,* para. 16 of the comments on that subpara. (pp. 182-183).

16 According to article I, para. 1, subpara. (1) "illicit traffic" means cultivation or trafficking in narcotic drugs contrary to the provisions of the Single Convention. The term "trafficking" not only includes all forms of illegal trade and distribution but also illegal manufacture and production, *1961 Commentary,* para. 1 of the comments on that subpara. (1) (p. 11).

subparagraph *(a)* be the same. It is submitted that the first sentence only defines in general terms what is defined in the second sentence in more detail. What distinguishes both dangerous situations is not necessarily the facts, but their causation, namely whether they are due to non-compliance with the Single Convention or not. The use of the words "important centre" in the second definition implies that a purely domestic situation not causing significant difficulties to other countries does not justify action of the Board. This may sometimes apply to countries or territories which, although having a high incidence of abuse of narcotic drugs, are neither countries or territories of origin nor of transit of the international illicit traffic. It is submitted that pursuant to the first sentence of subparagraph *(a)*, the aims of the Convention would also not be seriously endangered by such a domestic situation.

19. It is submitted that, while not easily reconcilable with the wording of the second sentence of subparagraph *(a)*, it would be in accordance with the spirit of the amendment of article 14 to assume that the Board could act under that sentence also in cases in which the country or territory fails to implement some provisions of the Single Convention, as long as its difficult drug situation is not due to such a failure.

20. The second sentence does not explicitly provide for the Board's authority to request explanations, but only for its right to propose consultations to the Government concerned. As under the first sentence,[17] the Government is not legally bound to accept such a proposal.

21. It is held that, in spite of the lack of an express provision authorizing it, the Board would not be barred from asking the Government concerned for an explanation of a situation as defined in the second sentence; but while under the first sentence of subparagraph *(a)* a Party would be bound, according to the apparent understanding of the 1972 Conference, to supply to the Board the requested explanations, it would not have that legal obligation under the second sentence.[17]

22. As long as the Board is not authorized under subparagraph *(d)* to call the attention of the Parties, the Council and the Commission to the matter and actually does not do so, it is bound to treat as confidential communications made under subparagraph *(a)*, including its own requests for explanations or proposals of consultations, as well as the replies of Governments and the course and contents of consultations. The Board is however not precluded from publishing in a report made pursuant to article 15, paragraph 1 that part of the information supplied by Governments under subparagraph *(a)* which has also come to its notice from other communications which it is not required to treat as confidential.

23. The Board is not authorized to withhold from the Government in question the information on which it bases any action under subparagraph *(a)*, nor can it withhold the source of that information.[18]

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17 See para. 16 of the present comments.

18 *1972 Records*, vol. 11, paras. 24, 25 and 28 of the summary records of the tenth plenary meeting (pp. 39-40).

24. As regards the replacing or supplementing of the Board's actions under subparagraph *(a)* by recommendations of multilateral technical or financial assistance, see article 14 *bis* and the comments thereon. As to the relations between paragraph 1, subparagraph *(a)* and that paragraph's subparagraph *(c)*, see the comments on subparagraph *(c)*.

Paragraph 1, subparagraph (b)

> ***(b)*** **After taking action under subparagraph *(a)* above, the Board, if satisfied that it is necessary to do so, may call upon the Government concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of this Convention.**

Commentary

1. That subparagraph was not amended by the 1972 Protocol; but by referring to subparagraph *(a)* it refers under the amended Convention to a provision which is different from what it was in the unamended Convention, and this may require some consideration.

2. It will be noted that the remedial measures which a Government may be called upon to adopt are those which "seem under the circumstances to be necessary for the execution of the provisions of this Convention". It appears to follow that the Board can call for remedial measures only in the case of a serious drug situation as defined in the first sentence of subparagraph *(a)*, but not in the case of a situation described in the second sentence of that subparagraph, because the second case relates to a situation which was not caused by a failure of the Government concerned to implement the provisions of the Single Convention.

3. While it is suggested that the view profferred in the preceding paragraph of the present comments represents the better opinion, it is admitted that it might not be impossible to understand the words "necessary for the execution of the provisions of this Convention" as including measures necessary for a different and better implementation of those provisions. If that view were accepted, the Board could, in the case of a situation referred to in the second sentence of subparagraph *(a)*, call upon the Government concerned complying with the provisions of the Convention to adopt such other methods of compliance as in its view would be necessary for a better execution of that treaty, i.e. for the purpose of achieving better results therefrom.

4. The Board may of course suggest remedial measures at any time to a Government which expressly or impliedly agrees to its doing so.

5. See also the comments of the 1961 Commentary on article 14, paragraph 1, subparagraph *(b)*, and in particular paragraph 11 of these comments relating to the Board's right to publish suggested remedial

measures. When referring in a report pursuant to article 15, paragraph 1, to remedial measures which it has suggested under the subparagraph under consideration, the Board must avoid any reference, either direct or implied, to the procedure under article 14 as long as it has not called the attention of the Parties, the Council and the Commission to the matter according to article 14, paragraph 1, subparagraph *(d)*.

Paragraph 1, subparagraph (c)

> (c) ***The Board may, if it thinks such action necessary for the purpose of assessing a matter referred to in subparagraph*** **(a)** ***of this paragraph, propose to the Government concerned that a study of the matter be carried out in its territory by such means as the Government deems appropriate. If the Government concerned decides to undertake this study, if may request the Board to make available the expertise and the services of one or more persons with the requisite competence to assist the officials of the Government in the proposed study. The person or persons whom the Board intends to make available shall be subject to the approval of the Government. The modalities of this study and the time-limit within which the study has to be completed shall be determined by consultation between the Government and the Board. The Government shall communicate to the Board the results of the study and shall indicate the remedial measures that it considers necessary to take.***

Commentary

1. Subparagraph *(c)* is entirely new. It was added by the 1972 Protocol.

2. The phrase "a matter referred to in subparagraph *(a)* of this paragraph" includes the dangerous drug situations referred to in the first and second sentence of that subparagraph, as well as any other question which may be relevant to carrying on consultations or requesting explanations under that provision. The Board may propose the study referred to in the subparagraph under consideration either before or after requesting explanations or proposing consultations under subparagraph *(a)* or during such consultations.

3. The question arises whether the Board can propose a study under subparagraph *(c)* only if on the basis of information admissible under subparagraph *(a)* it has reasons for taking any of the actions for which subparagraph *(a)* provides. Despite the fact that article 14, paragraphs 1 to 3 provides for a sequence of actions, it is submitted that the Board may propose the study even at a time when it does not yet have sufficient reasons for taking action under subparagraph *(a)*. This opinion is based on the consideration that the Government is not bound to accept the Board's proposal, and that there also does not appear to be any legal objection to the Board's proposing to a Government a study of its drug problems even outside a procedure under article 14.

4. The Board is bound to give the assistance requested by the Government under the second sentence of subparagraph *(c)* if its costs are borne by that Government, are contributed from other sources or are provided for in the Board's budget.[1]

5. The study with which subparagraph *(c)* deals is undertaken under the authority and direction of the Government on whose territory it is carried out.

6. The Board may nominate the person or persons whose "expertise" and "services" it is ready to make available to the Government requesting its assistance. It may nominate its own members, members of its own secretariat or of other units of the United Nations Secretariat, or other experts. The persons nominated by the Board are subject to the approval of the Government, which is not required to give any reasons for its rejection of persons proposed by the Board. The Board is however not obligated to substitute candidates for those rejected by the Government. It may be assumed that in practice the person or persons to be made available by the Board for assistance in the Government's study will be chosen in informal and confidential consultations between the Government and the Board.

7. Only the modalities and the time-limits of studies undertaken with the assistance of experts made available by the Board must be determined by consultation between the Government and that organ. It may however often be advisable that this be done also in the case of studies under subparagraph *(c)* carried out without assistance of persons placed by the Board at the disposal of the Government.

8. If a Government has accepted a proposal of the Board to undertake a study under subparagraph *(c)*, it is bound to report to the Board the results of its study and the remedial measures, if any, which it considers necessary to take. If it reconsiders the matter and decides not to carry out the study, it must also report that decision to the Board.

9. There is no express provision requiring the Board to treat as confidential its proposal of a study, its negotiations with the Government on such a proposal, the results of the study or the Government's report. The Government may however make it a condition of its acceptance of the Board's proposal that the study and its results be kept confidential; but even in cases in which the Government has not made such a condition, the Board, when referring to the study in a report under article 15, should avoid any reference, either direct or implied, to the fact that the study was undertaken in the course of a procedure under article 14, as long as it has not called the attention of the Parties, the Council and the Commission to the matter pursuant to subparagraph *(d)*.

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1 Article 6.

Paragraph 1, subparagraph **(d)**

(*d*) If the Board finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under subparagraph (*a*) above, or has failed to adopt any remedial measures which it has been called upon to take under subparagraph (*b*) above, *or that there is a serious situation that needs co-operative action at the international level with a view to remedying it,* it may call the attention of the Parties, the Council and the Commission to the matter. *The Board shall so act if the aims of this Convention are being seriously endangered and it has not been possible to resolve the matter satisfactorily in any other way. It shall also so act if it finds 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 co-operative action; after considering the reports of the Board, and of the Commission if available on the matter, the Council may draw the attention of the General Assembly to the matter.*

Commentary

1. The subparagraph under consideration in its unamended form[1]–like the whole unamended article 14–deals with situations in which, by failure of a country or territory to carry out the provisions of the Single Convention, the aims of that treaty are being seriously endangered. It provides for the possibility of the Board's calling the attention of the Parties, the Council and the Commission to such a situation, as a means of persuading the Government involved to abide by the rules of the Single Convention, i.e., as a kind of sanction which the Board may adopt with or without recommending under paragraph 2 an embargo on the import and export of narcotic drugs, or of both, against the country or territory concerned.

2. Article 14 as amended by the 1972 Protocol deals not only with cases of non-compliance with the Single Convention, but also with situations in which, without any failure in implementing the Single Convention, a country or territory gravely endangers or presents a serious risk of gravely endangering the aims of that Convention, by becoming or presenting a serious risk of becoming an important centre of the illicit traffic in narcotic drugs or of their illicit consumption. It deals thus also with situations which may be beyond the control of the Governments concerned. Subparagraph (*d*) provides also for the Board's calling the attention of the Parties, the Council and the Commission to situations of that nature; but in such cases the Board's action would not be a "sanction", but would be intended to assist the Government involved in its difficulties.[2]

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1 Being article 14, para. 1, subpara. (*c*) of the unamended Convention.

2 *1972 Records,* vol. II, para. 89 of the sixteenth meeting of Committee I (p. 139) and paras. 5 and 18 of the summary records of the seventeenth session of Committee I (pp. 140-141).

3. Subparagraph *(d)* indicates for both types of dangerous situations with which it deals the conditions under which the Board's action is discretionary and those under which it is mandatory.

4. In regard to dangerous drug situations due to a Government's non-compliance with the Single Convention, subparagraph *(d)* explicitly requires the existence of conditions endangering the aims of the Convention only for the Board's mandatory action. It is however submitted that in the absence of such conditions, the Board has under subparagraph *(d)* also no discretionary authority to call the attention of the Parties, the Council and the Commission to a country's or territory's failure to implement the Single Convention. This follows from the provision that the Board may take that action only if the Government concerned has failed to give satisfactory explanations under subparagraph *(a)*, or to adopt the suggested remedial measures under subparagraph *(b)*. A Government can be called upon to give explanations under subparagraph *(a)* only if objective reasons exist for the Board to believe that the aims of the Single Convention are being seriously endangered; and this is, according to the better view, also the condition for the Board's right under subparagraph *(b)* to call upon the Government to adopt remedial measures.[3]

5. But even if one holds that the Board has under subparagraph *(b)* authority to request a Government to adopt remedial measures even in cases in which the serious drug situation in its territory is not due to the Government's failure to carry out the provisions of the Single Convention, the Board's discretionary authority to take action under subparagraph *(d)* would still be limited to those cases of non-compliance with the Single Convention in which that treaty's aims are being seriously endangered. Paragraph 2 authorizes the Board, when calling the attention of the Parties, the Council and the Commission to a Government's non-compliance with the Single Convention as being responsible for such a drug situation, to recommend an embargo of the import or export of narcotic drugs, or of both, against the country or territory concerned. This is a very serious measure, and it cannot be assumed that the Board has that authority except in very grave situations.

6. The difference between a situation of non-compliance with the Single Convention in which the Board may act under subparagraph *(d)* and another such situation in which the Board must take that action is, therefore, not that in the latter case it would be a condition of its action that "the aims of the Convention are being seriously endangered" while in the former case this would not necessarily have to be the situation. The Board is under subparagraph *(d)* not only not bound to act on the basis of a Government's non-compliance with the Single Convention, but also has no right to take that action if the resulting situation does not seriously endanger the aims of the Single Convention. It may however be assumed that the Board would be more readily inclined to feel bound to act if the situation is particularly serious.

3 Paras. 2 and 3 of the above comments on article 14, para. 1, subpara. *(b)*.

7. The only difference between the two serious cases of non-compliance with the Single Convention falling within the scope of subparagraph *(d)* therefore is that the Board's action becomes mandatory only if it has come to the conclusion that "it has not been possible to resolve the matter satisfactorily in any other way". As long as the Board has not come to that conclusion, it has discretion to choose not to act and to discontinue its procedure under article 14 in regard to the case in question. It is submitted that it may normally not be very easy to arrive at such a conclusion, and that the Board would in the cases of serious non-compliance with the Single Convention covered by subparagraph *(d)* generally retain its discretionary power to act or not to act under that subparagraph.

8. In regard to serious drug situations not caused by the failure of a Government to carry out the provisions of the Single Convention, subparagraph *(d)* also deals with a situation in which the Board is bound to call the attention of the Parties, the Council and the Commission to the matter, and with another one in which the Board has only the right, but not the obligation, to do so. In both cases it is a condition for the Board's action that the Board should find that "there is a serious situation that needs co-operative action at the international level with a view to remedying it". It is submitted that the Board can make that finding only if the country or territory involved has become or presents a serious risk of becoming an important centre of the illicit traffic or of the illicit consumption of narcotic drugs. This follows from subparagraph *(a)*, which authorizes the Board to initiate the procedure under article 14 in cases of serious drug situations not due to non-compliance of a Government with the Single Convention only if the country or territory involved has become such a centre or presents a serious risk of becoming one.

9. In the case of such serious drug situations not caused by the failure of a Government to carry out the Single Convention, the Board's action under subparagraph *(d)* is mandatory only if "bringing such a situation to the notice of the Parties, the Council and the Commission is the most appropriate method of facilitating" "co-operative action at the international level with a view to remedying" the situation. Otherwise the Board may choose to act under subparagraph *(d)*, or not to act and discontinue the procedure under article 14 in regard to the country or territory involved.

10. When calling the attention of the Parties, the Council and the Commission to a serious drug situation caused by a Government's non-compliance with the Single Convention, the Board may also indicate the advisability of co-operative international action with a view to assisting the Government in improving that situation.

11. In the case of a serious drug situation *not due* to the failure of a Government in implementing the Single Convention the Board is not precluded from acting under subparagraph *(d)*, by reason of the fact that the Government concerned does not fully implement the Single Convention. The Board may in such a case apply those provisions of that paragraph which relate to serious drug situations not caused by non-compliance with the Single

Convention. It cannot be assumed that serious drug situations, though excluded from the scope of the sanctions of subparagraph *(d)* because they are not caused by a Government's failure to implement the Single Convention, are also excluded from the remedial provisions of that subparagraph because the Government in question does not fully comply with the provisions of that treaty.

12. When acting under subparagraph *(b)*, the Board must also be guided by the general principle laid down in paragraph 5 of the amended text of article 9. Actions taken by the Board under that subparagraph should therefore be those which under the conditions in question would be "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 the Single Convention.[4]

13. In all cases in which subparagraph *(d)* provides for the Board's calling the attention of the Parties, the Council and the Commission to the matter the Board, in agreement with the Government concerned, may in lieu of or in addition to its action under that subparagraph recommend according to article 14 *bis* technical or financial assistance, or both.

[4] *1972 Records*, vol. II, para. 86 of the summary records of the sixteenth meeting of Committee I (p. 139).

Paragraph 2

"2. The Board, when calling the attention of the Parties, the Council and the Commission to a matter in accordance with paragraph *(d)* above, may, if it is satisfied that such a course is necessary, recommend to Parties that they stop the import of drugs, the export of drugs, or both, from or to the country or territory concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or territory. The State concerned may bring the matter before the Council."

Commentary

1. The 1972 Protocol made only a very minor change in paragraph 2. It replaced the reference to "paragraph 1 *(c)*" by one to "paragraph 1 *(d)*" since subparagraph *(c)* in the unamended version of the Single Convention became subparagraph *(d)* in its amended text.

2. No changes were made in paragraph 2 to take into account the fact that the provision to which it refers is under the 1972 Protocol very different from what it is under the unamended text of the Single Convention. The unamended subparagraph provides for the Board's calling the attention of the Parties, the Council and the Commission to a serious drug situation only in

cases in which that situation is due to the failure of a Government to carry out the provisions of the Single Convention, while its amended text provides for such an action by the Board also in cases in which the serious drug situation is not due to such a failure and may even be beyond the control of the Government involved.[1]

3. The question arises whether under article 14, paragraph 2 of the amended Single Convention the Board may recommend a narcotic drug embargo in all cases in which it calls the attention of the Parties, the Council or the Commission to the matter, as it may do under that provision in the unamended Convention.

4. An affirmative reply to that question would mean that under the amended Single Convention the Board would have authority to recommend a drug embargo against a country or territory which has a serious drug situation even though it is making all possible efforts to enforce the provisions of the Single Convention. It is submitted that such an interpretation would be manifestly unreasonable,[2] and also obviously contrary to the intentions of the 1972 Conference.

5. One will note that under the amended as well as under the unamended text of paragraph 2, the Board may recommend an embargo only "if it is satisfied that such a course is necessary". It is hardly imaginable that the Board would ever be justified in finding it "necessary" to recommend a drug embargo against a country or territory whose Government complies with the provisions of the Single Convention. One may therefore conclude that despite the fact that the 1972 Conference did not appropriately amend paragraph 2, the Board is authorized to recommend a drug embargo only in those cases in which under paragraph 1, subparagraph *(d)* it calls the attention of the Parties, the Council and the Commission to a dangerous drug situation caused by non-compliance by the Government concerned with the provisions of the Single Convention.

6. When considering whether it should recommend an embargo pursuant to paragraph 2, the Board must also be guided by the general principle laid down in paragraph 5 of the amended article 9.

7. In agreement with the Government concerned, the Board may under article 14 *bis* add to or substitute for the recommendations of an embargo recommendations of technical or financial assistance, or both.

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1 *1972 Records,* vol. II, para. 89 of the summary records of the sixteenth meeting of Committee I (p. 139).

2 Article 32, para. *(b)* of the Vienna Convention on the Law of Treaties, document A/CONF.39/17.

Article 7

NEW ARTICLE 14 *BIS*

Introductory paragraph of article 7 of the 1972 Protocol and article 14* bis *of the amended Single Convention

The following new article shall be inserted after article 14 of the Single Convention:

***"Article 14* bis**

"Technical and Financial Assistance

***"In cases which it considers appropriate and either in addition or as an alternative to measures set forth in article 14, paragraphs 1 and 2, the Board, with the agreement of the Government concerned, may recommend 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 obligations under this Convention, including those set out or referred to in articles 2, 35, 38 and 38* bis."**

Commentary

1. Article 14 *bis* is a new article introduced by the 1972 Protocol; but it is not new in substance, since it does not confer powers on the Board which it did not have under the unamended Single Convention.[1] The Board's powers under the unamended provisions of article 14, paragraphs 1 and 2 are all discretionary, and the Board is not precluded, with the agreement of the Government concerned, from adding to or substituting for actions under those provisions, recommendations of the kind with which the new article 14 *bis* deals.

2. The article under consideration explicitly authorizes the Board to address its recommendations "to the competent United Nations organs and to the specialized agencies". The Board is however not precluded from recommending to intergovernmental organizations, not forming part of the United Nations system, that they render assistance within their special competences.

3. The Board may recommend not only assistance for the purpose of improving the implementation of the Single Convention, but more generally

1 *1972 Records,* vol. II, paras. 7 and 16 of the summary records of Committee II (pp. 189-190).

also for the purpose of advancing the aims of the Single Convention. It will be recalled that the Board may, under the amended paragraph 1 of article 14, deal with difficult drug situations not due to a failure of the Government concerned to carry out the provisions of the Single Convention.[2] The Board may in such cases find it advisable to recommend assistance in the implementation of measures not required by provisions of that treaty.

4. Assistance may in particular also be needed in the implementation of article 17, which requires Parties to establish and maintain a special administration for the purpose of applying the Single Convention, and more generally in the execution of article 4, introductory paragraph, which requires Parties to take the legislative and administrative measures necessary for giving effect to that treaty.

5. With the consent of the Government concerned the Board may indicate in its recommendation the details of the assistance which it considers desirable.

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2 See the above comments on article 14, para. 1, subpara. *(a)* and subpara. *(d)*.

Article 8

AMENDMENT TO ARTICLE 16 OF THE SINGLE CONVENTION

Article 16 of the Single Convention shall be amended to read as follows:

"The secretariat services of the Commission and the Board shall be furnished by the Secretary-General. ***In particular, the Secretary of the Board shall be appointed by the Secretary-General in consultation with the Board."***

Commentary

1. The amendment of article 16 made a treaty obligation that had already been included in the arrangements adopted under article 9, paragraph 2 by the Council, in consultation with the Board, in order to ensure the full technical independence of the Board in carrying out its functions.[1]

2. The amendment of article 16 was explained by the spokesman of its sponsors as being intended to emphasize the independence of the Board.[2]

3. It implies an obligation of the Secretary-General, in the context of the special administrative workload involved, to provide a permanent secretariat unit for the Board. It does not affect the administrative control which the Secretary-General, as chief administrative officer of the United Nations, has over the Board's secretariat, nor the character of that secretariat as an integral part of the United Nations Secretariat.

4. It will be noted that the Secretary-General is required to *consult* the Board, but not to obtain its *agreement* on his appointment of the Board's Secretary.

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1 Council resolutions 1196 (XLII) and 1775 (LIV).

2 *1972 Records,* vol. I, document E/CONF.63/5 (pp. 95 *et seq.*); vol. II, para. 48 of the summary records of the fifth meeting of Committee II (p. 176); the amendment was sponsored by 31 Governments; see also resolution I of the 1972 Conference, *1972 Records,* vol. I, p. 128.

Article 9

AMENDMENTS TO ARTICLE 19, PARAGRAPHS 1, 2 AND 5 OF THE SINGLE CONVENTION

Introductory paragraph of article 9 of the 1972 Protocol and paragraph 1 of article 19 of the amended Single Convention

Article 19, paragraphs 1, 2 and 5, of the Single Convention shall be amended to read as follows:

"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;

"*(d)* Quantities of drugs necessary for addition to special stocks;

"*(e)* The area (in hectares) and the geographical location of land to be used for the cultivation of the opium poppy;

"*(f)* Approximate quantity of opium to be produced;

"*(g)* The number of industrial establishments which will manufacture synthetic drugs; and

"*(h)* The quantities of synthetic drugs to be manufactured by each of the establishments referred to in the preceding sub-paragraph.

Commentary

1. The 1972 Protocol adds to paragraph 1, subparagraphs *(e)* to *(h)*, leaving that paragraph's text otherwise unchanged.

2. Estimates of the area to be used for the cultivation of the opium poppy "for the purpose of harvesting opium" are required under article 8, paragraph 3 of the 1953 Protocol; but in contradistinction to the estimates to be furnished pursuant to article 19, paragraph 1, subparagraph *(e)* of the amended Single Convention, the estimates under the 1953 Protocol do not have a binding effect.[1]

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[1] Article 8, paras. 10 and 11 of the 1953 Protocol.

3. Under article 12, paragraph 1 and article 19, paragraph 1, introductory subparagraph, the Board could pursuant to subparagraph *(e)* require separate estimates in respect of the opium poppy cultivated for the production of opium and in regard to the poppy cultivated for other purposes. The Board would need the separate data on the opium poppy cultivated for the production of opium in order to be able to use the information provided for in subparagraph *(e)* for the purposes for which it is destined.

4. Knowledge of the geographic location of opium poppy cultivation might be useful to the Board in examining a situation in which opium produced in one country is illicitly imported into a neighbouring country.[2] In such a situation article 22 of the Single Convention might perhaps be applicable to the opium poppy cultivated in border regions for any purpose.[3]

5. The word "approximate" in subparagraph *(f)* is intended to emphasize the various uncertainties which determine the size of the opium harvest;[4] but the figures furnished under subparagraph *(f)*, being estimates, can by their very nature be only "approximate".

6. The same drugs may be either "natural" or "synthetic"; e.g. morphine may be obtained from opium or poppy straw, and thus be a "natural" drug,[5] or be manufactured by a process of full chemical synthesis; similarly cocaine may be made from coca leaves or by a process of full chemical synthesis;[6] but the manufacture of these drugs by such a process is not yet economical. On practical grounds one may assume for the purposes of subparagraphs *(g)* and *(h)* that synthetic drugs are all substances in Schedules I and II except those at present *normally* obtained from the opium poppy (its opium or straw), the coca bush or cannabis plant. On the basis of that assumption thebaine obtained from *papaver bracteatum* and oxycodone, hydrocodone, acetyldihydrocodeine and codeine made therefrom are to be considered to be natural drugs.

7. The question arises whether the "industrial establishments" manufacturing synthetic drugs have to be identified by name. Subparagraph *(g)* requires only an estimate of their number. Subparagraph *(h)* requires an estimate of the quantities of such drugs manufactured by each of the establishments referred to in subparagraph *(g)*.

8. It is submitted that an answer to that question which would be generally acceptable can hardly be given. It is however submitted that it

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2 *1972 Records*, vol. II, paras. 29 and 60 of the summary records of the seventh meeting of Committee I (pp. 92-94); see also article 8, para. 3 of the 1953 Protocol.

3 *1961 Commentary*, para. 8 of the comments on article 22 (p. 276).

4 *1972 Records*, vol. II, para. 32 of the summary records of the seventh meeting of Committee I (p. 92).

5 Article 1, para. 1, subpara. *(j)*.

6 *1931 Commentary*, para. 14 (p. 41).

appears to be the better opinion that the identity of "each of the establishments" need not be indicated in the estimate to be furnished under subparagraph *(h)*. Governments may under that provision refer to each establishment by a number, with an indication of the quantity of each of the synthetic drugs which it is believed it will manufacture in the calendar year to which the estimate in question relates.

9. An "establishment" as that word is used in the Single Convention is a place of business with its fixtures and organized staff.[7] An individual or corporate drug manufacturer or a State enterprise engaged in drug manufacture may have several "establishments", some of which may not have a special name. The information pursuant to subparagraphs *(g)* and *(h)* must be given in respect of each "establishment" and not in respect of each individual, corporate or governmental manufacturer.

10. The Board determines whether a Party has complied with its obligations flowing from its binding estimates,[8] by comparing the estimates with related statistical data which it receives under article 20.

11. In regard to the estimates furnished pursuant to subparagraph *(e)*, the Board should receive the corresponding statistical figures under the new subparagraph *(g)* of paragraph 1 of the amended article 20.

12. In regard to the estimates provided for in subparagraph *(f)*, the Board should obtain the related statistics under article 20, paragraph 1, subparagraph *(a)*, which was not changed by the 1972 Protocol.

13. As regards the estimates to be supplied under subparagraph *(g)*, neither the unamended Single Convention nor its amended version contains a provision requiring Governments to furnish to the Board the related statistical information. The Commission may, under article 18, paragraph 1, introductory subparagraph of the Single Convention, and does under article 20 of the 1931 Convention, obtain the names and addresses of persons or firms authorized to manufacture narcotic drugs, and the names of the drugs each of them is entitled to make.[9] That information does not necessarily include each of the several industrial "establishments" such a drug manufacturer may have, although it may be assumed that he would normally not have more than one "establishment" engaged in the manufacture of a particular synthetic narcotic drug. The Commission under article 18, paragraph 1, introductory subparagraph, could obtain the required separate information on individual "establishments" if it should find such information necessary. The Board could obtain from the Commission[10] statistical data which it may need in its

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7 *1961 Commentary*, para. 3 of the comments on article 29, para. 2, subpara. *(b)* (p. 321).

8 See article 19, para. 5 and article 21 *bis*, para. 1 of the amended Single Convention; see also article 21 which was not amended by the 1972 Protocol.

9 See documents E/NR.FORM/Rev.2, Annex II and E/NF.1973.

10 Article 8, para. *(b)* of the Single Convention.

examination of the compliance of Governments with article 19, paragraph 5 in respect of their estimates furnished under subparagraph *(g)*.

14. The Board receives under article 20, paragraph 1, subparagraph *(a)* information on the total quantity of each "synthetic" drug[11] manufactured in each country and territory, but not on the part of that total made by a particular establishment. The Commission may obtain the additional data by applying article 18, paragraph 1, introductory subparagraph.

15. While the Board is empowered to use information furnished by the Commission for the performance of its functions,[12] it may be questionable whether it is compatible with its technical independence guaranteed by article 9, paragraph 2 to place the Board in a position in which it has to obtain from the Commission information needed for its work.[13] The Commission is under no obligation to furnish the Board with that information. It appears to have been due to an oversight of the 1972 Conference that the 1972 Protocol does not require Parties to furnish to the Board the statistical data necessary for the purpose of examining the compliance of Governments with article 19, paragraph 5 in regard to their estimates furnished under article 19, paragraph 1, subparagraphs *(g)* and *(h)*. It may be assumed that the Board is under no obligation to make that examination.

16. In view of the rule of article 2, paragraph 3 that preparations other than those in Schedule III are subject to the same measures of control as the drugs which they contain, the question arises whether subparagraphs *(g)* and *(h)* also apply to industrial establishments manufacturing preparations of "synthetic" drugs.

17. Article 2, paragraph 3 also provides that "estimates (article 19) and statistics (article 20) distinct from those dealing" with the drugs which the preparations contain shall not be required in the case of preparations. That restriction appears to exclude preparations from the scope of subparagraph *(h)*, but not necessarily from that of subparagraph *(g)*. It is however submitted that because of the interdependence of these subparagraphs it would be compatible with their purpose to exclude preparations from the information to be furnished under both of them.[14]

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11 Or "natural" drug.

12 Article 8, para. *(b)* and article 14, para. 1, subpara. *(a)* in its unamended and amended version.

13 Article 12, para. 4 and article 13, para. 2.

14 *1972 Records*, vol. II, para. 4 of the summary records of the thirteenth meeting of Committee I (p. 119).

Paragraph 2, subparagraphs **(a), (b)** ***and*** **(c)**

2. ***(a)*** **Subject to the deductions referred to in paragraph 3 of article 21, the total of the estimates for each territory and each drug** ***except opium and synthetic drugs*** **shall consist of the sum of the amounts specified under subparagraphs** ***(a), (b)*** **and** ***(d)*** **of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimates as provided in subparagraph** ***(c)*** **of paragraph 1.**

(b) ***Subject to the deductions referred to in paragraph 3 of article 21 regarding imports and in paragraph 2 of article 21*** **bis,** ***the total of the estimates for opium for each territory shall consist either of the sum of the amounts specified under subparagraphs*** **(a), (b)** ***and*** **(d)** ***of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in subparagraph*** **(c)** ***of paragraph 1, or of the amount specified under subparagraph*** **(f)** ***of paragraph 1 of this article, whichever is higher.***

(c) ***Subject to the deductions referred to in paragraph 3 of article 21, the total of the estimates for each territory for each synthetic drug shall consist either of the sum of the amounts specified under subparagraphs*** **(a), (b)** ***and*** **(d)** ***of paragraph 1 of this article, with the addition of any amount required to bring the actual stocks on hand at 31 December of the preceding year to the level estimated as provided in subparagraph*** **(c)** ***of paragraph 1, or of the sum of the amounts specified under subparagraph*** **(h)** ***of paragraph 1 of this article, whichever is higher.***

Commentary

1. The unamended paragraph 2 of article 19 provides for a single definition of the notion "the total of the estimates" valid for all narcotic drugs, i.e., for all substances in Schedules I and II. That paragraph as amended by the 1972 Protocol has three different definitions of that phrase, one in subparagraph *(b)* for opium, another in subparagraph *(c)* for "synthetic" drugs, and a third in subparagraph *(a)* for all other narcotic drugs, that is to say, for all "natural" drugs other than opium. This third group includes all narcotic drugs normally obtained from opium or poppy straw, the coca leaf, drugs normally obtained from coca leaves, cannabis, cannabis resin and drugs normally obtained from cannabis or cannabis resin.[1]

2. For a discussion of the term "synthetic drugs", see above, paragraph 6 of the comments on the introductory paragraph of article 9 of the 1972 Protocol and on paragraph 1 of article 19 of the amended Single Convention.

[1] The tetrahydrocannabinols and their isomers are not "drugs" in the meaning of the Single Convention, but "psychotropic substances" included in Schedule I of the Vienna Convention.

3. The phrase "the total of the estimates" is a device of legislative technique in the field of international drug control law, first used by the 1931 Convention in order to avoid the need for repeating all the addenda and the subtrahends of which that total is composed, in provisions in which all of them form the basis of a computation of legally relevant quantities. It is not literally a total of all the estimates, because the estimates of stocks under article 19, paragraph 1, subparagraph *(c)* are not included. The Single Convention makes use of that device in two cases: in article 21, paragraph 4, authorizing the Board to require the cessation of exports of a narcotic drug to a country or territory whose imports of that drug exceeded a maximum computed on the basis of "the total of the estimates" of the drug concerned for that country or territory; and in article 31, paragraph 1, subparagraph *(b)*, requiring Parties not knowingly to permit the export of narcotic 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 amounts intended to be re-exported.[2] The notion of "the total of the estimates" is not used for any other purpose either in the unamended or in the amended Single Convention. It is not used for determining the limits of narcotics supplies which a Party may under article 21, paragraphs 1 and 2 obtain by manufacture or import or both, nor for limiting "production"[3] including the "production" of opium.

4. Subparagraph *(a)* reproduces the definition of "the total of the estimates" as given in article 19, paragraph 2 of the unamended Single Convention. It differs from the earlier text only by excluding from its scope opium and synthetic drugs. As regards natural drugs other than opium, the definition of "the total of estimates" of the unamended text has not been affected by the 1972 Protocol, nor consequently the computation of the legally relevant quantities for the purposes of article 21, paragraph 4 or article 31, paragraph 1, subparagraph *(b)*. The comments of the 1961 Commentary on article 19, paragraph 2[4] of the unamended Single Convention therefore also apply *mutatis mutandis* to article 19, paragraph 2, subparagraph *(a)* of its amended text.

5. The definition of "the total of the estimates" in subparagraph *(b)* applicable to opium differs from that in subparagraph *(a)* for natural drugs other than opium in that

(a) The total is not only subject to the deductions referred to in article 21, paragraph 3, but also to those made by the Board according to article 21 *bis*, paragraph 2, and

(b) always subject to the deductions just mentioned under *(a)*, it is either the amount computed as under article 19, paragraph 2 of the unamended Convention for all drugs, or the figure given by the Government concerned[5]

2 The phrase "the total of the estimates" defined in article 19, para. 2 also occurs in article 21, para. 3 and in the new article 21 *bis*, para. 2.

3 Defined in article 1, para. 1, subpara. *(t)* to mean "the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained".

4 *1961 Commentary*, pp. 234 to 236.

5 Or established by the Board pursuant to article 12, para. 3.

under article 19, paragraph 1, subparagraph *(f)* of the amended text as its estimate of the "approximate quantity of opium to be produced", whichever of these two amounts is higher.

6. The phrase in subparagraph *(b)* "deductions referred to in paragraph 3 of article 21" is modified by the apposition "regarding imports". These deductions include in particular the amounts of narcotic drugs which in the year concerned a country or territory acquired by manufacture or import or both in excess of the quantities authorized pursuant to article 21, paragraph 1. That paragraph however limits only the amounts which a country or territory may obtain by "manufacture" or import; it does not restrict the quantities which it may "produce".[3] Since opium is not manufactured, the deductions under article 21, paragraph 3 therefore can in respect of that drug relate only to excessive *imports.* A quantity of opium produced licitly or illicitly and diverted into the illicit traffic however may wholly or in part be deducted by the Board from that country's or territory's total of the estimates for that drug according to article 21 *bis,* paragraph 2.[6]

7. Of the two alternative computations of the "total of estimates" provided in subparagraph *(b)* for opium, the first would have to be used in regard to a country or territory whose own estimated opium needs[7] exceed its opium production estimated according to article 19, paragraph 1, subparagraph *(f)*; the second would be used for a country or territory whose estimated opium production exceeds its estimated opium needs.

8. The first method of computation, which is also the one to be applied pursuant to the unamended paragraph 2 of article 19 in regard to all narcotic drugs, therefore applies to the overwhelming majority of countries that do not permit the production of opium and consequently do not have to furnish estimates of opium production under subparagraph *(f)* of paragraph 1. It applies also to those of them which have a significant problem of illicit opium production which they cannot suppress. The first method of computation would also normally have to be employed for the majority of the countries legally producing opium, since their estimated opium needs would exceed their estimated opium production under the amended article 19.[8] The method which under the unamended Single Convention would have to be used for computing the total of opium estimates would thus not be affected by the 1972 Protocol in respect of the overwhelming majority of countries,

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6 Article 21 *bis,* para. 1 and 2; as regards restrictions of the production of opium for export, see article 24, paras. 2 to 5.

7 i.e., the sum of the quantity needed for domestic consumption for medical and scientific purposes, the quantity needed for the manufacture of other narcotic drugs, the quantity needed for the manufacture of preparations in Schedule III, the quantity needed for the making of substances not covered by the Single Convention, the quantity needed for addition to stocks, and the quantity needed for addition to "special stocks" (article 1, para. 1, subpara. *(w)*). Subject to the deductions concerned, that sum of estimated quantities forms "the total of the estimates" as calculated by the first of the two alternative methods provided for in subpara. *(b)*.

8 Document E/INCB/31, Table I (p. 14) and Table III (p. 31).

i.e. all which do not permit the production of opium, and even normally for the majority of the few countries which engage in the legal production of that drug.

9. The second method of computation provided for in subparagraph *(b)* would thus be applicable only in regard to some of the countries permitting the production of opium, in fact under the conditions prevailing at the time of this writing, in all years only for India and in some years also for Iran and Pakistan.[9]

10. It will be noted that the Board may make the deduction under article 21 *bis,* paragraph 2 only from the total opium estimates of a Party to the amended Single Convention which permits the legal production of opium and consequently "has submitted an estimate under paragraph 1 *(f)* of article 19".[10] The Board does not appear to be authorized to make that deduction in respect of a country not a Party to the amended Single Convention, even if its legal opium production exceeds its estimates furnished under article 19, paragraph 1, subparagraph *(f)* and a significant amount of opium produced, licitly or illicitly, within its borders has been introduced into the illicit traffic.[11]

11. A deduction under article 21 *bis,* paragraph 2 from the total opium estimates of a country or territory would not reduce the amount of opium which that country or territory would be authorized to import,[12] but only the quantities whose export to that country or territory other Parties would be authorized to permit[13] or the Board would be required to tolerate;[14] but those quantities would normally be considerably larger than the amount which the country or territory would be entitled to import.[15] The deduction would thus frequently have no effect on the actual imports of the country or territory in question.

12. The amounts of opium which a country or territory would be authorized to import would under article 21, paragraphs 1 to 3, continue to be based on its needs for opium and not on its "total of the estimates" for opium.[16] Their size would thus not be affected by the method by which "the total of the estimates" would have to be computed. The application of the second method provided for in subparagraph *(b)* would affect only the

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9 Other legal opium producers are Bulgaria (in some years), Yugoslavia and Japan, whose totals of estimates of opium would have to be computed by the first method; Burma also produces opium; but the information available to the Board does not permit a conclusion as to the method by which its total of the estimates for opium would have to be determined.

10 Estimates of opium production not furnished by a State could be established by the Board pursuant to article 12, para. 3.

11 See below, the comments on article 21 *bis,* para. 2.

12 Article 21, paras. 1 to 3.

13 Article 31, para. 1, subpara. *(b).*

14 Article 21, para. 4.

15 *1961 Commentary,* paras. 7 to 12 of the comments on article 21, para. 4 (pp. 272-273) and paras. 8 and 9 of the comments on article 31, para. 1 (pp. 350-351).

16 See para. 3 above of the present comments.

quantities of opium whose export to the country or territory involved Parties would be entitled to permit[13] or the Board be required to tolerate.[14] It would thus reduce the capacity of the Board under article 21, paragraph 4 to prevent excessive opium imports to a country or territory whose "total opium estimates" would be calculated by the second method; but it can hardly be imagined that such a country or territory would import excessive amounts of opium, since the second method of calculation is to be applied only in regard to a country or territory whose estimated opium production exceeds its own opium needs. Such a country or territory can be expected to be an exporter of opium rather than an importer of large quantities of that drug. It is submitted that the amendment by the 1972 Protocol of the method of calculating "the total of the estimates" for opium is of very little if any practical importance.

13. Subparagraph *(c)* provides for two different methods of calculating "the total of the estimates" of a synthetic drug.[17] The first is the same method as the one prescribed in subparagraph *(a)* for natural drugs[18] other than opium, or in the unamended paragraph 2 of article 19 for all drugs. The second method, patterned after the second definition in subparagraph *(b)* of "the total of the estimates" of opium, requires that the total of the estimates of a synthetic drug should, subject to the deductions referred to in article 21, paragraph 3, be equal to the sum of the figures furnished by the Government concerned[19] under article 19, paragraph 1, subparagraph *(h)* as the estimated quantities of that synthetic drug to be made by each of the establishments[20] manufacturing it. Like subparagraph *(b)* for opium, subparagraph *(c)* provides that the larger amount of the two figures obtained for the synthetic drug involved under the two methods should constitute its "total of the estimates".

14. The figure obtained by the first of those two methods would be "the total of the estimates" in the case of a country or territory whose estimated needs for the drug involved exceed its estimated manufacture of that drug, and the one obtained by the second method would be "the total of the estimates" in the case of a country or territory whose estimated manufacture of the drug concerned exceeds its estimated needs for it.

15. The amounts of a synthetic drug which a country or territory would under article 21, paragraphs 1 to 3 be entitled to obtain by manufacture or import or both in a given year would under the amended Single Convention continue to be based on its needs for that drug and not on "the total of the estimates" for it.[21] Their size would therefore not be affected by which of

17 Para. 6 of the comments on article 9, introductory paragraph of the 1972 Protocol and on article 19, para. 1 of the amended Single Convention.

18 Para. 1 of the comments on article 19, para. 2, subparas. *(a)*, *(b)* and *(c)*.

19 Or established by the Board under article 12, para. 3.

20 Para. 9 of the comments referred to in foot-note 17.

21 The amount to be manufactured would also be subject to a limit under article 19, para. 1, subpara. *(h)* and para. 5.

the two methods "the total of the estimates" would be calculated. That amendment of the 1972 Protocol thus does not bring about any change in the quantities of synthetic drugs which a country or territory may manufacture or import. The application of the second method provided for in subparagraph *(c)* would affect only the amounts of the synthetic drug concerned whose export to the country or territory in question Parties would have the right to permit[13] or the Board would be bound to tolerate.[14] The change introduced by the 1972 Protocol in the calculation of "the total of the estimates" of synthetic drugs somewhat weakens the capacity of the Board under article 21, paragraph 4 to prevent excessive imports of a synthetic drug to a country or territory whose "total of the estimates" for that drug would be calculated by the second method for which subparagraph *(c)* provides; but such a country or territory would hardly import excessive amounts of a synthetic drug which it manufactures in larger amounts than it needs. One can conclude that the change of the 1972 Protocol in the method of computing "the total of the estimates" for synthetic drugs is hardly of any practical importance.[22]

22 It was correctly pointed out by a delegate to the 1972 Conference that the changes in calculating "the total of the estimates" for opium and synthetic drugs do not fit in with other provisions of the Single Convention; *1972 Records,* vol. II, para. 38 of the summary records of the thirteenth meeting of Committee I (p. 122).

Paragraph 2, subparagraphs (d)

(d) ***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.***

Commentary

1. The interpretation of the subparagraph under consideration presents considerable difficulties. The provision deals with "estimates furnished under the preceding subparagraphs of this paragraph", i.e. of paragraph 2; estimates are however not furnished under paragraph 2, but under the subparagraphs of paragraph 1. Moreover if it is assumed that the word "estimates" as used in subparagraph *(d)* is meant to be an abbreviation of the phrase "the totals of the estimates"[1] with which the preceding subparagraphs of paragraph 2 deal, these totals are not "furnished", but computed in accordance with the terms of those subparagraphs. It must be admitted that the meaning of subparagraph *(d)* is rather obscure.

1 Article 14, para. 1 of the 1931 Convention uses the words "the estimates" for "the total of the estimates"; *1931 Commentary,* para. 144 (p. 183).

2. The legislative history of subparagraph *(d)* reveals that an earlier version of that provision was intended to reduce the amount of opium to be produced in the country or territory concerned, and originally formed paragraph 2 of the draft of article 21 *bis* from where it was transferred to article 19. The original text was revised in order to be made applicable also to synthetic drugs

3. Paragraphs 1 and 2 of draft article 21 *bis,* headed "Limitation of opium production", as originally proposed, read as follows:

> 1. The quantity of opium produced by any country or territory in any one year shall not exceed the estimate of opium produced established under paragraph 1 *(f)* of article 19.
>
> 2. From the quantity 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.[2]

4. Committee I of the 1972 Conference decided to transfer the substance of paragraph 2 of draft article 21 *bis* to article 19.[3] It was proposed to add to the draft of article 19, paragraph 2, subparagraph *(b)* the following sentence:

> The relevant estimates 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.[4]

5. Some of the decisions of the 1972 Conference are explained by the desire that controls equal to those to be implemented by opium producing countries should also be imposed on countries manufacturing synthetic drugs.[5] It seems also to have been the mistaken assumption of some delegates that under the amended Single Convention the size of "the total of the estimates" for opium would have some bearing on the amount of opium

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2 Document E/CONF.63/5 and addenda 1-7; *1972 Records,* vol. I, pp. 96 *et seq.*

3 *1972 Records,* vol. II, paras. 6 and 11 of the summary records of the seventh meeting of Committee I (p. 91).

4 Document E/CONF/C.1/L.16, *1972 Records,* vol. I, p. 105 and vol. II, para. 6 of the summary records referred to in the preceding foot-note; the draft of article 19, para. 2, subpara. *(b)* as reproduced in document E/CONF.63/5 (see foot-note 2) reads as follows: *(b)* Subject to the deductions referred to in para. 3 of article 21 *bis,* the total of the estimates for each territory and opium shall consist of the sum of the amounts specified under sub-paras. *(a), (b)* and *(d)* of para. 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 subpara. (c) of para. 1, or of the amount specified under subpara. *(f)* of para. 1 of this article, whichever is higher.

5 *1972 Records,* vol. II, para. 24 of the summary records of the twelfth meeting of Committee I (p. 117); as regards the meaning of "synthetic drugs", see para. 6 of the above comments on the introductory paragraph of article 9 of the 1972 Protocol and on para. 1 of article 19 of the amended Single Convention.

which may be produced.[6] That desire and assumption apparently explain the transfer of the substance of subparagraph *(d)* from article 21 *bis* to article 19, paragraph 2 and the extension of the application of the transferred provision originally only governing opium to synthetic and other drugs.

6. The drafters of the subparagraph under consideration did not succeed in expressing very clearly the intention which the 1972 Conference had in adopting that provision. There appears to have been some error in its drafting.

7. The first question which may be raised is whether subparagraph *(d)* erroneously refers to paragraph 2 instead of paragraph 1. The substitution of a reference to paragraph 1 for that to paragraph 2 would lend subparagraph *(d)* some meaning. It would however not be clear which of the estimates furnished under paragraph 1 should be "appropriately modified". The Parties would in particular not be required appropriately to modify specifically their estimates furnished under article 19, paragraph 1, subparagraphs *(f)* and *(h)*; but only a modification of those estimates would seem to be in accord with the intention of the 1972 Conference, since precisely such modifications would oblige the Parties to reduce their production of opium or manufacture of synthetic drugs,[7] as intended. A conclusion that the reference should be to paragraph 1 instead of paragraph 2 therefore does not appear to be appealing in the light of the purposes of the Single Convention and of the intention which the 1972 Conference seems to have had in mind when adopting the subparagraph under consideration.

8. Another possibility is that the drafters of subparagraph *(d)* used the words "the estimates" as an abbreviation for the phrase "the totals of the estimates" and that the words "furnished under" have to be understood to mean "mentioned in". Since the size of the "total of estimates" has no bearing on the amount of opium which may be produced or on the quantity of a synthetic drug which may be manufactured,[8] that interpretation would also seem not to be in accord with the intention of the 1972 Conference.

9. It is submitted that it would appear to be preferable to assume that while the words "furnished under" mean in this context "mentioned in", the word "estimates" is correctly used. The only estimates which are separately mentioned in the preceding subparagraphs of paragraph 2 and not merely as parts of the definitions of the different "totals of the estimates" are: in subparagraph *(b)*, the estimates according to article 19, paragraph 1, subparagraph *(f)*, i.e. the estimate of the "approximate quantity of opium to be

6 *1972 Records*, vol. II, paras. 4 to 21 of the summary records of the ninth meeting of Committee I (pp. 100-102); summary records of the thirteenth and fourteenth meeting of that Committee (pp. 119-127) and para. 73 of the summary records of the fifteenth meeting of the same Committee (p. 132).

7 Article 19, para. 5 and article 21 *bis*, para. 1 of the Single Convention.

8 See para. 3 of the above comments on article 19, para. 2, subparas. *(a)*, *(b)* and *(c)*; moreover in view of article 21, para. 3 the modifications under article 19, para. 2, subpara. *(d)* would duplicate deductions which are already taken into account in the calculation of the deductions to be made under article 21, para. 3 from the total of the estimates.

produced", and in subparagraph *(c)* the estimates according to paragraph 1, subparagraph *(h)* of that article, i.e. the estimates of "the quantities of synthetic drugs to be manufactured by each of the establishments". A modification of these separately-mentioned estimates would affect the size of opium production or of the manufacture of the synthetic drug in question, as the case may be, and this–it is submitted–appears to have been the intention of the 1972 Conference.

10. It is admitted that no compelling arguments have been given for any of the corrective interpretations proffered in the preceding paragraphs of the present comments; but whatever view Parties may have of the meaning of subparagraph *(d),* it would from the viewpoint of the purposes of the Single Convention be of little practical importance. The same would be the case if Parties would consider that subparagraph to be ineffective, as would seem to follow from its literal meaning.

11. It is suggested that the Board may find it advisable to recommend to Parties in which particular way subparagraph *(d)* should be implemented, or that they should consider that provision to be ineffective. It might be useful in that case if the Commission would expressly concur with the Board's recommendation and would propose to the Council to adopt a recommendation endorsing the Board's view.

12. A Party which accepts the view indicated in paragraph 9 of the present comments would have to modify its estimates of opium production for the next year following the release of the seized opium, or following the withdrawal of opium from "special stocks," in which the consequential reduction in the production of opium could technically be accomplished.[9] A Party which manufactures synthetic drugs could modify its estimate of synthetic drugs to be manufactured by each of its establishments, either for the year in which the transfer or the withdrawal from special stocks took place, by furnishing to the Board appropriate supplementary estimates,[10] or for the following year.

13. A Party which adopts the view discussed in paragraph 7 of the present comments could make the relevant modifications of all estimates, except that of the area to be used for the cultivation of the opium poppy and that of the approximate quantity of opium to be produced, for the year in which the release of the seized drug in question or the withdrawal of the drug involved from special stocks took place, by furnishing supplementary estimates,[10] or for the following year. It should make the required modification of its estimates of the area to be cultivated with the opium poppy and of opium production for the next year, following the release of seized opium or the withdrawal of opium from special stocks, in which the consequential reduction in the cultivated area and in opium production could technically be accomplished.[9]

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9 See also article 21 *bis,* para. 2.

10 Article 19, para. 3.

14. If the interpretation considered in paragraph 8 of the present comments is adopted, the deductions would have to be made by the Board from "the total of the estimates" for the year following that in which the release of the seized drugs or the withdrawal from special stocks took place.

15. The date of seizure of the drug concerned is under subparagraph *(d)* in any event irrelevant.

16. It will be noted that subparagraph *(d)* does not require that the quantities in question be deducted, but only that the "estimates" be appropriately modified. That leaves to the Party or the Board–as the case may be–very wide discretion in determining the extent of the required subtractions.

17. Modifications of some of the estimates furnished under paragraph 1[11] or of "the totals of estimates",[12] to be made pursuant to subparagraph *(d)*, would have the effect of a corresponding duplication of the deductions to be made under article 21, paragraph 2 and this cannot have been the intention of the 1972 Conference. Such modifications would not appear to be "appropriate".

18. A duplication of the deductions pursuant to article 21, paragraph 2, however, would not result from a modification of the estimates of the "approximate quantity of opium to be produced",[13] i.e. of the estimates to which alone the sponsors of the original draft of subparagraph *(d)* intended to apply that provision.[14] Article 21, paragraph 2 has no bearing on opium production.

19. It was pointed out above[15] that the transfer of the substance of the provision of subparagraph *(d)* from the original draft of article 21 *bis* to its present place in article 19 was motivated by the desire to make it applicable to synthetic drugs; but a modification, to be made pursuant to subparagraph *(d)*, of the estimates of "the quantities of synthetic drugs to be manufactured by each of the establishments" (para. 1, subpara. *(h)*)[13] would also result in a corresponding duplication of deductions under article 21, paragraph 2 and therefore would hardly appear to be "appropriate".

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11 Para. 7 of the present comments.

12 Para. 8 of the present comments.

13 Para. 9 of the present comments; see also para. 7 of these comments. No duplication would also be caused by a modification of the estimates pursuant to para. 1, subparas. *(e)* and *(g)*.

14 Paras. 2 to 6 of the present comments.

15 Paras. 2 and 5 of the present comments.

Paragraph 5

> **"5. Subject to the deductions referred to in paragraph 3 of article 21, and account being taken where appropriate of the provisions of article 21 *bis*, the estimates shall not be exceeded."**

Commentary

1. In view of the extension of the list of estimates in article 19, paragraph 1, paragraph 5 applies also to estimates of:

(a) The area to be used for the cultivation of the opium poppy (paragraph 1, subparagraph *(e)*);

(b) The approximate quantity of opium to be produced (paragraph 1, subparagraph *(f)*);

(c) The number of industrial establishments which will manufacture synthetic drugs (paragraph 1, subparagraph *(g)*); and

(d) The quantities of synthetic drugs to be manufactured by each of the establishments manufacturing them (paragraph 1, subparagraph *(h)*).

2. These estimates, except that of the approximate quantity of opium to be produced, relate to activities which, insofar as they are legally carried on, can rather exactly be controlled by Government action.

3. It is, on the other hand, sometimes impossible to avoid that the estimates for which the unamended paragraph 1 of article 19 already provides, i.e., the estimates to be furnished under subparagraphs *(a)* to *(d)* of that paragraph, are exceeded.[1] The *1961 Commentary* therefore holds[2] in respect of those estimates that paragraph 5 only requires that a country's or territory's actual consumption, actual utilization for the manufacture of other narcotic drugs, of uncontrolled substances or of preparations in Schedule III, actual stocks held at the end of the year in question and actual additions to "special stocks" should, *as far as possible,* not exceed their respective estimates, as originally furnished to, or established by the Board,[3] or as modified by supplementary estimates.[4]

4. The text of article 19, paragraph 1, subparagraph *(f)*, requiring only that the estimates of opium production should be "approximate", reveals that the 1972 Conference was well aware of the fact that a Party would quite often not be able to prevent its actual opium harvest from exceeding its estimate of opium production. A Party can in that case not be considered to be in breach of its obligations under paragraph 5; see also below the comments on article 21 *bis*, paragraph 1.

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1 *1961 Commentary*, para. 2 of the comments on article 19, para. 5 (p. 242).

2 Para. 1 of the comments mentioned in the preceding foot-note (p. 241).

3 Article 12, para. 3.

4 Article 19, para. 3.

5. It has been suggested earlier that the Board is authorized to require[5] that under article 19, paragraph 1, subparagraph *(e)* Parties furnish separate estimates of the area to be cultivated with the opium poppy for the production of opium and of the area so cultivated for other purposes. However, what Parties may not "exceed" under paragraph 5 is not these separate figures, but the estimate of the total area to be used for the cultivation of the opium poppy for any purpose.

6. Under article 21, paragraphs 1 to 3 the amount of a drug (whether natural or synthetic) which a Party may acquire by manufacture or import or both in any of its territories in any given year must not exceed a maximum to be computed in accordance with these provisions. A Party is therefore required to see to it that its manufacture of a synthetic drug in any year does not only not exceed the sum of its estimates of the quantities of that drug to be manufactured in each of its establishments, as it is required to do by paragraph 5 in connexion with paragraph 1, subparagraph *(h)* of the amended article 19, but also does not exceed the maximum which would be authorized under article 21, paragraphs 1 to 3. These two figures can hardly be the same. It follows that the smaller of them would determine the amount which the Party would be entitled to manufacture.

7. It may be noted also that the quantity of a synthetic drug manufactured by a particular industrial establishment should not "exceed" the estimates for that establishment.[6]

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5 Para. 3 of the above comments on the introductory paragraph of article 9 of the 1972 Protocol and on para. 1 of article 19 of the amended Single Convention.

6 Article 19, para. 1, subpara. *(h)*.

Article 10

AMENDMENTS TO ARTICLE 20 OF THE SINGLE CONVENTION

Article 20 of the Single Convention shall be amended to read as follows:

"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;

"*(f)* Stocks of drugs as at 31 December of the year to which the returns relate; and

"*(g)* Ascertainable area of cultivation of the opium poppy.

"2. *(a)* The statistical returns in respect of the matters referred to in paragraph 1, except subparagraph *(d)*, shall be prepared annually and shall be furnished to the Board not later than 30 June following the year to which they relate.

"*(b)* The statistical returns in respect to the matters referred to in subparagraph *(d)* of paragraph 1 shall be prepared quarterly and shall be furnished to the Board within one month after the end of the quarter to which they relate.

"3. The Parties are not required to furnish statistical returns respecting special stocks, but shall furnish separately returns respecting drugs imported into or procured within the country or territory for special purposes, as well as quantities of drugs withdrawn from special stocks to meet the requirements of the civilian population."

Commentary

1. The 1972 Protocol made the following changes in article 20: it added subparagraph *(g)* to paragraph 1 requiring Parties to furnish to the Board annual statistical reports on their "ascertainable area of cultivation of the

opium poppy"; it deleted paragraph 3 reading that "... 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."; and consequently it renumbered paragraph 4 as paragraph 3.

2. The new subparagraph *(g)* is the statistical counterpart of the new subparagraph *(e)* of paragraph 1 of article 19, requiring Parties to supply to the Board annual estimates of "the area (in hectares) and the geographical location of land to be used for the cultivation of the opium poppy". Subparagraph *(g)* should enable the Board to review the compliance of Parties with their obligations under paragraph 1, subparagraph *(e)* and paragraph 5 of the amended article 19.

3. As regards the omission of the 1972 Conference to provide for statistical information corresponding to the estimates furnished under article 19, paragraph 1, subparagraphs *(g)* and *(h)*, see paragraphs 13 to 15 of the above comments on the introductory paragraph of article 9 of the 1972 Protocol and on article 19, paragraph 1 of the amended Single Convention.

4. Several delegates to the 1972 Conference doubted that the Board needs information on the area cultivated with the opium poppy for any purpose whatsoever. Some of them held that information on the area cultivated for the production of opium would be sufficient.[1] It is submitted that under article 13, paragraph 1 and article 20, paragraph 1, introductory subparagraph, the Board could ask for separate data on the area cultivated with the opium poppy for the production of opium and on the area cultivated with the poppy for all other purposes.[2] The representative of the Board stated at the 1972 Conference that the Board might have to ask the Parties to furnish separate information on the area used for the production of opium.[3] It may also be recalled in this context that Parties to the 1953 Protocol have under article 9, paragraph 1, subparagraph *(a)*, clause (i) of that treaty undertaken to supply that information to the Board.

5. Some delegates to the 1972 Conference also pointed out that it would be practically impossible or extremely difficult to collect exact data required for the implementation of the subparagraph under consideration.[4] The word "ascertainable" was added to the draft of that provision to meet these misgivings.[5] It is therefore submitted that Parties need under subparagraph *(g)* make only such efforts to collect the required information as are practical and as can reasonably be expected of them, particularly in respect of the area on which the poppy is cultivated for other purposes than for the

1 *1972 Records,* vol. II, paras. 67, 68, 69, 74, 75, 78 and 80 of the summary records of the nineteenth meeting of Committee I (pp. 154-155).

2 See also para. 3 of the comments referred to in para. 3 of the present comments.

3 Para. 79 of the summary records referred to in foot-note 1 (p. 155).

4 Paras. 65, 66, 67, 68 and 74 of the summary records mentioned in foot-note 1 (pp. 153-155).

5 Paras. 70 and 81 of the summary records (pp. 154-155).

production of opium. They are certainly not required to search out every little garden patch on which opium poppies are grown for decorative purposes.

6. Contrary to the corresponding provision of article 19, paragraph 1, subparagraph *(e),* the subparagraph under consideration does not expressly require that the information be expressed in hectares; but the Board may under article 13, paragraph 1 and article 20, paragraph 1, introductory subparagraph, prescribe that form of presentation.

Article 11

NEW ARTICLE 21 BIS

Introductory paragraph of article 11 of the 1972 Protocol and paragraph 1 of article 21 bis *of the amended Single Convention*

The following new article shall be inserted after article 21 of the Single Convention:

"Article 21 **bis**

"Limitation of Production of Opium

"1. The production of opium by any country or territory shall be organized and controlled in such manner as to ensure that, as far as possible, the quantity produced in any one year shall not exceed the estimate of opium to be produced as established under paragraph 1 **(f)** ***of article 19."***

Commentary

1. The 1972 Conference recognized that advance estimates of opium production, i.e. of a harvest of an agricultural product, cannot be exact. Article 19, paragraph 1, subparagraph *(f)* therefore only requires that Parties should furnish estimates of "the approximate quantity of opium to be produced". In view of this understanding of the problem the Conference amended the draft of the paragraph under consideration to provide that the quantity produced shall *"as far as possible"* not exceed the estimate.[1]

2. A country or territory which in good faith implements the controls required by article 23, and, pursuant to paragraph 2 of that article, authorizes opium poppy cultivation only on an area of such size as according to past experience can be expected approximately to yield the estimated opium harvest, would have to be considered to have complied with article 21 *bis*, paragraph 1 (or article 19, paragraph 5) even though its opium production greatly exceeds its estimates for the year in question. It is submitted that such a country or territory would have to be held to have "organized and controlled" opium production "in such a manner as to ensure that, as far as possible" its opium production does not exceed its estimates for the year in question. This would in particular have to be recognized if the extent of the

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1 Document E/CONF.63/5, *1972 Records,* vol. I, pp. 95 *et seq.,* and vol. II, paras. 32, 53 and 61 of the summary records of the sixth meeting of Committee I (pp. 88 and 90); see also *1961 Commentary,* paras. 1 and 2 of the comments on article 19, para. 5 (pp. 241-242).

area authorized for opium poppy cultivation for opium production has been determined on the basis of the average yield of opium per unit of land (acre or hectare) in the opium producing district or districts concerned in the preceding five years.[2]

3. A country or territory would in no case be required to destroy legally cultivated opium poppies or not to collect part of the opium harvest in order to reduce its opium production to the amount of its estimate.[3]

4. The estimates which should "as far as possible" not be exceeded by actual opium production are either those furnished by the Governments concerned under article 19, paragraph 1, subparagraph *(f)*, or those established by the Board pursuant to article 12, paragraph 3, or those revised by supplementary estimates under article 19, paragraph 3. They are not those established by the Board in accordance with the amended paragraph 5 of article 12.[4]

5. Under article 19, paragraph 3 a Government may furnish to the Board supplementary estimates during the year to which the original [5] estimates relate. The 1972 Protocol does not exclude the estimates of opium production from the application of that provision.[6] A Government therefore could by a supplementary estimate avoid an excess under article 21 *bis*, paragraph 1 and thus its consequences under paragraph 2 of that article. It could furnish a supplementary estimate even after the produced opium has been collected, so long as it does so during the calendar year to which the original estimate relates. It is however suggested that such a supplementary estimate furnished to the Board after the opium harvest, although not incompatible with the letter of article 19, paragraph 3 and article 21 *bis*, paragraph 1, would not be in accord with the intention which the authors of article 21 *bis* had in mind when adopting this article.[7]

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2 Article 8, para. 3 of the 1953 Protocol.

3 See however para. 2 of the amended article 22.

4 Para. 6 of the above comments on the introductory paragraph of article 5 of the 1972 Protocol and on para. 5 of article 12 of the amended Single Convention.

5 Or earlier supplementary estimates. Supplementary estimates may also be furnished prior to that year. *1961 Commentary*, paras. 3 and 5 of the comments on article 19, para. 3 (pp. 237-238).

6 *1972 Records*, vol. II, para. 10 of the summary records of the fifth meeting of Committee I (p. 82).

7 The estimate system as originally adopted by the 1931 Convention and taken over by the Single Convention was intended to apply to the *requirements* of narcotic drugs for different purposes as a basis for computing manufacturing and import limits. Its extension to opium production by the 1972 Protocol, i.e. to an agricultural process, has caused some incongruities. The extension of the estimate system under article 19, paragraph 1, subparagraphs *(e)*, *(g)* and *(h)* may also not be in full harmony with its rules. The 1972 Protocol did not make such adjustments in that system as would be necessary to avoid those incongruities. The estimates of opium production and of the area used for such production under article 8, paragraph 3 of the 1953 Protocol do not have a binding character, and are therefore basically different from those of the 1972 Protocol.

6. Article 21 *bis,* paragraph 1 is intended to cover Parties and non-Parties to the amended Single Convention alike, and also territories of such Parties to which the Single Convention does not apply according to article 42 or 46. The Board may however apply paragraph 2 of article 21 *bis* only in the case of an excess occurring in a country which is a Party to the amended Single Convention or in those of its non-metropolitan territories to which the Single Convention applies according to article 42. It may however proceed under article 14 in regard to an excess under article 21 *bis,* paragraph 1 occurring in a country which is not a Party to the amended Single Convention, or in a non-metropolitan territory to which the Single Convention does not apply pursuant to article 42 or 46 if it finds that the conditions for proceeding under article 14 exist.

Paragraphs 2 and 5

> "2. ***If the Board finds on the basis of information at its disposal in accordance with the provisions of this Convention that a Party which has submitted an estimate under paragraph 1*** (f) ***of article 19 has not limited opium produced within its borders to licit purposes in accordance with relevant estimates and that a significant amount of opium produced, whether licitly or illicitly, within the borders of such a Party, has been introduced into the illicit traffic, it may, after studying the explanations of the Party concerned, which shall be submitted to it within one month after notification of the finding in question, decide to deduct all, or a portion, of such an amount from the quantity to be produced and from the total of the estimates as defined in paragraph 2*** (b) ***of article 19 for 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. This decision shall take effect ninety days after the Party concerned is notified thereof.***
>
> "5. ***In taking its decision with regard to a deduction under paragraph 2 above, the Board shall take into account not only all relevant circumstances including those giving rise to the illicit traffic problem referred to in paragraph 2 above, but also any relevant new control measures which may have been adopted by the Party.***"

Commentary

1. The Board may act under paragraph 2 only on the basis of information which it received pursuant to (explicit) provisions of the Single Convention. Those provisions are: article 8, paragraph *(b),* article 12, article 13, article 14, article 19, article 20, article 21 *bis,* paragraph 2, article 24

paragraph 2, subparagraph *(a)*, article 35, paragraphs *(f)* and *(g)* and article 49, paragraph 3 subparagraph *(b)*.[1]

2. In order to be authorized to decide on a deduction with which paragraph 2 deals the Board must

(a) find that an excess of opium production pursuant to paragraph 1 has occurred in a country which has accepted the 1972 Protocol (or the amended Single Convention) or in a non-metropolitan territory of such a Party to which the Single Convention applies according to article 42;

(b) find that a significant amount of opium produced, whether licitly or illicitly, in such a country or territory has flowed into the illicit traffic;

(c) notify those findings to the Party concerned and request explanations of the excess of opium production and of the flow of opium into the illicit traffic; and

(d) study and find unsatisfactory such explanations as it may receive.

3. Under the text of paragraph 2 it would appear that the Board may apply that provision only to those countries Parties to the amended Single Convention or to those of their non-metropolitan territories subject to the Single Convention for which the Governments concerned have furnished the estimates under article 19, paragraph 1, subparagraph *(f)* that were exceeded in accordance with the conditions of article 21 *bis*, paragraph 1. It is however suggested that it was obviously not the intention of the 1972 Conference to exclude from the scope of article 21 *bis*, paragraph 2 a country or territory for which the Board under article 12, paragraph 3 has established an estimate of opium production because the Government in question failed to furnish it.

4. As regards the question whether a Party can by a supplementary estimate prevent the determination by the Board of excessive opium production in the sense of article 21 *bis*, paragraph 1, see paragraph 5 of the above comments on the introductory paragraph of article 11 of the 1972 Protocol and on article 21 *bis*, paragraph 1 of the amended Single Convention.

5. The phrase "licit purposes" covers not only medical and scientific purposes, but also the quasi-medical use of opium and opium smoking in cases in which by virtue of an appropriate reservation pursuant to article 49 opium production for such a non-medical use is authorized.

6. The plural "relevant estimates" may be explained by the consideration that a Party may under article 49, paragraph 3, subparagraph *(b)* have furnished to the Board a separate estimate of opium production for quasi-medical purposes or opium smoking or both, in addition to an estimate of such production for medical and scientific purposes.

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1 See paras. 8 and 9 of the comments on the introductory paragraph of article 6 of the 1972 Protocol and para. 1, subpara. *(a)* of article 14 of the amended Single Convention.

7. The Board may apply paragraph 2 not only in a case in which a significant amount of "licitly" produced opium has been diverted into illicit channels, but also in one in which such diversion has not taken place, but opium is produced not only "licitly" but also "illicitly". The words "licitly" and "illicitly" are in this context synonymous with "legally" and "illegally". The applicability of paragraph 2 to a Party which has an excessive legal opium production which nevertheless that Party seems effectively to control, though it cannot prevent a significant illegal opium production, may perhaps be motivated by the assumption that a Party which is unable to prevent illegal opium production is also unable to prevent diversion from its legal production, although that diversion cannot be proven for the purposes of that paragraph.[2]

8. It must be admitted that in practice it may often be very difficult for the Board to determine with certainty that a "significant" quantity of opium has been diverted from legal production into illicit channels or was illegally produced in the country or territory in question. It may in particular be difficult to determine with certainty that opium appearing in the illicit traffic originated in the country or territory involved.[3] But past experience has proven that in some situations the Board would be able to make such determinations beyond any reasonable doubt.

9. It is sufficient for the purpose of paragraph 2 that the Board finds that an important quantity of opium was diverted from legal production or illegally produced. It is not necessary for the Board to be able to establish, even approximately, the quantity of opium involved, but it must be in a position to determine the minimum amount which has been introduced into the illicit traffic from legal or illegal production of opium in order to be able to decide what amount should be deducted from the quantity of opium to be produced in the country or territory in question, and from its "total of estimates" for opium. Although it will in many cases be nearly impossible for the Board to establish that minimum with certainty, there have been some situations in the past in which the Board could do so.

10. It is suggested that the Board should normally transmit its findings and request for explanation to the Party concerned by registered air mail with a request for a postal return receipt. Paragraph 2 provides that the Party concerned should submit its explanations to the Board "within one month after" that notification. This means that the Party is required to mail or hand by messenger its explanations to the secretariat of the Board within one

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2 It cannot be excluded that a country controls effectively legal opium production in that part of its territory which is under effective control of its Government, but cannot prevent illegal opium production in a part of its territory over which its authorities cannot exercise full control.

3 *1972 Records*, vol. II, para. 26 of the summary records of the fifth meeting of Committee I (p. 83) and para. 4 of the summary records of the sixth meeting of that Committee (p. 86).

month from receipt of that organ's notification.[4] The Board may however allow a longer period, but not less than one month, for submission of the explanations. If the explanations are mailed, they should be sent by registered mail and normally by air mail.

11. The Board cannot refuse to consider explanations which were not sent within the time limit mentioned in the preceding paragraph, but have arrived in time for its examination.

12. It may be noted that under article 13, paragraph 3 the Board may request explanations not only from a Party to the amended Single Convention but also from a Government which has not accepted that amended treaty (or the 1972 Protocol) if on the basis of information received under article 19, paragraph 1, subparagraph *(f)* and article 20, paragraph 1, subparagraphs *(a)* and *(e)* it finds that in the territory of that Party or non-Party legal opium production has exceeded the related estimates, or illicit opium production took place. Since the conditions under which the Board may act under article 21 *bis,* paragraph 2 are very stringent, it may be assumed that the Board will very often ask for explanations of excessive legal opium production or of illicit opium production under its authority pursuant to article 13, paragraph 3, rather than under article 21 *bis.*

13. As regards the right of the Board to ask for explanations[5] in the case of excessive legal opium production or illegal opium production caused by the failure of a Government to carry out, the provisions of the Single Convention, or in the case of situations of that kind not due to such a failure, its right to propose to the Government involved the opening of consultations, see article 14, paragraph 1, subparagraph *(a)* of the amended Single Convention and the above comments on the introductory paragraph of article 6 of the 1972 Protocol and paragraph 1, subparagraph *(a)* of article 14 of the amended Single Convention. The Board may receive the required explanations in the course of such consultations.

14. A request for explanations made under article 13, paragraph 3 or under article 14, paragraph 1, subparagraph *(a)* of the amended Single Convention would not be sufficient for the purposes of article 21 *bis,* paragraph 2. The Board can make a decision on a deduction pursuant to article 21 *bis,* paragraph 2 only after having requested explanations under the conditions of that provision.

15. The amount which under paragraph 2 the Board may wholly or partially deduct is the amount of opium diverted from legal production into illicit channels and that of opium illicitly produced and consequently appearing in the illicit traffic. It is not the quantity of legal opium production exceeding the related estimates.[6]

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4 There can be no objection to a Party's submitting its explanation to a member of the United Nations Secretariat stationed in New York and authorized by the Board for that purpose.

5 Or to propose the opening of consultations.

6 As regards the deduction of excessive manufacture or import, see article 21, para. 3.

16. As has been said above, it is virtually impossible for the Board to determine with certainty the actual amount of opium flowing into the illicit traffic from legal or illegal production, although it may sometimes be able to make a rather accurate estimate. However, what the Board may deduct wholly or partially is not that estimated amount, but only that portion of it in respect of which the Board finds beyond a reasonable doubt that it went into the illicit traffic. That part may be only a relatively minor portion of the estimated quantity or of the quantity which actually appeared in the illicit traffic. However, there have been in the past, though infrequently, some occasions in which the Board could find that a particular quantity of opium had without any doubt been diverted from legal production into illicit channels or was illegally produced.

17. The Board may refuse to decide to make a deduction, although all conditions required by paragraph 2 for such a measure have occurred. It is suggested that the Board would refuse to take that action whenever this would be incompatible with its obligation under article 9, paragraph 4 of the amended Single Convention to endeavour to ensure the availability of narcotic drugs for medical and scientific purposes. It may therefore be assumed that the Board would decline to make the deduction if it would thereby create a risk of a shortage of opium on the legal market.

18. It is also submitted that the Board would refuse to make the deduction if such a measure would in its opinion not be likely to contribute to an improvement of the opium situation in the country or territory in question. The Board would also abstain from making the deduction if it appears probable that new control measures adopted by the Party concerned will lead to such an improvement.[7]

19. If the Board decides to make a deduction, it is required to deduct the same amount from the opium to be produced and from the total of the estimates.[8]

20. The Board determines the year for which the deductions are to be made. That year must be the same for both deductions.

21. To determine the year for which the deduction could be made from "the total of the estimates" does not present any particular technical problems;[9] but the deduction from the opium to be produced in a given year can be accomplished only if the Party concerned is notified of the prescribed

7 Article 21 *bis*, para. 5.

8 The deductions could be larger than the amount to be produced or the total or both, and thus reduce that amount or total or both to zero.

9 If that year did not have to be the same as the year for which the deduction would have to be made from the quantity of opium to be produced, the deduction from "the total of the estimates" could be made for the year following that in which the excessive opium production and the significant diversion from legal production or the illegal production took place, i.e., for the year in which the Board becomes aware of those conditions, or for the following year if in the earlier year the Board could not make the required findings in time.

deduction an adequate time before it makes the arrangements required by the Single Convention for the organization and control[10] of that production. The Party must therefore be notified of the deduction a sufficiently long time before the opium poppies in question are sown.[11]

22. The Board may under article 12, paragraph 1 prescribe the date by which the Parties have to furnish their estimates under article 19, paragraph 1, subparagraph *(f)* of the approximate quantities of opium which they plan to produce, i.e., the figures which they are bound not to exceed.[12] The Board may fix different dates for different Parties.[13] That date must be early enough to enable the Board to examine the estimates and, if necessary, to suggest under article 12, paragraph 5 to the Government concerned a reduction of, or increase in, the estimate in time for the Government to be able to make the necessary changes in its production plan and to carry them out; but if the date fixed for furnishing the estimates is too early, some Governments might have to supply them at a time when they would not yet be able to know all the factors which they would have to take into account in planning their opium production.

23. Moreover, under article 20, paragraph 2, subparagraph *(a)*, Parties are bound to furnish to the Board statistical data on their production and seizure of opium (which are very important figures for the purposes of article 21 *bis*, paragraph 2) only by 30 June following the year to which they relate. The Board would hardly be in a position to make the findings under article 21 *bis* without that information. Consequently, if the Board were to determine an early date for the furnishing of the opium production estimates in order to be able to examine them early and to enable Governments to make advisable reductions in their planned opium production in the following year, i.e. in the year to which the estimates relate, it would be in a position to suggest reductions under article 12, paragraph 5, but normally would not yet be able to require deductions under article 21 *bis*, paragraph 2 for that year, because it would not yet have the information on which it could base that decision.

24. It follows that the Board would generally be able to require deductions pursuant to article 21 *bis*, paragraph 2 only for the third year following that in which the excessive opium production and diversion from legal production or illegal production took place, or even only for a later year if it has to take into account relevant contractual export commitments of the opium-producing Party in question. So long an interval between the time

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10 Article 23.

11 Document E/CONF.14/12, paras. 24 to 26.

12 Article 19, para. 5 and article 21 *bis*, para. 1.

13 The Board has fixed as the date for the annual estimates of opium production to be furnished under article 8, para. 3 of the 1953 Protocol, 30 June of the year preceding that to which they refer. That date may sometimes or even often be too late for the purposes of article 21 *bis*, para. 2; see form B/4 (twelfth edition, November 1974) of the International Narcotics Control Board.

when, according to the Board's finding, control of opium production was defective in a country or territory and the time at which that country or territory has consequently to reduce production, might sometimes not be very desirable.

25. The question arises whether the Board should consider as the beginning of the time needed by the Government concerned for making the arrangements required to carry out its decision the date on which the Government receives the Board's notification, or the date ninety days after such receipt, i.e., the date on which the Board's decision takes effect. It is submitted that there can be no objection to the Board accepting for that purpose the earlier date in timing its deductions pursuant to article 21 *bis,* paragraph 2.[14]

26. It cannot be excluded that the Party involved, aware of a deduction or of the possibility of a deduction by the Board from its planned opium production, might furnish an excessive estimate for the year in question, particularly if it considered the Board's action or pending action not to be justified. Such an excessive estimate or the furnishing pursuant to article 19, paragraph 3 of supplementary estimates[15] prior to or during the year whose opium production was involved, could make ineffective deductions made by the Board under article 21 *bis,* paragraph 2.

27. It may also by recalled in this context that a country's or territory's "total of the estimates" for opium, whether reduced by a deduction pursuant to article 21 *bis,* paragraph 2 or not, has no bearing on the amount of opium which the country or territory may produce.[16]

28. The Board may at any time rescind its decision to make a deduction under the paragraph under consideration.

29. It may be concluded that the Board will not frequently find that the stringent conditions for making a deduction pursuant to paragraph 2 exist. Moreover, since such a deduction might have no effect on the amount of opium which a Party could legally produce and would not directly influence its illegal opium production, it may perhaps also be assumed that the Board would find it only rarely advisable to decide to make such a deduction even in cases in which the conditions required for such a measure exist. The procedure of paragraph 2 may however provide the Board with an additional useful mechanism[17] for engaging in a dialogue with an opium producing Party which has a serious problem of diversion from its legal opium

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14 The purpose of the delay of 90 days does not seem to be quite clear.

15 Para. 5 of the comments on the introductory paragraph of article 11 of the 1972 Protocol and article 21 *bis,* para. 1 of the amended Single Convention.

16 Paras. 3, 10 and 11 of the comments on article 19, para. 2, subparas. *(a), (b)* and *(c)* of the amended Single Convention and para. 5 of the comments on para. 2, subpara. *(d)* of that article.

17 Article 9, para. 5 of the amended Single Convention; see also article 21 *bis,* para. 3.

production or of illicit opium production. It must however be admitted that the value of that mechanism is considerably affected by the limitation of the application of paragraph 2 to Parties.[18]

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18 Para. 6 of the comments on the introductory paragraph of article 11 of the 1972 Protocol and on para. 1 of article 21 *bis* of the amended Single Convention; see also para. 3 of the present comments.

Paragraph 3

3. After notifying the Party concerned of the decision it has taken under paragraph 2 above with regard to a deduction, the Board shall consult with that Party in order to resolve the situation satisfactorily.

Commentary

1. The purpose of the consultations in which the Board should engage under paragraph 3 is that of resolving "the situation satisfactorily". This means only that the Board should endeavour to induce the Party concerned to take measures which appear to be likely to improve its control of opium production or its arrangements for preventing illicit opium production, as the case may be. If the Board finds that such corrective measures are not within the capacity of the Party concerned, the possibility of international assistance would be an appropriate topic of the consultations. Paragraph 3 appears to apply to a specific situation the general policy which the Board is required to follow under article 9, paragraph 5 of the amended Single Convention.

2. The application of paragraph 3, like that of paragraph 2, is limited to Parties.[1] The Board is however not prevented from seeking consultations on a difficult or defective control situation of the kind with which paragraph 2 deals, in countries which have not accepted the amended Single Convention and in respect of which it is not authorized to decide on deductions pursuant to that paragraph.

3. The Board is also not precluded from seeking consultations with a Party on problems mentioned in paragraph 2, prior to taking a decision to make a deduction pursuant to that provision, or even without taking such a decision.[2]

4. If feasible, the Board should seek the consultations for which paragraph 3 provides early enough in order to be able, if desirable, to rescind its decision to make a deduction under paragraph 2 at a time when the Party concerned can still take into account that rescission in its arrangements for the organization and control of opium production in the year in question.

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1 Para. 6 of the comments on the introductory paragraph of article 11 of the 1972 Protocol and on paragraph 1 of article 21 *bis* of the amended Single Convention and para. 3 of the comments on article 21 *bis*, para. 2.

2 Article 9, para. 5 of the amended Single Convention.

Paragraph 4

4. If the situation is not satisfactorily resolved, the Board may utilize the provisions of article 14 where appropriate.

Commentary

1. The Board is not prevented from utilizing article 14 under the conditions of that provision without first applying article 21 *bis*, paragraph 2 and without a previous finding that "the situation is not satisfactorily resolved". Paragraph 4 of article 21 *bis*, like paragraphs 2 and 3 of that article, applies in any event only to countries which are Parties to the amended Single Convention and to those of their non-metropolitan territories to which the Single Convention applies according to article 42.

2. It is submitted that in fact paragraph 4 only refers to what the Board could in any case do if it finds that the conditions for proceeding under article 14 exist.

Article 12

AMENDMENT TO ARTICLE 22 OF THE SINGLE CONVENTION

Article 22 of the Single Convention shall be amended to read as follows:

> **"1. 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.**
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> ***"2. A Party prohibiting cultivation of the opium poppy or the cannabis plant shall take appropriate measures to seize any plants illicitly cultivated and destroy them, except for small quantities required by the Party for scientific and research purposes."***

Commentary

1. The 1972 Protocol amends article 22 by adding a second paragraph, and consequently the number 1 at the beginning of the formerly sole paragraph.

2. It will be noted that paragraph 2 applies only to illicitly cultivated opium poppies and cannabis plants. Parties to the unamended or amended Single Convention are under article 26, paragraph 2 of that treaty required to destroy illegally cultivated coca bushes.[1]

3. Article 22, paragraph 2 applies to all cases in which the cultivation is prohibited for any reason, and not only to those cases in which that measure is taken under paragraph 1 of that article, no matter whether the ban is effected by the text of a law or by a policy of refusing required licences.

4. It was suggested at the 1972 Conference that paragraph 2 only make explicit an obligation of the Parties which is already implied in the unamended text of article 22.[2] It is however submitted that the unamended text of article 22 already implies an obligation to destroy illegally cultivated

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1 And "so far as possible" to "enforce the uprooting of all coca bushes which grow wild".

2 *1972 Records,* vol. II, paragraph 25 of the summary records of the fourteenth meeting of Committee II (p. 213).

plants only for those Parties which prohibit the cultivation of the opium poppy or cannabis plant for the reasons stated in that provision.[3]

5. Parties to the amended Single Convention are under paragraph 2 not bound to destroy legally cultivated opium poppies used for illegal production of opium, or legally cultivated cannabis plants used for the illegal production of cannabis or cannabis resin. This would in particular be the case of opium poppies planted for other purposes than the production of opium (seeds or decorative purposes) or of cannibis plants grown for industrial purposes (fibre and seed) or horticultural purposes.[4]

6. The obligation under paragraph 2 to destroy illegally cultivated plants does not include an obligation to destroy products illegally obtained from such plants such as opium, poppy straw, cannabis and cannabis resin.

7. The Parties are required to implement paragraph 2 by the taking of "appropriate measures", i.e., they are bound to take such measures as may be necessary, but only to the extent that they appear to be practical and can reasonably be expected of them under their special conditions.

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3 This would apply also to the coca bush except for the more far-reaching special provision of article 26, para. 2.

4 Article 23, para. 1 and article 28, para. 2.

Article 13

AMENDMENT TO ARTICLE 35 OF THE SINGLE CONVENTION

Article 35 of the Single Convention shall be amended to read as follows:

"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;

"*(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;

"(f) *Furnish, if they deem it appropriate, to the Board and the Commission through the Secretary-General, in addition to information required by article 18, information relating to illicit drug activity within their borders, including information on illicit cultivation, production, manufacture and use of, and on illicit trafficking in, drugs; and*

"(g) *Furnish the information referred to in the preceding paragraph as far as possible in such manner and by such dates as the Board may request; if requested by a Party, the Board may offer its advice to it in furnishing the information and in endeavouring to reduce the illicit drug activity within the borders of that Party.*"

Commentary

1. The 1972 Protocol amends article 35 by adding two paragraphs: paragraphs *(f)* and *(g)*.

2. Parties are required under article 18, paragraph 1, introductory subparagraph and subparagraph *(c)* and paragraph 2 to furnish to the Secretary-General for the Commission information on the matters to which paragraph *(f)* refers. That mandatory information is that defined by the Commission in accordance with the special provision of article 18, paragraph 1, subparagraph *(c)*, and that required by that organ under its more general powers pursuant to paragraph 1, introductory subparagraph and subparagraph *(a)* and paragraph 2 of that article.

3. The information which under paragraph *(f)* Parties may find it appropriate to supply to the Commission and the Board would be *additional* to the mandatory information required by article 18, as that paragraph expressly states. That additional information would consist of those details regarding the illicit traffic in,[1] or illicit use of, narcotic drugs which is not mandatory under article 18, but which the Government concerned considers useful for the work of the Commission or the Board, or both. As intended by its authors and expressly indicated by its text, paragraph *(f)* does not provide for the furnishing of information which would duplicate the information furnished under article 18.[2]

4. It is also held that Governments would, under the unamended Single Convention, not be precluded from supplying the additional information to which paragraph *(f)* refers. Nevertheless the addition of that provision to article 35 is not without effect on the working of the Single Convention.[3] Under the unamended treaty, the Board would, outside the procedure pursuant to article 14, receive such information on the illicit traffic and the illicit use of narcotic drugs as the Commission may wish to call to its attention under article 8, paragraph *(b)*,[4] or as Governments would have to furnish under article 20, paragraph 1, subparagraph *(e)* or in explanation of their estimates or statistical data pursuant to article 12, paragraph 4 or article 13, paragraph 3. Information on the illicit traffic or on the illicit use of narcotic drugs supplied by Governments but not under those provisions would not be "information submitted by Governments to the Board under the provisions of this Convention" as defined in article 14, paragraph 1, subparagraph *(a)* and therefore under the unamended as well as under the amended Single Convention could not be used by the Board for the purposes of that subparagraph. Information furnished under the new paragraph *(f)* would be such information, and consequently could be the basis for the

1 Article 1, para. 1, subpara. (1).

2 For a different view, see *1972 Records*, vol. II, paras. 18, 37 and 40 of the summary records of the twentieth meeting of Committee I (pp. 157 and 159). For information requested by the Commission under article 18 at the time of this writing, see document E/NR.FORM/Rev.3, chaps. VII and VIII.

3 For a different opinion, see *1972 Records*, vol. II, paras. 13 and 54 of the summary records of the twenty-first meeting of Committee I (pp. 162 and 165).

4 As regards information supplied by other organs of organizations belonging to the United Nations family, see *1961 Commentary*, para. 10 of the comments on article 14, para. 1, subpara. *(a)* (pp. 180-181).

Board's initiation of a procedure pursuant to article 14. Paragraph *(f)* thus increases the Board's power to proceed under that article.

5. Moreover, paragraph *(f)* emphasizes the Board's authority to exercise its functions not only in respect of the control of all phases of the legal trade in narcotic drugs (including production and manufacture) but also in respect of problems of the illicit traffic in and the illicit use of such drugs.

6. Paragraph *(f)* refers to conditions *within* the borders of the reporting Party; but references to the foreign origin of the drugs found in the illicit traffic and to the lack of control or defective control in a foreign country, causing or rendering more difficult a domestic problem, may be included in the Party's report.

7. There is no provision in the unamended Single Convention or in the 1972 Protocol which would prevent non-Parties to the Single Convention or Parties to that treaty which did not accept the 1972 Protocol from furnishing the additional information to which paragraph *(f)* refers; but such information would not be "information submitted by Governments to the Board under the provisions of this Convention", i.e. of the Single Convention in the sense of article 14, paragraph 1, subparagraph *(a)*.

8. A report under paragraph *(f)* cannot be submitted only to the Commission or only to the Board, but if made, it must be made to both. It should be addressed in at least two copies to the Secretary-General, who would in each case forward the required copies to the Commission and to the Board.[5]

9. The spokesman of the sponsors of paragraphs *(f)* and *(g)* at the 1972 Conference emphasized the discretionary character of paragraph *(f)*.[6] However, the text of paragraph *(f)* in connexion with the introductory paragraph of article 35 seems to leave it to the judgement of each Party only to decide whether furnishing the additional information involved would be "appropriate". Its opinion in this matter cannot be challenged by another Party; but paragraph *(f)* like all the other provisions of the Single Convention, has to be implemented in good faith. If a Party believed in reality that it would be appropriate to furnish the additional information in question, it would have an obligation to do so,[7] although it may claim to have a different opinion; but this would of course be a highly improbable situation. In practice, supplying additional information under paragraph *(f)* would be voluntary.

10. The words in paragraph *(f)* "information relating to illicit drug activity ... including information on illicit cultivation, production, manufacture and use of, and illicit trafficking in, drugs" could have been more

5 *1972 Records*, vol. II, paras. 46 and 47 of the summary records of the twenty-first meeting of Committee I (p. 165).

6 *1972 Records*, vol. II, para. 1 of the summary records of the twenty-first meeting of Committee I (p. 161); see also para. 23 of the summary records of the twentieth meeting of that Committee (p. 158).

7 This follows from the text of the introductory paragraph: "shall ... furnish ..."

briefly expressed by the words "information relating to illicit traffic and illicit use of drugs",[8] since the definition of illicit traffic in article 1, paragraph 1, subparagraph (l) reads: "Illicit traffic means cultivation or trafficking in drugs contrary to the provisions of this Convention";[9] the phrase "illicit drug activity" in paragraph *(g)* is also used to cover "illicit traffic" and illicit use of drugs.

11. The Commission may solicit information under paragraph *(f)*. It may wish to do so when it considers such information only useful but not "necessary" for the performance of its functions.[10] This power of the Commission can certainly be assumed in view of its right under the Charter as a functional Commission of the Council to invite Governments to furnish information, and particularly also in view of its authority under article 18, paragraph 1, introductory subparagraph, to require Parties to the Single Convention to supply information necessary for the performance of its functions.

12. It is admitted that it is not equally certain that the Board may invite Parties to furnish information under paragraph *(f)*. It is however suggested that it would be the better opinion that the Board has that right. This view seems to be in accord with the authority conferred by paragraph *(g)* upon the Board to indicate the manner in which and the dates by which Parties should furnish information pursuant to paragraph *(f)*.

13. The right of the Board to determine the "manner" includes the right of the Board to request the use of a form which it may wish to prepare, and to indicate the mode of transmission, e.g., that reports which are not delivered to the Secretary-General by a member of the delegation of the Party concerned or by messenger should be forwarded by air mail. The Board may, e.g., also request that the communication containing the report should be typewritten.

14. The Board may determine the date by which such periodical reports as may be solicited under paragraph *(f)* should be furnished. It may determine a particular date by which a special report which it may solicit should be supplied, provided of course that the view indicated in paragraph 12 of the present comments is accepted that the Board is authorized to solicit information under paragraph *(f)*.

15. While, as indicated in paragraph 9 of the present comments, supply of information under paragraph *(f)* is practically voluntary, Parties which decide to furnish such information are bound to do so "as far as possible" in the manner and by the date determined by the Board.

16. The second sentence of paragraph *(g)* does not grant the Board new powers which it does not already have under the unamended Single

8 Article 1, para. 1, subpara. (l).

9 The term "trafficking" not only includes all forms of trade and distribution, but also manufacture and production; *1961 Commentary*, para. 1 of the comments on article 1, para. 1, subpara. (l) (p. 11).

10 Article 18, para. 1, introductory subpara.

Convention. There is no provision in that unamended text which would preclude the Board from offering a Government, at its request, advice in furnishing information to international organs and in endeavouring to combat the illicit traffic within its borders, but this explicit recognition of the Board's right to give such advice if requested again stresses the Board's function not only in relation to the control of the legal trade in narcotic drugs, but also in regard to problems of the illicit traffic.[11]

17. Paragraphs *(f)* and *(g)* appears to be provisions introduced by the 1972 Protocol in order to promote 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."[12] That promotion appears to be one of the principal aims of the 1972 Protocol.

18. The last word of the French text in paragraph *(g)* should correctly be *"celle-ci"* and not *"ceux-ci"*.

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11 See also para. 5 of the present comments.

12 Article 9, para. 5 of the amended Single Convention; see also article 14, para. 1, subparas. *(a)* and *(c)*, article 14 *bis* and article 21 *bis*, paras. 2 and 3 of that amended text; see also para. 29 of the above comments on article 21 *bis*, paras. 2 and 5.

Article 14

AMENDMENTS TO ARTICLE 36, PARAGRAPHS 1 AND 2 OF THE SINGLE CONVENTION

Introductory paragraph of article 14 of the 1972 Protocol and article 36, paragraph 1 of the amended Single Convention

Article 36, paragraphs 1 and 2, of the Single Convention shall be amended to read as follows:

"1. *(a)* 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.

"(b) *Notwithstanding the preceding sub-paragraph, when abusers of drugs have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 38.*

Commentary

1. The 1972 Protocol amends article 36, paragraph 1 by adding subparagraph *(b)*, and consequently the whole original text of paragraph 1 becomes subparagraph 1 *(a)*.

2. The text of subparagraph *(b)* closely follows, *mutatis mutandis*, the text of the corresponding subparagraph *(b)* of paragraph 1 of article 22 of the Vienna Convention.

3. Under the text of subparagraph *(b)*, Parties may substitute measures of treatment[1] for conviction or punishment of all abusers of narcotic drugs who have intentionally committed an offence covered by subparagraph *(a)*,

1 In the broad sense including also "education", "after-care", "rehabilitation" and "social reintegration".

no matter how serious that offence may be. It may however be expected that, in accordance with the purpose of article 36, Parties will normally do so only in the case of relatively minor offences such as the illicit sale of comparatively small quantities of narcotic drugs for the purpose of obtaining the financial means required to support the seller's drug dependence, or the supply with or without consideration of a small amount of a narcotic drug to a friend abusing it.[2]

4. It is submitted that subparagraph *(b)* may not be applied to offenders who abuse narcotic drugs occasionally, but only to those who abuse them frequently, i.e. who are dependent on them.

5. There may be a difference of opinion as to the question whether the right of Parties to substitute measures of treatment for conviction or punishment also authorizes them not to prosecute. It is suggested that it would be the better opinion that Parties are bound to prosecute, although under subparagraph *(b)* they are not required to convict or punish, all offences covered by subparagraph *(a)*. In the process of prosecution a Party could determine whether substitution of measures of treatment for conviction or punishment would be appropriate.

6. It will be noted that Parties may not apply subparagraph *(b)* to persons dependent on psychotropic substances[3] who have committed an offence covered by subparagraph *(a)*, unless they are also simultaneously abusers of narcotic drugs.

7. It is submitted that substitution of measures of treatment for conviction or punishment could in the light of the purpose of article 36 be desirable only if it can reasonably be hoped that the drug-dependent offender would not only be cured of his dependence, but would also not again commit a serious drug offence.

8. As regards the meaning of the terms "treatment", "education", "after-care", "rehabilitation" and "social reintegration", see below, the comments on article 15 of the 1972 Protocol amending article 38 of the Single Convention.

9. The measures of treatment which may be substituted for conviction or punishment, may also include commitment to an institution of treatment.

10. The provision of subparagraph *(b)* stipulating that Parties may impose on drug dependent offenders measures of treatment *in addition* to conviction or punishment only states what they may do anyway. Its inclusion in subparagraph *(b)* may be explained by the view of the authors of that subparagraph that such additional measures may often be desirable.

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2 Or in the case of possession of narcotic drugs for personal consumption if the Party concerned considers possession to be a punishable offence under subpara. *(a)*; *1961 Commentary*, paras. 17 to 24 of the comments on article 4 (pp. 112-113).

3 Article 1, para. *(e)* of the Vienna Convention.

11. It may finally be noted that Parties to both the unamended and amended Single Convention would be precluded from replacing conviction or punishment by measures of treatment under subparagraph *(b)* by their continued obligation to those Parties to the Single Convention which have not accepted the 1972 Protocol (so long as there are any such Parties). Article 39 authorizes only the substitution of more "strict" or "severe" measures for measures required by the Single Convention. Subparagraph *(b)* is certainly not more "strict" or "severe" than subparagraph *(a)*, i.e. paragraph 1 of article 36 of the unamended Single Convention.

12. Parties to the 1936 Convention could also normally not apply subparagraph *(b)*, since that would be incompatible with their obligations towards those Parties to that treaty which are not Parties to the amended Single Convention.[4]

[4] As regards the continued force of the 1936 Convention after the 1912, 1925 and 1931 Conventions have ceased to be in force, see the opinion of the Legal Adviser to the 1961 Conference, *1961 Records*, vol. I, p. 172.

Paragraph 2, introductory subparagraph, subparagraph (a) *and subparagraph* (b), *clause (i)*

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 in which application is made, and if such offender has not already been prosecuted and judgement given.

(b) *(i) Each of the offences enumerated in paragraphs 1 and 2* (a) *(ii) of this article shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.*

Commentary

1. The 1972 Protocol does not change the English or French text of the introductory subparagraph. It makes some drafting changes in the Spanish text of that subparagraph which do not affect its substance.

2. The text of clause (i) of subparagraph *(b)* closely follows *mutatis mutandis* the wording of article 8, paragraph 1 of the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.[1] It reproduces the substance of article 9, paragraph 1 of the 1936 Convention.

3. The first sentence of clause (i) represents an amendment of bilateral or multilateral extradition treaties in force at the time when extradition is requested, the amendment being effective between those Parties to such treaties which are Parties to the amended Single Convention.[2]

4. The second sentence of clause (i) imposes upon Parties to the amended Single Convention an obligation to include in any bilateral or multilateral extradition treaty to be concluded among themselves, the offences enumerated in article 36, paragraph 1, subparagraph *(a)* and paragraph 2, subparagraph *(a)*, clause (ii). That obligation does not exist in respect of a multilateral extradition treaty if one or more of the contracting States are not Parties to the amended Single Convention. However, those of the contracting Parties to such an extradition treaty which are Parties to the amended Single Convention would between themselves have to treat the above-mentioned offences as extradition crimes under the multilateral extradition treaty, since under clause (i) those offences would be deemed to be included as extraditable offences in that "existing" extradition treaty.

5. It would be in the spirit of clause (i) if Parties to the amended Single Convention would endeavour to include the offences mentioned in the preceding paragraph of the present comments also in bilateral extradition treaties to be concluded with non-Parties to the amended Single Convention, and in multilateral extradition treaties in whose conclusion such non-Parties participate.

6. In view of subparagraph *(b)*, clause (iv) the treaty definitions of the offences which under clause (i) have to be included in extradition treaties to be concluded may cover only "sufficiently serious" infractions; similarly only

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1 International Civil Aviation Organization, Doc. 8920; *1972 Records*, vol. II, para. 2 of the summary records of the eleventh meeting of Committee II (p. 202).

2 Under article 41 of the Vienna Convention on the Law of Treaties, Parties to a multilateral extradition treaty not covered by para. 1, subpara. *(a)* of that article intending to accept the 1972 Protocol or to become Parties to the amended Single Convention would have to notify the other Parties to the extradition treaty of their intention and of the contents of the amended clause (i) of subpara. *(b)* of para. 2 of article 36 of the Single Convention, document A/CONF.39/27; as regards multilateral extradition treaties, see *1972 Records*, vol. II, para. 12 of the summary records of the eleventh meeting of Committee II (p. 203); see also the opinion of the Legal Adviser to the 1961 Conference, *1961 Records*, vol. II, p. 241.

such infractions need to be deemed to be included as extraditable offences in any extradition treaty existing between Parties to the amended Single Convention.

7. The introductory subparagraph of paragraph 2 subjects the obligations of Parties under subparagraph *(b)*, clause (i) to their respective constitutional limitations, legal system and domestic law. The Parties are by that provision not exempted from the obligation to take legislative actions which may be necessary to carry out clause (i). A Party is however not required to change its constitution or to take such actions as would be incompatible with basic principles of its legal system or domestic law governing the matter.[3]

8. Although not expressly stated as under clause (iii), extradition under clause (i) need be granted by the requested Party only in accordance with the conditions of its own law, which must however be consonant with its obligations under clause (i). Moreover, clause (iv) expressly provides that all extraditions under subparagraph *(b)* need be granted only in conformity with the law of the requested Party.[4]

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3 *1961 Commentary*, paras. 3 to 5 of the comments on article 36, para. 2, introductory subpara. (pp. 430-431).

4 See also clause (ii); see also article 9, para. 3 of the 1936 Convention.

Paragraph 2, subparagraph* (b), *clause (ii)

(ii) If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offences enumerated in paragraphs 1 and 2* (a) *(ii) of this article. Extradition shall be subject to the other conditions provided by the law of the requested Party.

Commentary

1. The text of clause (ii) follows *mutatis mutandis* closely the language of article 8, paragraph 2 of the Convention of 1970 for the Suppression of Unlawful Seizure of Aircraft.[1]

2. Parties would have the option mentioned in clause (ii) also without that provision. The 1972 Conference included that clause in subparagraph *(b)* because it obviously found it desirable that a Party to the amended Single Convention which makes extradition conditional on the existence of a treaty

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1 See foot-note 1 to the comments on article 36, para. 2, introductory subpara., subpara. *(a)* and subpara. *(b)*, clause (i).

should consider the amended Convention as a legal basis for extradition if it receives from another Party to that amended treaty with which it had no extradition treaty a request for extradition of a person having committed any of the offences enumerated in article 36, paragraph 1, subparagraph *(a)* and paragraph 2, subparagraph *(a)*, clause (ii).

3. It will be noted that clause (ii) does not impose any legal obligation on Parties.[2]

4. Since exercising the option referred to in clause (ii) is entirely within the discretion of the Parties to which that provision refers, they may subject extraditions granted in accordance with that clause to such legal conditions as they make think fit. The last sentence of clause (ii) explicitly so states.

2 *1972 Records*, vol. II, paras. 19 and 26 of the summary records of Committee II (pp. 203 and 204).

Paragraph 2, subparagraph (b), *clause (iii)*

(iii) Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences enumerated in paragraphs 1 and 2 **(a)** ***(ii) of this article as extraditable offences between themselves, subject to the conditions provided by the law of the requested Party.***

Commentary

1. Clause (iii) follows *mutatis mutandis* closely the text of article 8, paragraph 3 of the Convention of 1970 for the Suppression of Unlawful Seizure of Aircraft.[1] It incorporates a provision similar to one contained in article 9, paragraph 2 of the 1936 Convention. Contrary to that provision of the 1936 Convention, it does not exclude from its scope Parties which make extradition conditional upon reciprocity.[2]

2. The obligations of a Party under clause (iii) are by virtue of the introductory subparagraph of paragraph 2 subject to its "constitutional limitations", its "legal system and domestic law". A Party is thereby not relieved from its obligation to take legislative measures which may be necessary for the implementation of clause (iii). It is however not required to change its constitution or to take such actions as would be incompatible with basic principles of its legal system or domestic law governing the granting of extradition.[3]

1 See foot-note 1 of the comments on article 36, para. 2, introductory subpara., subpara. *(a)* and subpara. *(b)*, clause (i).

2 Compliance with clause (iii) would represent "reciprocity".

3 See also para. 7 of the above comments on para. 2, introductory subpara., subpara. *(a)* and subpara. *(b)*, clause (i).

3. The clause under consideration expressly stipulates that extradition which it governs needs to be granted only with the conditions of the law of the requested Party; but these conditions must be consonant with the obligations of that Party under clause (iii). Moreover, clause (iv), referring to all provisions of subparagraph *(b),* states that "extradition shall be granted in conformity with the law of the Party to which application is made".

Paragraph 2, subparagraph* (b), *clause (iv)

> **"*(iv)* Extradition shall be granted in conformity with the law of the Party to which application is made, and, *notwithstanding subparagraphs* (b) *(i), (ii) and (iii) of this paragraph,* the Party shall have the right to refuse to grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious."**

Commentary

1. Clause (iv) reproduces the substance of the proviso of the unamended article 36, paragraph 2, subparagraph *(b);* it is also patterned after article 9, paragraphs 3 and 4 of the 1936 Convention.[1]

2. The clause under consideration stipulates that "extradition shall be granted in conformity with the law" of the requested Party. This means that extraditions need to be granted only in conformity with all material and procedural conditions of that law. These conditions must however be consonant with the obligations of Parties under clause (i) or (iii), as the case may be.

3. Clause (iv), and consequently that stipulation, applies to all extraditions covered by subparagraph *(b),* to those to be granted pursuant to clauses (ii) or (iii) (both of which contain equivalent provisions)[2] and as well to those to be granted under clause (i) which does not have such a provision.

4. In view of the different principles prevailing in different countries on matters of extradition and more generally on matters of material and procedural penal law it must be assumed that under clause (iv) requested Parties have a very broad discretion to decide whether an offence is "sufficiently serious" to warrant extradition.

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1 The proviso of the unamended text refers to provisions which are only recommendatory while clause (iv) applies to the obligatory clauses (i) and (iii) as well as to the non-obligatory clause (ii).

2 This apparent repetition seems to be due to the drafting history of subpara. *(b),* clauses (i), (ii) and (iii) being patterned after article 8, paras. 1, 2 and 3 of the Convention of 1970 for the Suppression of Unlawful Seizure of Aircraft (document 8920 of the International Civil Aviation Organization), and clause (iv) retaining, with some drafting changes, the proviso of article 36, para. 2, subpara. *(b)* of the unamended Single Convention.

Article 15

AMENDMENTS TO ARTICLE 38 OF THE SINGLE CONVENTION AND ITS TITLE

General comments

1. A system of administrative controls and penal sanctions established for the purpose of keeping narcotic drugs from actual or potential victims forms the essence of the Single Convention.

2. The new article 38 reflects the general acceptance of the view that that system, and consequently also the implementation of the international drug control treaties alone, is not sufficient, and should not form the sole subject of international co-operation in the campaign against drug abuse.

3. The new article 38 takes over, with minor drafting changes and *mutatis mutandis*, the text of article 20 of the Vienna Convention. The 1972 Conference adopted article 38 because it held that a multi-disciplinary approach to the problem of the abuse of narcotic drugs and psychotropic substances was required, as did the 1971 Conference which adopted the Vienna Convention.

4. The provisions of the new article 38 are couched in general terms so as to present guidelines for the policies to be adopted by Governments in the field rather than mandatory rules requiring the adoption of specific measures.

5. The article under consideration deals with measures to be applied to individuals abusing narcotic drugs,[1] with the training, i.e., with the development of the required professional skills of the personnel dealing with the problems of those individuals.[2] and with the promotion of an understanding of the manifold aspects of those problems on the part of that personnel and where appropriate, also on the part of the general public.[3]

6. It is suggested that Governments may often find it advisable to carry out joint programmes under the new article 38 of the Single Convention and under article 20 of the Vienna Convention.

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1 The principal content of para. 1.

2 Para. 2.

3 Para. 3.

Introductory paragraph of article 15 of the 1972 Protocol, title and paragraph 1 of article 38 of the amended Single Convention

Article 38 of the Single Convention and its title shall be amended to read as follows:

"Measures against the Abuse of Drugs

"1. The Parties shall give special attention to ***and take all practicable measures for the prevention of abuse of drugs 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."***

Commentary

1. Only such measures need to be taken as the Government concerned considers to be "practicable".[1] What may be "practicable" in some countries may not be "practicable" in other countries. Measures which are within the competence and the means of the country concerned are not necessarily "practicable" in the sense of paragraph 1. A Government may consider them not "practicable" if in order to carry them out it has to divert sparse skilled personnel or financial means or both from tasks which it considers to deserve higher priority in the light of its special economic and social conditions. That may in particular be the case of developing countries. One may say that "practicable" is normally what can reasonably be expected of a Government in the light of its resources and the degree of seriousness of its problem of drug abuse.

2. Treatment, after-care, rehabilitation and social reintegration present four stages of remedial measures which are widely held to be necessary to restore the well-being and social usefulness of abusers of narcotic drugs or psychotropic substances.[2] Those four terms are not always used in exactly the same sense. It is sometimes also not possible to draw a dividing line between the measures to be applied at each of those four stages. The following comments on the meaning of those terms therefore should be considered to be only tentative.

3. The term "treatment" in a broad sense is sometimes applied to the entire process consisting of the four phases to which the paragraph under consideration refers.[3] It is held that in the narrow sense in which it is employed in that paragraph it covers the process of withdrawal of the abused narcotic drugs, or where necessary that of inducing the abuser to restrict his intake of narcotic drugs to such minimum quantities as might be medically justified in the light of his personal condition.[4]

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1 The French text used the word *"possibles"* and the Spanish text the word *"posibles"* for the English "practicable". It is held that in view of the nature of the provision the English text is to be given preference.

2 Article 1, para. *(e)* of the Vienna Convention.

3 See also *1961 Commentary,* para. 4 of the comments on article 38 (p. 446).

4 In the case of medically justified "maintenance programmes".

4. It is submitted that the term after-care refers to that stage of treatment (in the broad sense) of the abuser of narcotic drugs which consists mainly of such psychiatric, psychoanalytical or psychological measures as may be necessary after he has been withdrawn from the drugs which he abused or, in the case of a "maintenance programme", after he has been induced to restrict his intake of narcotic drugs as required under the programme; but such measures may be needed also in the first phase, referred to as "treatment" in paragraph 1.

5. It is suggested that the word "rehabilitation" covers such measures as may be required to make the former abuser of narcotic drugs physically, vocationally, morally and otherwise fit for living a normal life as a useful member of society (cure of diseases, physical rehabilitation of disabled persons, vocational training, supervision accompanied by advice and encouragement, measures of gradual progress to a normal self-reliant life, etc.).[5] Such measures of "rehabilitation" may however have to be taken also in the first and second stages referred to in paragraphs 3 and 4 of the present comments. Measures which have been referred to as "after-care" may and quite often have to be continued during the stage of "rehabilitation".

6. It is particularly difficult to draw a dividing line between what paragraph 1 calls "rehabilitation" and what it calls "social reintegration". It is suggested that the term "rehabilitation" mainly refers to those measures which are intended to improve the personal qualities of the abuser (health, mental stability, moral standards, vocational skills), while the term "social reintegration" includes measures intended to make it possible for him to live in an environment more favourable to him. The term "social reintegration" may thus cover such measures as provision of a suitable job and appropriate housing, and perhaps also enabling the former abuser of narcotic drugs to leave his former environment and to move to a social atmosphere less likely to produce such social evils as drug addiction. Change of the environment may also be advisable in order to reduce the harm which the social stigma attached to drug abuse may cause the former abuser. It is also held that measures of "after-care", "rehabilitation" and "social reintegration" will often have to be overlapping.

7. It has been pointed out that the four stages of treatment referred to in the amended article 38, paragraph 1 cannot easily be separated in time or content. It is also admitted that other views may be held on the exact dividing lines between those four stages. It is however submitted that it is not necessary to agree on those lines for the purpose of appropriately implementing that provision. Its authors used the terms "treatment", "after-care", "rehabilitation" and "social reintegration" normally applied to different stages of the treatment (in the broad sense) of abusers of narcotic drugs in order to indicate that the Parties should take all "practicable" measures–no matter to which discipline they may belong–which may be

5 Para. 5 of the comments referred to in foot-note 3 (p. 447).

required for a successful treatment of the abusers. The employment of overlapping terms appears to be useful for achieving that comprehensive meaning.

8. The term "identification" may apply not only to the discovery of actual abusers of narcotic drugs, but also to that of particular groups whose members are specially prone to abuse them.[6] Inspection of the prescriptions retained by retail distributors of narcotic drugs and, where possible, a reporting system patterned on that of reporting communicable diseases may, by way of example, be mentioned as means of identification.

9. The term "education" in this paragraph seems to apply only to education on the harmful consequences of the abuse of narcotic drugs. Such education may also be part of the promotion of an understanding of the problems of drug abuse among the general public under paragraph 3. As used in paragraph 1, the term "education" does not appear to cover that enlightening of the general public, but rather to refer to imparting information to actual abusers of narcotic drugs, to classes in schools and to special courses intended for groups found to be specially prone to abuse narcotic drugs. It would be desirable that in planning programmes of education Governments should not overlook the danger that spreading of knowledge about narcotic drugs may in some situations lead to the spread of their abuse. That risk may have to be kept in mind specially where such abuse does not exist or is only rare.[7]

10. The administrative control measures and penal sanctions for which the Single Convention provides are intended to prevent the abuse of narcotic drugs and therefore constitute measures of "prevention". When using the very broad term "prevention" in paragraph 1, the authors of that provision however thought of other additional measures suitable to keep people from abusing narcotic drugs. "Prevention" as used in this place would include all practicable economic and social measures capable of changing a social atmosphere or subcultural conditions responsible for the development of personality traits finding expression in the abuse of narcotic drugs. Early identification of groups prone to abuse narcotic drugs and education may also be measures of prevention.

11. It is submitted that Governments need not engage directly in the treatment, education, after-care, rehabilitation and social reintegration referred to in paragraph 1. They may leave the implementation of those measures to private facilities.

12. Paragraph 1 requires Parties to co-ordinate their efforts in the various disciplines in question on the national as well as on the international level. That co-ordination would on the national level be part of the

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6 *1971 Records,* vol. II, para. 25 of the summary records of the sixth plenary meeting of the 1971 Conference (p. 21).

7 Para. 51 of the summary records referred to in the preceeding foot-note (p. 22); see also article 38, para. 3 of the amended Single Convention.

arrangements made for maintaining a "special administration" pursuant to article 17. Regional arrangements such as those for which the new article 38 *bis* provides may sometimes be helpful in ensuring effective international co-ordination for the purposes of article 38, paragraph 1.

Paragraphs 2 and 3

> ***"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 drugs.***
>
> ***"3. The Parties shall take all practicable measures to assist persons whose work so requires to gain an understanding of the problems of abuse of drugs and of its prevention, and shall also promote such understanding among the general public if there is a risk that abuse of drugs will become widespread".***

Commentary

1. Paragraph 2 applies only to persons engaged in any phase of treatment (in the broad sense) of abusers of narcotic drugs; it does not cover persons engaged only in preventive measures, including the application of the administrative controls and penal sanctions for which the Single Convention provides. It is however suggested that the promotion of proper training of personnel engaged on the domestic level in the implementation of the provisions of that treaty is an implied obligation of Parties carrying out the Convention in good faith.

2. The "persons" to which the first part of paragraph 3 applies include all persons covered by paragraph 2, and in addition persons engaged in any aspect of prevention of the abuse of narcotic drugs or of the implementation of the Single Convention. Judges, police officers, prison wardens, doctors and followers of religious callings who in their professional work deal with abusers of narcotic drugs may be such persons. They fall in that category although their work may only partially be concerned with drug addicts. The authors of paragraph 3 held that persons engaged in any phase of treatment of abusers of narcotic drugs should not only have the required professional skills, but also an understanding of the multidisciplinary and often complex problems involved. They considered it desirable that all other persons whose work brings them in contact with addicts should also have that broad understanding.

3. Paragraph 3 also requires Parties to promote such a broad understanding among the general public "if there is a risk that abuse of drugs will become widespread". It is suggested that such a promotion is also required if drug addiction has already become a widespread phenomenon. The limitation of that requirement to situations in which there is a risk of widespread abuse of narcotic drugs or in which such widespread abuse already exists is motivated by the assumption of some Government officials that the

promotion of knowledge about narcotic drugs in countries where their abuse is rare may actually lead to the spread of their abuse by arousing the morbid curiousity of psychologically weak persons, inducing them to abuse the drugs.[1]

4. Understanding of the complex problems of drug addiction on the part of the general public may be helpful in the formulation and adoption of adequate social policies for dealing with that question.

5. The Parties are under paragraph 2 not required to engage in governmental training programmes, but only to "promote" the training for which that paragraph provides. The methods of that training will differ in different countries in accordance with the differences in the nature of their problems of drug abuse and in view of their different educational systems. The term "promote" means "help forward", "encourage" or "support".

6. The requirement of promotion of training pursuant to paragraph 2 is qualified by the phrase "as far as possible". A determination of what is possible in a country depends on the means which that country can reasonably be expected to use for the purposes of paragraph 2, and also to some extent on the degree of seriousness of its drug abuse problem. A Government would not be required to divert sparse skilled personnel or financial means to training programmes pursuant to paragraph 2 from tasks which it considers to deserve higher priority in the light of its particular national conditions. That applies specially to developing countries. It is suggested that "possible" in paragraph 2 has about the same meaning as "practicable" in paragraph 1.

7. Paragraph 3 requires Parties to take all practicable measures to "assist" persons whose work so requires to gain an understanding of the problems of drug abuse and of its prevention, and also to "promote" such an understanding among the general public where required by that provision. It is suggested that the words "assist" and "promote" in paragraph 3 have the same meaning and are used in the same sense as "promote" in paragraph 2.[2] The employment of these two different words appears to be due only to reasons of style. The Governments are not bound to engage themselves in training or publicity programmes which might be required under paragraph 3; they may limit themselves to "promoting" such programmes undertaken by private persons or non-governmental organizations.

8. Paragraph 3 limits the obligation of Parties to assist persons whose work so requires to gain an understanding of the problems of drug abuse and its prevention, to taking all practicable measures for that purpose; it does not expressly so limit their obligation to promote such understanding among the general public. It follows however from the nature and drafting history of paragraph 3 that Parties are in both of these cases required to take only such

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1 *1971 Records*, vol. II, para. 51 of the summary records of the sixth plenary meeting (p. 22).

2 See para. 5 of the present comments.

measures as can reasonably be expected of them in the light of the resources available to them for that purpose, and of the seriousness of their drug abuse problem.[3]

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3 *1971 Records*, vol. II, summary records of the sixth plenary meeting, paras. 20, 34, 39 and 47 (pp. 21-22).

Article 16

NEW ARTICLE 38 *BIS*

The following new article shall be inserted after article 38 of the Single Convention:

"Article 38 bis

"Agreements on Regional Centres

"If a Party considers it desirable as part of its action against the illicit traffic in drugs, having due regard to its constitutional, legal and administrative systems, and, if it so desires, with the technical advice of the Board or the specialized agencies, it shall promote the establishment, in consultation with other interested Parties in the region, of agreements which contemplate the development of regional centres for scientific research and education to combat the problems resulting from the illicit use of and traffic in drugs."

Commentary

1. The new article 38 *bis* does not impose any legal obligations on Parties, nor does it provide for any actions which Governments, the Board or the specialized agencies could not take even if the article had not been included in the Single Convention. The 1972 Conference appears to have preferred the inclusion of the non-mandatory article 38 *bis* in the treaty to the adoption of a resolution recommending the actions with which that article deals because it seems to have held that an article in the Convention would carry greater weight even if it was not mandatory.[1]

2. Article 38 *bis* does not directly recommend the promotion of the establishment of agreements contemplating the development of the regional centres which it defines, but only provides that Parties should engage in such a promotion if they consider it desirable as part of their action against the illicit traffic. Nevertheless, it is submitted that it was the opinion of the 1972 Conference that such centres were indeed desirable in some regions.[2]

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1 *1972 Records,* vol. II, para. 121 of the twelfth plenary meeting (pp. 56-57); see also article 2, para. 5, article 20, para. 3, article 30, para. 2, subpara. *(b),* clause (ii), paras. 3 and 4, article 35, para. *(a),* article 36, para. 2, subpara. *(b),* article 38, para. 2 and article 39, of the unamended Single Convention, and article 35, para. *(f),* article 36, para. 2, subpara. *(b),* clause (ii) and article 38 *bis* of the amended Single Convention.

2 The usefulness of one regional centre, i.e. of the Anti-Narcotics Bureau of the League of Arab States was mentioned at the 1972 Conference. The functions of that Bureau do not seem to be those of the definition of the centres in article 38 *bis;* they appear in some respects to be larger, *1972 Records,* vol. II, para. 46 of the summary records of the twentieth meeting of Committee I (p. 160).

3. The promotion with which article 38 *bis* deals will be undertaken only, first, if the Party so desires, secondly, with due regard to its constitutional, legal and administrative system, and thirdly, again only if it so desires, with the technical advice of the Board or the specialized agencies.

4. It will be noted that the formula does not read *"subject to* its constitutional, legal and administrative systems" but only *"with due regard"* to such systems. The same formula is used as in the introductory paragraph of article 35. It differs from similar limiting phrases at the beginning of paragraphs 1 and 2 of article 36 which commence with the words "subject to". The words "due regard to" are employed instead of the words "subject to" because it is hardly imaginable that the promotion which article 38 *bis* describes in very general and perhaps somewhat vague terms could be incompatible with the constitutional, legal or administrative systems of any State.[3]

5. The specific reference to "the technical advice of the Board or the specialized agencies" of course does not preclude a Party from seeking the technical advice of such other intergovernmental organs as the Commission or the Secretariat of the United Nations, or indeed of any intergovernmental or non-governmental organization or any individual.

6. The phrase "other interested Parties in the region" covers all Parties in the region which can make a useful contribution to the work of the centre, and not only those which might benefit from such work. It does not exclude Parties whose direct participation in the centre may for any reason whatsoever not be contemplated. The special reference to "other interested Parties" of course does not exclude consultation with interested States which are not Parties to the amended Single Convention, as may frequently be advisable.

7. The very general and perhaps somewhat vague expression[4] "shall promote[5] the establishment . . . of agreements which contemplate the development of regional centres" indicates that the authors of article 38 *bis* considered that the immediate setting up of such a centre might sometimes not be possible or even advisable, although it might be a desirable aim of institutionalization of regional co-operation.

8. The phrase "problems resulting from the illicit use of and traffic[6] in drugs" covers all aspects of the problem of drug abuse no matter what discipline may be involved (sociology, economics, medicine (including

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3 That applies also to the provisions of article 35; see also *1961 Commentary*, comments on the introductory paragraph of article 35 (pp. 416-417).

4 See also para. 4 of the present comments.

5 i.e., encourage, help forward or support.

6 The phrase "illicit traffic" covers illicit cultivation of the opium poppy for the production of opium, of the coca bush or the cannabis plant for the production of cannabis; the illicit "production" or manufacture of, wholesale or retail trade in, or distribution of narcotic drugs; article 1, para. 1, subpara. (1) and *1961 Commentary*, comments on that provision (p. 11).

pharmacology and psychiatry), psychology, chemistry, law, government administration (including police), etc.).

9. The functions of the regional centres to which the article under consideration refers are specifically those of scientific research and education. There can however be no objection to charging such centres also with such operational activities as the development of regional policies for the campaign against drug abuse, the exchange of police information, or more generally the co-ordination of the illicit traffic work of the enforcement services of the States of the region and forming a centre of international information on problems of drug abuse.

10. The term "scientific research" not only includes research in the natural sciences, but also that in social sciences, including applied sciences such as educational or police methods. The importance which the authors of the 1972 Protocol attached to education is also shown by the text of the new subparagraph *(b)* of paragraph 1 of article 36 and by the provisions of the new article 38.

Article 17

LANGUAGES OF THE PROTOCOL AND PROCEDURES FOR SIGNATURE, RATIFICATION AND ACCESSION

1. This Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be open for signature until 31 December 1972 on behalf of any Party or signatory to the Single Convention.

2. This Protocol is subject to ratification by States which have signed it and have ratified or acceded to the Single Convention. The instruments of ratification shall be deposited with the Secretary-General.

3. This Protocol shall be open after 31 December 1972 for accession by any Party to the Single Convention which has not signed this Protocol. The instruments of accession shall be deposited with the Secretary-General.

Article 18

ENTRY INTO FORCE

1. This Protocol, together with the amendments which it contains, 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 17.

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 Protocol shall come into force on the thirtieth day after the deposit by that State of its instrument of ratification or accession.

Commentary

1. It will be noted that until 31 December 1972 the Protocol was open for signature not only on behalf of Parties to the Single Convention but also on behalf of States which had signed that treaty but had not yet ratified or acceded to it, i.e. had not yet become Parties thereto. Such signatories cannot

ratify the Protocol, i.e. become Parties thereto, as long as they have not ratified or acceded to the Single Convention.[1]

2. Apart from that somewhat unusual provision on signature, the two articles under consideration are standard provisions very similar to those which can be found in a number of other treaties.

3. The 1972 Protocol does not contain any provision for its denunciation. A Party to the unamended Single Convention and to the Protocol would by its denunciation of the Convention[2] also cease to be a Party to the Protocol, since it cannot be a Party to the latter without being a Party to the former treaty. A Party to the amended Single Convention could of course cease its participation in that treaty by denouncing it in accordance with its article 46.

4. The 1972 Protocol came into force on 8 August 1975.

1 Article 17, para. 2 of the Protocol.

2 Article 46 of the Single Convention.

Article 19

EFFECT OF ENTRY INTO FORCE

Any State which becomes a Party to the Single Convention after the entry into force of this Protocol pursuant to paragraph 1 of article 18 above shall, failing an expression of a different intention by that State:

***(a)* Be considered as a Party to the Single Convention as amended; and**

***(b)* Be considered as a Party to the unamended Single Convention in relation to any Party to that Convention not bound by this Protocol.**

Commentary

Article 19 accords with and follows closely the text of article 40, paragraph 5, of the Vienna Convention on the Law of Treaties.[1]

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1 Document A/CONF.39/27. Article 40, paragraph 5 of that Convention reads as follows:

"5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:

"*(a)* be considered as a party to the treaty as amended; and

"*(b)* be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement."

Article 20

TRANSITIONAL PROVISIONS

1. The functions of the International Narcotics Control Board provided for in the amendments contained in this Protocol shall, as from the date of the coming into force of this Protocol pursuant to paragraph 1 of article 18 above, be performed by the Board as constituted by the unamended Single Convention.

2. The Economic and Social Council shall fix the date on which the Board as constituted under the amendments contained in this Protocol shall enter upon its duties. As from that date the Board as so constituted shall, with respect to those Parties to the unamended Single Convention and to those Parties to the treaties enumerated in article 44 thereof which are not Parties to this Protocol, undertake the functions of the Board as constituted under the unamended Single Convention.

3. Of the members elected at the first election after the increase in the membership of the Board from eleven to thirteen members the terms of six members shall expire at the end of three years and the terms of the other seven members shall expire at the end of five years.

4. The members of the Board whose terms are to expire at the end of the above-mentioned initial period of three years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

Commentary

1. Paragraphs 1 and 2 are patterned after the transitional provisions of article 45 of the Single Convention.

2. It is obviously an oversight of the 1972 Conference that paragraph 2 does not entrust the Board, as constituted under the amended Single Convention, with the functions of the Board under the Vienna Convention of 1971, which is not enumerated in article 44 of the Single Convention concluded in 1961. It is submitted that in spite of this omission the Board as constituted under the amended Single Convention will be authorized to perform the Board's functions under the Vienna Convention.

3. The Vienna Convention, in its article 1, paragraph *(c)* identifies the Board on which it confers functions as "the International Narcotics Control Board provided for in the Single Convention on Narcotic Drugs, 1961". It is held that this provision is meant to refer to the Single Convention as it may be amended at any relevant time.

4. The authority of the Board as constituted under the amended Single Convention to perform the functions under the Vienna Convention could also be justified on reasons given by the International Court of Justice in its Advisory Opinion on the International Status of South West Africa in 1950.[1] The Court held in this case that international control continued to exist even when the original organs of control had ceased to exist, and control could be exercised by new organs performing similar supervisory functions.

5. As regards paragraphs 3 and 4 of article 20, see paragraphs 4 to 10 of the above comments on the introductory paragraph of article 2 of the 1972 Protocol, title of article 9 of the amended Single Convention, paragraph of the 1972 Protocol introducing paragraph 1 of article 9 of the amended Single Convention and paragraph 1 of article 9 of the amended Single Convention.

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1 International Status of South West Africa, Advisory Opinion: *I.C.J. Reports,* 1950, p. 128. On page 136 the Court states: "It cannot be admitted that the obligation to submit to supervision has disappeared merely because the supervisory organ has ceased to exist, when the United Nations has another international organ performing similar, though not identical supervisory functions"; see also the opinion of the Legal Adviser to the 1961 Conference, *1961 Records,* vol. I, p. 174.

Article 21

RESERVATIONS

1. Any State may, at the time of signature or ratification of or accession to this Protocol, make a reservation in respect of any amendment contained herein other than the amendments to article 2, paragraphs 6 and 7 (article 1 of this Protocol), article 9, paragraphs 1, 4 and 5 (article 2 of this Protocol), article 10, paragraphs 1 and 4 (article 3 of this Protocol), article 11 (article 4 of this Protocol), article 14 *bis* (article 7 of this Protocol), article 16 (article 8 of this Protocol), article 22 (article 12 of this Protocol), article 35 (article 13 of this Protocol), article 36, paragraph 1 *(b)* (article 14 of this Protocol), article 38 (article 15 of this Protocol) and article 38 *bis* (article 16 of this Protocol).

2. A State which has made reservations may at any time by notification in writing withdraw all or part of its reservations.

Commentary

1. Reservations under article 21, paragraph 1 would not be permitted in respect of provisions of the Single Convention reproduced by the 1972 Protocol, but not amended thereby.

2. States desiring to become Parties to the amended Single Convention[1] may under the procedure of article 50, paragraph 3 of that treaty be authorized to make reservations on provisions in respect of which reservations are prohibited pursuant to article 21 of the 1972 Protocol.

3. States acceding to the amended Single Convention may make unilateral reservations in respect of the provisions enumerated in article 50, paragraph 2 of that treaty. Of the amended provisions on which reservations may be made pursuant to article 21 of the 1972 Protocol only article 14, paragraphs 1 and 2 are listed in article 50, paragraph 2.[2] Such States

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1 Article 19, para. *(a)* of the 1972 Protocol.

2 The only change which the 1972 Protocol makes in article 14, para. 2 of the Single Convention is a substitution of a reference to "paragraph 1 *(d)*" for a reference to "paragraph 1 *(c)*", since para. 1 *(c)* of the unamended text becomes para. 1 *(d)* of the amended text. In view of a considerable revision of para. 1 *(c)* of the unamended text, article 14, para. 2 although apart from the change in that reference retaining an unamended text, may be held to obtain in the context of the amended treaty a different meaning and if that view is accepted, be considered to be one of the amended provisions on which a unilateral reservation would be possible under article 21, para. 1 of the 1972 Protocol; see however para. 5 of the above comments on article 14, para. 2; see also *1972 Records*, vol. II, para. 4 of the summary records of the thirteenth plenary meeting (p. 58).

therefore may not make unilateral reservations in respect of other amendments effected by the 1972 Protocol[3] in respect of which Parties to the unamended Single Convention ratifying or acceding to the 1972 Protocol may make reservations under article 21 of that Protocol.

4. Reservations under article 21 of the 1972 Protocol may be made in respect of the amendments made to the following provisions of the Single Convention: article 2, paragraph 4 (article 1 of the 1972 Protocol), article 12, paragraph 5 (article 5 of the Protocol), article 14, paragraphs 1 and 2 (article 6 of the Protocol), article 19, paragraphs 1 and 2[4] (article 9 of the Protocol), article 20, paragraph 1[5] (article 10 of the Protocol), article 21 *bis* (article 11 of the Protocol) and article 36, paragraph 2, subparagraph *(b)* (article 14 of the Protocol).

5. The reservation permitted in respect of the amendment to article 2, paragraph 4 would apparently have the effect of making more onerous the obligation of a reserving Party.[6] Nevertheless, the 1972 Conference did not exclude that reservation because it was informed that the admission of such a reservation would be helpful in the domestic situation of a particular country.[7]

6. There seems to be a contradiction between the prohibition of reservations to the amendments contained in article 2, paragraphs 6 and 7 under whose texts article 19, paragraph 1, subparagraphs *(e)* and *(f)*, article 20, paragraph 1, subparagraph *(g)* and article 21 *bis* appear to have a binding effect, and the omission of those provisions of articles 19 and 20 and of article 21 *bis* from the list of provisions in respect of which reservations are prohibited. It was however the clear understanding of the 1972 Conference that reservations on article 19, paragraph 1, subparagraphs *(e)* and *(f)*, article 20, paragraph 1, subparagraph *(g)* and article 21 *bis* would also render them non-obligatory under article 2, paragraphs 6 and 7 for reserving Parties.[8]

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[3] They may however be authorized to make those reservations under article 50, para. 3.

[4] And article 19, para. 5 insofar as it becomes applicable to estimates of opium production (and other estimates introduced by the 1972 Protocol).

[5] And the deletion of para. 3 of the unamended article 20 of the Single Convention.

[6] See however *1961 Commentary*, paras. 12, 13 and 14 of the comments on article 2, para. 4 where the opinion is expressed that according to an understanding of the Parties to the Single Convention Parties are not bound to require retail traders in preparations in Schedule III to keep records of their sales of such preparations (pp. 62-63); see also paras. 3 to 6 of the above comments on the introductory paragraph of article 1 of the 1972 Protocol and on para. 4 of article 2 of the amended Single Convention.

[7] *1972 Records*, vol. II, paras. 1, 4, 9, 13, 15, 18, 23, 26 and 27 of the summary records of the thirteenth plenary meeting (pp. 58-60).

[8] Paras. 16, 29, 30, 31 and 32 of the summary records referred to in the preceding foot-note (pp. 59-60).

ARTICLE 22, CONCLUDING PARAGRAPH AND ATTESTATION CLAUSE

Article 22

The Secretary-General shall transmit certified true copies of this Protocol to all the Parties and signatories to the Single Convention. When this Protocol has entered into force pursuant to paragraph 1 of article 18 above, the Secretary-General shall prepare a text of the Single Convention as amended by this Protocol, and shall transmit certified true copies of it to all States Parties or entitled to become Parties to the Convention as amended.

Concluding paragraph and attestation clause

DONE at Geneva, this twenty-fifth day of March one thousand nine hundred and seventy-two, in a single copy, which shall be deposited in the archives of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed this Protocol on behalf of their respective Governments.

Commentary

1. According to article 40 of the Single Convention those States not yet Parties to that treaty are entitled to become Parties which are either Members of the United Nations or being non-member States are members of a specialized agency of the United Nations, or Parties to the Statute of the International Court of Justice or are invited by the Council to become Parties to the Single Convention.

2. A State may become a Party to the amended Single Convention either by becoming a Party to its amended text[1] or, being already a Party to the unamended Single Convention, by ratifying or acceding to the 1972 Protocol, or, if not yet such a Party, by ratifying or acceding to both the unamended Single Convention and the 1972 Protocol. It is therefore suggested that the Secretary-General should also send certified true copies of the 1972 Protocol not only to the States mentioned in the first sentence of article 22, as that provision requires, but also to States not signatories of the Single Convention entitled under article 40, paragraph 1 to become Parties to that treaty.

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1 Article 19, para. *(a)*.

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