

**COMMENTARY**  
**on the**  
**CONVENTION ON**  
**PSYCHOTROPIC**  
**SUBSTANCES**

*Done at Vienna on 21 February 1971*



**UNITED NATIONS**



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E/CN.7/589

**UNITED NATIONS PUBLICATION**

**Sales No. E.76.XI.5**

**Price: \$U.S. 17.00**  
**(or equivalent in other currencies)**

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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 "Vienna Convention" for the Convention on Psychotropic Substances, done at Vienna on 21 February 1971, text in document E/CONF.58/6.
- The "Single Convention" for the Single Convention on Narcotic Drugs, 1953, done at New York on 30 March 1953, reproduced in United Nations, *Treaty Series*, vol. 520, p. 151.
- The "1912 Convention" for the International Opium Convention, signed at The Hague on 23 January 1912, reproduced in League of Nations, *Treaty Series*, vol. VIII, p. 187.
- The "1925 Agreement" for the Agreement concerning the Suppression of the Manufacture of, Internal Trade in, and Use of Prepared Opium, signed at Geneva on 11 February 1925, reproduced in League of Nations, *Treaty Series*, vol. LI, p. 337.
- The "1925 Convention" for the International Opium Convention, signed at Geneva on 19 February 1925, reproduced in League of Nations, *Treaty Series*, vol. LXXXI, p. 317.
- The "1931 Agreement": for the Agreement concerning the Suppression of Opium Smoking, signed at Bangkok on 27 November 1931, reproduced in League of Nations, *Treaty Series*, vol. CLXXVII, p. 373.
- The "1931 Convention" for the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva on 13 July 1931, 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, 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, reproduced in United Nations, *Treaty Series*, vol. 12, p. 179.
- The "1948 Protocol" for the Protocol Bringing under International Control Drugs Outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol signed at Lake Success, New York, on 11 December 1946, signed at Paris on 19 November 1948, reproduced in United Nations, *Treaty Series*, vol. 44, p. 277.
- The "1953 Protocol" for the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in and Use of Opium, signed at New York on 23 June 1953, reproduced in United Nations, *Treaty Series*, vol. 456, p. 3.
- The "1972 Protocol" for the Protocol amending the Single Convention on Narcotic Drugs, 1953, done at Geneva on 25 March 1972, text in document E/CONF.63/9.
- 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, held at 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, held at 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, 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 Drugs, document numbers E/CONF.58/7 and E/CONF.58/7/Add.1, Sales Nos. E.73.XI.3 and E.73.XI.4
- The “Mimeographed 1971 Records” for the mimeographed provisional issue of the “1971 Records”.
- 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. (Series of League of Nations publications 1937.XI.3).
- The “1961 Commentary” for the Commentary on the Single Convention on Narcotic Drugs, 1961, New York, United Nations, 1973, Sales No. E.73.XI.1.
- The “Revised Draft Protocol” for the “Revised Draft Protocol on Psychotropic Substances” adopted by the Commission on Narcotic Drugs of the Economic and Social Council, at its first special session, held 12-30 January 1970; Official Records of the Economic and Social Council: Forty-eighth session. Supplement No. 8 (E/4785), Chapter III. That draft is also reproduced in 1971 Records, vol. I, p. 23 and *sequitur*; it served as the working document of the 1971 Conference.
- The “Import Certificate and Export Authorization System” for the provisions of the Single Convention laid down in its article 31, paragraphs 4 to 15 or for those of the Vienna Convention laid down in its article 12, paragraphs 1 and 3.
- 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 “General Assembly” for the General Assembly of the United Nations.
- The “Secretary-General” for the Secretary-General of the United Nations.
- “WHO” for the World Health Organization.

CONVENTION ON  
PSYCHOTROPIC SUBSTANCES

PREAMBLE

*The Parties,*

*Being concerned* with the health and welfare of mankind,

*Noting* with concern the public health and social problems resulting from the abuse of certain psychotropic substances,

*Determined* to prevent and combat abuse of such substances and the illicit traffic to which it gives rise,

*Considering* that rigorous measures are necessary to restrict the use of such substances to legitimate purposes,

*Recognizing* that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted,

*Believing* that effective measures against abuse of such substances require co-ordination and universal action,

*Acknowledging* the competence of the United Nations in the field of control of psychotropic substances and desirous that the international organs concerned should be within the framework of that Organization,

*Recognizing* that an international convention is necessary to achieve these purposes,

*Agree* as follows:



## Article 1

### USE OF TERMS

#### General comments

1. It may be useful to discuss the following terms which article 1 of the Single Convention defines while article 1 of the Vienna Convention does not refer to them, namely: “consumption”, “cultivation”, “production”, “stocks”, “special stocks” and “territory”.

2. The term “consumption” and the related form “consumed” are used in the Single Convention to denote the transfer of controlled drugs from the wholesale level of the drug economy to the retail level, and not in their ordinary meaning.<sup>1</sup> The Vienna Convention does not employ the word “consumption”. It does not deal specifically with the transfer of the substances which it controls, from the wholesale level to the retail level. Where it covers what is meant by the word “consumption” in its common sense it uses the terms “use” or “abuse”.<sup>2</sup>

3. See article 1, paragraph 2 of the Single Convention and the *1961 Commentary* thereon.

4. The term “cultivation” does not appear in the Vienna Convention, which does not contain any provision governing the cultivation of plants from which substances which it controls may be obtained. See article 1, paragraph 1, subparagraph (*i*) of the Single Convention and the *1961 Commentary* thereon.

5. The term “production” is used by the Single Convention to denote the separation of opium, coca leaves, cannabis, and cannabis resin from the plants from which they are obtained. The Vienna Convention does not distinguish between the separation of psychotropic substances from the plants which yield them and other processes by which such substances are obtained. It considers all such processes to be “manufacture”.

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<sup>1</sup> Article 9, paragraph 3 of the Single Convention, however, appears to use the word “consuming” in its common meaning; see *1961 Commentary* (paragraph 6 of the comments) on this provision.

<sup>2</sup> See article 2, paragraph 4; article 3, paragraph 2; article 4, paragraph (*a*); article 5, paragraphs 1 and 2; article 7, paragraphs (*a*) and (*e*); article 9, paragraphs 1 and 3; article 10, paragraph 1; article 14, paragraph 2; article 20, heading and paragraphs 1 and 3; and article 32, paragraph 4 of the Vienna Convention; see also article 22, paragraph 1, subparagraph (*b*) of that Convention.

6. See article 1, paragraph 1, subparagraphs (*n*) and (*t*) of the Single Convention and the *1961 Commentary* on these provisions and below, the comments on article 1, paragraph (*i*) of the Vienna Convention.

7. The term “stocks” is used in the Vienna Convention in article 5, paragraph 2, article 8, paragraph 2, subparagraphs (*c*), article 11, paragraph 1 (“stock”), article 15, and article 16, paragraph 4, subparagraph (*a*). These provisions of article 8, 11, 15 and 16 obviously exclude from the scope of that term the amount held by the government for “special Government purposes and to meet exceptional circumstances” i.e. what is called “special stocks” in the Single Convention. Contrary to its meaning in the Single Convention, that term in article 5, paragraph 2, article 8, paragraph 2, subparagraph (*c*), article 11, paragraph 1 and article 15 also covers quantities held by retail distributors. Apart from requiring under article 7, paragraph (*d*) the restriction of supplies of psychotropic substances in Schedule I to “a duly authorized person”, the Vienna Convention does not limit the quantities of psychotropic substances which may be supplied to particular countries or regions, or which may be held by manufacturers of or traders in those substances.

8. See article 1, paragraph 1, subparagraphs (*w*) and (*x*); article 21, paragraph 1 to 4; article 29, paragraph 3, article 30, paragraph 2, subparagraph (*a*) and article 31, paragraph 1, subparagraph (*b*) of the Single Convention and the *1961 Commentary* on these provisions; see also below the comments on article 16, paragraphs 4 and 5 of the Vienna Convention.<sup>3</sup>

9. Neither the term “special stocks” nor an equivalent term appears in the Vienna Convention.

10. The term “territory” is used in the Single Convention in two principal meanings: in an administrative sense to denote a part of a State which is treated as a separate entity for the application of the Convention’s system of import certificates and export authorizations, and more generally of that Convention’s narcotics régime; and in a political sense to refer to a non-metropolitan territory for the international relations of which a Party is responsible. In accord with the Single Convention the Vienna Convention uses in article 27 and article 29, paragraph 1 the term “territory” in the political sense. It does not employ the word “territory” in its administrative meaning, except perhaps in article 16, paragraph 1, introductory subparagraph.<sup>4</sup> It calls “region” what is referred to as “territory” in the

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<sup>3</sup> See 1971 *Records*, vol. II, p. 83 of the English text; see also article 24, paragraph 1 and paragraph 2, subparagraphs (*a*) and (*b*) of the Single Convention.

<sup>4</sup> This may be due to the fact that this subparagraph follows the text of article 18, paragraph 1, introductory subparagraph and subparagraph (*a*) of the Single Convention, and that the 1971 Conference overlooked the need to substitute “regions” for “territories”.

administrative sense of this term in the Single Convention.<sup>5</sup> The term “region” is defined in article 1, paragraph (*k*) of the Vienna Convention, and its meaning is also indicated in article 28 of that Convention.

11. As does the Single Convention, the Vienna Convention employs the term “territory” in several places also in the sense of “geographic area”.<sup>6</sup>

12. See also the *1961 Commentary* on article 1, paragraph 1, subparagraph (*y*), and article 42 of the Single Convention and below, the comments on article 1, paragraph (*k*) and on article 27 and 28 of the Vienna Convention.

### *Introductory paragraph and paragraph (a)*

**Except where otherwise expressly indicated, or where the context otherwise requires, the following terms in this Convention have the meanings given below:**

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

### *Commentary*

1. The term “Council” refers to the Economic and Social Council of the United Nations as composed pursuant to Article 61 of the Charter of the United Nations in the amended version in force at the relevant time.

2. For an amendment of the Charter increasing the original Council membership of eighteen to twenty-seven, see General Assembly resolution 1991 B (XVIII) of 17 December 1963. For a second amendment increasing the number of Council members to fifty-four, see General Assembly resolution 2847 (XXVI) of 20 December 1971. The Council, by its resolution 1621 A (LI) of 30 July 1971,<sup>7</sup> increased the number of the members of its sessional committees to fifty-four even prior to the adoption and coming into force of the second amendment. The Council’s Social Committee, one of its sessional committees, deals with drug problems, and in particular also with the reports of the Commission and the Board.

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<sup>5</sup> Article 1, paragraph (*k*), article 3, paragraph 3; article 7, paragraph (*f*); article 12, paragraph 1, subparagraphs (*c*) to (*e*), paragraph 2, subparagraphs (*b*) to (*d*), and paragraph 3, subparagraphs (*f*) and (*h*); article 13, paragraphs 1 to 3; article 16, paragraph 4, subparagraph (*a*) and paragraph 5; and article 19, paragraph 1, subparagraph (*a*) and paragraph 2 of the Vienna Convention.

<sup>6</sup> Article 12, paragraph 2, subparagraph (*c*), paragraph 3, subparagraphs (*a*), (*d*), (*e*) and (*h*); article 22, paragraph 2, subparagraph (*a*), clause (*iv*) and article 32, paragraph 4.

<sup>7</sup> Operative paragraph 2; see also operative paragraphs 5 and 6 of General Assembly resolution 2847 (XXVI) and *Summary Record of the Council’s 1813th Meeting on 7 January 1972, Official Records of the Economic and Social Council, Fifty-second Session (E/SR.1809-1818)*, pp. 23-26.

3. For the functions of the Council under the terms of the Vienna Convention, see article 2, paragraph 8; article 18, paragraph 1; article 19, paragraph 1, subparagraphs (a) and (c), paragraph 2 and paragraph 3; article 25, paragraph 1 and article 30, paragraphs 1 and 2 of that Convention; see in particular below, the comments on article 17, paragraphs 1 and 2; and on article 30.

4. See also the *1961 Commentary* on article 1, paragraph 1, subparagraph (h).

### *Paragraph (b)*

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

### *Commentary*

1. The Single Convention does not provide for the composition of the Commission as it does for that of the Board. The Vienna Convention and the 1972 Protocol also do not deal with the composition of the Commission. The Commission is a “functional commission” of the Council set up pursuant to Article 68 of the Charter of the United Nations. The Council determines the composition and the terms of reference of the Commission. The Commission is at the time of this writing composed of representatives of thirty governments. Under the present rules established by the Council not only Member States of the United Nations but also those States not members of the United Nations which are members of specialized agencies<sup>8</sup> or parties to the Single Convention may be elected by the Council to membership on the Commission.

2. The appointment of the representatives of governments on the Commission does not require prior consultation with the Secretary-General or confirmation by the Council, as is prescribed in the case of other functional commissions of the Council.<sup>9</sup>

3. The Council also has the power to determine the character of the Commission. It could transform the Commission into an organ composed of independent experts or into a mixed body consisting in part of government representatives and in part of persons chosen in their personal capacity. The Commission must however remain a collegial body for the performance of the functions entrusted to it by the Vienna Convention, the Single Convention and by earlier drug control treaties. The Council could not transform it into a one-man organ if it wishes that the Commission should be able to continue to implement those treaty functions.

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<sup>8</sup> See Articles 57 and 63 of the Charter of the United Nations.

<sup>9</sup> See foot-note 4 to rules 12 and 13 of the rules of procedure of the functional commissions of the Economic and Social Council; document E/4767, United Nations publication, Sales No. 70.I.9.



4. The Commission has two kinds of powers: “charter” functions, i.e. those which it has obtained by decisions of the Council, and “treaty” functions, which are those with which it has been vested by specific treaty provisions.

5. As regards the functions which the Commission has under the Vienna Convention, see article 2, paragraphs 4 to 8; article 3, paragraph 4; article 12, paragraph 1, subparagraph (a) and paragraph 2, subparagraph (a); article 14, paragraph 2; article 16, paragraphs 1 and 6; article 17; article 18, paragraph 1 and article 19, paragraph 1, subparagraphs (a) and (c) and paragraph 2; see also article 24 (expenses of the Commission).

6. As regards the Commission’s functions under the Single Convention, see article 3, paragraph 3, subparagraphs (ii) and (iii) and paragraphs 4 to 9; article 7; article 8; article 14; paragraph 1, subparagraphs (a) and (c) and paragraph 2; article 15, paragraph 1; article 18, paragraph 1, introductory subparagraph and subparagraph (c) and paragraph 2; article 31, paragraph 5 and article 32, paragraph 2; see also article 49, paragraph 3, subparagraph (a).

7. As regards the Commission’s functions under earlier drug treaties, see article 5, paragraph 6; article 11, paragraph 4 and article 21 of the 1931 Convention as amended by the 1946 Protocol; articles 2 and 3 of the 1948 Protocol and article 10, paragraph 1, subparagraph (c) of the 1953 Protocol; see also article 19, paragraph 4, subparagraph (a) of the 1953 Protocol.

8. For provisions of the 1972 Protocol concerning the Commission, see article 6 [amending article 14, paragraph 1, subparagraph (a) and subparagraph (c) (which becomes subparagraph (d) by the amendment) of the Single Convention] and article 13 (adding the new paragraph (f) to article 35 of the Single Convention).

9. For provisions defining the “charter” functions of the Commission and determining its composition, see Council resolutions: 9 (I), 199 (VIII), 845 (XXXII), II and III, paragraph 1, 1147 (XLI), paragraph 4, 1156 (XLI) II and 1663 (LII). For the Commission’s “Sub-Commission on Illicit Traffic and Related Matters in the Near and Middle East”, see report of the Commission on Narcotic Drugs on its Twenty-fifth Session, resolution 6 (XXV) of the Commission,<sup>10</sup> and Council resolution 1776 (LIV).

10. As regards the power of the Council to review and change decisions of the Commission pursuant to article 2, paragraphs 5, 6 and 8, see below, comments on article 2, paragraph 8; see also paragraph 1 of the comments on article 3, paragraph 4.

11. See also the *1961 Commentary* on article 3, paragraph 8, subparagraphs (a), (c) and (d) and paragraph 9 and article 7 of the Single Convention.

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<sup>10</sup> *Official Records of the Economic and Social Council, Fifty-fourth Session, Supplement No. 3 (E/5248), paragraph 487:*

**Paragraph (c)**

**(c) “Board” means the International Narcotics Control Board provided for in the Single Convention on Narcotic Drugs, 1961.**

*Commentary*

1. It is submitted that it was undoubtedly the intention of the authors of the Vienna Convention that the term “Single Convention on Narcotic Drugs, 1961” in paragraph (c) should refer to that Convention as it may be amended from time to time. This is so although the 1972 Conference seems to have overlooked the Vienna Convention when providing in article 20, paragraph 2 of the 1972 Protocol amending the Single Convention that the Board as it will be constituted under that Protocol should, with respect to those Parties to the unamended Single Convention and to those Parties to the treaties enumerated in article 44 of that Convention which are not parties to the Protocol, undertake the functions of the Board as constituted under the unamended Single Convention. This article 44 does not, and having been adopted in 1961 could not, list the Vienna Convention.

2. The authority of the Board as it will be constituted under the terms of the 1972 Protocol to perform the functions conferred on it by 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.<sup>11</sup> The Court held in that 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.<sup>12</sup>

3. The constitutional provisions concerning the Board are laid down in articles 9 to 11 of the Single Convention.

4. Prior to the coming into force of the 1972 Protocol, the members of the Board were elected for a term of three years by the Council, which chose three Board members from a list of at least five persons nominated by WHO and eight Board members from a list of candidates nominated by Members of the United Nations and by Parties to the Single Convention which were not members of the United Nations.

5. The number of Board members has been increased, by article 2 of the 1972 Protocol (amending article 9, paragraph 1 of the Single Convention) to thirteen, three members to be elected by the Council from a list of at least five persons to be nominated by WHO, and the remaining ten members to be

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<sup>11</sup> *International status of South-West Africa, Advisory Opinion: I.C.J. Reports 1950*, p. 128.

<sup>12</sup> *Ibid.*, p. 136 where the Court stated: “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 of the 1961 Conference, 1961 *Records*, vol. 1. p. 174.

elected from a list of candidates to be nominated by the Members of the United Nations and by Parties to the Single Convention which are not members of the United Nations. The 1972 Protocol, by its article 3 (amending article 10, paragraph 1 of the Single Convention), also extends the term of office of members of the Board from three to five years. Pursuant to article 20, paragraph 2 of the 1972 Protocol the Council decided at its 1983rd plenary meeting on 15 January 1976 that the Board, as constituted under the amendments of its constitution by that Protocol, will enter upon its duties on 2 March 1977.

6. The following provisions of the Vienna Convention deal with functions of the Board: article 2, paragraph 7 (receipt of communications of the Secretary-General concerning decisions of the Commission relating to the Schedules) and paragraph 8, subparagraph (c) (receipt of communications of the Secretary-General relating to decisions of the Council acting on appeal against those decisions of the Commission); article 3, paragraph 3 (receipt of communications of the Secretary-General concerning the exemption of preparation by Parties to the Vienna Convention) and paragraph 4 (receipt of communications of the Secretary-General relating to the termination of such exemptions by the Commission); article 16, paragraphs 4 and 5 (concerning the statistical information which must be furnished to the Board by Parties to the Vienna Convention); article 16, paragraph 6 (concerning the right of the Board to determine the manner in which and the dates by which information pursuant to article 16, paragraph 4 should be furnished); article 18 (concerning reports of the Board to the Council); article 19 (on the measures which the Board may take to ensure the execution of the provisions of the Convention) and article 24 (on the expenses of the Board). As regards provisions of the Single Convention relating to the Board, see: article 1, paragraph 1, subparagraph (a); article 3, paragraph 7 and paragraph 8, subparagraph (c); article 5; article 6; article 8, paragraph (b); articles 9 to 16; articles 19 and 20; article 21, paragraphs 3 and 4; article 24, paragraph 2, subparagraph (a) and paragraph 4, subparagraph (a), clause (ii); article 27, paragraph 2; article 45 and article 49, paragraph 3, subparagraph (b) and paragraph 4, subparagraph (a), clauses (ii) and (iii) and concluding clause and subparagraph (b).

7. See also the *1961 Commentary*, comments on article 1, paragraph 1, introductory subparagraph and subparagraph (a), general comments on article 9 and comments on article 45.

8. As regards functions which the Board as constituted under the terms of the unamended Single Convention performs under earlier drug treaties pursuant to article 45, paragraph 2 of the Single Convention, and as constituted under the terms of the 1972 Protocol will perform pursuant to article 20, paragraph 2 of the 1972 Protocol, see: articles 21 (obsolete), 22, 23, 24, 25 (very important), 26 and 27 of the 1925 Convention; articles 2 to 8, 13 (requiring application of provisions of the 1925 Convention to drugs controlled by the 1931 Convention) and 14 (paragraph 1 of this article being obsolete) of the 1931 Convention; article 1, paragraph 3 and paragraph 4

(requiring the application of provisions of the 1931 Convention and thus of provisions of the 1925 Convention to drugs placed under control by operation of the 1948 Protocol); article 2 and article 3 of the 1948 Protocol; and article 4, paragraph (c); article 5, paragraph 1, subparagraph (b), and paragraphs 2 to 5; article 7, paragraph 5; articles 8 and 9; articles 11 to 13 and article 19, paragraph 4, subparagraph (b) and paragraph 5, subparagraph (a), clauses (ii) and (iii) and concluding clause and subparagraph (b) of the 1953 Protocol.

9. For functions which the Board has under the Single Convention as amended by the 1972 Protocol in addition to its functions under the unamended text of the Single Convention, see the following provisions of that Protocol: article 2 (adding paragraphs 4 and 5 to article 9 of the Single Convention); article 5 (amending article 12, paragraph 5 of the Single Convention); article 6 (amending article 14, paragraph 1, subparagraphs (a) and (c) of the Single Convention, the latter subparagraph becoming subparagraph (d) in the amended text, and adding a new subparagraph designated subparagraph (c) in the new text); article 7 (adding the new article 14 *bis* to the Single Convention); article 8 (amending article 16 of the Single Convention); article 9 (adding subparagraphs (e) to (h) to article 19, paragraph 1 of the Single Convention); article 10 (adding subparagraph (g) to article 20, paragraph 1 of the Single Convention); article 11 (adding article 21 *bis*, paragraphs 2 to 5 to the text of the Single Convention); article 13 (adding paragraphs (f) and (g) to article 35 of the Single Convention) and article 16 (adding a new article 38 *bis* to the text of the Single Convention); see also article 1 (amending article 2, paragraphs 6 and 7 of the Single Convention); article 9 (amending article 19, paragraphs 2 and 5 of the Single Convention); article 11 (adding article 21 *bis*, paragraph 1 to the Single Convention) and article 20, paragraphs 1 and 2.

### **Paragraph (d)**

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

### *Commentary*

1. As does the Single Convention,<sup>13</sup> the Vienna Convention entrusts to the Secretary-General two different kinds of functions, namely those of a substantive nature and those of a “ministerial” character. The substantive functions relate to the implementation of the international control measures required by the Convention. The ministerial functions are those which the Secretary-General has in connexion with signatures, ratifications, accessions, entry into force, reservations, territorial application, amendment of the Convention and the deposit of the original treaty. The ministerial functions are included in the “final” or “formal” clauses of the Convention, i.e. in its articles 25 to 30, 32 and 33 and in its concluding paragraph.

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<sup>13</sup> And earlier drug treaties.

2. Substantive provisions in the main body of the Vienna Convention which refer expressly to the Secretary-General are: article 2, paragraphs 1, 2, 7, introductory subparagraph and paragraph 8, subparagraphs (a) and (b);<sup>14</sup> article 3, paragraphs 3 and 4; article 13, paragraph 1; article 16, paragraph 1, introductory subparagraph, paragraph 2 and paragraph 3; article 18, paragraph 2; and article 21, paragraph (b). Other provisions which do not refer to the Secretary-General “*expressis verbis*” imply the performance of functions by him; e.g. article 16, paragraphs 4 and 5; article 18, paragraph 1; article 19, paragraph 1, all subparagraphs, paragraphs 2, 3 and 5;<sup>15</sup> article 21, paragraph (c); and article 24.

### Paragraph (e)

(e) “Psychotropic substance” means any substance, natural or synthetic, or any natural material in Schedule I, II, III or IV.

### Commentary

1. The definition distinguishes on the one hand four classes of psychotropic substances, namely the different groups listed in the four schedules and subject to different control régimes of varying strictness, and on the other hand three kinds, namely “natural” and “synthetic” substances and those referred to as “natural material”. The latter distinction does not indicate the special régime whose application the Vienna Convention requires. The particular control measures governing a psychotropic substance are determined by the schedule in which it is listed, and not by its character of a “synthetic” or “natural” psychotropic substance or of a “natural material”. The quality of being “synthetic” or “natural” or a “natural material”, therefore, normally does not appear to be of legal importance. There is, however, one provision which would apply only to some of those psychotropic substances in Schedule I which are “natural” or “natural material”. Article 32, paragraph 4 provides that a State on whose territory plants containing such substances grow wild may make a reservation in respect of control measures required by article 7 for those psychotropic substances in Schedule I. Such a reservation, however, could not affect the measures applicable to the international trade and could be made only in relation to substances “which are traditionally used by certain small, clearly determined groups in magical or religious rites”.<sup>16</sup>

2. The term “synthetic” appears to refer to a psychotropic substance manufactured by a process of full chemical synthesis. One may also assume

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<sup>14</sup> Subparagraph (c) does not refer expressly to the Secretary-General, but the function of transmitting the Council’s decision under this provision has to be carried out by the Secretary-General.

<sup>15</sup> These secretariat functions under these provisions of article 16, paragraphs 4 and 5, and articles 18 and 19 would be carried out by a secretariat furnished by the Secretary-General; see article 16 of the Single Convention in its unamended version and as amended by article 8 of the 1972 Protocol.

<sup>16</sup> See also below comments on article 32, paragraph 4.

that the authors of the Vienna Convention intended to apply the term “natural material” to parts of a plant which constitute a psychotropic substance, and the term “natural psychotropic substance” to a substance obtained directly from a plant by some process of manufacturing<sup>17</sup> which was relatively simple, and in any event much simpler than a process of full chemical synthesis. The same psychotropic substance may, however, be obtained directly from a plant or be manufactured by a full synthetic process, and thus be either “natural” or “synthetic”. “Mescaline” included in Schedule I is such a substance.<sup>18</sup>

3. There are isolated provisions in the Vienna Convention which apply to other substances than psychotropic substances, i.e. article 2, paragraph 9, applying to substances which are not listed in any of the Schedules and may be used in the illicit manufacture of psychotropic substances, and article 22, paragraph 3, applying to substances not listed in the Schedules and to equipment which are used or intended to be used in the commission of offences governed by the penal provisions of article 22 of the Vienna Convention.<sup>19</sup>

4. While the Single Convention always employs the term “drug” in reference to a substance listed in its Schedule I or II, the Vienna Convention very often does not use the term “psychotropic substance” when referring to a substance in one of its four Schedules. It uses in numerous such cases simply the word “substance” with an indication of its being listed in a Schedule or of the particular Schedule in which it is listed.<sup>20</sup> In a number of other cases, where by words of reference or by the context it is made clear that what is meant is a psychotropic substance, the Convention employs the word “substance” without an indication of its inclusion in a Schedule.<sup>21</sup>

#### **Paragraph (f)**

**(f) “Preparation” means:**

- (i) any solution or mixture, in whatever physical state, containing one or more psychotropic substances, or**
- (ii) one or more psychotropic substances in dosage form.**

<sup>17</sup> Article 1, paragraph (i).

<sup>18</sup> See *1961 Commentary* on article 1, paragraph 1, subparagraph (i) of the Single Convention where the definition of “drug” also refers to “natural” or “synthetic” drugs (paragraph 4 of the comments). See also *Mimeographed 1971 Records*, E/CONF.58/L.4/Add. 5, foot-notes 1 and 3; and E/CONF.58/C.3/L.10; *1971 Records*, vol. I, pp. 53 to 54 of English text, vol. II, Summary Records of the nineteenth plenary meeting, paragraphs 53 to 56 and 79 to 80 (pp. 78 and 79 of the English text).

<sup>19</sup> See below comments on article 2, paragraph 9 and on article 22, paragraph 3.

<sup>20</sup> See article 2, paragraphs 6 and 7; articles 5, 7, 8, paragraph 1; articles 9, 11, 12, 13, 14, 16, paragraph 4. The use of the word “psychotropic” would of course be a pleonasm where the listing of the substance in a Schedule is indicated.

<sup>21</sup> See article 3, paragraphs 1 and 2; article 4, paragraph (c); article 10, paragraph 2; article 12, paragraph 3, paragraphs (e) to (h); article 13, paragraphs 2 and 3; and article 14, paragraphs 2 and 3.

*Commentary*

1. The term “preparation” as defined in this paragraph is much broader than in the Single Convention.<sup>22</sup>

2. The definition given in subparagraph (i) of the paragraph under consideration would include also gaseous solutions or mixtures.<sup>23</sup> In order to be a “preparation” in the meaning of that subparagraph, the mixture or solution must always contain a substance not controlled by the Vienna Convention, in addition to one or more controlled substances. A mixture or solution consisting only of psychotropic substances<sup>24</sup> cannot be considered to be a preparation in the sense of subparagraph (i). This follows from the text of subparagraph (ii), which otherwise would not have to include a combination of two or more psychotropic substances in “dosage” form within the term “preparation”.

3. Subparagraph (ii) of the paragraph under consideration is intended to extend the scope of the meaning of “preparation” to cover also any single psychotropic substance or combination of psychotropic substances in “dosage” form, even if not in the form of a solution or mixture which contains also an uncontrolled substance. It follows from the phrase “dosage form” that the term “preparation” in the sense of subparagraph (ii) refers to a measured small quantity of a psychotropic drug or a combination of psychotropic drugs in whatever form [tablet (pill), ampoule or powder] ready for consumption by, or administration to, a patient or animal, no matter whether orally or by parenteral (subcutaneous or intravenous) injection or otherwise.

4. Provisions of the Vienna Convention referring specifically to preparations are: article 1, paragraph (i); article 3; article 4, paragraph (a); article 11, paragraph 6 and article 16, paragraph 4, subparagraph (c) and concluding sentence.

5. The application of the term preparation to “one or more psychotropic substances in dosage form” appears to accord with the technical terminology used in the field of medicine, pharmacology and pharmaceutical science.

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<sup>22</sup> Article 1, paragraph 1, subparagraph (s); the word “preparation” is not defined in the drug treaties preceding the Single Convention, but as employed in these treaties has always been understood to refer to a mixture.

<sup>23</sup> “Preparation” as defined in article 1, paragraph 1, subparagraph (s) of the Single Convention does not include gaseous mixtures. That Convention’s definition reads: “‘Preparation’ means a mixture, solid or liquid, containing a drug”. This definition implies a mixture with an uncontrolled substance. Theoretically such a preparation could include more than one drug controlled by the Single Convention provided always that it contains also a substance not controlled by that Convention; see also *1961 Commentary* on article 2, paragraph 3 (paragraph 1 of the comments on this provision).

<sup>24</sup> Article 1, paragraph (e) of the Vienna Convention.

6. In article 1, paragraph (i) it is stipulated that the term “manufacture” should also include the making of preparations other than those made on prescription in pharmacies. The definition of “manufacture” in the Single Convention does not include the making of preparations. In view of that Convention’s provision subjecting preparations<sup>25</sup> to the same measures of control as the drugs which they contain, it is nevertheless held that the requirement of licensing the manufacture of drugs controlled by the Single Convention also applies to the making of preparations containing such drugs.<sup>26</sup> It may be recalled in this connexion that the Vienna Convention in its article 3, paragraph 1 also requires that preparations should be subject to the measures applicable to the most strictly controlled psychotropic substance which they contain.

7. It is submitted that article 3, paragraphs 2 to 4 could not be applied to all preparations falling within the scope of the definition in article 1, paragraph (f), but only to those which in addition to a psychotropic substance<sup>27</sup> also contain a non-controlled substance in the way described in article 3, paragraph 2.<sup>28</sup>

8. Under article 4, paragraph (a) international travellers could be permitted to carry small quantities of “preparations” for personal use. As submitted further below, that authority refers to preparations in “dosage form”, whether or not they are combinations of psychotropic substances with non-psychotropic substances.<sup>29</sup>

9. Article 16, paragraph 4, excludes from the statistical information on manufacture which Parties are bound to furnish to the Board the quantities of preparations which were manufactured. The Single Convention stipulates in another context more generally that Parties are not required to supply statistical data on preparations distinct from those dealing with the controlled drugs which they contain.<sup>30</sup>

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<sup>25</sup> Other than those in Schedule III of the Single Convention, see article 2, paragraph 3 of that Convention.

<sup>26</sup> *1961 Commentary* on article 1, paragraph 1, subparagraph (n) (paragraph 12 of the comments on this provision and foot-note 44 thereto) and on article 29, paragraph 1 (paragraph 4 of the comments on this provision) and paragraph 2, subparagraph (b) (paragraph 1 of the comments on this subparagraph); see also the *1961 Commentary* on article 30, paragraph 1, subparagraph (a) (paragraph 6 of the comments) and subparagraph (b), clause (ii) (paragraph 7 of the comments) and article 31, paragraph 3, subparagraph (a) (paragraph 5 of the comments).

<sup>27</sup> Preparations containing a psychotropic substance in Schedule I are outside the scope of these provisions.

<sup>28</sup> See below comments on article 3, paragraphs 2 and 3.

<sup>29</sup> See below comments on article 4, paragraph (a).

<sup>30</sup> Article 2, paragraph 3 of the Single Convention; *1961 Commentary* on article 1, paragraph 1, subparagraph (n) (paragraph 10 of the comments), article 2, paragraph 3 (paragraph 2 of the comments) and article 20, paragraph 1, subparagraph (a) (paragraph 9 of the comments); and Form P of the Board (3rd edition, October 1973), particularly instructions Nos. 3, 5 and 9.



**Paragraph (g)**

(g) “Schedule I”, “Schedule II”, “Schedule III” and “Schedule IV” mean the correspondingly numbered lists of psychotropic substances annexed to this Convention, as altered in accordance with article 2.

*Commentary*

1. The Vienna Convention follows closely the Single Convention in providing for Schedules listing four groups of psychotropic substances,<sup>31</sup> subject to four different régimes of varying strictness.

2. As does the Single Convention,<sup>32</sup> the Vienna Convention permits the amendment of the Schedules by a different and simpler procedure<sup>33</sup> than the revision of other parts of the treaty. As under the terms of the Single Convention amendments of the Schedules of the Vienna Convention by that procedure may impose on Parties additional obligations without their consent while other amendments to be binding upon a Party require its express or tacit agreement.<sup>34</sup>

3. Under the Single Convention all control measures applicable to drugs subject to a more lenient régime must also be applied to drugs falling under a more strict régime, which on its part is distinguished from a less strict régime by “additional” control measures not required under the more lenient régime. The régimes of the Vienna Convention in general also differ from each other in the same way. There are, however, provisions which apply to psychotropic substances under a less strict régime and not to psychotropic substances under a more strict régime.<sup>35</sup>

4. The Vienna Convention does not have a Schedule corresponding to Schedule III of the Single Convention which in regard to *all* Parties to the treaty<sup>36</sup> exempts listed preparations, often referred to somewhat inexactly as “exempted preparations”, from certain control measures. The Vienna Convention, on the other hand, permits Parties under conditions which it prescribes,<sup>37</sup> unilaterally to exempt preparations from some measures of control.<sup>38</sup> This authority is subject to the right of the Commission, taking

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<sup>31</sup> Article 1, paragraph (e).

<sup>32</sup> Article 3.

<sup>33</sup> Article 2.

<sup>34</sup> Article 47 of the Single Convention and article 30 of the Vienna Convention.

<sup>35</sup> See article 9, paragraphs 1 and 2; article 11, paragraphs 4 to 6; article 12, paragraph 2; article 13 and article 16, paragraph 4, subparagraphs (b) to (d) of the Vienna Convention.

<sup>36</sup> For a historical review of the treaty position of preparations exempted from some measures of control applicable to drugs which they contain, see *1961 Commentary*, comments on article 2, paragraph 4. It may be recalled that such preparations are referred to in the 1931 Convention as “preparations for the export of which export authorizations are not required”

<sup>37</sup> Article 3, paragraph 2.

<sup>38</sup> Article 3, paragraph 3.

into account the views and recommendations of WHO, to terminate wholly or partially such unilateral exemptions.<sup>39</sup>

5. The various régimes of the Vienna Convention differ much more from each other than those of the Single Convention. Moreover, by the operation of article 2, paragraph 7 and article 3, paragraphs 2 and 3 of the Vienna Convention, the treaty obligations of Parties in regard to a particular psychotropic substance or preparation may not be the same, while the obligations of all Parties in respect to the same drug or preparation are under the Single Convention under equal conditions identical. Article 2, paragraph 7<sup>40</sup> provides for the right of partial non-acceptance by a Party of decisions of the Commission to place a non-controlled substance under control or an already controlled substance under a more strict régime. Article 3, paragraphs 2 and 3, authorizes each Party to exempt unilaterally a preparation from some measures of control.<sup>41</sup>

6. The Commission is under the Vienna Convention authorized to place two kinds of substances under control by placing them in one of the four Schedules: those which have the dependence-producing and mind-altering properties described in article 2, paragraph 4, subparagraph (a), clause (i), and those which are capable of producing similar abuse and similar ill effects as a substance already included in a Schedule, as provided in clause (ii) of that subparagraph. It will be noted that, in the case of the second category of substances, it is not required that the substance concerned be capable of producing the “same” harmful effects as a substance already under control. It is sufficient that the substance in question can cause “similar” injurious effects. The inclusion by the Commission of “similar” substances in the Schedules may thus gradually change the character of these lists and extend the scope of the notion of “similarity” as a justification for placing a substance under international control. A gradual adjustment to changing conditions may, therefore, be brought about in the course of the application of the Vienna Convention, and in particular of its article 2, paragraphs 4 and 5.<sup>42</sup>

7. It is submitted that the Schedules of the Vienna Convention may be modified not only by the Commission pursuant to article 2, paragraphs 4 to 6, but also by the amendment procedure provided for in article 30.<sup>43</sup>—The latter procedure may suggest itself if it is desired to place a substance under international control which does not have the properties required under article 2, paragraphs 4 and 5, for the Commission’s action, and thus to increase the Commission’s authority to place additional substances under

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<sup>39</sup> Article 3, paragraph 4 of the Vienna Convention.

<sup>40</sup> See below, comments on this provision.

<sup>41</sup> See below, comments on these provisions.

<sup>42</sup> See also *1961 Commentary* (paragraph 8 of the comments) on article 3, paragraph 3, subparagraph (iii) of the Single Convention.

<sup>43</sup> See below comments on this article; see also *1961 Commentary* (paragraph 5 of the comments) on article 47 of the Single Convention.

control. Unlike the Single Convention,<sup>44</sup> the Vienna Convention does not contain in any one place a synopsis summarizing the control provisions of its various régimes applicable to substances in its different Schedules.

8. See also the 1961 Commentary on article 1, paragraph 1, subparagraph (*u*).

### Paragraph (h)

**(h) “Export” and “import” mean in their respective connotations the physical transfer of a psychotropic substance from one State to another State.**

### Commentary

1. The definitions of the terms “export” and “import” given in the paragraph under consideration differ from those of the same terms in article 1, paragraph 1, subparagraph (*m*) of the Single Convention<sup>45</sup> in that they do not expressly cover the “interregional” trade, i.e. the physical transfer of controlled substances from one “region” to another “region” of the same State.<sup>46</sup>

2. It appears, however, that the terms “export” and “import” in the Vienna Convention are used in the same sense as in the Single Convention, i.e. to include also the interregional shipment of psychotropic substances. In some places the fact that the two terms refer also to movements from or to a region of the same State is clear from the text itself (using the term “region”), and in other provisions the view presented here follows from the context or from the purpose of the provision in question governing exports or imports; see the following provisions in which—it is held—the terms “export” or “import” also include interregional physical transfers of psychotropic substances: article 5, paragraph 2; article 7, paragraph (*f*); article 8, paragraphs 1 and 2, subparagraph (*a*); article 11, paragraphs 2 and 5; article 12; article 14, paragraph 1; article 16, paragraph 4; subparagraphs (*a*) and (*b*) and paragraph 5; and article 19, paragraph 2.

3. It is on the other hand submitted that article 13 refers only to interstate movements of psychotropic substances and that consequently the words “export” and “import” as used in this article do not cover transfers of psychotropic substances from one region to another region of the same State.

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<sup>44</sup> Article 2.

<sup>45</sup> And in article 1 of the 1953 Protocol.

<sup>46</sup> The definitions of the Single Convention and of the 1953 Protocol refer to the transfer “from one ‘territory’ to another ‘territory’ of the same State”, both treaties calling “territory” what the Vienna Convention calls “region”; see also above the general comments on article 1 and below paragraph (*k*) of article 1 and the commentary thereon.

There can however be no objection to a Party applying *mutatis mutandis* the rules of that article also to its interregional trade.<sup>47</sup>

4. It may also be mentioned in this connexion that article 4, paragraph (a) concerning the carriage by international travellers of small quantities of psychotropic drugs (in Schedules II, III or IV) appears to refer only to interstate and not to interregional transfers of such substances. It may however be assumed *a fortiori* that Parties may apply the rule of that paragraph also to interregional travel.<sup>48</sup>

5. As under the terms of the Single Convention, the question may arise as to the exact moment at which an export or import has taken place. As regards an import, is it the time of the consignment's crossing the border of the importing State or region, that of its customs clearance, or that of its receipt by the importer? As regards an export, is it the time of the shipment's dispatch, of its passing customs control, or of its crossing the frontier of the exporting State or region? The time of crossing, clearance, receipt or dispatch—as the case may be—may not fall into the same calendar year.<sup>49</sup>

6. It is admitted that this question of exact timing of a particular import or export is much less important under the Vienna Convention than under the Single Convention, because under the former there are no provisions limiting the amounts of controlled substances which a country or region may import as are under the latter.<sup>50</sup> The problem will also very rarely arise, since the Board receives only annual and not more frequent export and import data.<sup>51</sup>

7. The Board requests that the import and export “statistics should be based, as far as possible, on the actual movement across frontiers” and not on the date of the import and export authorizations or on the time of customs clearance.<sup>52</sup> It is true—as national authorities have claimed in regard to imports and exports subject to the Single Convention—that very often it will

<sup>47</sup> See below the general comments on article 13.

<sup>48</sup> See below comments on this provision.

<sup>49</sup> It may be noted that pursuant to article 16, paragraph 4, subparagraphs (a) and (b) and paragraph 6 of the Board receives only annual export and import statistics; see also Form P of the Board (4th edition, October 1974) which was prepared under resolution I of the 1971 Conference [1971 *Records*, vol. I (English), p. 128] and Council resolution 1576 (L) concerning the provisional application of the Vienna Convention pending its coming into force.

<sup>50</sup> Article 21, paragraphs 1 to 4 and article 31, paragraph 1, subparagraph (b) of the Single Convention. The establishment of the exact time of an export may occasionally also be relevant in determining whether under article 24, paragraph 2, subparagraph (a) and paragraph 4, subparagraph (a), clause (ii) of the Single Convention a Party has in a given year exported more than five tons of opium which it “produced”.

<sup>51</sup> It will be recalled that under article 20, paragraph 1, subparagraph (d) and paragraph 2, subparagraph (b) of the Single Convention Parties are required to furnish quarterly import and export figures. See also foot-note 49 above.

<sup>52</sup> See the Board's Form P (3rd edition, October 1973), Instruction 13, and A/S (9th edition, November 1973), Instruction 10.

be very difficult or even impossible to establish the exact time of the border crossing. It is for this reason that the Board has stated that the statistics should be “based” only “as far as possible” on the actual movement over the frontier.

8. It is submitted that national authorities will comply with the Board’s conception of the terms “import” and “export” if they consider as the time of the border crossing, in the case of an import, the earliest possible moment at which they could become aware of the entry of the shipment, and, in the case of an export, a moment as near as possible to the actual movement over the frontier, i.e. in the former case, the actual arrival of the goods for customs control, and in the latter case, their departure from the customs house or customs control. These moments, and not the dates of customs clearance which should normally be done with dispatch but may sometimes be delayed, should be the basis for timing the exports and imports for the purpose of computing the statistical data to be supplied to the Board.<sup>53</sup>

9. As regards the Board’s authority to determine the timing of exports and imports which Parties should take into account in computing the statistical data, see article 16, paragraph 6, providing that Parties should furnish the statistical figures “in such a manner” as the Board may request.

10. For the purpose of determining whether an export or import has taken place, a bonded warehouse, free port and free zone are considered by the Board to be a part of the State or region in which they are situated. Consequently, shipments sent to such a warehouse, port or zone are considered “exports” and “imports” only if in this process they leave the State or region from which they originate. The same applies to consignments from such locations. Psychotropic drugs which while in transit through a State or region are temporarily placed in a bonded warehouse, free port or free zone pending their further shipment are not to be considered to have been imported or exported by the State or region of transit.

11. Consignments sent to a particular region of another State are to be considered to have been imported only when they cross the border of the importing region and not at the moment, if earlier, at which they cross the border of the State to which the importing region belongs.

12. Psychotropic drugs which for any reason whatsoever are returned by the importing State or region to the State or region from which they had been exported are to be treated as having been exported by the former and to have been imported by the latter.<sup>54</sup>

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<sup>53</sup> For a more detailed discussion of the problem determining the exact date of exports and imports, see *1961 Commentary* on article 1, paragraph 1, subparagraph (m) (paragraphs 1 to 5 of the comments).

<sup>54</sup> *1961 Commentary* on article 1, paragraph 1, subparagraph (m) (paragraphs 6 and 7 of the comments); Form P, referred to in foot-note 52 above, Instruction 14 and Form A/S, mentioned in the same foot-note, Instruction 11.

**Paragraph (i)**

(i) “Manufacture” means all processes by which psychotropic substances may be obtained, and includes refining as well as the transformation of psychotropic substances into other psychotropic substances. The term also includes the making of preparations other than those made on prescription in pharmacies.

*Commentary*

1. The term “manufacture” as defined in the paragraph under consideration differs from that in article 1, paragraph 1, subparagraph (n) of the Single Convention by including the making of preparations<sup>55</sup> and also the separation of psychotropic substances from the plants from which they are obtained.<sup>56</sup>

2. Because the making of preparations is included in the term “manufacture”, article 16, paragraph 4, closing subparagraph expressly excludes the quantities of “preparations manufactured” from the statistical information which Parties under subparagraphs (a) and (b) of that paragraph have to furnish to the Board on the manufacture of psychotropic substances.

3. In article 11, paragraph 6 and in article 16, paragraph 4, subparagraph (c) the term “manufacture” is expressly used for the making of “exempt” preparations.<sup>57</sup>

4. The making of preparations in pharmacies on prescription would be “distribution” of, or (retail) “trade” in, the psychotropic substances which they contain.

5. The term “pharmacies” as used in the paragraph under consideration is not limited to those retail outlets which are technically referred to by this designation or by an equivalent word in another language, but is intended to cover all licensed retail traders in psychotropic substances.<sup>58</sup>

6. It appears also to follow from the common meaning of the word “manufacture” and from the purpose of the provision under consideration that the compounding of preparations by medical practitioners for dispensation or administration to their patients or to animals or for retail sale to their

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<sup>55</sup> 1961 *Commentary* on article 1, paragraph 1, subparagraph (n) of the Single Convention (paragraph 12 of the comments).

<sup>56</sup> The separation of controlled drugs other than opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained would under the Single Convention not be excluded as “production” from the term “manufacture” but constitute “manufacture”, 1961 commentary on article 1, paragraph 1, subparagraph (t) of the Single Convention (paragraph 4 of the comments).

<sup>57</sup> Article 3, paragraphs 2 to 4.

<sup>58</sup> 1971 *Records*, vol. II, paragraphs 6 to 31 of the Summary Records of the twentieth plenary meeting, pp. 81 to 82 of the English text.

patients, to holders of animals which they treat or other persons,<sup>59</sup> does not constitute “manufacture” within the meaning of the Vienna Convention, but may be considered part of the process of sale, distribution, dispensation or administration of psychotropic substances and their preparations.<sup>60</sup>

7. Consequently licensed retail outlets of psychotropic substances do not require a manufacturing licence under article 8, paragraph 1 in order to be authorized to make on prescription preparations of substances in Schedules II, III or IV.<sup>61</sup> Medical practitioners also do not need a manufacturing licence for the compounding of preparations of such substances. Moreover, the latter also do not require a retail trade licence or any licence at all for such compounding as long as they do it while performing therapeutic or scientific functions.<sup>62</sup> The distribution including the compounding for retail distribution by such a practitioner to persons who are not his patients or to holders of animals which he does not treat, is, however, not a “therapeutic” or “scientific” function and is, therefore, subject to the requirement of a retail trade licence.<sup>63</sup>

8. Like the Single Convention, the Vienna Convention does not employ the term “conversion” used by the 1931 Convention for a process which it distinguishes from “manufacture”.<sup>64</sup> Like the Single Convention, the Vienna Convention expressly includes in the term “manufacture” part of what the 1931 Convention, *mutatis mutandis*, calls “conversion”, namely the transformation of psychotropic substances into other psychotropic substances. The term “manufacture” as defined in the paragraph under consideration does not cover the transformation of psychotropic substances into substances not controlled by the Vienna Convention.<sup>65</sup> In its article 4, paragraph (b) this Convention, however, employs the term “manufacture” for the transformation of psychotropic substances (other than those listed in Schedule I) into non-controlled “substances or products”, i.e. into substances not listed

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<sup>59</sup> Physicians are in some countries authorized to sell medicines not only to their patients, but also to other persons, particularly in places without an authorized pharmacist; 1961 *Commentary* on article 30, paragraph 1, subparagraph (c) of the Single Convention (paragraph 4 of the comments).

<sup>60</sup> 1961 *Commentary* on article 29, paragraph 1 of the Single Convention (paragraph 4 of the comments).

<sup>61</sup> See however article 7, paragraph (b) and below the comments thereon.

<sup>62</sup> Article 8, paragraph 3.

<sup>63</sup> 1961 *Commentary* on article 30, paragraph 1, subparagraph (c) (paragraph 4 of the comments).

<sup>64</sup> The 1931 Convention (article 1, paragraph 4) defines conversion as the transformation of a “drug” by a chemical process, with the exception of the transformation of alkaloids into their salts; see 1931 commentary, paragraph 51. It does not matter whether the controlled drug is transformed into another controlled drug or into an uncontrolled substance.

<sup>65</sup> The 1931 Convention in defining “conversion” does not exclude from the term the transformation into non-controlled substances. The definition of manufacture by article 1, paragraph 1, subparagraph (n) of the Single Convention excludes the transformation of (controlled) drugs into non-controlled substances.

in any of the four Schedules of the Convention.<sup>66</sup> That meaning of manufacture in that place follows from the “context”.<sup>67</sup>

9. It is submitted that in some provisions controlling the manufacture of psychotropic substances it would be in conformity with the aims of the Vienna Convention if the term “manufacture” could be understood to include the transformation of psychotropic substances into non-controlled substances, although it must be agreed that the “context” does not require<sup>67</sup> that “manufacture” be understood in that sense. It appears, however, essential for the effective functioning of the Vienna Convention that the manufacturers of non-controlled substances from psychotropic substances should be subject to the licensing requirements and controls of article 8, paragraphs 1, 2 and 4, and should be required to keep records at least of the psychotropic substances used and of the non-controlled products obtained, in the same way as manufacturers of exempted preparations<sup>68</sup> are bound to maintain them pursuant to article 11, paragraph 6.<sup>69</sup> Moreover, Parties to the Vienna Convention are expressly obligated under article 16, paragraph 4, subparagraph (*d*) to furnish to the Board statistical reports in regard to each substance in Schedules II, III or IV on the quantities used for the making of non-controlled substances. This appears to imply that they are bound to require manufacturers who transform substances in those Schedules into non-controlled substances to keep records of the psychotropic substances so used. Control over such manufacturers would also imply the duty to obligate them to maintain records as to the nature, quantity and initial disposal of the non-controlled substances which they make;<sup>70</sup> for the discussion of a similar problem under the Single Convention regarding the transformation of controlled drugs into substances not covered by that Convention, see *1961 Commentary* on article 1, paragraph 1, subparagraph (*n*), paragraph 4 of the comments.

10. As under the Single Convention,<sup>71</sup> “manufacture” as defined in article 1 of the Vienna Convention includes “refining” of crude psychotropic substances. Such refining is consequently subject to all control measures which apply to the manufacture of psychotropic substances, and the Board may request separate statistical data on a psychotropic substance in its crude and in its refined form. Judging by the Board’s practice under the Single Convention, it is assumed that the Board would normally not need such separate figures.

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<sup>66</sup> The Single Convention also employs in several places the term “manufacture” for the making from (controlled) drugs of substances which it does not cover; see *1961 Commentary* on article 1, paragraph 1, subparagraph (*n*) (paragraph 4 of the comments).

<sup>67</sup> Article 1, introductory paragraph of the Vienna Convention.

<sup>68</sup> Article 3, paragraphs 2 to 4.

<sup>69</sup> This provision refers of course exclusively to the manufacture of “exempt” preparations.

<sup>70</sup> Article 4, paragraph (*b*) of the Vienna Convention; see also article 11, paragraph 6.

<sup>71</sup> See also article 1, paragraph 4 of the 1931 Convention.



11. Following the practice under the Single Convention and under earlier drug treaties, it must be assumed that the salts of psychotropic substances are substances different from their bases.<sup>72</sup> If they are included in the Schedules, they become psychotropic substances separate from those which are their bases. The 1971 Conference did not include the salts in the Schedules. It may, however, be assumed that by the procedure pursuant to article 2 the salts will be included in the Schedules, since in terms of medical practice they have the same pharmacological properties as the bases themselves and since some of the psychotropic substances are almost exclusively used in form of their salts.<sup>73</sup> The making of the salts included in the Schedules would be “manufacture” as defined in the paragraph under consideration, and thus be subject to all the control measures of the Vienna Convention applicable to the manufacture of the substances in that Schedule in which they are listed. It is not probable that some salts of psychotropic substances would not be included in the Schedules. Assuming, however, that some of them would not be added to the Schedules, their making would be “manufacture of non-psychotropic substances or products” under article 4, paragraph (b), since they would be made by transforming the psychotropic substances which are their bases.

12. Isomers, esters and ethers of psychotropic substances, whenever their existence is possible, must also be considered to be substances different from the psychotropic substances whose chemical variations they are.<sup>74</sup> The 1971 Conference did not include them in the Schedules, either individually or by a general formula, with the exception of the isomers of the tetrahydrocannabinols in Schedule I. If included in the Schedules, their making from the psychotropic substances whose chemical variations they represent would be “manufacture” in the sense of the definition of this term in the paragraph under consideration and if not so included their making would be “manufacture of non-psychotropic substances or products” pursuant to article 4, paragraph (b).

13. The making of psychotropic substances which only appear as an intermediary stage in a continuous process of making other psychotropic substances or non-controlled products would be manufacture in the sense of article 1, paragraph (i), and consequently subject to the control provisions applicable to the particular Schedule in which the intermediary substance is listed, although sometimes or even very often the Board may not find it

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<sup>72</sup> See the Schedules I, II and IV of the Single Convention; article 1, paragraph 2 of the 1931 Convention; and *1961 Commentary* on article 1, paragraph 1, subparagraph (n) (paragraph 10 of the comments); see also the *Third Report of the Expert Committee on Drugs Liable to Produce Addiction*, World Health Organization Technical Report Series No. 57, paragraph 4.3 (p. 8 of the English text).

<sup>73</sup> Report of the Commission on Narcotic Drugs on its Third Special Session (1974), *Official Records of the Economic and Social Council: Fifty-sixth Session, Supplement No. 6 (E/5458)*, paragraph 364.

<sup>74</sup> Schedules I and II of the Single Convention; *1961 Commentary* on article 1, paragraph 1, subparagraph (n) (paragraphs 10 and 11 of the comments).

necessary to request statistical data in respect of them. Statistical figures on psychotropic substances representing an intermediary stage in an “interrupted” process of making psychotropic or non-controlled substances would, however, be needed by the Board for performing its functions.<sup>75</sup> The fabrication process would, e.g., have to be considered to be interrupted if the intermediary product was transported to another factory, but not if it was only transferred to another machine or to another unit of the same factory without a lapse of time which would be held unusual under the conditions of the work process concerned. It is admitted that it would in many cases be very difficult to distinguish between a “continuous” process and an interrupted one. It is suggested that, in case of doubt, it would be in the interest of effective control to consider a work process “interrupted” rather than “continuous”.

14. The separation of psychotropic substances from the plants which yield them is “manufacture” in the sense of article 1, paragraph (i)<sup>76</sup>, and thus controlled by the provisions applicable to the Schedule in which the psychotropic substances concerned are listed. However, the application of some of these control measures may quite often be very difficult because the plants concerned are frequently cultivated, or grow wild, in remote places<sup>77</sup>, and the cultivators of the plants or the gatherers of the psychotropic substances would as “manufacturers” have to maintain records pursuant to article 11 which in many cases they would not be qualified to keep. Governments would in a situation of this kind have to refuse to grant the required licence,<sup>78</sup> special licence or “prior authorization”<sup>79</sup> if—as would very often be the case—the prospective harvester or gatherer was not qualified for “the effective and faithful” execution of the provisions of the laws and regulations which the Governments would have enacted in pursuance of the Vienna Convention.<sup>80</sup> It may be noted that in the case of psychotropic substances in Schedule I, but not in the case of other psychotropic substances, a Party could under the conditions of article 32, paragraph 4, make a reservation by which it would in part be freed from the obligation to require a “special licence” or “prior authorization”, or indeed any kind of authorization or permit, for the gathering of the substances concerned in Schedule I.<sup>81</sup> This would be the case where plants growing wild in the

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<sup>75</sup> 1961 Commentary on article 19, paragraph 1, subparagraph (b) (paragraphs 4 and 5 of the comments) and on article 20, paragraph 1, subparagraph (a) (paragraphs 6 and 7 of the comments).

<sup>76</sup> See above the general comments on article 1 (paragraphs 4 and 5 of the comments).

<sup>77</sup> Which moreover may not be under effective administrative control of the Government concerned.

<sup>78</sup> Article 8, paragraph 1.

<sup>79</sup> Article 7, paragraph (b).

<sup>80</sup> Article 8, paragraph 4.

<sup>81</sup> Article 8, paragraph 1 does not apply to substances in Schedule I.

territory of the Party making the reservation are “traditionally used by certain small, clearly determined groups in magical or religious rites”.<sup>82</sup>

15. Cultivation of plants for the purpose of obtaining psychotropic substances or raw materials for the manufacture of such substances is not “manufacture” in the sense of article 1, paragraph (i). Many provisions of the Vienna Convention governing psychotropic substances would be unsuitable for application to cultivation. The harvesting of psychotropic substances, i.e. a separation of such substances from the plants from which they are obtained, is “manufacture”.

16. See also 1961 Commentary on article 1, paragraph 1, subparagraphs (n) and (t).

### **Paragraph (j)**

**(j) “Illicit traffic” means manufacture of or trafficking in psychotropic substances contrary to the provisions of this Convention.**

### *Commentary*

1. While the definition of “illicit traffic” in article 1, paragraph 1, subparagraph (1) of the Single Convention covers also cultivation of some plants from which controlled drugs may be obtained, the term “illicit traffic” in the sense of the paragraph under consideration does not include cultivation. No provision of the Vienna Convention expressly controls cultivation. However, pursuant to article 22, paragraph 2, subparagraph (a), clause (ii), Parties may have to consider cultivation of plants from which psychotropic substances may be obtained as an “attempt” to commit an offence (of illicit traffic) punishable under article 22, paragraph 1, subparagraph (a), or as an act “preparatory” to such an offence.<sup>83</sup>

2. As included in the definition of “illicit traffic” in the Single Convention, the word “trafficking” refers not only to all forms of unauthorized trade and distribution, but also to unauthorized manufacture. As used in the definition of the Vienna Convention it covers only all forms of trade and distribution, but not manufacture, which is expressly mentioned as being a form of illicit traffic (if unauthorized, i.e. carried on contrary to the provisions of that Convention). However, in article 16, paragraph 3, subparagraph (d), “traffickers” refers also to illicit manufacturers.

3. It may be noted that article 22 of the Vienna Convention concerning the actions which Parties should treat as punishable offences does not use the

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<sup>82</sup> It may perhaps seem to be incongruous that Parties may in such a situation free themselves from the obligation to require authorization of “manufacture” in respect of substances in Schedule I and not in regard to other psychotropic substances; but the 1971 Conference provided for this reservation in view of specific local conditions which it had in mind and where only psychotropic substances in Schedule I would be involved.

<sup>83</sup> See below the comments on article 22, paragraph 2, subparagraph (a), clause (ii).

term “illicit traffic”. Attention may be drawn to the fact that the definition of punishable offences in article 22 covers actions “contrary to a law or regulation adopted [by the Party concerned] in pursuance of its obligations under this [the Vienna] Convention” while the definition of “illicit traffic” in article 1, subparagraph (*j*) refers to actions “contrary to the provisions of this Convention”. Both definitions do not appear to be coextensive. It may, however, be assumed that the 1971 Conference intended that all actions in the illicit traffic should be punishable offences pursuant to article 22, paragraph 1, subparagraph (*a*).<sup>84</sup>

4. The term “illicit traffic” as defined in subparagraph (*j*) is consistently used throughout the Convention; see the third paragraph of the preamble, article 16, paragraph 3, introductory subparagraph and article 21, heading and paragraphs (*a*), (*b*) and (*c*).

### **Paragraph (k)**

**(k) “Region” means any part of a State which pursuant to article 28 is treated as a separate entity for the purposes of this Convention.**

### *Commentary*

1. While the Single Convention uses the term “territory” in three different meanings,<sup>85</sup> the authors of the Vienna Convention intended to use this word only for two of them, namely for a non-metropolitan territory for the international relations of which a Party is responsible,<sup>86</sup> and in the sense of “geographic area”.<sup>87</sup> The Vienna Convention uses the word “region” for the third of the meanings in which the Single Convention employs the word “territory”, namely for that of a separate administrative entity for applying the treaty concerned.<sup>88</sup> The authors of the Vienna Convention made this substitution because they wanted to avoid using the same term for two entirely different notions, namely for the political concept of a territory for the international relations of which a Party is responsible, and for that of a separate administrative entity for the purpose of treaty implementation.

2. However, the definition of the administrative term “territory” in the Single Convention<sup>89</sup> and that of the corresponding term “region” in the Vienna are not identical. The Single Convention’s term “territory” means

<sup>84</sup> See below, the comments on this provision.

<sup>85</sup> See above, the general comments on article 1 (paragraphs 10 to 12 of the comments); and *1961 Commentary* on article 1, paragraph 1, subparagraph (*y*) of the Single Convention.

<sup>86</sup> The word “territory” is used in this “political” sense in article 27 and article 29, paragraph 1.

<sup>87</sup> For provisions in which “territory” is used in this sense, see above, foot-note 6.

<sup>88</sup> See foot-note 5 above, for the provisions of the Vienna Convention in which the term “region” is used.

<sup>89</sup> Article 1, paragraph 1, subparagraph (*y*).

“any part of a State which is treated as a separate entity for the application of the system of import certificates and export authorizations”, while the Vienna Convention’s term “region” refers to “any part of a State which pursuant to article 28 is treated as a separate entity for the purposes of this Convention”. It is submitted that the differences between the two phrases “for the application of the system of import certificates and export authorizations” and “for the purposes of this Convention” are in this context not really substantive, because the separate application of the import certificate and export authorization system of the Single Convention implies the separate application of all administrative control measures of that Convention, and being a separate entity for the purposes of the Vienna Convention means in fact being a separate entity for the application of the administrative controls of that latter treaty.

3. The Vienna Convention’s definition refers to its article 28, while the Single Convention’s definition does not include a reference to its article 43, which *mutatis mutandis* is substantively identical with article 28 of the Vienna Convention. One may conclude that in order to be valid for the purposes of the Vienna Convention, the “regional” structure of a Party must always have been notified to the Secretary-General, and becomes effective only on 1 January of the year following the year in which the notification was made.<sup>90</sup> This applies also to the regional organization of a State as it exists at the time of its becoming a Party. It is submitted that there can be no objection to a State making the required notification prior to that time if it wishes that its regional structure be legally valid under the terms of the Vienna Convention already at the date at which it becomes a Party.

4. While this view regarding the need for prior notification of the regional structure as it would exist at the time of a State becoming a Party appears to follow from the text of the Convention, it is submitted that one may, in respect of that Convention’s provisions regarding regions, also proceed from the assumption that States need not have implemented all their treaty obligations at the date at which they become Parties, and that in performing their treaty obligations in good faith<sup>91</sup> they are allowed a reasonable length of time for adopting the required measures. It follows that a State may for the purposes of the Vienna Convention maintain its regional structure as it exists at the time of its becoming a Party, provided that without any undue delay it makes the necessary notifications pursuant to article 28.

5. One may recall in this connexion that Parties to the Single Convention are under article 43 of that treaty not bound to notify the Secretary-General of the division of their area into separate entities

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<sup>90</sup> Article 28, paragraph 3.

<sup>91</sup> Article 26 of the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, reproduced in United Nations Conference on the Law of Treaties. First and Second Sessions, *Official Records*. Documents of the Conference, New York, United Nations 1971 (A/CONF. 39/11/Add.2, Sales No.: E.70.V.5), pp. 287 *et sequitur*.

(“territories”) for the purposes of that Convention, as long as the divisions existing at the time of their becoming Parties are not modified.<sup>92</sup> This follows mainly from the fact that the Single Convention’s definition of “territory” in the administrative meaning of this term does not refer to its article 43 which—as stated above—corresponds to article 28 of the Vienna Convention.

6. A “region” need not always be a “part of a State” as indicated in the definition of this term in the subparagraph under consideration, but under article 28, paragraph 2 may also consist of the area of two or more Parties forming a customs union.<sup>93</sup>

7. It has been mentioned above<sup>94</sup> that the Vienna Convention appears inconsistently to use the word “territories” for “regions” in article 16, paragraph 1, introductory subparagraph.

8. See also below, the comments on article 28.

### *Paragraph (1)*

**(1) “Premises” means buildings or parts of buildings, including the appertaining land.**

### *Commentary*

1. The term “premises” occurs in drug treaties preceding the Single Convention as well as in the Single Convention.<sup>95</sup> These treaties use the word “premises” in the phrase “establishments and premises”, but do not define either “premises” or “establishments”. According to their normal meaning, the word “premises” has been understood to refer in these conventions to whole buildings or parts of buildings used for the drug business concerned<sup>96</sup> and the word “establishment” as a place of such a business with its fixtures and organized staff.<sup>97</sup> “Establishment” in this sense includes also the premises on which the business is carried on. “Premises” as understood in these earlier treaties may, but does not necessarily, include the appertaining

<sup>92</sup> 1961 *Commentary* on article 1, paragraph 1, subparagraph (y) (paragraph 11 of the comments).

<sup>93</sup> Similarly, under article 43, paragraph 2 of the Single Convention a “territory” may consist of the area of two or more Parties forming a customs union.

<sup>94</sup> General comments on article 1 (paragraph 10 of the comments).

<sup>95</sup> See article 10, second paragraph, subparagraph (a) of the 1912 Convention; article 6, second paragraph, subparagraph (a) of the 1925 Convention; and article 29, paragraph 2, subparagraph (b); and article 30, paragraph 1, subparagraph (b), clause (ii) of the Single Convention.

<sup>96</sup> In the 1912 and 1925 Convention the manufacture of the controlled drugs in question; in the Single Convention the manufacture of controlled drugs and their preparations and the trade in controlled drugs, but not the trade in their preparations.

<sup>97</sup> 1961 *Commentary* on article 29, paragraph 2, subparagraph (b) (paragraph 3 of the comments).

land. Whenever the premises on which the drug business is undertaken comprise only a part of a building, they may sometimes be considered not to contain also that land; but this does not mean that under those treaties Governments are not bound to require the application to the land of such control measures as may appear necessary for an effective protection of the premises against theft or other diversion of the controlled substances.<sup>98</sup>

2. The Vienna Convention uses the phrase “establishments and premises” in its article 8, paragraph 2, subparagraph *(b)*.<sup>99</sup> “Establishment” appears to have here the same meaning as in the earlier treaties in the same phrase. The meaning of “premises” differs from that in the prior conventions in that it always includes the appertaining land. What has been implied in the narcotics régime<sup>100</sup>, namely the requirement to control the access, through the appertaining land, to the premises is thus explicit in the Vienna Convention.

3. As regards the meaning of the word “establishments” in article 7, paragraph *(a)* and article 12, paragraph 1, subparagraph *(c)* and paragraph 3, subparagraph *(c)* where it is not accompanied by a reference to “premises” see below the comments on these provisions.

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<sup>98</sup> They may impose the obligation to adopt such measures in the manufacturing or trade licence or in the licence authorizing the use of the premises. They may also do it in general or individual instructions under their respective control laws.

<sup>99</sup> This provision corresponds to the provisions of the earlier treaties, referred to in foot-note 95 above.

<sup>100</sup> i.e. the régime relating to the drugs controlled by the earlier treaties.

## Article 2

### SCOPE OF CONTROL OF SUBSTANCES

#### General comments

1. The procedure of the Vienna Convention for changes in its Schedules, i.e. for controlling additional substances, for transferring a psychotropic substance from one régime to another of the four different control régimes, and for freeing a substance from control, is patterned after the procedure provided for in article 3 of the Single Convention for corresponding decisions under that Convention. Under both treaties action by the Commission as well as by the World Health Organization is required in each such case; but there are some important differences between the two treaties.

2. Under the Single Convention, the World Health Organization finds whether a substance has the dangerous properties required for a particular kind of régime or whether the properties of a drug under control are not sufficiently dangerous to warrant control; it recommends the régime under which a non-controlled substance should be placed, changes in the régime of a controlled drug, and the removal of a drug from control. It may also recommend that the Commission should take no action in a case under consideration. Under the Vienna Convention, the World Health Organization is also charged with making findings regarding the dangerous properties of substances and with making recommendations in respect of controlling non-controlled substances, of changes in the control of psychotropic substances and of freeing psychotropic substances from control. It may also recommend that no action should be taken.

3. However, under the Single Convention, the Commission has only the choice between acting in accordance with the recommendation of the World Health Organization or not taking any action. It cannot place a substance under control, change the régime of a drug or free a drug from control except "in accordance with the recommendation of the World Health Organization". Under the Vienna Convention the Commission is not limited to this choice. Provided always that the World Health Organization has previously made and communicated to the Commission its findings and recommendations on control measures, if any, in respect to the substance in question, the Commission may—as the case may be—place that substance under a particular control régime, change its régime, or free it from control, even if its action is not in accord with the World Health Organization's recommendation. In whatever action it wishes to take the Commission must, however, take into account the findings and recommendations of the World Health Organization, and must consider that Organization's assessments to be determinative as to



medical and scientific matters; but it may decide to make a change in the Schedules for reasons relating to other factors, particularly to those of an economic, social, legal or administrative nature, even when such a change has not been recommended by the Organization. In this procedure the Commission has under the Vienna Convention a much wider discretion than in the corresponding procedure under the Single Convention.<sup>101</sup> However, as outlined below, it could not place under control an uncontrolled substance which the World Health Organization has found not to have the properties defined in article 2, paragraph 4, subparagraph (a), clause (i) or (ii), or refuse to free such a substance from control. The Commission could also not place in Schedule I or refuse to delete from that Schedule a substance which the World Health Organization has found to have more than a “very limited” therapeutic usefulness.

4. Under the Single Convention, the Commission may free preparations from several control measures applicable to the drugs which those preparations contain. The preparations so exempted are listed in Schedule III. The Commission may rescind such exemptions by deleting them from that Schedule. Here again, the Commission can act only in “accordance with the recommendation of the World Health Organization” or refuse to act. A preparation can be exempted only from all the measures indicated for this purpose in the Convention, and not only from some of them. The exemption is equally valid for all Parties.

5. Under the Vienna Convention the Commission has no such general authority to exempt—in relation to all Parties—preparations from some control measures applicable to the psychotropic substances which the preparations contain. However, such an action may be taken unilaterally by an individual Party.<sup>102</sup> The exemption need not cover all measures from which the preparation may be freed. The Party may choose to exclude from the exemption some of those measures. Moreover, the exemption is valid only in respect of the Party which has taken such an action, and not in respect of other Parties.

6. The Commission may wholly or partially rescind such an exemption in a procedure in which the World Health Organization participates, and which is very similar to that prescribed for changes in the Schedules of the Vienna Convention and referred to above in paragraphs 2 and 3. The Commission may thus decide on a total or partial termination of an exemption although not acting in accordance with the recommendation of the World Health Organization.<sup>103</sup>

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<sup>101</sup> Article 3, paragraph 3, subparagraph (iii), paragraph 5 and paragraph 6; article 2, paragraphs 4 to 6 of the Vienna Convention; see also below paragraphs 20 to 25 of the comments on article 2, paragraphs 5 and 6.

<sup>102</sup> But not in respect of preparations containing substances in Schedule I.

<sup>103</sup> Article 3, paragraphs 4 and 6 of the Single Convention; article 3, paragraphs 2 to 4 of the Vienna Convention. Under the Vienna Convention there is, however, no appeal to the Council against the decisions of the Commission (article 2, paragraph 8), [nor a right of partial rejection of the Commission’s decisions (article 2 paragraph 7)].

7. Under the Single Convention the Commission may place under international control not only substances which themselves have the harmful effects in question,<sup>104</sup> but also precursors of controlled drugs, i.e. substances “convertible”<sup>105</sup> into controlled drugs. The Schedules of the Vienna Convention do not list substances which have been included because they are capable of conversion into psychotropic substances, but only those which have the defined dangerous properties themselves. The Vienna Convention also does not explicitly confer upon the Commission the authority to place under international control substances which are “convertible” into psychotropic substances. Consequently, in view of the present composition of the Schedules, the Commission has neither an express nor an implicit authority to place under control “convertible” substances.<sup>106</sup>

8. Under the Single Convention, the Commission may bring under the control of that treaty drugs already controlled by earlier drug treaties. The Commission would also theoretically not be prevented from placing some “psychotropic” substances under a régime of the Single Convention without removing them from the Schedules of the Vienna Convention.<sup>107</sup> The definitions in the two treaties, of the properties of substances which would warrant international control are overlapping. The Vienna Convention, however, excludes from its scope substances already “under international control”.<sup>108</sup>

9. Unlike the Single Convention, the Vienna Convention does not authorize the Commission to adopt a decision, binding upon Parties, to place a substance under provisional control, pending the procedure on the control status of that substance before the World Health Organization and the Commission.<sup>109</sup> Under both treaties, however, the Parties are required to examine, in the light of the available information, the possibility of unilaterally imposing provisional control measures. Under the Single Convention this provision relates only to substances not yet under its control. The provision of the Vienna Convention appears to apply not only to hitherto uncontrolled substances, but also to substances already in that treaty’s Schedules II, III or IV, but in all cases only if the information contained in or

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104 i.e. those defined in article 3, paragraph 3, subparagraph (iii) of the Single Convention.

105 As regards the meaning of “convertibility” see the *1961 Commentary* on article 3, paragraph 3, subparagraph (iii) (paragraph 9 to 13 of the comments).

106 Article 2, paragraph 4 and below, the comments on this provision. There is only the very vague provision of article 2, paragraph 9 concerning precursors; see also article 2, paragraph 8 of the Single Convention.

107 As regards substances which can be controlled by the Vienna Convention but not by the Single Convention, see *1961 Commentary* on article 3, paragraph 3, subparagraph (iii) of the Single Convention (paragraphs 6 and 7 of the comments).

108 As regards the meaning of the phrase “international control” as used in the relevant provision of the Vienna Convention, see below the comments on article 2, paragraph 1.

109 Article 3, paragraph 3, subparagraph (ii) of the Single Convention; *1971 Records*, vol. II, paragraph 2 of the minutes of the twenty-fourth meeting of the Committee on Control Measures (p. 176 of the English text).

accompanying the notification which initiated<sup>110</sup> the procedure indicates that the substance in question is suitable for inclusion in Schedule I or II of the Vienna Convention.<sup>111</sup>

10. Decisions of the Commission providing for changes in the Schedules of the Vienna Convention or for terminating wholly or partially an exemption of a preparation authorized by a Party require a two-thirds majority of its total membership.<sup>112</sup> Its decisions changing the Schedules of the Single Convention can be made by the same majority as its other decisions under that treaty or as a functional Commission of the Council under the Charter of the United Nations, i.e. by a majority of its “members present and voting”. This majority requirement was determined by the Council in the rules of procedure which it adopted for its functional commissions.<sup>113</sup> The Council has authority to change those rules and thus also the majority requirements for decisions of the Commission under the Single Convention, and in particular also for those changing the Schedules of that treaty. It cannot change the two-thirds majority requirement for the decisions of the Commission changing the Schedules of the Vienna Convention or terminating exemptions of preparations made under that treaty.<sup>114</sup>

11. Under both Conventions Parties can appeal to the Council against decisions of the Commission placing new substances under control, changing the régime of a controlled substance or freeing a substance from control.<sup>115</sup> Under the Vienna Convention but not under the Single Convention, Parties have, in addition, the right to refuse to carry out some of the control measures which would be required by the placement of a new substance under international control or by transferring a psychotropic substance from a less strict to a stricter régime.<sup>116</sup>

12. Which organ of the World Health Organization is entitled to act for that Organization under article 2 or other provisions of the Vienna

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110 Article 2, paragraph 1 of the Vienna Convention.

111 Article 2, paragraph 3 of the Vienna Convention and article 3, paragraph 3, subparagraph (i) of the Single Convention; provisional control for substances in Schedule II of course can be a subject of this examination only if they appear suitable for inclusion in Schedule I.

112 Article 17, paragraph 2 of the Vienna Convention.

113 These rules are referred to above in foot-note 9; see rule 55, where it is stated that the phrase “majority of the members present and voting” means the members casting an affirmative or negative vote and that abstaining members should be considered to be not voting.

114 For voting of the Commission by mail or telegram on placing a non-controlled substance under the Single Convention, see *1961 Commentary*, general comments on article 3 (paragraphs 19 to 22 of the comments).

115 Article 3, paragraph 8 of the Single Convention and article 2, paragraph 8 of the Vienna Convention. As regards the view that the Vienna Convention, like the Single Convention, does not authorize an appeal against a refusal of the Commission to act, see below the comments on article 2, paragraph 8, subparagraph (a) of the Vienna Convention.

116 Article 2, paragraph 7 of the Vienna Convention.

Convention<sup>117</sup> is to be determined by that Organization in accordance with its own constitutional provisions.<sup>118</sup>

### Paragraph 1

1. If a Party or the World Health Organization has information relating to a substance not yet under international control which in its opinion may require the addition of that substance to any of the Schedules of this Convention, it shall notify the Secretary-General and furnish him with the information in support of that notification. The foregoing procedure shall also apply when a Party or the World Health Organization has information justifying the transfer of a substance from one Schedule to another among those Schedules, or the deletion of a substance from the Schedules.

1. This paragraph is substantially the same as article 3, paragraph 1 of the Single Convention, and most of the observations made in the *1961 Commentary* on the latter provision apply also to the former. Some of those comments may be repeated in the following paragraphs.

2. The procedure for making a change in the Schedules of the Vienna Convention cannot be set in motion without a notification to the Secretary-General either by a Party or by the World Health Organization that a change may be “required”. That change may be an addition of an uncontrolled substance to any of the four Schedules, a transfer of a psychotropic substance from one Schedule to another Schedule or the deletion of a psychotropic substance from a Schedule without transferring it to another Schedule.

3. Whether a change in a Schedule may be “required” depends on the “opinion” and thus is left to the judgement of the Party or the World Health Organization. Either is, however, bound to make the notification if it is of the opinion that an amendment to a Schedule may be “required”.

4. An amendment is not necessarily “required” if the Party or the World Health Organization holds that a substance not yet under control has the capacity to produce the effects described in article 2, paragraph 4, subparagraph (a), clause (i) or (ii). If it can reasonably be assumed that it is highly improbable that a Government would authorize the trade in such a substance and that there is also no risk that the substance would be made by clandestine manufacturers, the opinion might be justified that international control of that substance would not be required. The same would in any event be the case if there is no risk that the substance concerned would become a significant problem of the *international* illicit traffic. An opinion that control is not required could in such cases justly be held in the case of

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<sup>117</sup> Articles 2, 3 and 10.

<sup>118</sup> See also *1961 Commentary* on article 3, paragraph 3, subparagraph (iii) (paragraph 2 of the comments).

substances which exist only in laboratories. In cases of this kind, especially if there is no danger of the harmful substance becoming a significant problem of the *international* illicit traffic, there would also not be “sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control”.<sup>119</sup>

5. An amendment in a Schedule may not only be “required” for the purpose of fighting drug abuse, but sometimes also to facilitate the availability of very useful psychotropic substances for therapeutic purposes. In determining the question of control of a substance or of the strictness of régime to which it should be subjected, its dangerous properties must very often be weighed against its usefulness in medical practice. Not only the problem of drug abuse but more general considerations of public health are to be taken into account.<sup>120</sup> In the light of considerations of this kind the transfer of a substance from a stricter régime to a less strict régime may sometimes be “required”, and occasionally also the freeing from international control of a relatively not very dangerous, but medically very useful and very widely needed substance.

6. The meaning of the phrase “not yet under international control” appears to require some consideration. On first sight it may seem that the phrase applies not only to the Single Convention, but also to all earlier drug control treaties no matter how limited the control may be to which the substance concerned may be subject under such a treaty.

7. At the time of this writing it may seem to be without any practical importance whether the phrase refers only to the Single Convention or also to all the other earlier drug control treaties, since all drugs controlled by the earlier treaties are also subject to the Single Convention. However, if it should become desirable in the future that a particular substance should be subject to the controls of the Vienna Convention rather than to those of the international narcotics régime,<sup>121</sup> that question could become important.

8. In such a case the substance in question could be deleted from the Schedules of the Single Convention by a decision of the Commission pursuant to article 3 of that treaty; but without a treaty amendment, it could not be removed from the régime of the 1925 Convention,<sup>122</sup> or from that of the 1931 Convention in cases in which control has been imposed by the text of

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<sup>119</sup> See below the comments on article 2, paragraph 4.

<sup>120</sup> See the paragraph in the preamble reading: “Recognizing that the use of psychotropic substances for medical and scientific purposes is indispensable and that their availability for such purposes should not be unduly restricted”; see also the second paragraph of the preamble and article 2, paragraph 4, subparagraph (b); furthermore, see 1961 *Commentary* on article 3, paragraph 1 of the Single Convention (paragraphs 4 and 5 of the comments).

<sup>121</sup> i.e. to the control provisions laid down in the Single Convention and in the earlier drug control treaties.

<sup>122</sup> Although not placed under control by the text of the Convention itself, but only by operation of its article 10.

the treaty itself and not by the operation of its article 11<sup>123</sup> or of article 1 or 3 of the 1948 Protocol.<sup>124</sup> For example, diacetylmorphine (heroin) could be deleted from the Schedules of the Single Convention and thus, having ceased to be a “drug” in the meaning of that convention, would be freed from the controls applicable to “drugs” under that treaty.<sup>125</sup> It could, however, be removed from the control of the 1925 and 1931 Conventions only by treaty amendments. It may be concluded that as long as the earlier drug treaties are still in force,<sup>126</sup> the transfer of substances from the narcotics régime to the Vienna Convention would become procedurally much easier if the phrase “under international control” in the paragraph under consideration would be understood to refer only to control under the Single Convention. Moreover, in some cases such a transfer would even be virtually impossible unless the phrase is understood in that sense.

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123 As regards article 11 of the 1931 Convention: the products obtained from the phenanthrene alkaloids of opium or ecgonine alkaloids of the coca leaf, not having been in use on 13 July 1931, are under control of that treaty (article 11, paragraph 1) until freed from control by operation of article 11. A substance so freed could later be placed under control (article 11, paragraph 7). In any case the drugs listed in article 1, paragraph 2 of the 1931 Convention could not be removed from control of that Convention without a treaty amendment.

124 Hypothetically, it may be desirable to place heroin under the controls of the Vienna Convention applicable to psychotropic substances in Schedule I of that treaty. It may, however, be emphasized that the reference to heroin should by no means imply any suggestion whatsoever to remove heroin from the Schedules of the Single Convention and to include it in Schedule I of the Vienna Convention. The reference to heroin is made only for demonstrating the legal problem. It may also be mentioned that in the case of many drugs under the régime of the 1931 Convention by virtue of article 11 of that treaty or by operation of articles of the 1948 Protocol removal from control by application of these articles may prove impossible because the conditions for removal from that control could not be established by the World Health Organization although the drugs concerned might be suitable for control by the Vienna Convention pursuant to article 2, paragraph 4 of that treaty.

125 Article 2, paragraphs 1 to 5 of the Single Convention.

126 Article 44, paragraph 1 of the Single Convention. The fact that the 1936 Convention, excepting its article 9, would continue to be in force seems to be irrelevant in this connexion, since it deals with penal law to be applied to illicit traffickers and does not provide for the administrative controls which technically form the system of “narcotics control”. It may, however, be mentioned that at the 1961 Conference it was suggested that it was doubtful whether the 1936 Convention, without being revised, would continue to be operative after the termination of the 1912, 1925 and 1931 Conventions. This view appears to be based on the consideration that by reference to article 2 of the 1936 Convention which in turn refers to the three treaties mentioned in article 1, most penal provisions of that treaty apply to actions contrary to the provisions of those three Conventions. Even if that view were accepted, article 5 relating to contraventions of national controls and article 15 (in so far as it relates to such contraventions, but not in regard to actions in breach of provisions of the three Conventions) would remain effective; so would article 16 concerning Governmental reports; however, the Legal Adviser to the 1961 Conference explained to the Plenary that the termination of those Conventions would not affect the operation of the 1936 Convention since the reference to the three treaties was only a legislative technique of defining the punishable offences subject to the provisions of the 1936 Convention; 1961 *Records*, vol. I, p. 172.

9. There appear to be some reasons for assuming that the authors of the Vienna Convention intended to give the phrase “under international control” the more narrow meaning of “under control by the Single Convention”. This restricted meaning seems to be in accord with the purposes of the Vienna Convention.

10. The members of the Commission proposed a separate treaty for psychotropic substances and the Governments adopted the Vienna Convention primarily because the majority of them held that amphetamines, barbiturates and tranquillizers which they wished to control could not be placed under the Single Convention as long as a single Party to that treaty objected.<sup>127</sup> The Vienna Convention was therefore intended to supplement the Single Convention in the fight against drug abuse, and not the earlier drug treaties which are to be replaced by the Single Convention.<sup>126</sup> It is submitted that stimulants and depressants within the scope of the Vienna Convention could by the operation of the 1948 Protocol<sup>128</sup> be placed under the narcotics régime applicable to manufactured drugs as it existed prior to the Single Convention. That régime is essentially the same as the control system provided by the Single Convention for such drugs. They could also be placed under the administrative controls<sup>129</sup> of the narcotics régime by application of article 10 of the 1925 Convention. It may be recalled in this connexion that barbiturates, amphetamines and tranquillizers are not necessarily excluded from the scope of the Single Convention by the *text* of that treaty, but rather on the basis of an understanding of the participants to the 1961 Conference which adopted the Convention.<sup>127</sup> There was no such understanding on the part of the authors of the 1925 Convention and the 1948 Protocol.

11. The purpose of the exclusion from the Vienna Convention of substances already “under international control” was to avoid the possibility that Parties could be bound to apply to a substance both that Convention and the Single Convention.<sup>130</sup> The authors of the Vienna Convention also held that in the future it might in some cases be desirable to transfer a substance from the Single Convention to the Vienna Convention. Both of these aims could be achieved if the phrase “international control” in the paragraph

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<sup>127</sup> 1961 *Commentary* on article 3, paragraph 3, subparagraph (iii) of the Single Convention (paragraphs 6 and 7 of the comments). Another important reason for adopting an additional treaty was that it would thus become possible to apply to psychotropic substances a somewhat different régime than that applicable to narcotic drugs. This has also been the reason for including in Schedule I of the Vienna Convention hallucinogenic substances which would not be excluded from the scope of the Single Convention.

<sup>128</sup> Articles 1 to 3.

<sup>129</sup> i.e., the controls other than those of the estimates system. The recommendation of the World Health Organization pursuant to that article to place a substance under control is, however, binding only upon Parties which accept it.

<sup>130</sup> The provisions of the Vienna Convention and those of the narcotics régime do not appear to be incompatible with each other, and both could simultaneously be implemented by a Government, although this may impose unnecessary burdens.

under consideration refers only to the control by the Single Convention. If this interpretation is accepted, a substance removed from the Schedules of the Single Convention could be placed under the Vienna Convention, even though it might continue to be controlled by provisions of earlier drug treaties from which it could not be freed.<sup>131</sup> A Party to the Vienna Convention<sup>132</sup> which was also bound by those earlier provisions could in such a case, by denouncing the earlier treaties concerned, avoid being required to apply to the substance in question the rules of the narcotics régime as well as those of the Vienna Convention. It may be added that from the viewpoint of effective drug control there is no objection to a Party to the Single Convention denouncing the earlier drug treaties other than the 1936 Convention. What is required from that viewpoint is a universal acceptance of the Single Convention and of the Vienna Convention. Continued and wide adherence to the 1936 Convention may also be desirable.<sup>133</sup> It would not be necessary to denounce the 1936 Convention, since that Convention provides only for penal law to be applied to illicit traffickers, and not for the administrative control measures which technically form the international narcotics régime. The simultaneous application of that Convention and of article 22 of the Vienna Convention, which although somewhat different, contains substantially the same provisions on penal law as the 1936 Convention, would not involve the need for implementing two different control systems in regard to the same substance.<sup>134</sup>

12. Whatever may be the correct original meaning of the phrase “under international control”, the Commission could in any event transfer from the régime of the Single Convention to that of the Vienna Convention a substance also controlled by a narcotics treaty preceding the Single Convention and still in force at the time of the transfer, if no Party to the Vienna Convention objected. Such an action of the Commission, in the light of the circumstances prevailing at the time at which it would be taken, might be considered a “subsequent practice in the application” of the Vienna Convention “which establishes the agreement of the Parties” regarding the interpretation of the phrase “under international control” as meaning “under control of the Single Convention”.<sup>135</sup>

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131 See above paragraph 8.

132 And to the Single Convention.

133 This view regarding the 1936 Convention appears in any event to have been held by the 1961 Conference; see article 44 of the Single Convention; 1961 *Records*, vol. I, pp. 171-174.

134 It would, however, mean that article 22, paragraph 1, subparagraph (b) could not be applied in respect of a substance which would continue to be subject to the 1912, 1925 or 1931 Convention (either by operation of the Convention itself or by virtue of the 1948 Protocol) although placed under the Vienna Convention. As regards the relationship between obligations under the 1936 Convention and article 22 of the Vienna Convention, see below, the general comments on article 22.

135 See article 31, paragraph 3, subparagraph (b) of the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969; *Official Records of the United Nations Conference on the Law of Treaties, First and Second Sessions, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), A/CONF.39/11/Add.2, p. 283.



13. It is also submitted that the phrase “under international control” refers only to those acts controlled by the Single Convention<sup>136</sup> which are also controlled by the Vienna Convention since its purpose is to avoid the application of the rules of two different régimes to the same situation.

14. Cannabis, cannabis resin or coca leaves could be deleted by the Commission from the Schedules of the Single Convention and consequently be freed from that treaty’s controls concerning drugs, with the exception of those required by article 26 and article 28, paragraph 1.<sup>137</sup> The Commission could not free them from the controls applying to their “production”, i.e. to their separation from the cannabis plant or the coca bush, as the case may be. Nor could the Commission abolish the controls of the cultivation of those plants.<sup>138</sup> This could be done only by treaty amendment. It is perhaps possible to assume that the continued control of the cultivation of the plants under the Single Convention alone would not be in the way of concluding that those three drugs, if removed from the Schedules of that Convention, are not under “international control” in the sense of article 2, paragraph 1 of the Vienna Convention, since that treaty does not control “cultivation”; it is, however, submitted that the Single Convention’s continued control of the “production” of those drugs would not permit such a conclusion, since the Vienna Convention rules concerning “manufacture” would apply to the “production” of those three substances, if included in its Schedules. A situation would thus be created in which the same action, namely the harvesting of coca leaves, cannabis or cannabis resin, would be controlled by two different régimes, i.e. the rules of the Single Convention controlling “production”, and those of the Vienna Convention concerning “manufacture” which are applicable to its Schedule in question. It was suggested earlier that avoiding such a situation was the purpose of limiting the scope of the Vienna Convention to substances “not yet under international control”.<sup>139</sup> Consequently cannabis or cannabis resin (or coca leaves) could not be transferred from the Single Convention to the Vienna Convention without amending the Single Convention.<sup>140</sup>

15. A situation in which it would be in the interest of public health and legally possible to transfer a substance from control by a Single Convention to control by the Vienna Convention or vice versa might be considered to “require” an amendment to the Schedules of both treaties under the terms of article 3, paragraph 1 of the Single Convention and under article 2, para-

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136 See above, paragraph 11.

137 See article 1, paragraph 1, subparagraph (i) and article 2, paragraphs 1 to 5 of the Single Convention.

138 Articles 26, 27 and 28, paragraph 1 of the Single Convention. This applies also to opium in respect of which the Commission could also not abolish the special controls concerning the production of opium for international trade; see articles 23 and 24 of that Convention.

139 Paragraphs 11 and 13 of the present comments: see also above the general comments on article 1 (paragraph 5 of the comments) and the comments on article 1, paragraph (i) (paragraph 14 of the comments).

140 Or the Vienna Convention.

graph 1 of the Vienna Convention.<sup>141</sup> Unlike the provisions of the Vienna Convention excluding substances under international control (i.e., under the Single Convention) from the range of substances which may be placed under its control, neither the Vienna Convention nor the Single Convention contains any provision which, as a general proposition, would exclude from the scope of the Single Convention a substance in a Schedule of the Vienna Convention.

16. It is submitted that all drugs under the Single Convention which are at present controlled because they themselves have the dangerous properties in question, and not only because they are “convertible”<sup>142</sup> into drugs having those properties, are covered by the definition of article 2, paragraph 4 of the Vienna Convention indicating the characteristics for which substances may be placed under the control of the Vienna Convention. On the other hand, many of the psychotropic substances fall within the scope of the definition of article 3, paragraph 3, subparagraph (iii) of the Single Convention describing the substances which may be subjected to the régime of that treaty. It may, however, be recalled in this context that amphetamines, barbiturates and tranquillizers nevertheless cannot be controlled by the Single Convention if any Party to that treaty objects.<sup>143</sup> It has been mentioned above that the definitions in the two treaties of the properties warranting international control are overlapping.<sup>144</sup>

17. There appears therefore to be no legal obstacle to placing under the régime of the Single Convention substances already controlled by the Vienna Convention, no matter whether those substances are deleted from the Schedules of the Vienna Convention or not, provided however that they have the properties required for inclusion in Schedule I or II of the Single Convention.

18. A substance in a Schedule of the Vienna Convention which is “convertible”<sup>142</sup> into a substance covered by the definition of article 3, paragraph 3, subparagraph (iii) of the Single Convention could therefore be placed under the Single Convention, provided, however, that that dangerous substance itself is already in Schedule I or II of the Single Convention or is placed simultaneously in one of the two Schedules.<sup>145</sup> In view of the wide range of chemical substances which may be under the Vienna Convention or under the Single Convention, such a case may occur.

19. A situation may arise in which it would be in the interest of public health that a substance listed in a Schedule of the Vienna Convention and

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<sup>141</sup> See also above paragraphs 3 to 5.

<sup>142</sup> See above paragraph 7 of the general comments on article 2.

<sup>143</sup> Article 3, paragraph 3, subparagraph (iii) of the Single Convention and *1961 Commentary* on this provision; see also above paragraph 8 of the general comments on article 2 of the Vienna Convention and paragraph 10 of the comments on article 2, paragraph 1.

<sup>144</sup> See above paragraph 8 of the general comments on article 2.

<sup>145</sup> *1961 Commentary* on article 3, paragraph 3, subparagraph (iii) of the Single Convention (paragraph 14 of the comments).

“convertible” in the sense just mentioned should be included in Schedule I<sup>146</sup> or II of the Single Convention. This may in particular happen if the substance in question has relatively minor harmful properties itself but is “convertible” into a very dangerous substance. It has been pointed out above<sup>147</sup> that in such a situation an amendment to a Schedule of the Single Convention or to one of both Conventions<sup>148</sup> would be “required” pursuant to article 3, paragraph 1 of the Single Convention and article 2, paragraph 1 of the Vienna Convention.

20. The question arises whether the Party concerned or WHO can cause the discontinuation of the procedure under article 2 by withdrawing the notification which it sent to the Secretary-General. The text of the Convention itself does not give a definite answer to this question. However, it cannot be overlooked that the procedure under article 2 (or article 3, paragraph 4) is carried on in the interest of all Parties, and not only of the World Health Organization or of that Party which sent the notification. In view of the purposes of the Convention, it may therefore be the better opinion that the notification cannot be withdrawn, in any event not after it has been forwarded by the Secretary-General pursuant to paragraph 2, unless the Commission agrees or at least does not object. It may be assumed that the Commission has that power, since it is authorized to refuse to take action under article 2, paragraphs 5 and 6 (and article 3, paragraph 4). Anyway, it would be in the interest of international control that a notification should not be withdrawable without the express or tacit consent of the Commission, especially after it has been forwarded pursuant to paragraph 2. The Party and WHO have, however, the right to supplement or correct their notifications.

21. A notification initiating the procedure pursuant to article 2 may be sent by a Party or WHO prior to the coming into force of the Vienna Convention, a “Party” being a State which has signed without reservation of ratification, ratified or acceded to that treaty.

### *Paragraph 2*

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

### *Commentary*

1. This paragraph is substantively the same as article 3, paragraph 2 of

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<sup>146</sup> In the case in which inclusion in Schedule I would be desirable, listing in Schedule IV may sometimes also be required (article 3, paragraph 5 of the Single Convention).

<sup>147</sup> See above paragraph 15.

<sup>148</sup> Only of the Single Convention in the highly improbable case of inclusion in a Schedule of the Single Convention without deletion from Schedules of the Vienna Convention.

the Single Convention.<sup>149</sup> Consequently the comments of the 1961 Commentary on the provision of the Single Convention apply also to the provision of the Vienna Convention. Some of the points raised in that commentary may be noted here.

2. In the case of a notification received from a State which is not a Party to the Vienna Convention, the Secretary-General may inform the Government of that State that he will not take action under article 2, paragraph 2, since only Parties to the treaty or the World Health Organization are entitled to make such notifications. However, he may also choose to forward to Parties, to the Commission and to WHO a notification received from a State not a Party, and leave it to these organizations to refuse to take action. By so doing he may bring to the attention of the World Health Organization and of Parties relevant information which might “require”, i.e., justify, a change in Schedules of the Vienna Convention, and thus enable that Organization or a Party to make the necessary notification.

3. The Secretary-General may sometimes find it advantageous not to reject *a limine* a notification of a State whose character as a Party may raise controversial legal questions, and thus leave it to the Commission and to WHO to decide such a legal problem. He may in such a situation seek to avoid taking a position on a controversy of that kind, although he may hold that the notifying State is in fact not a Party.

4. The Treaty requires that the Secretary-General should transmit a notification of a Party to Parties, the Commission and WHO because these two Organizations have to take action in respect of the control status of the substance concerned and the Parties should be enabled, if they wish, to furnish additional relevant information and comments. By receiving the notification and information supporting it, the Parties should also be enabled to consider, pursuant to article 2, paragraph 3, the possibility of provisionally apply to substances which appear suitable for inclusion in Schedule I or II the appropriate régime governing one or the other of those Schedules.

5. The notification and the accompanying information should also be sent to the Party from which it was received. The Secretary-General is required to transmit the notification “to the Parties” and this term covers also the notifying Party. Apart from such an argument based on the letter of the law, transmitting the notification to the Party from which it was originally obtained is also justified on the grounds that that Party would thus be enabled to see whether the Secretary-General has chosen, from the information which he had received in support of the notification, all the required “relevant” data. The Party may ask the Secretary-General to send to the Parties, to WHO and to the Commission information which it had sent to him and which he has omitted. It may, however, be noted that the

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<sup>149</sup> In the English version both provisions are literally the same. The French and Spanish texts of article 2, paragraph 2, differ slightly from the corresponding texts of the Single Convention without affecting the identity of the meaning of the provisions of both treaties.

Secretary-General is required to transmit only such information as *he* considers relevant. If he chose not to transmit the requested additional data in order to avoid bulky reproduction and heavy costs of translation which he considers unnecessary, or for any other reason, the Party concerned may, of course, itself send the additional data which it considers relevant to the Commission, to WHO and to all those Parties it desires to inform.

6. The Secretary-General is not required to send to WHO the notification which he issues and the information which he selects as relevant if it is that Organization which initiated the procedure by its notification. It is nevertheless suggested that it might be useful if the Secretary-General would in such a case send those documents also to WHO, which would thus be enabled to request the Secretary-General to transmit supplementary data to the Parties and to the Commission.

7. Although the treaty does not require it, it would also be useful if the Secretary-General would send to the Board a copy of the notification and of the supporting information, in order to enable that organ to take all the preparatory steps which may be required to facilitate a quick execution of the Commission's decision concerning the control status of the substance concerned when taken. Although the Board is given no formal role in the procedure of article 2 on the control status of substances which are the object of a notification, its representative to the Commission and to the WHO Expert Committee on Drug Dependence would be enabled to play a more useful role at meetings of those organs considering such substances if the Board had in advance obtained the relevant data contained in the notification and in the accompanying information. The Board is regularly represented at the meeting of those two organs.

### *Paragraph 3*

**3. If the information transmitted with such a notification indicates that the substance is suitable for inclusion in Schedule I or Schedule II pursuant to paragraph 4, the Parties shall examine, in the light of all information available to them, the possibility of the provisional application to the substance of all measures of control applicable to substances in Schedule I or Schedule II, as appropriate.**

### *Commentary*

1. The Single Convention has two provisions concerning provisional control of a substance whose international control status is being considered by the World Health Organization and the Commission: one leaving the application of provisional control measures to the judgement of each Party,<sup>150</sup> and another one authorizing the Commission, pending its final decision on the matter, to prescribe, with binding effect upon Parties, the

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<sup>150</sup> Article 3, paragraph 3, subparagraph (i).

application of such measures.<sup>151</sup> The Vienna Convention does not contain such a mandatory provision, but only a discretionary one which is similar to the corresponding provision of the Single Convention, but also differs therefrom in several respects.

2. Under both treaties the Parties are required to examine in the light of all information available to them the possibility of applying provisional control measures to the substance in question.<sup>152</sup> The Parties should take into account not only the data furnished to them in the notification and supporting information received from the Secretary-General, but all the other data readily available to them. However, they are not bound to undertake a special research or even an extended search in order to be able to decide whether the application of provisional control measures is possible.

3. Although a Party may find that the application of provisional control measures is possible, it is not bound to impose such measures, no matter what its reasons may be: whether economic, social, legal, administrative or other factors.<sup>153</sup> A Party is not accountable for the reasons for which it may refuse to apply provisional control, and is not required to explain its refusal to do so to other Parties or to an international organ.

4. Under the Single Convention Parties are bound to examine the possibility of applying provisional control to any substance, not yet under control, whose control status is being examined by WHO and the Commission in the procedure which that treaty prescribes for that purpose.<sup>154</sup> It does not matter whether the substance appears suitable for inclusion in Schedule I, in Schedules I and IV, or in Schedule II of the Single Convention. Pursuant to the Vienna Convention Parties are not bound to examine the possibility of applying provisional control in regard to all substances whose international régime is being considered in the procedure which the Convention has established to this end.<sup>155</sup> Parties have that obligation only in respect of those substances not yet controlled or in Schedules III and IV of the Vienna Convention which appear suitable for inclusion in Schedule I or II of that treaty, and in respect of substances in Schedule II appearing suitable for inclusion in Schedule I.

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<sup>151</sup> Article 3, paragraph 3, subparagraph (ii); see also article 11, paragraph 1 of the 1931 Convention and article 2 of the 1948 Protocol; see *1961 Commentary* on article 3, paragraph 3, subparagraphs (i) and (ii) of the Single Convention.

<sup>152</sup> The Vienna Convention says in English: "in the light of 'all' information available to them"; in French: "*à la lumière de 'tous' les renseignements dont elles disposeront*"; and in Spanish: "*teniendo en cuenta 'toda' la información de que dispongan*"; the Single Convention uses the phrase in English: "in the light of the available information"; in French: "*compte tenu des renseignements disponibles*"; and in Spanish: "*teniendo en cuenta la información de que se disponga*". These three versions of the Vienna Convention qualify the information by the word "all", "tous" and "toda" and those of the Single Convention do not; it is nevertheless suggested that there is no difference under both treaties in the scope of information which Parties have to take into account.

<sup>153</sup> See below article 2, paragraphs 5 and 6.

<sup>154</sup> Article 3, paragraphs 1 to 7 of the Single Convention.

<sup>155</sup> Article 2, paragraphs 1 to 6 of the Vienna Convention.

5. Under the Single Convention Parties have to consider only the possibility of applying provisionally the controls applicable to its Schedule I no matter whether the substance concerned appears suitable for inclusion in its Schedule I or II. Under the Vienna Convention Parties are required to examine the possibility of applying provisionally the controls applicable to substances in its Schedule I in respect of substances appearing suitable for inclusion in that Schedule, and those applicable to substances in its Schedule II in respect of substances appearing suitable for inclusion in the latter Schedule.

#### *Paragraph 4*

**4. If the World Health Organization finds:**

**(a) That the substance has the capacity to produce**

**(i) (1) A state of dependence, and**

**(2) Central nervous system stimulation or depression, resulting in hallucinations or disturbances in motor function or thinking or behaviour or perception or mood, or**

**(ii) Similar abuse and similar ill effects as a substance in Schedule I, II, III or IV, and**

**(b) That there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control,**

**the World Health Organization shall communicate to the Commission an assessment of the substance, including the extent or likelihood of abuse, the degree of seriousness of the public health and social problem and the degree of usefulness of the substance in medical therapy, together with recommendations on control measures, if any, that would be appropriate in the light of its assessment.**

#### *Commentary*

1. The chemical structure, as such, of the substance to be examined by WHO pursuant to the paragraph under consideration is not relevant for the purpose of applying subparagraph (a), clauses (i) and (ii), i.e. of establishing the liability of a substance to be abused, although there is of course a relationship between the chemistry of a substance and its effects on the person consuming it; but minor modifications of the chemical formula of a substance may result in great changes in its pharmacological properties, including also its capacity to cause dependence. Substances belonging to different chemical groups may produce similar pharmacological effects, and those belonging to a particular chemical group may have very different pharmacological properties. Chemical classifications alone, therefore, cannot be the basis for determining the need for control.

2. It has been mentioned above that substances which themselves do not have the properties as defined in paragraph 4, but are only “convertible” into

substances having such properties cannot be placed under the régime of the Vienna Convention. Such substances are in particular not capable of producing “similar abuse or similar ill effects as a substance in Schedule I, II, III or IV” because these Schedules do not list substances which are only convertible into harmful substances without having the properties in question themselves.<sup>156</sup>

3. Clauses (i) and (ii) describe in two different ways the harmful properties that are the subject of the findings by the World Health Organization; but whether falling under the one or the other of the two sets of criteria, a substance is suitable for control by the Vienna Convention only if the World Health Organization also finds that “there is sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem warranting the placing of the substance under international control”.<sup>157</sup>

4. The phrase “international control” in this context means control by one of the four régimes applicable to the substances in the four Schedules of the Vienna Convention.

5. In regard to the question whether a “public health” problem exists the WHO Expert Committee on Drug Dependence commented in 1968:

“If . . . drug abuse or dependence is likely to be, or is known to be, only sporadic or infrequent in the population, if there is little danger of its spread . . . , and if its adverse effects are likely to be, or are known to be, limited to the individual user, there is no public health problem. Such forms of abuse may be prevented or managed by adequate information and appropriate medical care. On the other hand, if the drug dependence is associated with behavioural or other responses that adversely affect the user’s interpersonal relations or cause adverse physical, social or economic consequences to others as well as to himself, and if the problem is actually widespread in the population or has a significant potential for becoming widespread, then a public health problem does exist.”<sup>158</sup>

6. It is apparent that only a significant health problem appears to be a “public health” problem as this phrase is used by the Vienna Convention; but it must be emphasized that a health problem becomes a “public health” problem not only because a considerable number of people are already involved, but also if there is a risk that a considerable number of persons will

<sup>156</sup> See above, paragraph 7 of the general comments on article 2; and paragraphs 16 and 18 of the comments on article 2, paragraph 1.

<sup>157</sup> Subparagraph (b).

<sup>158</sup> WHO *Expert Committee on Drug Dependence, Sixteenth Report, WHO Technical Report Series No. 407*, section 1, paragraph 2; the Committee uses the term “drug” in the sense of “any substance that, when taken into a living organism, may modify one or more of its functions”, thus including narcotic drugs, psychotropic and non-controlled substances; *ibid.*, section 1, paragraph 1. At the time of this writing it is the Director-General of WHO who is authorized to perform the functions of that Organization under article 2; see World Health Assembly resolution WHA 18.46 (May 1965); see also resolution WHA 7.7 (May 1954).



be affected. It is submitted that a “public health” problem in the sense of subparagraph (b) is therefore always a “social problem”.

7. It is nevertheless held that the addition of the words “and social problem” to the phrase “public health” does not constitute a pleonasm. It appears that the addition is intended to require the WHO, in determining whether the health problem is sufficiently significant to warrant control, to take into account the actual or potential damaging effects which the abuse of the substance may have in terms of problems of the society other than those of a health character, such as a consequential reduction in labour productivity, or an increase in the incidence of traffic accidents, or considerably larger public expenditures. A more limited health problem may thus become relevant if it produces or may produce more extensive social consequences of a non-health character, while a somewhat greater health problem may be neglected by WHO for the purpose of its finding whether the substance is suitable for control pursuant to the paragraph under consideration if its actual or potential social consequences, other than those of a health character, are only minor. The extent of the actual illicit traffic or of the danger of the emergence of a considerable illicit traffic in that substance would be particularly relevant.

8. The “public health and social problem” must be of such a kind as to warrant “international control”. If the substance is abused or likely to be abused in more than one country so as to constitute a public health and social problem in those countries, the problem is “international”; but this international character alone does not warrant “international control”. What is required is that controls of the Vienna Convention are suitable to solve or at least to alleviate the problem and that lack of those controls in one country, no matter whether it has itself the public health and social problem caused by the substance under examination, weakens the control in other countries which have such a problem. On the other hand, although the “public health and social problem” exists only in a single country, “international control” of the substance concerned is warranted if the efforts of control by that country are weakened by the lack of control in other States.

9. Alcohol appears to be covered by both definitions of dangerous substances which may be considered for control by the Vienna Convention, by the definition contained in subparagraph (a), clause (i) as well as by that laid down in clause (ii) of that subparagraph. Alcohol is capable of producing a state of dependence, a central nervous system depression<sup>159</sup> resulting in such disturbances as some of those referred to in clause (i). Alcohol may also be considered to be capable of producing similar abuse and similar ill effects

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<sup>159</sup> While laymen in particular may consider alcoholic beverages to be stimulating, there appears to be very little doubt that alcohol is not a central nervous system stimulant, but a primary and continuous depressant agent of that system; see Louis S. Goodman and Alfred Gilman, *The Pharmacological Basis of Therapeutics, Fourth Edition* (London, The Macmillan Company, 1970), p. 135 and pp. 291 to 293; in any event it appears to be much less a central nervous system stimulant than a depressant.

as substances in the Schedules of the Vienna Convention.<sup>160</sup> There is also ample evidence that it is being widely abused so as to constitute a very serious “public health and social problem”. Alcoholism is, moreover, a serious problem in many countries, and in this sense it is a very important international problem. The treatment of alcoholics also gives rise to some problems similar to those relating to the treatment of abusers of many narcotic drugs<sup>161</sup> or of some psychotropic substances.<sup>162</sup> Furthermore, the degree of usefulness of alcohol in present day medical therapy is minimal. It must be admitted that the alcohol problem has many features similar to those related to the abuse of other dependence-producing drugs.

10. Nevertheless, alcohol is not fully covered by the terms of paragraph 4 and therefore cannot be placed under the control of the Vienna Convention. The “public health and social problem” which alcohol presents is not of such a nature as to warrant its being placed under “international control”, which—as has been submitted—means control by the Vienna Convention.<sup>163</sup> Alcohol does not “warrant” that type of control because it is not “suitable” for the régime of the Vienna Convention.<sup>164</sup> It appears to be obvious that the application of the administrative measures for which that treaty provides would not solve or alleviate the alcohol problem.<sup>165</sup> In fact, this was also the view of the 1971 Conference, which did not intend to apply the Vienna Convention to alcohol and consequently to cover it by the terms of paragraph 4, subparagraph (b).

11. No matter how serious the public health and social problem may be which tobacco presents in many countries, it is not covered by the criteria given in paragraph 4. Although it is capable of producing a “state of dependence”, it is not capable of producing the central nervous system stimulation (or depression)<sup>166</sup> resulting in any of the disturbances mentioned

<sup>160</sup> i.e. barbiturates listed in Schedules III and IV.

<sup>161</sup> i.e. drugs subject to the Single Convention.

<sup>162</sup> i.e. substances controlled by the Vienna Convention.

<sup>163</sup> See above paragraph 4.

<sup>164</sup> Or for the régime of the Single Convention.

<sup>165</sup> See above paragraph 8.

<sup>166</sup> It is held that nicotine which is contained in large quantities in tobacco and in some quantities in tobacco smoke has effects which consist of a primary transient stimulation and a secondary more persistent depression of the sympathetic and parasympathetic ganglia. Ganglion cells are first stimulated and then paralysed. It has also been established that nicotine has not only effects on the peripheral nervous system, but also some on the central nervous system. It is said to cause a marked stimulation of the central nervous system, particularly of the respiratory, vasomotor and emetic centres of the medulla. Stimulation is followed by depression of the central nervous system. However, the comparatively small quantities of nicotine contained in tobacco smoke appear to have only minimal effect on the central nervous system if any; Goodman and Gilman, *op cit.* (foot-note 159), pp. 588, 589 and 591. Although not very relevant in this connexion it may be mentioned that the carbon monoxide contained in tobacco smoke is also capable of having depressant effects on the central nervous system. The tissues of the brain are specially sensitive to oxygen deprivation. (Carbon monoxide combines with haemoglobin to form carboxyhaemoglobin. Haemoglobin in this form does not carry oxygen); Goodman and Gilman, *op. cit.*, pp. 930 and 932; neither nicotine nor carbon monoxide have any therapeutic value.

in subparagraph (a), clause (i), nor does it have the capacity to produce “similar abuse and ill effects” similar to those of a substance in a Schedule of the Vienna Convention. Moreover, although of no usefulness in medical therapy, it is not suitable<sup>164</sup> for the kind of controls for which the Vienna Convention provides, and which if applied would not make any useful impact on the tobacco problem. That problem, however serious, therefore does not “warrant” the placing of tobacco “under international” control, i.e. under the Vienna Convention.<sup>163</sup> Tobacco was not considered by the 1971 Conference to be a suitable object for control by that treaty.

12. The second of the two definitions, i.e. that contained in subparagraph (a), clause (ii) describing the properties of substances which WHO under the conditions of subparagraph (b) and of the concluding subparagraph of paragraph 4 may recommend for control by the Vienna Convention, is patterned after article 3, paragraph 3, subparagraph (iii) of the Single Convention indicating the characteristics of substances which WHO may recommend for, and the Commission may place under, control by that latter Convention. The basic difference between those definitions in the two treaties is that the definition in the Single Convention also covers substances which are not harmful by themselves but are “convertible” into dangerous drugs, whereas that of the Vienna Convention does not.<sup>167</sup>

13. What is to be considered to be “similar”, as this word is used in the definition, is not indicated in the Vienna Convention, and in any event could hardly be defined with a precision which would be useful for the purposes of that treaty. There may be varying degrees of similarity. It follows that it is left to the judgement and largely to the discretion of WHO to determine whether in a given case the characteristics of abuse and ill effects are close enough to the harmful properties of substances already controlled by the Vienna Convention to justify the conclusion that a similarity as required by the definition exists. In the light of the practice of WHO and of the Commission under the corresponding norm of article 3, paragraph 3, subparagraph (iii) of the Single Convention, it may be assumed that the similarity required under article 2, paragraph 4, subparagraph (a), clause (ii) would not be excluded by the fact that the substance examined by the World Health Organization has a much more potent capacity to produce abuse and ill effects than the controlled substance with which it is compared.<sup>168</sup>

14. In all cases of “similarity”, there are some elements of likeness and some of diversity. Whether WHO concludes that similarity exists or not may often depend on the particular like or dissimilar features which it may consider more or less relevant in the light of the circumstances surrounding the particular substance under consideration. To determine the relevance of particular features of the substances to be compared is left to the judgement of WHO, guided by considerations of public health.

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<sup>167</sup> See above paragraph 2 and foot-note 156.

<sup>168</sup> See *1961 Commentary* on article 3, paragraph 3, subparagraph (iii) of the Single Convention (paragraphs 6 and 7 of the comments).

15. In general, substances covered by the definition of clause (ii) will be hallucinogenics, stimulants similar to the amphetamines and depressants similar to the barbiturates and to those tranquillizers already controlled by the Vienna Convention, excluding however such of those types of psychoactive substances as are controlled, and as long as they are controlled, by the Single Convention.<sup>169</sup>

16. Since the substances which under the conditions of clause (ii) may be placed under control by the Vienna Convention need not have the same,<sup>170</sup> but only similar, harmful characteristics as those already included in the Convention's Schedules, the nature of those Schedules may gradually change. The range of substances which under those conditions could be placed under the Vienna Convention could thus gradually become wider. The Convention, by its application, may to some extent be adjusted to changing conditions in this way.<sup>171</sup>

17. While under the definition of clause (i) it is required that the substance under consideration be capable of producing "a state of dependence" in order to qualify for international control, such a capacity is not expressly required under clause (ii). One of the co-sponsors of the new text of paragraph 4<sup>172</sup> which with minor modifications was incorporated in the final text of the Vienna Convention stated, when introducing the new version at a meeting of the Committee on Control Measures of the 1971 Conference, that the concept of "dependence" was an essential part of the definition under clause (i).<sup>173</sup> He added that "the inclusion of that concept did not limit the scope of the instrument, since there could still be a finding [under clause (ii)] that a particular substance produced abuse and ill effects similar to those produced by substances already included in the schedules, without any proof

<sup>169</sup> See above comments on article 2, paragraph 1 (paragraphs 6 to 14 of the comments); see also *WHO Expert Committee on Drug Dependence, Sixteenth Report, WHO Technical Report Series No. 407*, section 3, which contains the considerations that guided the Committee in preparing the original Schedules for the draft treaty which as modified by the Commission and the 1971 Conference became the Vienna Convention; for these original Schedules see *WHO Expert Committee on Drug Dependence, Seventeenth Report, WHO Technical Report Series No. 437*, section 4, paragraph 4. The much shorter Schedules of the Vienna Convention as adopted by the 1971 Conference do not contain a single substance which was not included in the Schedules prepared by the WHO Expert Committee. See also the Revised Draft Protocol on Psychotropic Substances, reproduced in *1971 Records*, vol. I, pp. 23 *et sequitur*.

<sup>170</sup> It is hardly possible that a new substance would have exactly the same properties as a substance already included in the Schedules.

<sup>171</sup> See *1961 Commentary* on article 3, paragraph 3, subparagraph (iii) of the Single Convention (paragraph 8 of the comments).

<sup>172</sup> 1971 Conference, document E/CONF.58/C.4/L.58.

<sup>173</sup> The notion of dependence did not appear in the *Revised Draft Protocol on Psychotropic Drugs* (article 2, paragraph 4) which served as working document of the 1971 Conference. It was introduced by the sponsors of the new text in line with a recommendation of the World Health Organization; see *World Health Organization Expert Committee on Drug Dependence, Seventeenth Report* (referred to above in foot-note 169), section 3 (p. 9), and *Eighteenth Report, World Health Organization, Technical Report Series No. 460*, section 2, paragraph 2 (p. 7) and *1971 Records*, vol. II, p. 176.

of dependence being required”.<sup>174</sup> The speaker made this statement in defence of the introduction of the notion of “dependence” in the definition of clause (i) against opponents of the new text. He appears to have assumed that not all substances in the Schedules of the Vienna Convention are capable of producing “dependence”, which he defined as capacity to “induce repeated use characterized by want or need”.<sup>175</sup>

18. Whether or not the view presented in that statement at the 1971 Conference is correct, i.e. whether or not under clause (ii) the World Health Organization, in order to be able to recommend a substance for international control, must in all cases find that the substance in question is capable of producing “a state of dependence”, there can be no doubt that the World Health Organization, without such a finding, cannot determine that under clause (ii) a substance has the capacity to produce similar abuse and similar ill effect to those of a “dependence-producing” substance already in a schedule. It is submitted that it can hardly be assumed that a substance which is not dependence-producing has similar harmful properties to those of a dependence-producing substance already controlled by the Vienna Convention. Moreover, it is suggested that WHO, when determining the similarity of an uncontrolled substance with a controlled dependence-producing substance, would not only have to examine whether the uncontrolled substance is dependence-producing in any sense, but more specifically whether both substances have “similar” dependence-producing properties. The similarity of such properties would be one of the elements in the similarity of the harmful characteristics under clause (ii).

19. Whether WHO, in order to be able to recommend under the conditions of clause (ii) a new substance for international control, must in all cases find that it is dependence-producing, depends on the question whether all substances in the Schedules of the Vienna Convention are dependence-producing. The answer to this question may in turn depend on the meaning which one attaches to the term “dependence-producing”. There cannot be any doubt that most substances in the Schedules of the Vienna Convention are dependence-producing. A difference of opinion can be found only in respect of some hallucinogenic substances in Schedule I, especially also in regard to LSD. Since the WHO Expert Committee on Drug Dependence has selected, in accordance with standards which it established,<sup>176</sup> all psychotropic substances later included by the 1971 Conference in the Schedules of the Vienna Convention, one must attribute particular importance to its views on the subject. One can find in reports of that Committee the express or implied view that those hallucinogenics are indeed dependence-producing.<sup>177</sup>

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<sup>174</sup> 1971 *Records*, vol. II, p. 176.

<sup>175</sup> *Ibid.*

<sup>176</sup> WHO *Expert Committee on Drug Dependence, Sixteenth Report* (referred to in foot-note 169), section 3 and *Seventeenth Report* (referred to in foot-note 169), section 4.

<sup>177</sup> WHO *Expert Committee on Drug Dependence, Sixteenth Report*, section 3 (pp. 17 and 18) and *Eighteenth Report* (referred to above in foot-note 173), section 3, paragraph 1, foot-note 2 (p. 9).

The WHO Scientific Group on the Evaluation of Dependence-Producing Drugs which met in 1963, however, stated: "The reports of recent outbreaks of abuse of LSD have not indicated clearly the extent of psychic dependence and there is no evidence of physical dependence."<sup>178</sup>

20. It has on the other hand been found that chronic users of LSD are quite uncommon, and that even they rarely use the substance more frequently than biweekly. Most users tend with time to become less interested in LSD. While they continue to smoke marihuana, they discontinue the consumption of LSD or other potent hallucinogenics (psychedelics).<sup>179</sup> One may perhaps consider such users as dependent on the use of drugs or psychotropic substances in general, rather than on the use of particular hallucinogenics.

21. One may, however, conclude that it would in practice be of little importance to decide whether under clause (ii) all new substances must be "dependence-producing" in order to qualify for international control. In the case of those few substances in the Schedules of the Vienna Convention which some authorities may consider not to be dependence-producing, the actual properties are not controversial. There is only a difference in the terminology applied to them. What is relevant under clause (ii) is the similarity of actual properties of the substance to be examined by WHO to those of a substance in a Schedule. It does not really matter in this context whether some similar properties of the two substances which are compared are named "dependence-producing", as long as they are found to be similar.

22. It may be useful in this context to recall the view of the WHO Expert Committee on Drug Dependence<sup>180</sup> expressed in 1963 that "drug<sup>181</sup> dependence is a general term selected for its applicability to all forms of drug abuse and carries no connotation of the degree of risk to public health or need for a particular type of drug control". The Committee stated that the characteristics of drug dependence will vary with the agent involved, and that there are different "types" of drug dependence, including *inter alia* the barbiturate type and the amphetamine type.<sup>182</sup> This accords with the opinion<sup>183</sup> that a new substance examined by the World Health Organization could under clause (ii) not be found to be similar in its harmful properties to a dependence-producing substance already controlled by the Vienna Convention if, although dependence-producing in a general sense, it causes a type

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<sup>178</sup> Report of the Group, WHO Technical Report Series No. 287, section 3, paragraph 5 (p. 22).

<sup>179</sup> Goodman and Gilman, *op. cit.* (foot-note 159), p. 297.

<sup>180</sup> Then called WHO Expert Committee on Addiction-Producing Drugs; see *1961 Commentary* on article 3, paragraph 3, subparagraph (iii) of the Single Convention, foot-note 2 (p. 86).

<sup>181</sup> As to the term "drug" as including in this instance "psychotropic substances", see above foot-note 158.

<sup>182</sup> WHO Expert Committee on Addiction-Producing Drugs, *Thirteenth Report, WHO Technical Report Series No. 273*, section 4 (pp. 9 and 10).

<sup>183</sup> See above, paragraph 18.

of dependence which is essentially different from that caused by the substance with which the uncontrolled substance is being compared. However, such an uncontrolled substance whose dangerous properties would thus be found to be dissimilar to those of all substances already in the Schedules could nevertheless qualify for international control under clause (i).

23. An exact definition of the general notion of a “state of dependence”, therefore, may not be necessary for the purposes of clause (ii), because the characteristics of the different types of dependence which might have to be established under that provision would be indicated by the properties of the controlled substances with which the uncontrolled substance in question would be compared. It is, however, submitted that it might be useful for the purposes of clause (i) to consider what the Convention means by the phrase “a state of dependence”<sup>184</sup>, since it is expressly required that a substance must have the capacity to produce such a condition in order to qualify for international control, and since the exact sense of “dependence” in particular cases cannot be determined under clause (i) by reference to the properties of substances already under control, as it can and must be done under clause (ii).

24. “Dependence” as the term is used in clause (i) means dependence on a particular central nervous system stimulant or depressant capable of having the effects outlined in that clause and being considered by WHO as to its suitability for international control. The word “dependence” as commonly used has a very broad meaning.<sup>185</sup> It may refer to varying degrees of a desire of an individual to use particular chemical substances in order to obtain a state of well-being or an absence of discomfort. That desire may be mild or strong, or even so overpowering as to constitute a craving or compulsion.<sup>186</sup> The substance producing “dependence” may, but need not, cause “tolerance”. The dependence may be only “psychological”, *i.e.* the repeated use of the substance on which the individual depends does not cause an altered physiological state characterized by intense physical disturbances when consumption of the substance is discontinued.<sup>187</sup> The dependence on a substance may also be “physical” if its repeated use causes such an altered physiological state.

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184 The Swedish representative stated at the twenty-fourth meeting of the Committee on Control Measures of the 1971 Conference: “With regard to paragraph 4, the meaning of the word “dependence” was perfectly clear in the context of the clinical experience that had been acquired and of the progress which was being continually made in that connexion.” Paragraph 14 of the minutes of that meeting, *1971 Records*, vol. II, p. 177; see also paragraph 16 of the minutes of the 25th meeting of that Committee, *1971 Records*, vol. II, p. 179.

185 One may be “dependent” upon a wide variety of substances including laxatives, headache medicines (aspirin), vitamins, and antibiotics; Goodman and Gilman, *op. cit.* (foot-note 159), p. 276.

186 *Ibid.*

187 Or its action is counteracted by a specific antagonist; *Report of a WHO Scientific Group on the Evaluation of Dependence-Producing Drugs* (cited above in foot-note 178), section 2 (p. 5).

25. "Physical dependence" is defined as "an altered physiological state produced by the repeated administration of a drug, which necessitates the continued administration of the drug to prevent the appearance of a stereotyped syndrome, *the withdrawal or abstinence syndrome* characteristic for the particular drug". "Tolerance" refers to a condition in which "after repeated administration, a given dose of a drug produces a decreasing effect or, conversely, when larger doses must be administered to obtain the effects observed with the original dose".<sup>188</sup>

26. The "state of dependence" referred to in clause (i) must always be a "psychological" or "psychic" dependence; it may, but need not, also be a "physical" dependence; it does not matter whether it is accompanied by "tolerance".

27. To determine more precisely what is to be considered "a state of dependence" for the purpose of applying clause (i) and in particular what degree of desire or craving should be required is left to the judgement of the World Health Organization. In the light of progress made in the understanding of the problem of drug abuse and of changing requirements of public health, the World Health Organization may modify its concept of dependence for the purpose of carrying out that treaty provision.<sup>184</sup>

28. In this context it may be interesting to reproduce the definition of "dependence" by the WHO Expert Committee on Drug Dependence "as a state, psychic and sometimes also physical, resulting from the interaction between a living organism and a drug,<sup>158</sup> characterized by the behavioural and other responses that always include a compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effects, and sometimes to avoid the discomfort of its absence. Tolerance may or may not be present. A person may be dependent on more than one drug".<sup>189</sup>

29. In order to be able to recommend international control under the definition of clause (i) (and the conditions of subparagraph (b) and of the closing subparagraph of paragraph 4), the World Health Organization must not only find that the substance concerned has the capacity to produce "a state of dependence" and "central nervous stimulation or depression",<sup>190</sup> but also that the stimulation or depression could result "in hallucinations or disturbances in motor function or thinking or behaviour or perception or mood". That view follows from the text of subclause (2) of clause (i), although a disturbance in thinking, perception or mood need not necessarily result from a central nervous stimulation or depression. Some expert opinion holds that WHO should also be able to recommend control in cases in which disturbances do not result from such a stimulation or depression.

<sup>188</sup> These two definitions are by Jerome H. Jaffe; Goodman and Gilman, *op. cit.* (foot-note 159), p. 277. For the term "drug", see above, foot-note 158.

<sup>189</sup> *Sixteenth Report* (referred to above in foot-note 169), section 1, paragraph 1 (p. 6); see also the *Eighteenth Report* (referred to in foot-note 173), section 3, paragraph 1 (p. 9).

<sup>190</sup> Or both central nervous stimulation and depression; but either would suffice.



30. Broad terms such as “thinking” or “mood” very often do not have a fully exact counterpart in other languages, and even by paraphrasing it is frequently not possible to render them accurately in translations. “Thinking” is not exactly the same as “juicio” or “judgement”, and “mood” not necessarily the same as “estado de ánimo” or “l’humeur”. However, for the purposes of the Vienna Convention such terms must have the same meaning in the different language versions, all five languages being equally authentic.<sup>191</sup> Here again it is the function of WHO to interpret those terms in the light of the purposes of the Convention, and in so doing to attribute the same sense to clause (i) in the five official language versions. Moreover, the disturbances mentioned in clause (i) are symptoms resulting from the action of chemical substances on the central nervous system. Since they are a medical matter, the findings of WHO regarding those symptoms are to be “determinative” under paragraph 5 of article 2. It may nevertheless be useful to give in the following paragraphs some indication of the meaning of the terms as used in clause (i) for some pharmacological effects of the chemical substances to be examined by the World Health Organization. It is, however, submitted that this should in no way be regarded as limiting the authority of WHO to interpret those terms.

31. The term “hallucinations” includes the perception of objects with no reality, or experience of sensations with no external cause.<sup>192</sup> Some of the substances already in the Schedules of the Vienna Convention are also capable of producing “hallucination”. Such hallucinogenic substances are found in Schedule I of that treaty. However, not only those hallucinogenics but under certain conditions also other substances such as amphetamines listed in Schedule II of the Vienna Convention can induce hallucinations.<sup>193</sup> Hallucinations may be accompanied by “disturbances” in “thinking”, “perception”, “mood” and “behaviour”. Substances causing hallucinations may be covered not only by the definition of clause (i) but also by that of clause (ii), in the latter case if they are capable of producing “similar abuse and similar ill effects” as a substance already in a Schedule of the Vienna Convention. Hallucinogenics could in appropriate cases also be placed under control by the Single Convention under the conditions of its article 3, paragraph 3, subparagraph (iii).<sup>194</sup>

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191 Last paragraph of the Vienna Convention.

192 Webster’s *New International Dictionary of the English Language, Second Edition* (Springfield, Massachusetts, G and C. Merriam Company, 1948), p. 1129; this term in its pathological and psychological sense is also defined as the apparent perception of an external object when no such object is present; *The Shorter Oxford Dictionary* (The Clarendon Press, Oxford, 1947), vol. I, p. 858.

193 Goodman and Gilman, *op. cit.* (foot-note 159), p. 296; cocaine in Schedule I of the Single Convention has also such a capacity; *ibid.*; “hallucinogenics” in the technical sense will differ from other substances which may cause hallucinations, by their capacity “reliably” to induce or compel such states of altered perception, thought or feeling as are and can be experienced only in dreams and occasionally also in a condition of religious exaltation; *ibid.*

194 See above paragraph 8 of the general comments on article 2, paragraphs 10 and 16 of the comments on article 2, paragraph 1 and 1961 *Commentary* on article 3, paragraph 3, subparagraph (iii) of the Single Convention (paragraph 7 of the comments).

32. The term “perception” may relate to the capacity of perceiving by the senses as well as to the process of perceiving. It may also cover the capacity of recognizing objects or facts by the combination of different sensations and the utilization of past experiences.<sup>195</sup> A “disturbance” in “perception” thus may also be caused by a disturbance in “thinking”.

33. The term “thinking” may refer to the capacity of “judging” correctly a situation or a problem and to that of arriving at correct conclusions; it covers also the actual process of weighing and arriving at such judgements and conclusions.<sup>196</sup> Disturbances in thinking may *inter alia* be accompanied by disturbances in “behaviour” and “mood”.<sup>197</sup>

34. The term “behaviour” comprises the mode of conducting oneself, the manner of behaving “absolutely” or “in relation to others”, or the action or reaction in relation to environment. In a psychological sense the term relates to the individual’s activities eventuating either visibly in muscular movement or invisibly in glandular secretion.<sup>198</sup> Disturbances of “behaviour” will often be found to be accompanied by disturbances in “mood” and frequently also by disturbances in “thinking”. “Drug dependence” as such—as defined by the WHO Expert Committee on Drug Dependence—is characterized, *inter alia* by a “disturbance” in “behaviour”.<sup>199</sup>

35. The term “mood” being a “frame of mind” or a “state of feeling”<sup>200</sup> does not appear to be a very precise concept. A disturbance of “mood” may often appear together with a disturbance of behaviour and also with a disturbance of thinking.

36. All of the disturbances referred to in subclause (2) of clause (i) may be dangerous not only for the person taking the substance but for other persons as well. This is particularly true in respect of disturbances in thinking or mood. It is quite common for more than one of the disturbances mentioned in subclause (2) to appear simultaneously. Some disturbances quite frequently may also be caused by the use of substances meeting the criteria laid down in clause (ii). In fact, the substances already included in the Schedules of the Vienna Convention by the 1971 Conference may produce one or more of those disturbances. For instance, barbiturates listed in Schedule III, whose properties would also be covered by the criteria of clause (i), can produce several of the disturbances noted in that clause such as confused thinking, depressed mood, inattention to stimuli and disturbances in

<sup>195</sup> Webster’s, *op. cit.* (foot-note 192), p. 1816 and p. 2276 (entry “sensation”).

<sup>196</sup> Webster’s, *op. cit.* (foot-note 192), p. 2026 and p. 2027.

<sup>197</sup> This may be the case in the event of mild barbiturate intoxication (in the acute as well as the chronic effects), Goodman and Gilman, *op. cit.* (foot-note 159), pp. 289 to 290.

<sup>198</sup> Webster’s *op. cit.* (foot-note 192), p. 246 and the *Oxford Dictionary* (cited in the same foot-note), vol. 1, p. 164.

<sup>199</sup> See above paragraph 28 and foot-note 189.

<sup>200</sup> *The Shorter Oxford Dictionary, op. cit.* (foot-note 192), vol. I, p. 1278.

motor function (ataxia and disequilibrium, “ataxia” being the inability to co-ordinate voluntary muscular movements.)<sup>201</sup>

37. While the disturbances mentioned in clause (i) are not mutually exclusive and two or more of them may frequently appear together as a result of consumption of the same chemical substance, it is sufficient for the purposes of subparagraph (a) that WHO find the existence of only one of them.

38. It is submitted that not all disturbances mentioned in clause (i), subclause (2), however minor, are “disturbances” within the meaning of that provision, but only those which are significant, i.e. which, by loss of behavioural control or of other faculties for preventing self-injury or injury to others, or otherwise, could cause “adverse physical, social or economic consequences” to the user of the substance involved or to others, are relevant in this context.<sup>202</sup> The intensity of disturbance required in order to be relevant, in the case of each of those symptoms of the effect of the substance concerned on the central nervous system, will differ. It is suggested that in determining the relevance of the degree and also of the special features of a disturbance considered pursuant to clause (i), account would have to be taken of the role which the disturbance may play in rendering the actual abuse or likelihood of abuse of the substance in question a “public health and social problem”.

39. It may be stressed that probably all of the substances placed in the Schedules by the 1971 Conference could be covered by the terms of clause (i), subclause (2) and most, if not all, by the definition of the whole clause (i).<sup>203</sup> It may be pointed out that substances fitting the definition of clause (i) could also be recommended for control under clause (ii) if the conditions of that latter clause were met<sup>204</sup>, as would very often be the case. Clause (i) was not included in the Convention in order to extend the scope of that treaty to substances essentially different from those which were placed in the Schedules by the 1971 Conference or could be placed in the Schedules pursuant to clause (ii). It appears to be intended only to close such possible future gaps in international control as could be caused by the appearance of central nervous system stimulants or depressants which would present public

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201 Ataxia and disequilibrium may also be caused by some minor tranquillizers and by ethyl alcohol; Goodman and Gilman, *op. cit.* (foot-note 159), p. 172. Distortions of mood, impairment of thinking and of fine motor skills may be after-effects of barbiturates; *ibid.*, p. 103. Alcohol may cause disturbances in mood accompanied by motor disturbances; *ibid.*, p. 136. Some hypnotics and sedatives (“bromide” intoxication) may produce neurological disturbances manifested in motor inco-ordination; *ibid.*, pp. 122 and 270.

202 See also above paragraph 5 of the present comments and *World Health Organization Report, Committee on Drug Dependence, Sixteenth Report* (cited above in foot-note 158), section 1, paragraph 2 (pp. 6 to 7).

203 See above paragraphs 17 to 21. Whether all of the substances already in the Schedules of the Vienna Convention are covered will depend on the meaning of the phrase “state of dependence” as applied to them.

204 And of course those of subparagraph (b) and of the concluding subparagraph.

health and social problems analogous to those created by substances already controlled by the Vienna Convention, but which for some reasons that could not be foreseen by the 1971 Conference might be found not to have the capacity to produce “similar abuse and similar ill effects” to those of substances already in the Schedules of that treaty. The definitions of clauses (i) and (ii) are overlapping, and so are both of them with the definition of article 3, paragraph 3, subparagraph (iii) of the Single Convention.<sup>205</sup>

40. Under paragraph 4 WHO is required to take four actions: first, an examination of the substance in question in order to make the findings described in subparagraph (a) and (b); secondly, to make in the light of the results of that examination an assessment of the substance as outlined in the concluding subparagraph of paragraph 4; thirdly, to determine whether control by the Vienna Convention should be recommended, and if so, what particular régime provided for in that treaty should be applied; and finally, to communicate its findings, assessment and recommendations regarding control to the Commission through the Secretary-General.<sup>206</sup> Several questions which may arise in the course of the examination by the World Health Organization of the substance which is the subject of the procedure pursuant to paragraph 4 have been considered in the preceding paragraphs of these comments on that provision.

41. The “assessment” which pursuant to the concluding subparagraph WHO is required to include in its communication to the Commission should not only comprise the factual results of its examination under subparagraphs (a) and (b), but also an *evaluation* of the data which it may have found, in the light of such considerations of public health as it may consider appropriate for the purpose of assisting the Commission in arriving at a correct decision under paragraphs 5 and 6.<sup>207</sup> The assessment must in particular also include WHO’s views on the “extent or likelihood of abuse”, “the degree of seriousness of the public health and social problem” and “the degree of usefulness of the substance in medical therapy”.

42. It is obvious that pursuant to subparagraph (b) WHO must also establish the extent of abuse or the degree of likelihood of abuse of the substance which it is examining. It must do this in order to be able to determine whether that abuse or likelihood of abuse constitutes a “public health and social problem warranting the placing of the substance under international control”. Those quantitative factors must be taken into account since they might show whether the case considered by WHO is sufficiently

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<sup>205</sup> See also above paragraph 16 of the comments on article 2, paragraph 1 and paragraph 12 of the comments on article 2, paragraph 4; see also *1961 Commentary* (paragraph 6 of the comments on article 3, paragraph 3, subparagraph (iii) of the Single Convention).

<sup>206</sup> As regards the question whether the World Health Organization could without taking those actions terminate the procedure under article 4 by withdrawing its notification in cases in which the procedure was initiated by the World Health Organization itself, see above paragraph 20 of the comments on article 2, paragraph 1.

<sup>207</sup> Or under article 3, paragraph 4 under the similar procedure pursuant to that provision.

significant to present such a problem.<sup>208</sup> The World Health Organization's assessment should therefore indicate in sufficient detail the extent of abuse and the degree of the likelihood of abuse, particularly because their determination involves not only medical and scientific findings<sup>209</sup> which would have to be accepted by the Commission,<sup>210</sup> but also the establishment of other facts on whose proof and relevance the Commission may differ from the World Health Organization. A detailed explanation of the views of WHO on the extent of the actual abuse or on the degree of likelihood of abuse of the substance which it has considered would be very useful to the Commission in performing its tasks.

43. The extent of abuse or the degree of likelihood of abuse are important considerations in assessing "the degree of seriousness of the public health and social problem". The World Health Organization must under subparagraph (b) consider the magnitude of the health and social problem which is presented by the abuse or likelihood of abuse of the substance which it examines in order to be able to decide whether that problem is significant, because it would otherwise not be a "public health and social problem" within the meaning of subparagraph (b), warranting the imposition of international controls;<sup>208</sup> but it would not be enough for the World Health Organization to determine simply whether the public health and social problem is or is not significant enough to warrant control. The Organization must beyond that assess the *degree* of seriousness of the problem. Its views on the matter are important for the Commission, which is not bound to place under control a substance dangerous under the terms of subparagraphs (a) and (b) even though it in fact presents a "public health and social problem" warranting international control according to subparagraph (b). Since in arriving at its decision the Commission would have to weigh the dangerous properties of the substance against the non-medical considerations mentioned in paragraph 5<sup>211</sup>, it would find it useful to have the views of WHO on the *degree* of seriousness of the public health and social problem which it has to take into account. WHO evaluation of the *degree* of seriousness of that problem is in fact indispensable in this context, because there is a relationship between the nature of the dangerous pharmacological properties of a substance and the magnitude of the public health and social problem which it may cause. It is suggested that it would in many cases be useful if WHO would include in its assessment addressed to the Commission not only its medical and scientific reasons<sup>208</sup> for determining the degree of seriousness of the public health and social problem concerned but, where appropriate, also its other considerations.

44. WHO is required to include in its assessment addressed to the Commission also an evaluation of "the degree of usefulness of the substance

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208 See above paragraph 5 to 7 of the comments on article 2, paragraph 4.

209 Pharmacological properties of a substance may be an important factor in deciding whether there is evidence of likelihood of abuse of the substance.

210 Article 2, paragraph 5; see also article 3, paragraph 4.

211 See also article 3, paragraph 4.

in medical therapy". It may be appropriate to recall in this connexion the view of the WHO Expert Committee on Drug Dependence that "the need, type and degree of international control must be based on two considerations: (a) the degree of risk to public health and (b) the usefulness of the drug in medical therapy".<sup>212</sup> The degree of therapeutical usefulness of the substance concerned would accordingly be very important to the World Health Organization in choosing the particular régime which it might recommend for the substance. That information will be indispensable for the Commission in considering in which Schedule of the Vienna Convention, i.e. under what particular control régime provided for in that treaty, it should place the substance. It is apparent that in determining the usefulness of a medicine not only its potential beneficial effects, its value in the case of grave medical indications and the extent and frequency of its employment, but also the intensity of its dangerous properties such as those described in subparagraph (a) and other harmful side effects may have to be taken into account. All these present "medical matters".<sup>213</sup> It is, however, submitted that in some cases the great costs of a medicine may also be of some relevance.

45. The assessment by WHO of "the degree of seriousness of the public health and social problem and the degree of usefulness of the substance in medical therapy" is indispensable in all cases in which an uncontrolled substance is being considered for international control, as well as in those cases in which a controlled substance is being examined with a view to transferring it from one Schedule to another Schedule, or with a view to deleting it from the Schedules, pursuant to article 2, paragraph 6, i.e. with a view to changing its control régime or to freeing it from control.

46. The phrase "recommendations on control measures" means "recommendations of the Schedule in which the substance in question should be placed". WHO is not prevented from recommending alternatively two Schedules for the same substance in cases in which it finds it appropriate to do so. In view of the Commission's right to choose another Schedule than that recommended by the World Health Organization, that Organization may find it useful to make such an alternative recommendation in order to indicate to the Commission which Schedule the World Health Organization would consider second best if the Commission does not accept the Organization's first choice.<sup>214</sup>

47. It is suggested not only that WHO should recommend the Schedule in which the substance concerned should be placed in cases in which it finds

<sup>212</sup> Its *Sixteenth Report* cited in foot-note 158, section 3 (p. 18); see also its *Eighteenth Report* (cited in foot-note 173), section 3, paragraph 4, subparagraph 1 (p. 31).

<sup>213</sup> Article 2, paragraph 5; see also article 3, paragraph 4.

<sup>214</sup> The World Health Organization could not make such an alternative recommendation under article 3, paragraph 3, subparagraph (iii) of the Single Convention; see *1961 Commentary* on that provision (paragraph 3 of the comments).

that the imposition of control would be appropriate,<sup>215</sup> but that it might in appropriate instances also indicate in the assessment to be communicated to the Commission that control is not required, if it arrives at that conclusion.

48. As regards the question whether a substance should be controlled or in which Schedule a substance should be placed, WHO has very wide discretion in making its recommendations, as the Commission has in making its decisions.<sup>216</sup>

49. It is hardly possible to foresee exactly all the considerations which WHO and the Commission may appropriately take into account in adopting, as the case may be, the recommendations or decisions referred to in the preceding paragraph. However, in view of the purposes of the Vienna Convention<sup>217</sup>, it is safe to state that WHO, in recommending a particular Schedule for a substance<sup>218</sup>, will be guided by its views of the degree of risk to public health which that substance presents and of its usefulness in medical therapy.<sup>219</sup> It has been pointed out above that in taking into account those two basic principles it will also have to pay attention to other factors than those of a medical or scientific nature.<sup>220</sup>

50. It may be useful to indicate in this place the more specific considerations which the WHO Expert Committee on Drug Dependence had in mind when proposing a substance for inclusion in a particular Schedule. It may be recalled that all substances but one in the Schedules established by the 1971 Conference have been included in a Schedule comparable to the group for which they had been recommended by the WHO Expert Committee.<sup>221</sup> The considerations which guided the Committee in including psychotropic substances in different groups are as follows:

For inclusion in Group (a) which became Schedule I of the Vienna Convention:

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215 Or under paragraph 6 if it would find that a transfer to another Schedule would be desirable.

216 Article 2, paragraph 5; the same applies to the recommendations of WHO and to the decisions of the Commission under article 2, paragraph 6 and article 3, paragraph 4.

217 See also the references in the Preamble to public health and social problems, to the indispensability of the use of psychotropic substances for medical and scientific purposes and to the desirability that their availability should not be unduly restricted.

218 Or pursuant to article 2, paragraph 6 to free a psychotropic substance from control (i.e. the deletion of a substance from a Schedule without transferring it to another Schedule) or pursuant to article 3, paragraph 4 to terminate the exemption of a preparation from control measures.

219 See above paragraph 44 of the comments on article 2, paragraph 4.

220 See above paragraphs 5 to 8 of the comments on the provision under consideration.

221 Phencyclidine was included by the 1971 Conference in Schedule II, although it had been proposed by the WHO Expert Committee for inclusion in Group (c) corresponding to Schedule IV of the Vienna Convention; *Seventeenth Report of the Expert Committee* (cited above in foot-note 169), section 4, paragraph 4 (pp. 13 to 18); however, not all substances recommended for control by the Committee were included by the 1971 Conference in Schedules of the Vienna Convention.

Substances whose liability to abuse constitutes an especially serious risk to public health and which have a very limited, if any, therapeutic usefulness.

For inclusion in Group (b.1) which became Schedule II:

Substances whose liability to abuse constitutes a substantial risk to public health and which have little to moderate therapeutic usefulness.

For inclusion in Group (b.2) which became Schedule III:

Substances whose liability to abuse constitutes a substantial risk to public health and which have moderate to great therapeutic usefulness.

For inclusion in Group (c) which became Schedule IV

Substances whose liability to abuse constitutes a smaller but still significant risk to public health and which have a therapeutic usefulness from little to great.<sup>222</sup>

51. Although, "bearing in mind the economic, social, legal, administrative and other factors it may consider relevant",<sup>223</sup> the Commission must also give particular weight to the degree of risk to public health which the substance in question presents, and to its therapeutic usefulness, when deciding whether it should be controlled or in which Schedule it should be placed. It appears to have held, at its first special session in 1970, the same views on this question as those of the WHO Expert Committee on Drug Dependence. That conclusion may be drawn from the text of article 2, paragraph 4 of the Revised Draft Protocol on Psychotropic Substances<sup>224</sup> which it adopted, and which reads in part as follows:

"... the World Health Organization shall determine the degree of seriousness of the problem (especially serious, serious, substantial or significant) and the degree of usefulness of the substance in medical therapy (great, moderate or little, if any).<sup>5</sup> If the liability to abuse of such a substance constitutes an especially serious public health and social problem, and if it has little, if any, usefulness in therapy, the World Health Organization shall recommend that the substance be added to Schedule I. If the liability to abuse of the substance constitutes a public health and social problem which is lesser but still serious, substantial or significant, and in the light of the degree of usefulness of the substance in therapy, the World Health Organization shall recommend that the substance be added to Schedule II, III or IV, as appropriate. The World Health Organization shall communicate its findings and recommendations to the Commission."

<sup>5</sup> The representative of India expressed the view that the degree of seriousness of the public health and social problem should be the overriding consideration in regard to recommendations as to the Schedule in which a substance is to be included."

<sup>222</sup> *Ibid.*, pp. 13, 14 and 16.

<sup>223</sup> Article 2, paragraph 5; see also article 3, paragraph 4.

<sup>224</sup> The Protocol served as working document of the 1971 Conference; see also foot-note 169 above.



52. It is also suggested that WHO may consider whether to recommend and the Commission whether to decide to place a preparation in a less strictly controlled Schedule than that in which the substance which it contains is listed, and thus to transform that preparation into a separate psychotropic substance according to article 1, paragraph (e). WHO and the Commission may consider such an action if they find that the preparation, because of its composition, presents a much lesser risk to public health than the basic substance which it contains, and that the basic substance cannot be recovered by readily available means. Such a measure might appear to be desirable in the case of preparations whose dangerous properties would be relatively minor, but whose unilateral exemption pursuant to article 3, paragraphs 2 and 3 would nevertheless appear to be undesirable.

53. WHO may join to its notification of a substance pursuant to paragraph 1 its assessment and recommendations of control concerning that substance.<sup>225</sup> Where possible, the Organization might consider it desirable to do so in order to speed up the procedure, as would in some cases be advisable in the interest of public health. It might in other cases be preferable to delay the assessment and recommendations in order to give the Parties<sup>226</sup> an adequate time to submit to WHO their comments if they so wish.

54. In a procedure properly initiated by a notification pursuant to paragraph 1<sup>227</sup>, WHO may perform its function under paragraph 4 even prior to the coming into force of the Convention. It may be recalled that the Office of Legal Affairs of the United Nations ruled in 1964 that WHO was entitled to make recommendations regarding changes in the Schedules of the Single Convention prior to the entry into force of that treaty.<sup>228</sup>

55. The wording of paragraph 4 appears to apply only to cases in which an uncontrolled substance is being considered for international control. However, the procedure outlined in that paragraph is to be followed *mutatis mutandis* also in cases in which the deletion of a substance from a Schedule, with or without transfer to another Schedule, is the subject of WHO examination pursuant to article 2, paragraph 6. Some of the observations made in reference to paragraph 4 may also have some relevance in that Organization's consideration of the termination of the exemption of a preparation from control measures under article 3, paragraph 4.

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225 Both the notification and the assessment are to be addressed to the Secretary-General; see above paragraph 40.

226 Which would receive the notification of the World Health Organization from the Secretary-General pursuant to paragraph 2.

227 See above paragraph 21 of the comments on this provision.

228 *Commission on Narcotic Drugs, Report of the Nineteenth Session (1964), Official Records of the Economic and Social Council, Thirty-seventh Session, Supplement No. 9 (E/3893)*, paragraphs 156 to 158.

*Paragraphs 5 and 6*

5. The Commission, taking into account the communication from the World Health Organization, whose assessments shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources.

6. If a notification under paragraph 1 relates to a substance already listed in one of the Schedules, the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment. The Commission, taking into account the communication from the World Health Organization as under paragraph 5 and bearing in mind the factors referred to in that paragraph, may decide to transfer the substance from one Schedule to another or to delete it from the Schedules.

*Commentary*

1. Paragraph 5 refers to actions which the Commission may take in respect of the control status of substances not yet controlled, while paragraph 6 deals with the actions which the Commission may take in respect of substances already in the Schedules of the Vienna Convention. Under paragraph 5 the Commission may refuse to place the substance under control, or it may place it in any one of the four Schedules. Pursuant to paragraph 6, it may refuse to change the control status of the substance, or it may remove it from the Schedule in which it is listed with or without transferring it to another Schedule. The removal from the Schedule would thus be a change in the control régime or exemption from all control by the Vienna Convention.

2. Only those actions of the Commission by which a Schedule is changed, i.e. those by which an uncontrolled substance is placed under control or a controlled substance is placed under a different régime or freed from control, are “decisions” within the meaning of article 17, paragraph 2<sup>29</sup> and consequently require adoption by a two-thirds majority of the members of the Commission, i.e. by a two-thirds majority of its total membership, no matter how many members are absent, abstain, or although present, do not participate in the voting.<sup>230</sup> A refusal or omission of the Commission to take such an action, i.e. to make a change in the Schedules,

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<sup>229</sup> Actions of the Commission terminating wholly or partially exemptions of preparations from control measures, pursuant to article 3, paragraph 4 are also such decisions.

<sup>230</sup> See above paragraph 10 of the general comments on article 2; see also below the comments on article 17, paragraph 2.

however formulated, whether called decision, resolution or otherwise, would not be a decision in the sense of article 17, paragraph 2. A decision of the Commission to “seek further information from the World Health Organization or from other appropriate sources” would also not be a decision in that sense; neither would other procedural decisions.

3. It appears that the Commission is not prevented from changing a Schedule by a postal or telegraphic vote. It is, however, submitted that the Commission could so proceed only if each of its members has received a copy of the relevant assessment of WHO made pursuant to the closing subparagraph of article 2, paragraph 4 or under paragraph 6, and if no member expressly objects to that procedure. The explicit opposition of a single member appears to be sufficient to exclude that way of adopting the decision, because otherwise the right of members of the Commission to participate fully in the decision-making process would be impaired. An adequate exchange of the views of the members on that matter could hardly be effected by mail or telegram. Moreover, a postal or telegraphic exchange of opinion would generally be very time-consuming. Consequently, on legal as well as on practical grounds, each member should have the right to request that the decision be postponed pending a full discussion of the question at the next session of the Commission. On the other hand, the decisions by postal or telegraphic vote need not in all cases be unanimous. It is held that there could be no objection to adopting the decision by a two-thirds majority of the members in such a vote provided that no member objects to the “procedure”. In any event, in the case of a postal vote the Secretary-General should send to the members the assessment of WHO and the request to vote, by registered mail, with a request for a postal return receipt.

4. The Secretary-General could carry out a vote by mail or telegram only if authorized by the Commission to do so, and only in such cases and under such conditions as the Commission determined. It is suggested that a vote by mail or telegram would normally be feasible only in cases which are not controversial.<sup>231</sup>

5. Even prior to the coming into force of the Convention,<sup>232</sup> the Commission could under paragraph 5 decide that an uncontrolled substance should be placed in a Schedule, and under paragraph 6 that a substance placed in a Schedule by the 1971 Conference should be deleted from a Schedule, with or without transfer to another Schedule, provided that it has received an assessment of WHO on the substance concerned under the concluding subparagraph of paragraph 4 or under paragraph 6, as the case may be; but the Commission’s decision could not enter into force before the

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<sup>231</sup> As regards a vote by mail or telegram on placing a substance under control by the Single Convention: see *1961 Commentary*, paragraphs 19 to 22 of the general comments on article 3 and paragraph 7 of the comments on article 3, paragraph 3, subparagraphs (i) and (ii); see in particular the Commission resolution I (XX), *Official Records of the Economic and Social Council, Fortieth Session, Supplement No. 2* (E/4140), paragraphs 60 and 61.

<sup>232</sup> Article 26, paragraph 1.

Convention itself comes into force. Consequently, the Secretary-General should not under paragraph 7, introductory subparagraph, communicate those decisions of the Commission to Parties prior to the coming into force of the Convention itself, because otherwise the provision of that subparagraph regarding the date on which the decisions of the Commission become effective could not be applied.<sup>233</sup> It may be useful to recall in this place that the Office of Legal Affairs of the United Nations has similarly ruled that the Commission could, prior to the coming into force of the Single Convention, make changes in that treaty's Schedules, such decisions to be communicated by the Secretary-General to Parties only after the coming into force of the Convention.<sup>234</sup>

6. The word "new" in the phrase "new findings" in paragraph 6 is intended to indicate that the "findings" which it qualifies are *formally* although not necessarily *materially* different from any earlier findings of WHO concerning the same substance; but such earlier findings may not exist in the case of a substance still in the same Schedule in which it was placed by the 1971 Conference. In respect of cases of that kind the word "new" would indicate that the findings are "new", i.e. formally but not necessarily substantively different from any views which that Conference may have held in regard to the substance in question, concerning matters which are the subject of the World Health Organization's findings pursuant to paragraph 4. However, in the phrases "new assessment" and "new recommendations" the word "new" obviously means that the assessment and the recommendations differ "materially" from an earlier assessment and earlier recommendations of the World Health Organization or, as the case may be, from earlier related views of the 1971 Conference which placed the substance concerned in a Schedule.

7. The French text coincides in this regard with the English version. The Spanish text, however, differs from the English and French texts.<sup>235</sup> It uses the words "*un nuevo dictamen*" for the English words "its new findings, any

<sup>233</sup> Under the same conditions the Commission could also prior to the coming into force of the Convention change its decisions so adopted. The original decisions should not be circulated to Parties, but only those replacing them because the former could not enter into force.

<sup>234</sup> See also above paragraph 21 of the comments on article 2, paragraph 1 and paragraph 54 of the comments on article 2, paragraph 4; see also foot-note 288.

<sup>235</sup> The English words: "... the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment" are reproduced in French: "... l'Organisation mondiale de la santé transmettra à la Commission ses nouvelles constatations ainsi que toute nouvelle évaluation de cette substance qu'elle pourra faire conformément aux dispositions du paragraphe 4 et toutes nouvelles recommandations portant sur des mesures de contrôle qui pourront lui paraître appropriées à la lumière de ladite évaluation", and in Spanish by: "... la Organización Mundial de la Salud comunicará a la Comisión un nuevo dictamen sobre la sustancia formulado de conformidad con el párrafo 4, así como cualesquier nuevas recomendaciones sobre las medidas de fiscalización que considere apropiadas según su dictamen".

new assessment”.<sup>236</sup> “*Nuevo*” has in this case the same meaning as “new” in the English phrase “new findings”; but “*nuevo*” in that sense refers not only to what is called in the English version “findings”, but also to what is called in that text “assessment”, while in the English text the word “new” has in reference to “assessment” a different meaning, as indicated above. It is, however, submitted that this textual difference does not affect the substance of WHO communications required under paragraph 6, which would be the same under all three language versions.

8. In support of that view one may point out that the word “new” in the English phrase “new findings”, while covering all findings *formally* “new” in relation to earlier findings, does not exclude “findings” which are *substantively* different from earlier findings. Similarly, the Spanish word “*nuevo*” in the phrase “*nuevo dictamen*” while covering any “*dictamen*” formally “new” in respect of an earlier “*dictamen*”, does not exclude a “*dictamen*” which is *substantively* different from an earlier “*dictamen*”. Consequently if—as has been indicated above and has to be “presumed” under the rules of interpretation of international treaties<sup>237</sup>—the word “*dictamen*” covers both what the English text calls “findings” and what it calls “assessment”, the phrase “*nuevo dictamen*” also includes what the English text calls “new assessment”,<sup>238</sup> i.e. also an assessment which is *materially* different from an earlier assessment.

9. Moreover, looking at the question from the viewpoint of the purposes of the Convention,<sup>239</sup> the World Health Organization’s communication pursuant to paragraph 6 has to cover, directly or at least by reference or implication, all points which it has to examine and to include in its communication to the Commission under paragraph 4.<sup>240</sup> A communication which does not do so would not be sufficient for the purposes of paragraph 6. Even in a case in which the World Health Organization holds that the results of its earlier examination of the substance concerned are still valid and that it does not need to change its former evaluation (assessment) of those results, nor consequently its earlier recommendations on control measures, it would either have to restate its earlier findings and views as being confirmed by its new examination or as not requiring a new examination, or it would have to refer to those findings and views expressly or by implication, i.e. it would, even in such a case, have to cover all points which have to be included in its communication under the concluding subparagraph of paragraph 4. All of

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236 And for the French words “*ses nouvelles constatations ainsi que toute nouvelle évaluation*”.

237 Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, article 33, paragraph 3; *United Nations Conference on the Law of Treaties, Official Records, Documents of the Conference (A/CONF.39/11/Add.2)*, pp. 283 *et sequitur*; the presumption is that the terms of the different authentic language versions of a treaty have the same meaning.

238 And the French text “*nouvelle évaluation*”.

239 Article 31, paragraph 1 of the Vienna Convention cited above in foot-note 237.

240 See above paragraphs 40 to 47 of the comments on article 2, paragraph 4.

those points would be relevant in the Commission's considerations under paragraph 6.

10. The English text of the treaty appears to use the word "assessment" in a somewhat different meaning in paragraphs 4 and 6, employing in paragraph 6 the term "findings" to cover in part what it calls "assessment" in paragraph 4, as the French text does with the corresponding words "*constatations*" and "*évaluation*", while the Spanish text is consistent in its use of the term "*dictamen*" in those two provisions. Those minor differences, notwithstanding the common meaning of all three texts, permits the interpretation that a WHO communication under paragraph 6 should cover all those points which it has to cover under paragraph 4.<sup>240</sup> That interpretation can also be accepted because it accords with the purposes of the Convention.

11. As under article 2, paragraph 4, WHO would not be prevented under paragraph 6 from recommending alternatively two Schedules for the same substance.<sup>241</sup>

12. WHO is bound<sup>242</sup> to make the communication mentioned in paragraph 6 covering expressly or at least by reference or implication all the points with which it must deal in a communication under paragraph 4.<sup>240</sup>

13. The reference to paragraph 5 has in the English text of paragraph 6 a meaning different from that in its French or Spanish version.<sup>243</sup> In the English text the reference requires the Commission to take into account under paragraph 6 the communication from WHO, i.e. the communication received pursuant to paragraph 6, in the same way as it has to do under paragraph 5 in respect of the communication provided for in paragraph 4. Consequently, the Commission is in particular bound to consider also under paragraph 6 as "determinative" the "assessments" "as to medical and scientific matters", contained in the World Health Organization's communication. However, the reference in the French text means that the Commission should take into account the communication from WHO *received* in accordance with paragraph 5, which appears to be incorrect since it is obviously the communication received pursuant to paragraph 6 which the Commission has to take into account. Otherwise, the provision of paragraph 6 expressly requiring a communication from WHO containing "new findings" for the purpose of paragraph 6 would not make sense. Moreover, in cases under paragraph 6, a relevant communication received under paragraph 5 may even not exist. The Spanish text would similarly require that the Commission should take into account the communication from WHO *provided* for in paragraph 5, which—as has been submitted—is incorrect. The French and

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241 See above paragraph 46 of the comments on article 2, paragraph 4.

242 See above paragraph 40 of the comments on article 2, paragraph 4.

243 The English words "taking into account the communication from the World Health Organization as under paragraph 5" are reproduced in the Spanish text by "*teniendo en cuenta la comunicación de la Organización Mundial de la Salud prevista en el párrafo 5*", and in the French version by "*tenant compte de la communication reçue de l'Organisation mondiale de la santé conformément au paragraphe 5*".

Spanish texts being manifestly incorrect on this point, preference must obviously be given to the English version.<sup>244</sup>

14. The “assessments” of WHO “as to medical and scientific matters”, which are “determinative” under paragraph 5 and under paragraph 6, include its medical and scientific *opinions* as well as its *factual* findings of that nature contained in its communications. In other words, those opinions and findings must be accepted by the Commission, which is not authorized to base its decisions on other medical or scientific views, whether held by some of its own members or obtained from other sources than WHO.

15. But only those “assessments” of WHO “as to medical and scientific matters” contained in that Organization’s communications pursuant to paragraphs 4 and 6 are “determinative”, and not the views of the Organization’s representative at meetings of the Commission, or those of other of its official spokesmen expressly on other occasions. Views laid down in decisions of organs of WHO are also not “determinative” for the purposes of paragraphs 5 and 6 unless included in a communication under paragraph 4 or 6.

16. It is, however, submitted that WHO may supplement or revise its communications. If its “assessments” as to “medical and scientific matters” are thereby affected, they are “determinative” not in their original form but as modified by the new communication.

17. “Medical or scientific matters” in respect of which the “assessment” of WHO is under paragraphs 5 and 6 “determinative”, are *inter alia*: a finding that a substance has or does not have the capacity to produce effects mentioned in article 2, paragraph 4, subparagraph (a), clauses (i) and (ii); views on the pharmacological effects of a substance which may play a role in concluding that there is “sufficient evidence” that the substance “is likely to be abused”; chemical views regarding the ease of illicit synthesis of a substance, adduced to justify that there is such “sufficient evidence”; views on pharmacological effects of a substance, other than those outlined in the clauses (i) and (ii) mentioned above, adduced in justifying that it constitutes a “public health” problem or in evaluating “the degree of seriousness” of the public health problem; and views on the degree of usefulness of a substance in medical therapy.<sup>245</sup>

18. However, communications from WHO under paragraphs 4 and 6 will and should also contain factual findings, evaluations and conclusions which are not “medical” or “scientific matters” and consequently not “deter-

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<sup>244</sup> See also article 32, paragraph (a) and (b) of the Vienna Convention on the Law of Treaties (cited in foot-note 237 above).

<sup>245</sup> However, if the therapeutic usefulness of a substance is affected by its great costs the view of WHO that the substance has a great therapeutic usefulness need not be accepted by the Commission. The medical considerations of WHO in arriving at its conclusions regarding the degree of therapeutic usefulness of the substance would in such a case remain “determinative”; see above paragraph 44 of the comments on article 2, paragraph 4.

minative”, but which WHO has to make in order to carry out its functions described in paragraph 4 for the purposes of paragraph 5 as well as for those of paragraph 6.<sup>246</sup> It would, e.g. have to take into account statistical data and reliable estimates as well as actual or potential damaging effects which the abuse of a substance in question might have on social problems other than those of a health character in order to establish whether there is “sufficient evidence that the substance is being or is likely to be abused so as to constitute a public health and social problem” and how serious that problem is, as it is required to do under subparagraph (b) and the concluding subparagraph of paragraph 4 of article 2. WHO would also have to consider whether the controls for which the Vienna Convention provides would be helpful, and if so, whether effective control in a country having such a problem would be impeded by lack of control in other countries, in order to determine whether that problem warrants “the placing of the substance under *international* control”.<sup>247</sup> The World Health Organization’s views on the reliability or importance of statistical data, estimated figures or other factual evidence on which it would base its evaluations and conclusions, its views on the significance of an actual illicit traffic or on the likelihood of the emergence of an illicit traffic<sup>248</sup> and its opinions regarding the relevance of international controls and the effects of the lack of foreign controls on a domestic problem of drug abuse, not being “medical and scientific matters”, would not be determinative, i.e. they would not be binding upon the Commission.

19. The Commission has, under paragraphs 5 and 6, very wide discretionary powers;<sup>249</sup> but this does not mean that it may act arbitrarily. It must have good reasons for its decision to change a Schedule as well as for its refusal to do so. The reasons should be those mentioned in paragraph 5, although defined in very broad terms, and identically in paragraph 6 by reference to paragraph 5. It must take into “account” the reasons contained in the communication from WHO. Those reasons which are of a “medical or scientific” nature must be accepted, while the others may be replaced by the Commission’s own establishment of facts, evaluations and conclusions; but all reasons of the World Health Organization, whether medical, scientific or others, may be outweighed by such economic, social, legal, administrative or other factors as the Commission may consider relevant and sufficiently important to justify a decision dissonant from the views of WHO on the matter. However, views of the Commission on factors of that kind may often not be inconsistent with the reasons of the World Health Organization, but may only supplement them.

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246 See paragraphs 40 to 47 of the comments on paragraph 4 as regards the medical, scientific and other matters which the World Health Organization should consider and cover in its communications under paragraphs 4 and 6 of article 2.

247 See above paragraphs 5 to 8 of the comments on article 2, paragraph 4.

248 See however paragraph 17 of the present comments.

249 See above paragraph 48 of the comments on article 2, paragraph 4; one may note the text: “The Commission . . . may add . . .” (paragraph 5), and “The Commission . . . *may* decide . . .” (paragraph 6).



20. The Commission is not limited to a choice between accepting or rejecting WHO's recommendation regarding the international control status of the substance under consideration, as it is in regard to changes in the Schedules of the Single Convention.<sup>250</sup> It may, contrary to a recommendation of WHO, place a substance under international control, refuse to do so, free it from such control or refuse to take that measure. It may place a substance in a Schedule different from that recommended by WHO.

21. It is, however, submitted that there are cases in which the Commission would be bound to act in accordance with recommendations of WHO.

22. If WHO finds under paragraph 4 that a substance does not have the dangerous properties described in subparagraph (a), clause (i) or (ii), and by consequence expressly or impliedly recommends in its communication to the Commission that the substance should not be controlled, the Commission would not be authorized to place it under control. Doing so would be incompatible with the provision that the WHO assessment should be "determinative as to medical and scientific matters", and also with the basic assumptions of the authors of the Vienna Convention which is intended to deal only with problems arising from the abuse of substances which have dangerous qualities as defined in the above-mentioned clause (i) or (ii).

23. For the same reasons the Commission would under paragraph 6 be bound to free from international control a substance which WHO finds to lack the pharmacological properties described in paragraph 4, subparagraph (a), clause (i) or (ii).

24. It must also be assumed that the Commission would act *ultra vires* if it placed in Schedule I a substance which WHO had found to have at least a significant therapeutic usefulness, and which therefore it did not recommend for inclusion in Schedule I. This view appears to follow from the provision of article 7, paragraph (a) requiring Parties to prohibit all use of substances in Schedule I "except for scientific and very limited medical purposes by duly authorized persons, in medical and scientific establishments which are directly under the control of their Governments or specifically approved by them". Placing in Schedule I a substance found ineligible by WHO for that Schedule would unduly restrict its availability for medical and scientific purposes, and thus conflict with requirements of sound principles of public health and also with basic aims of the Vienna Convention.<sup>251</sup> The view of WHO on the therapeutic usefulness of the substance, this being a "medical" matter, would here again be "determinative".

25. For the same reasons the Commission would also have to remove from Schedule I a substance which WHO found to have at least a significant

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<sup>250</sup> See above paragraph 3 of the general comments on article 2; paragraph 46 of the comments on article 2, paragraph 4 and *1961 Commentary* on article 3, paragraph 3, subparagraph (iii) (paragraph 17 of the comments), paragraph 5 (paragraph 11 of the comments) and paragraph 6 (paragraph 2 of the comments) of the Single Convention.

<sup>251</sup> See the fifth *considerandum* in the Preamble of the Vienna Convention.

therapeutic usefulness, and whose removal from that Schedule it expressly or impliedly recommended in its communication under paragraph 6.<sup>252</sup>

26. It is foreseen in paragraph 5, but not in paragraph 6, that the Commission may seek “further information from the World Health Organization or from other appropriate sources”. However, that provision only states expressly what the Commission would in any case be authorized to do under paragraphs 5 and 6, as is implied in the functions which are conferred upon the Commission in those provisions. The Commission could consult not only governmental or intergovernmental sources, but also any private source which it believed to have relevant knowledge on a question with which it was dealing under either of the two paragraphs. It appears, however, that the Commission would not be authorized to seek from any source other than WHO information as to medical or scientific matters covered in that Organization’s communication under paragraph 4 or paragraph 6, in order to examine the validity of the Organization’s opinions or factual findings in regard to such matters.

27. As regards the medical standards of WHO for placing a substance under international control or for placing it in a particular Schedule, see above paragraph 50 of the comments on article 2, paragraph 4; for views of the Commission on that matter at its first special session in 1970, see paragraph 51 of those comments. As regards the inclusion of a preparation in a Schedule see paragraph 52 of these comments.

#### *Paragraph 7, introductory subparagraph*

7. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, to the World Health Organization and to the Board. Such decision shall become fully effective with respect to each Party 180 days after the date of such communication, except for any Party which, within that period, in respect of a decision adding a substance to a Schedule, has transmitted to the Secretary-General a written notice that, in view of exceptional circumstances, it is not in a position to give effect with respect to that substance to all of the provisions of the Convention applicable to substances in that Schedule. Such notice shall state the reasons for this exceptional action. Notwithstanding its notice, each Party shall apply, as a minimum, the control measures listed below:

#### *Commentary*

1. The subparagraph under consideration contains three provisions: one prescribing to whom the Secretary-General should communicate decisions of the Commission taken pursuant to article 2; a second determining the date on

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<sup>252</sup> See also above paragraph 3 of the general comments on article 2.

which decisions of the Commission become “fully effective”; and a third granting Parties what one may call a “right of partial non-acceptance”<sup>253</sup> of the Commission’s decision adding a substance to a Schedule.

2. The words “any decision of the Commission taken pursuant to this article” refer to all decisions of the Commission changing any of the Schedules under paragraphs 5 and 6. Decisions by which the Commission refuses to make any such change are not covered by that phrase. This follows from the second sentence of the subparagraph under consideration, which provides that “such decision” shall become “fully effective” on the expiration of the 180-day period which it defines, the words “such decision” referring to the phrase “any decision” in the first sentence. The provision regarding effectiveness cannot apply to decisions which do not alter the existing control situation and thus neither add to, nor detract from, the obligations of Parties.

3. It is, however, suggested that the Secretary-General should not only communicate decisions by which Schedules are changed—as he is bound to do—but also those by which the Commission refuses to take such an action. This appears to be advisable because Governments which under paragraph 2 have been notified that a change in the Schedules was being considered need the information that the Commission has decided to reject the suggested change. Inclusion of that information in the Commission’s report on its session at which that decision would be taken would not be sufficient. It does not matter in what form the Commission’s decision is taken, nor by what name it is called.

4. The Secretary-General is bound to send the communications only to those States which are Members of the United Nations or which, although non-member States, are Parties to the Vienna Convention. It is suggested that the Commission should by name indicate to the Secretary-General those other States which it wishes to be notified of its decision whenever it considers it desirable that its action should be brought to their attention. Expressly naming those States appears to be desirable since it might be controversial on legal or other grounds whether a political entity involved was a “State”.

5. “The date of such communication” means the date which is indicated on the document containing the communication, and not the date on which that document was dispatched, a date which may often not be accurately known to the recipient. In order to ensure that the time available to a Party for notifying its “non-acceptance”<sup>254</sup> is not unduly shortened and also in order to enable Governments to take as quickly as possible the measures required to implement the Commission’s decision, the Secretary-General should as speedily as practicable dispatch the communications. It is suggested

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<sup>253</sup> 1971 *Records*, vol. II, minutes of the twenty-fifth session of the Committee on Control Measures, paragraph 60 (p. 182).

<sup>254</sup> See above paragraph 1 of the comments on the subparagraph under consideration.

that in cases in which the document is not handed to a representative of a Government or the Commission's decision is not notified to the Governments by telegram, the Secretary-General should send the communications by registered air mail with requests for postal return receipts. It is also suggested that the communications should be sent to all Governments in question on the same date, and on the day which appears on the document as its date.

6. On the expiration of the 180-day period indicated in the subparagraph under consideration, any decision deleting a substance from a Schedule without transferring it to another Schedule, and thus freeing it from control by the Vienna Convention, becomes effective in regard to *all* Parties. That delay may appear to be somewhat incongruous because in such cases Parties are not *bound* to take any action, and it is also difficult to understand why Parties should not be entitled immediately to free from control the substance concerned, particularly because the Commission's decision would remain effective even pending its review by the Council under paragraph 8, which does not have a suspensive effect;<sup>255</sup> but the text of the Convention does not appear to permit any other interpretation.

7. A decision of the Commission adding a substance to a Schedule becomes effective at the same time, but only in regard to Parties which within the period of 180 days have not made use of their right of "non-acceptance"<sup>254</sup> of that decision by notifying the Secretary-General in writing that they are not in a position to give effect with respect to that substance to all of the provisions of the Convention applicable to substances in that Schedule. However, Parties which have properly given such notice have, as a minimum, the obligations outlined in the last sentence of the introductory subparagraph and in subparagraphs (a) to (e) of paragraph 7. See below, paragraphs 11 to 16, as regards the effectiveness of decisions transferring substances from a Schedule subject to stricter controls to a Schedule subject to less strict controls.

8. The provision delaying the effectiveness of decisions of the Commission is intended to give Parties an adequate time to implement onerous decisions.<sup>256</sup> Although it is desirable that Parties should implement such decisions as expeditiously as practicable, they must be allowed a reasonable time to take the measures which may be required to do so. It is held that a Party which has not fully carried out an onerous decision of the Commission by the time at which it has become effective, need not necessarily be considered to have violated its treaty obligations, provided that it has in good

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<sup>255</sup> Paragraph 8, subparagraph (d); it may also be noted that a Party may sometimes request review by the Council after the 180-day period of paragraph 7 has expired. The request may be made by a Party within 180 days from its *receipt* of the notification of the Commission's decision. The date of the communication pursuant to paragraph 7 precedes the date of that receipt; see paragraph 8, subparagraph (a).

<sup>256</sup> It is submitted that this delay does not have any relevance in relation to the provisions concerning the review of the Commission's decisions by the Council under paragraph 8 since that review does not have a suspensive effect and also since it cannot be expected that the review procedure would be completed before the expiration of the 180-day period of paragraph 7.

faith and without any undue delay taken all steps which are required to carry out that decision. It appears to be implied in the provision of the introductory subparagraph of paragraph 7, and also to be in accord with the purposes of the Vienna Convention, that Parties should, if possible under their respective constitutions, take the necessary legislative action to authorize their executive branch of Government to place by decree substances under the controls required by decisions of the Commission; but the procedure for issuing such a decree may also require some considerable time.<sup>257</sup>

9. Since the 1971 Conference provided, in the Convention which it adopted, for onerous decisions of the Commission which are binding upon Parties, it found it necessary to grant them three procedural guarantees. One of them is the right of “non-acceptance”<sup>254</sup> provided in the subparagraph under consideration, another is the right of requesting a review of the Commission’s decisions by the Council under paragraph 8 of article 2, and the third is the requirement, under article 17, paragraph 2, of a two-thirds majority of the total membership of the Commission for its decisions amending any of the Convention’s Schedules.<sup>258</sup>

10. The provision of the subparagraph under consideration regarding the right of “non-acceptance”, read in connexion with some of the provisions of the following subparagraphs concerning that right and its relation with the review procedure pursuant to paragraph 8, may give rise to several legal questions which appear to require some consideration.

11. Under the introductory subparagraph the right of “non-acceptance”<sup>254</sup> appears to apply to any “decision adding a substance to a Schedule”. Such a decision may involve the inclusion in a Schedule of a previously uncontrolled substance, the transfer of a substance from a Schedule subject to less strict controls to a Schedule subject to stricter controls, or the transfer from a Schedule under stricter controls to a Schedule under less strict controls. The last sentence of the introductory subparagraph, in connexion with the following subparagraphs (a) to (e), defines the obligations of Parties which have made use of their right of “non-acceptance” in regard to the first two types of those decisions, but not in regard to the third type. The obligations of Parties which have notified the Secretary-General of their “non-acceptance” of decisions which place in a Schedule a formerly uncontrolled substance are listed in subparagraphs (a) to (d), and those of Parties which have made that notification in regard to decisions transferring a substance from a Schedule ruled by less strict controls to one

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<sup>257</sup> Of course, Parties need not implement decisions which are not onerous, i.e. which free substances from controls by the Vienna Convention or which transfer substances from a more strict régime to a less strict régime. If they wish to implement such decisions they may do it at a time of their choice, but only after they have become effective.

<sup>258</sup> See above, paragraph 10 of the general comments on article 2 and paragraph 2 of the comments on article 2, paragraphs 5 and 6, and below, the comments on article 17, paragraph 2.

ruled by stricter controls are stated in subparagraph (*e*). There is no special provision regarding the legal position of Parties which have used their right of “non-acceptance” in regard to decisions by which a substance is moved from a Schedule more strictly controlled to one less strictly controlled.

12. It is admitted that a Party will normally not notify its “non-acceptance” in respect of such decisions reducing their legal obligations, particularly since they are not bound to alleviate, in accordance with the Commission’s decision, the régime that they apply to the substance concerned;<sup>259</sup> but there may be cases in which a Party may have an interest in making that notification. The question as to the obligations that a Party would have in such an event is therefore not without practical importance.

13. Cases in which a Party may have such an interest may be some of those in which the Commission decides to include in a Schedule subject to a less rigid régime a substance that it had earlier decided to place in a more strictly controlled régime, *and* in which the Party had notified its “partial non-acceptance” in regard to the Commission’s earlier decision. For example, if the Commission had decided to place a previously uncontrolled substance in Schedule I, and later resolved to move it to Schedule II, a Party which had notified its “non-acceptance”<sup>254</sup> of the earlier decision may find it necessary to apply to that substance the provisions of subparagraph (*a*) rather than the total régime governing substances in Schedule II, and consequently to notify to the Secretary-General its “non-acceptance” of the new decision of the Commission, provided that the right to continue applying subparagraph (*a*) would be the result of its second notification. That this would indeed be so is pointed out below in paragraph 15.

14. It follows from the text of the introductory subparagraph that a Party has the right to notify its “non-acceptance” in respect of a decision adding to a less strictly controlled Schedule a substance which is moved from a more strictly controlled Schedule, as a Party can do in respect of any decision adding a substance to any Schedule. It would obviously be impossible to apply subparagraphs (*a*) to (*e*) to cases of non-acceptance of decisions moving a substance from a stricter régime to a less strict régime, since those provisions expressly apply only to cases in which a previously uncontrolled substance is added to a Schedule<sup>260</sup> or a substance is moved from a less strict régime to a more strict régime.<sup>261</sup>

15. It is submitted that no decision adding a substance to a Schedule becomes effective in regard to a Party which has transmitted to the Secretary-General in respect of that decision the written notice mentioned in the introductory subparagraph, except to the extent provided for in subparagraphs (*a*) to (*e*), which—as mentioned above—do not apply to the transfer of a substance from a more strict régime to a less strict régime. It follows that a decision making such a transfer, which has properly been the

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<sup>259</sup> See article 23 of the Vienna Convention.

<sup>260</sup> Subparagraphs (*a*) to (*d*).

<sup>261</sup> Subparagraph (*e*).

subject of the above-mentioned written notice of a Party, remains entirely ineffective in respect of that Party whose legal obligations consequently remain as they have been before, as long as the written notice is not withdrawn. Such a Party has to continue to apply to the substance concerned the régime which would be required if the substance had remained in its former Schedule. It could continue to apply the relevant provisions of subparagraphs (a) to (e) instead of the full new régime if it was entitled to do so by a previous written notice in accordance with the introductory subparagraph. As regards the withdrawal of the notification of “non-acceptance”, see below, paragraphs 28 and 29.

16. The view presented in the preceding paragraph is also supported by the text of the last sentence of the subparagraph under consideration, commencing with the word “notwithstanding”. It must however be admitted that the “fully” in the phrase “fully effective” may appear not to be entirely consonant with that view. It may, however, be assumed that the authors of the subparagraph included the word “fully” only because they had obviously in mind the provisions of subparagraphs (a) to (e), which even in cases of notifications of “non-acceptance” give some effect to decisions to which they apply. It is submitted that the word “fully” cannot have any meaning in respect of decisions transferring a substance from a Schedule subject to a stricter régime to a Schedule less strictly controlled, i.e. to decisions to which those subparagraphs do not apply. The meaning of the introductory subparagraph of paragraph 7 would not change if the word “fully” were omitted. The word seems to be superfluous in that context.

17. The relation between the right of non-acceptance and the review procedure pursuant to paragraph 8 also requires some consideration. The Convention does not explicitly indicate if and how a decision of the Council changing the Commission’s decision affects the rights of a Party which under the introductory paragraph of paragraph 7 has not accepted the Commission’s decision.

18. The opinion has been proffered above<sup>262</sup> that any decision of the Commission adding a substance to a Schedule remains ineffective in respect of a Party which has not accepted it in accordance with the introductory subparagraph of paragraph 7, except in so far as the Party is bound to apply the appropriate provisions of subparagraphs (a) to (e) in the cases mentioned therein instead of the old régime affected by the Commission’s decision.<sup>263</sup> It is submitted that any legal obligations which would result from the Council’s review of the Commission’s decisions are *effects* of that decision and consequently do not bind a Party which has not accepted that decision. Unless or until that Party withdraws its non-acceptance of the Commission’s decision, its legal position in regard to the substance in question is not

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<sup>262</sup> See paragraph 15 of the comments on the subparagraph under consideration.

<sup>263</sup> This old régime would be that applicable to the Schedule, if any, from which the substance in question was moved, or if the old régime had properly not been accepted by the Party under the introductory subparagraph of paragraph 7, the appropriate rules of subparagraphs (a) to (e) applicable to the former Schedule.

changed by the Council's alteration, reversal or confirmation of that decision. It is admitted that the above-mentioned view may occasionally have somewhat incongruous legal consequences, e.g., in a case in which the Council rescinds a decision of the Commission placing a formerly uncontrolled substance in a Schedule. The Party concerned could in such a case obtain the freedom granted by the Council by withdrawing its notification of non-acceptance, and by thus obtaining all the effects of the original decision of the Commission including the benefits of the Council's action. The view presented here, despite that incongruity, appears to be much preferable to an opinion according to which the Council's action could terminate the privileged position of a Party that did not accept the Commission's decision in question. It is held that such an opinion could hardly be reconciled with the terms of the Convention, and would moreover not be in accord with the purpose of the institution of "non-acceptance" and with the clear intentions of the 1971 Conference.

19. It was undoubtedly the opinion of the 1971 Conference that the right of "non-acceptance" was intended to enable a Party to take care of long-lasting "exceptional circumstances".<sup>264</sup> The provision requiring that a Party's "non-acceptance" of the Commission's decision should be justified by such circumstances in its territory would not be very meaningful if the relief which a Party could obtain by its refusal to accept the Commission's decision could be terminated by the Council's action under paragraph 8. It has earlier been pointed out in these comments<sup>265</sup> that Governments must be allowed a reasonable time to carry out onerous decisions of the Commission, and that they do not violate their treaty obligations as long as they implement those decisions in good faith and without any *undue* delay. It may be assumed that the Council would act quickly, as it would be required to do by the purpose of the review procedure under paragraph 8.<sup>266</sup> In view of its calendar of sessions the Council could normally arrive at its decision within a maximum period of one year. Since the Commission's decision would become "effective" only after 180 days after the date of its communication, a Government could generally obtain by its "non-acceptance" not more than an additional period of grace of about six months if the Council's decision were to terminate the effects of its "non-acceptance". A Government which was prevented by "exceptional circumstances" from implementing immediately an onerous decision of the Commission could certainly justify a delay of about six months even if it did not make use of the right of "non-acceptance". Its position would in practice not be different in this respect if the Convention did not provide for the right of "non-acceptance".

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<sup>264</sup> 1971 *Records*, volume II, minutes of the fourth meeting of the Committee on Control Measures, paragraphs 3, 10 and 14 (pp. 133 and 134).

<sup>265</sup> See above paragraph 8 of the comments on the introductory subparagraph under consideration.

<sup>266</sup> A delay in the review procedure would not only cause many Governments administrative difficulties but in many cases might also do harm to public health in some countries.



20. It is also submitted that to assume that the relief obtained by a Party from its “non-acceptance” of a decision of the Commission could be terminated by the Council’s action, could also not easily be reconciled with the provision of article 19, paragraph 7. That paragraph provides that if the Board has reason to believe that the aims of the Convention are being seriously endangered as a result of a Party’s “non-acceptance” of a decision of the Commission it might apply the “sanction” procedure of article 19. That procedure could under the conditions laid down in that article lead to so serious a measure as a recommendation of the Board to the Parties to stop the export, import, or both, of particular psychotropic substances, from or to the territory of a Party which has made use of the right of “non-acceptance” pursuant to article 2, paragraph 7, introductory subparagraph. It is very difficult to believe that the 1971 Conference intended to impose a serious sanction such as an import or export embargo, or both, of medicines on a Party which delays for about six months its implementation of a decision of the Commission. Moreover even the initial steps of article 19 would normally not be completed before the Council’s review under article 2, paragraph 8.

21. It must, however, be admitted that the text of the Convention does not give a clear answer in regard to the question of the relationship of the right of “non-acceptance” and the review procedure of paragraph 8. The view presented in the preceding paragraphs, which is based on the interpretation of the word “effective” in the second sentence of the introductory subparagraph of paragraph 7, may perhaps not appear to everyone to be fully convincing, in particular since a Party which has made use of its right of “non-acceptance” may continue to have obligations under subparagraphs (a) to (e) of paragraph 7 even though the Council has altered or reversed the Commission’s decision concerned. Nevertheless—as has been stated above—<sup>267</sup> that opinion appears to be much better than the contrary view according to which the effectiveness of a notification of “non-acceptance” could be terminated by a decision of the Council in the review procedure pursuant to paragraph 8, not only because it can be better reconciled with the admittedly somewhat ambiguous text of the treaty, but also because it is in clear agreement with the intention of the 1971 Conference.

22. A proposal before the 1971 Conference was to provide expressly in the Convention that “if the Council confirms or alters the decision of the Commission a Party shall comply with the decision of the Council, notwithstanding any notice of non-acceptance that it has made”.<sup>268</sup> That text was intended to replace article 2, paragraph 8, subparagraph (d) of the Vienna Convention as finally adopted. It follows that this subparagraph reading: “During pendency of the review, the original decision of the

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<sup>267</sup> See above paragraph 18 of the present comments on article 2, paragraph 7, introductory subparagraph.

<sup>268</sup> Report of the Commission on Narcotic Drugs on its First Special Session, *Official Records of the Economic and Social Council, Forty-eight Session, Supplement No. 8 (E/4785)*, Chapter III, foot-note 11 under article 2, paragraph 8, subparagraph (d) (p. 17).

Commission shall, subject to paragraph 7, remain in effect” was not understood by the 1971 Conference to allow the conclusion that the effects of a notification of “non-acceptance” pursuant of paragraph 7 were valid only during the pendency of the review. On the contrary, that proposal indicates that the 1971 Conference was of the opinion that the right of “non-acceptance” under paragraph 7 was not affected by the Council’s review pursuant to paragraph 8. The insertion of the phrase “subject to paragraph 7” seemed necessary to exclude the view that during the Council’s review the original decision remained in effect without any limitation by notifications of “non-acceptance”. The proposal was not accepted by the 1971 Conference.

23. Moreover, the whole course<sup>269</sup> of the discussion of paragraphs 7 and 8 cannot leave any doubt that the 1971 Conference was of the opinion that under the text of the Convention which it adopted, the rights of a Party which under paragraph 7 did not accept an onerous decision of the Commission were not affected by a decision of the Council in the review procedure of paragraph 8. The 1971 Conference appears to have considered the “right of non-acceptance” to be a “useful safety-valve *over* and *above* the right of resort to the Economic and Social Council”.<sup>270</sup>

24. It may be noted in this place that Parties are not entitled to refuse to accept decisions of the Commission by which under article 3, paragraph 4 their exemptions of preparations from some measures of control under paragraph 3 of that article are fully or partially terminated.

25. A Party may exercise its right of “non-acceptance” only “in view of exceptional circumstances”. It is required to state, in its notification to the Secretary-General, the reasons for its non-acceptance. It may also be noted that the subparagraph under consideration applies the phrase “exceptional action” to the “non-acceptance” of a decision of the Commission adding a substance to a Schedule.

26. It is difficult to foresee what conditions would be such “exceptional circumstances” as to justify a Party’s non-acceptance of a decision of the Commission. It appears to have been recognized at the 1971 Conference that the “phenomenally rapid and sometimes unpredictable advances in medical and scientific research”<sup>271</sup> render that very difficult. A representative stated that the inclusion in Schedule I of a medicine of high therapeutic value giving good results under strict control might constitute “exceptional circum-

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<sup>269</sup> 1971 *Records*, vol. II, minutes of the third meeting (p. 130), the fourth meeting, paragraphs 1 to 18 (p. 132), the twenty-fifth meeting, paragraphs 53 to 61 (p. 181) and the twenty-sixth meeting, paragraphs 1 to 11 (p. 182) of the Committee on Control Measures; summary records of the seventeenth, paragraphs 42 to 66 (p. 68), the eighteenth (p. 70) and the nineteenth, paragraph 1 (p. 74) plenary meetings; see also 1971 Conference documents: E/CONF.58/C4/L.60, E/CONF.58/L.5/Add.7, E/CONF.58/L.4/Add.8 and 9.

<sup>270</sup> 1971 *Records*, vol. II, summary records of the seventeenth plenary meeting (paragraph 57; p. 69).

<sup>271</sup> 1971 *Records*, vol. II, summary records of the eighteenth plenary meeting, paragraph 9 (p. 71).

stances” justifying non-acceptance of the Commission’s decision.<sup>272</sup> There might be some genuine differences of opinion about the utility of such a substance in different countries,<sup>273</sup> and the view of the World Health Organization and of the Commission, representing the dominant opinion, may in such a case not be in agreement with the experience of the Party which makes use of the right of non-acceptance. In any event it appears that the 1971 Conference held that cases in which “exceptional circumstances” would justify a notification of “non-acceptance” would be very rare.<sup>274</sup> It was, however, understood that the “exceptional circumstances” might be of long duration.<sup>275</sup>

27. From the viewpoint of the purpose of the Convention, it may be assumed that considerations other than those of public health would generally not justify a Party in not accepting a decision of the Commission. The discussion of the problem at the 1971 Conference also gives the impression that although not expressly stated, this was the Conference’s intention.

28. It is submitted that Parties may at any time withdraw their “non-acceptance” of a decision of the Commission, even though the Convention does not contain an express provision to that effect. It may be held that such a right is implied in the provisions of the treaty and also accords with its aims. Since a Party may refuse to accept a decision of the Commission only “in view of exceptional circumstances”, it appears to follow that it may not maintain its “non-acceptance”, which is called an “exceptional action”, after those circumstances have ceased to exist. Furthermore article 19, paragraph 7 authorizes the Board to take the measures provided for in that article if it has reason to believe that the aims of the Convention are being seriously endangered as a result of a Party’s non-acceptance under article 2, paragraph 7 of a decision of the Commission. Under the “sanction” procedure of that article a Party may in some cases even be called upon to remedy a situation of concern to the Board and other countries by withdrawing its notification of “non-acceptance”.<sup>276</sup>

29. The withdrawal of a notification of “non-acceptance” has to be effected by a written notice to the Secretary-General. The Commission’s decision in question would in such a case immediately become “fully

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<sup>272</sup> *Ibid.*, summary records of the eighteenth plenary meeting, paragraph 3 (p. 70) and minutes of the twenty-sixth meeting of the Committee on Control Measures, paragraph 8 (p. 183); it will be recalled that only a very limited medical use of substances in Schedule I is permitted under article 7, paragraph (a).

<sup>273</sup> *Ibid.*, summary records of the eighteenth plenary meeting, paragraph 9 (p. 71).

<sup>274</sup> *Ibid.*, summary records of the seventeenth plenary meeting, paragraph 55 (p. 69).

<sup>275</sup> *Ibid.*, minutes of the fourth meeting of the Committee on Control Measures, paragraphs 3 and 14 (pp. 133 and 134); see also above paragraph 19 of the present comments on article 2, paragraph 7; introductory subparagraph.

<sup>276</sup> See article 19, paragraph 1, subparagraph (b).

effective” in regard to the Party which has withdrawn its non-acceptance of that decision, but not before 180 days after the date of its communication.<sup>277</sup>

30. A Party may limit the territorial effects of its notice of non-acceptance by restricting them to a “region” to be indicated in that notice. The Vienna Convention does not explicitly so state; but the “exceptional circumstances” justifying a Party’s notice of non-acceptance may not exist in its total territory, but only in one or several of its regions. It may be noted in this context that article 3, paragraph 3 expressly provides that a Party may limit the effects of its exemption of a preparation to “one of its regions”. The notice should also indicate the control measures which the Party will apply in addition to those which would be required by subparagraphs (a) to (e). This could be done by enumerating those measures, or by naming those which would be obligatory under the full régime applicable to the substance in question, but which the Party will not apply.

31. A Party’s written notice of “non-acceptance” of a decision of the Commission, as well as its notification of the withdrawal of such a notice, must be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to the Vienna Convention, to WHO and to the Board.

32. Although the institution of “non-acceptance” played a great rôle in often controversial discussions of the 1971 Conference, it may rather safely be assumed that it will be of very little if any importance in practice. It can be expected that a Party will very rarely have a valid reason for rejecting a decision of the Commission placing a substance in a Schedule on the basis of the medical and scientific view of WHO on that case.<sup>278</sup>

***Paragraph 7, subparagraphs (a), (b), (c), (d) and (e)***

**(a)** A Party having given such notice with respect to a previously uncontrolled substance added to Schedule I shall take into account, as far as possible, the special control measures enumerated in article 6 and, with respect to that substance, shall:

- (i)** require licences for manufacture, trade and distribution as provided in article 8 for substances in Schedule II;
- (ii)** require medical prescriptions for supply or dispensing as provided in article 9 for substances in Schedule II;
- (iii)** comply with the obligations relating to export and import provided in article 12, except in respect to another Party having given such notice for the substance in question;

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<sup>277</sup> See above paragraphs 6 and 7 of the present comments on article 2, paragraph 7, introductory subparagraph.

<sup>278</sup> Article 2, paragraphs 4 to 6.

- (iv) comply with the obligations provided in article 13 for substances in Schedule II in regard to prohibition of and restrictions on export and import;
- (v) furnish statistical reports to the Board in accordance with paragraph 4 (a) of article 16; and
- (vi) adopt measures in accordance with article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

(b) A Party having given such notice with regard to a previously uncontrolled substance added to Schedule II shall, with respect to that substance:

- (i) require licences for manufacture, trade and distribution in accordance with article 8;
- (ii) require medical prescriptions for supply or dispensing in accordance with article 9;
- (iii) comply with the obligations relating to export and import provided in article 12, except in respect to another Party having given such notice for the substance in question;
- (iv) comply with the obligations of article 13 in regard to prohibition of and restrictions on export and import;
- (v) furnish statistical reports to the Board in accordance with paragraphs 4 (a), (c) and (d) of article 16; and
- (vi) adopt measures in accordance with article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

(c) A Party having given such notice with regard to a previously uncontrolled substance added to Schedule III shall, with respect to that substance:

- (i) require licences for manufacture, trade and distribution in accordance with article 8;
- (ii) require medical prescriptions for supply or dispensing in accordance with article 9;
- (iii) comply with the obligations relating to export provided in article 12, except in respect to another Party having given such notice for the substance in question;
- (iv) comply with the obligations of article 13 in regard to prohibition of and restrictions on export and import; and
- (v) adopt measures in accordance with article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

(d) A Party having given such notice with regard to a previously uncontrolled substance added to Schedule IV shall, with respect to that substance:

- (i) require licences for manufacture, trade and distribution in accordance with article 8;

- (ii) comply with the obligations of article 13 in regard to prohibition of and restrictions on export and import; and
- (iii) adopt measures in accordance with article 22 for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

(e) A Party having given such notice with regard to a substance transferred to a Schedule providing stricter controls and obligations shall apply as a minimum all of the provisions of this Convention applicable to the Schedule from which it was transferred.

### Commentary

1. It will be recalled that these subparagraphs do not provide for a régime applicable to a substance transferred by the Commission from a more strictly controlled Schedule to a less strictly controlled Schedule. As regards the régime which a Party that has not accepted the Commission's decision has to apply in such a case, see above, paragraphs 11 to 16 of the comments on article 2, paragraph 7, introductory paragraph.

2. Parties to which the provisions of subparagraphs (a) to (e) apply must also subject the preparations of the psychotropic substances concerned to the relevant minimum controls outlined in those subparagraphs. This follows from article 3, paragraph 1, which states that except as provided *in that article*<sup>279</sup> a preparation is subject to the same measures of control as the substance which it contains. If the preparation contains a substance whose régime is fully binding upon the Party and another substance whose régime the Party has not accepted pursuant to the introductory subparagraph of paragraph 7, the stricter of the two régimes would have to be applied. It may sometimes be difficult to decide whether a régime required by the provisions of subparagraphs (a) to (c) or the full régime applicable to one of the Schedules is more strict. There can be no doubt that any of the full régimes is more strict than that prescribed by subparagraph (d). It is, however, suggested that the régime of subparagraph (c) should be considered more strict than the full régime applicable to Schedule IV. This view is based on the consideration that the international controls required by subparagraph (c) render the régime described in that provision more strict than is the régime governing Schedule IV. International control measures are specially important for the purposes of the Convention. For the same reason, the control required by subparagraph (a) or (b) should be considered more strict than either the full régime applicable to Schedule III or that applicable to Schedule IV. The full controls prescribed for a substance in Schedule I or II are of course to be considered more strict than any of the four régimes described in subparagraphs (a) to (d). It is admitted that not all of the foregoing suggestions may be considered valid by some Parties. The decision as to which of two régimes is to be considered more strict will depend on the particular importance which a

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<sup>279</sup> See, however, article 16, paragraph 4, concluding sentence; see also article 4, subparagraph (a) and article 11, paragraph 6.

Government attaches to individual control measures. It is however held that the difficulties which a Party may experience in choosing the appropriate controls for a preparation which contains a substance whose régime is fully binding upon the Party and another substance whose inclusion in a Schedule it has not accepted pursuant to the introductory subparagraph of paragraph 7 will in practice hardly be of any importance since—as stated above<sup>280</sup>—it can be expected that Parties will most probably very rarely not accept decisions of the Commission placing a substance in a Schedule.

3. A Party which has not accepted the Commission's transfer of a substance from a more strict régime to a less strict régime is bound to apply to a preparation containing that substance the controls which it would have to apply to the substance itself, in the light of the considerations contained in paragraph 15 of the comments on article 2, paragraph 7, introductory subparagraph. If the preparation contains in addition one or more other psychotropic substances, the comments presented in the preceding paragraph apply.

4. The question arises whether a Party entitled by a notification of “non-acceptance” to apply to a substance one of the limited régimes described in subparagraphs (b) to (e) may under article 3, paragraphs 2 and 3 exempt from control measures a preparation containing such a substance although not withdrawing<sup>281</sup> its notification of “non-acceptance”, and thus continuing the limited régime in regard to the substance itself.

5. As has been pointed out earlier in these comments, Parties are bound under article 3, paragraph 1 to apply to a preparation those measures of control which they have to impose upon the psychotropic substance which the preparation contains “*except as provided in the following paragraphs of this article*”, i.e. of article 3. It has been indicated in preceding paragraphs of the present comments that Parties must apply that rule also to preparations containing a substance whose addition to the Schedule in which it is listed they did not accept pursuant to article 2, paragraph 7, introductory subparagraph, and in respect of which they may consequently apply the limited régime in question. Under the rule of article 3, paragraph 1 they have to apply that limited régime “*except as provided in the following paragraphs*” of article 3. The exemption of a preparation from some control measures, provided for in paragraphs 2 to 4 of article 3, constitutes that exception. It can be concluded that the question raised in the preceding paragraph of these comments has to be answered in the affirmative, i.e. that a Party may under paragraphs 2 and 3 of article 3 exempt from some control measures a preparation which contains a substance to which it may apply the limited régime. However, since preparations containing a substance in Schedule I are excluded from the scope of article 3, paragraph 2, preparations to which

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<sup>280</sup> See paragraph 32 of the comments on article 2 paragraph 7, introductory paragraph.

<sup>281</sup> See paragraph 28 of the comments on the provision cited in the preceding foot-note.

subparagraph (a) would apply and those containing such a substance and governed by subparagraph (e) could not be exempted.

6. The controls which a Party has to impose in the case of its exemption of a preparation containing a substance to which, pursuant to article 2, paragraph 7, it may apply a limited régime seem to require some consideration. Article 3, paragraph 3 provides that a Party may, under the conditions of paragraph 2, “decide to exempt the preparation . . . from any or all of the measures of control provided in this Convention except the requirements of” certain rules contained in the articles mentioned under (a) to (f) of article 3, paragraph 3.

7. That text gives rise to the question as to which controls of those mentioned in article 3, paragraph 3, subparagraphs (a) to (f) a Party would be bound to apply to a preparation

- (i) Which contains a substance controlled by one of the régimes outlined in the subparagraph (b) to (e) under consideration,
- (ii) Whose controls are determined by the régime governing that substance, and
- (iii) Which the Party has exempted from control measures pursuant to article 3, paragraph 3.

Must the Party in such a case impose all the control measures mentioned in article 3, paragraph 3, subparagraph (a) to (f) whether or not they govern the preparation if not exempted, or only those of them which would have to be applied to the preparation if not exempted?

8. The answer to that question appears to depend on the meaning one attaches to the phrase “except the requirements” in article 3, paragraph 3. Does it mean “except the control measures *if governing the preparation in question*”, or is the word “requirements” used to indicate that the application of the measures referred to in subparagraphs (a) to (f) would in all cases be *required*? The English text of paragraph 3 in connexion with paragraph 2 may perhaps lend itself better to the first of those two interpretations. The corresponding Spanish words “*salvo en lo prescrito respecto a:*” (i.e. in the articles mentioned in the subparagraphs (a) to (f)) also seem to confirm that view. However, the last sentence of the introductory subparagraph of paragraph 3 of the French text which reads: “*toutefois ladite préparation demeurera soumise aux obligations énoncées dans les articles suivants:*” (i.e. the articles mentioned in subparagraphs (a) to (f)) can more easily be understood to mean that the controls outlined in those subparagraphs must in all cases be applied to exempted preparations, even though some of them may not govern the preparation concerned under article 2, paragraph 7 and article 3, paragraph 1 if not exempted.<sup>282</sup>

<sup>282</sup> See paragraphs 2 and 3 of the present comments on article 2, paragraph 7, subparagraphs (a) to (e); it is admitted that the word “*demeurera*” in the French text may cast some doubts on the interpretation offered in this place.



9. Of the controls listed in article 3, paragraph 3, subparagraphs (a) to (f) the following are not required in regard to substances and their non-exempted preparations governed by article 2, paragraph 7, subparagraphs (b) to (d):

- (i) The keeping of records under article 11 as it applies to exempt preparations, in respect of substances in Schedule III and IV governed by article 2, paragraph 7, subparagraphs (c) and (d). That control is not expressly listed among those which have to be applied under article 2, paragraph 7, subparagraph (b) to substances in Schedule II; but its obligatory partial application seems to be implied in clause (v) of that subparagraph requiring Parties to furnish to the Board statistical reports on the quantities of substances in Schedule II used in the manufacture of exempted preparations. Under the full régime applicable to Schedule II, III or IV, as well as under article 3, paragraph 3, subparagraph (b), Parties are according to article 11 bound to require manufacturers not only to keep records as to the quantity of each psychotropic substance used in the manufacture of an exempted preparation, but also as to the nature, total quantity and initial disposal of the exempt preparation manufactured therefrom. Apart from the above mentioned implied obligation to require manufacturers of exempted preparations of substances in Schedule II to record the quantities of such a substance used in the manufacture of exempted preparations, none of the provisions of article 2, paragraph 7, subparagraphs (b) to (d) requires the maintenance of such records.
- (ii) The requirement of inspection under article 15 as it applies to manufacture. No provision in article 2, paragraph 7, subparagraphs (b) to (d) expressly requires inspection of manufacture, no matter whether the substance is in Schedule II, III or IV. However, since those subparagraphs require control by licence of manufacture, trade and distribution in respect of all such substances, it may be assumed that the obligatory maintenance of a system of inspection of manufacture is implied;<sup>283</sup> and
- (iii) Sending pursuant to article 16 statistical reports to the Board of the quantities of substances in Schedule III used in the manufacture of exempted preparations. Article 16 required such reports only in respect of substances in Schedules II and III. Article 2, paragraph 7, subparagraph (b), clause (v) provides for such reports in respect of substances in Schedule II.

10. A somewhat anomalous situation would in some cases follow from the adoption of the first of the interpretations proffered in paragraph 8 above according to which only those of the control measures referred to in article 3,

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<sup>283</sup> See also the *1961 Commentary*, comments on the title of article 34 (paragraph 2 of the comments, p. 405) and article 4 (paragraph 5 of the comments, p. 109), article 29, paragraph 2, subparagraph (a) (paragraph 3 of the comments, p. 320) and article 30, paragraph 1, subparagraph (b), clause (i) (paragraph 2 of the comments, p. 330) of the Single Convention.

paragraph 3, subparagraphs (a) to (f) would have to be applied to an exempted preparation which would also be required for the control of that preparation if not exempted. A Party which by non-acceptance of the inclusion of a substance in one of the Schedules could apply to that substance the limited régime required under article 2, paragraph 7, subparagraphs (b) to (d) could impose upon a preparation of such a substance which it exempts pursuant to article 3, paragraphs 2 and 3, a less strict régime than a Party which applies to the substance in question the full and more effective control system required by the Convention. It would achieve that result by two unilateral actions: the notification of non-acceptance under article 2, paragraph 7 and the exemption pursuant to article 3.<sup>284</sup> It is submitted that from the viewpoint of effective control it would be a matter of serious concern if manufacturers were not required to keep records of those quantities of a substance in Schedule III subject to the limited régime of subparagraph (c), or of a substance in Schedule IV<sup>285</sup> governed by the provisions of subparagraph (d), which they used in compounding exempted preparations. It would be equally serious if manufacturers were not required to keep records as to the nature, total quantity and initial disposition of preparations containing substances subject to their respective limited régime of subparagraphs (b), (c) or (d). Such records required by article 11, paragraph 6 appear to be very important to effective control.

11. Moreover, although—as pointed out above in paragraph 8—the text of article 3, paragraph 3 may seem to be somewhat ambiguous, it appears that the authors of that provision considered the control measures enumerated in subparagraphs (a) to (f) a minimum which should be required in regard to all exempted preparations. The second view suggested in paragraph 8 above therefore appears to be preferable because it accords much more with the purposes of the Convention. Consequently, a Party authorized to impose on a substance in Schedule II, III or IV the appropriate régime defined in article 2, paragraph 7, subparagraphs (b), (c) or (d) should apply to a preparation of such a substance which it exempts, *all* the controls enumerated in article 3, paragraph 3, subparagraphs (a) to (f), whether or not they are required for the control of the basic substance. In addition, the Party is of course bound to apply to the exempted preparation such relevant controls outlined in article 2, paragraph 7, subparagraphs (b) to (d) as it does not include in its exemption.

12. The five control régimes described in article 2, paragraph 7, subparagraphs (a) to (e), present, according to the last sentence of the introductory subparagraph of paragraph 7, the “*minimum*” which Parties that do not accept the Commission’s decision in question are bound to carry out. It is suggested that Parties should in this context keep in mind that their

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<sup>284</sup> The unilateral exemption can, however, be partially or wholly terminated by the Commission under article 3, paragraph 4.

<sup>285</sup> See above paragraph 9 of the present comments on the subparagraphs under consideration as to the obligation of such Parties to require manufacturers to keep records of the quantities of psychotropic drugs in Schedule II used in the manufacture of exempted preparations.

omission to carry out control measures governing the Schedule involved but not required by the limited régimes defined in subparagraphs (a) to (e) has to be justified by the exceptional circumstances which caused them not to accept the Commission's decision. One may assume that it is at least in accord with the spirit of the Vienna Convention, if not a legal obligation, that Parties should, in addition to the control measures required by subparagraphs (a) to (e), carry out all those other provisions of the Vienna Convention relating to the psychotropic substance concerned which would not make it significantly more difficult for them to cope with their "exceptional circumstances".

13. Under article 2, paragraph 7, subparagraph (e) a Party which does not accept a decision of a Commission transferring a substance "to a Schedule providing stricter controls" is bound to apply to that substance "as a minimum all of the provisions of this Convention applicable to the Schedule from which it was transferred". The Party must apply that minimum<sup>286</sup> although by virtue of its earlier non-acceptance of the inclusion of the substance in the Schedule from which it was transferred it was authorized to apply the relevant limited régime outlined in article 2, paragraph 7, subparagraphs (b), (c) or (d).

14. The reference in the English text of the introductory clause of subparagraph (a) to article 6 is erroneous. The correct reference would be to article 7. The French and Spanish texts correctly refer to article 7.

15. That introductory clause of subparagraph (a) requires that a Party not having accepted the inclusion in Schedule I of a previously uncontrolled substance should nevertheless "take into account, as far as possible, the special control measures enumerated in article 7." This provision does not cover the transfer of a substance to Schedule I from a less strictly controlled Schedule, to which subparagraph (e) applies; but the same reasons which would make it desirable to take into account the provisions of article 7 in the case of inclusion in Schedule I of a previously uncontrolled substance seem also to be valid in the event of such a transfer. That more specific rule applicable to substances in Schedule I appears to be implied in the more general rule requiring Parties to apply, "as a minimum" the limited régimes outlined in subparagraphs (a) to (e).<sup>287</sup>

16. The specific provisions of paragraph 7, subparagraph (a) applying to a formerly uncontrolled substance placed in Schedule I, would not prevent a Party from using substances in Schedule I "for the manufacture of non-psychotropic substances or products" or "for the capture of animals by persons specifically authorized by the competent authorities" to do so. Subparagraph (a) does not include article 4, article 5, paragraph 1 or article 7, paragraph (a) which would prohibit such use. Clause (ii) of subparagraph (a)

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<sup>286</sup> The words in subparagraph (e) "as a minimum" appear to be superabundant in view of the last sentence of the introductory subparagraph of paragraph 7; see the preceding paragraph of the present comments on subparagraphs (a) to (e).

<sup>287</sup> See above, paragraph 12 of the present comments on the subparagraphs under consideration.

requiring medical prescriptions for supply or dispensation covers only the case of sale, distribution, dispensation or administration to *individuals*, including the sale and distribution to individuals for use by other persons as patients or for use by animals. It does not constitute a general prohibition of the non-medical use of substances in Schedule I.<sup>288</sup> However, article 7, paragraph (a) which Parties must “take into account” when applying article 2, paragraph 7, subparagraph (a), prohibits all use of substances in Schedule I “except for scientific and very limited medical purposes”. While their need for using such a substance for wide medical use may be part of the “exceptional circumstances” which cause them not to accept the Commission’s decision to place the substance in Schedule I, it may be safely assumed that the use of the substance for the capture of animals will hardly ever be justified by such circumstances. The Parties should therefore prohibit such use.<sup>289</sup> The same will normally be the case in regard to the use of substances in Schedule I “for the manufacture of non-psychotropic substances or products”. However, it cannot be excluded entirely that in the future a Party’s urgent need of a substance in Schedule I for such manufacture may constitute “exceptional circumstances” compelling the Party not to accept the Commission’s decision placing that substance in Schedule I. It must be admitted that under the Vienna Convention, the Party could in that case authorize the use for such manufacture; but since the Party is required to “take into account, as far as possible, the special control measures enumerated in article 7”, and since the provisions of subparagraph (a) are only the “minimum” which the Party would be bound to apply for the control of the substance concerned, it is submitted that the Party would in such a case have to impose very strict controls to prevent diversion of the substance for illicit purposes. Failure to impose the required controls with a consequential significant leakage of the substance into the illicit traffic may, according to article 19, paragraph 7, be considered by the Board to be a “reason to believe that the aims of this Convention are being seriously endangered as a result” of the Party’s non-acceptance of the Commission’s decision to place that previously uncontrolled substance in Schedule I. It may again be noted in this place that the procedure of article 19 may lead to such a serious measure as a recommendation of the Board to Parties that they stop the export, import, or both, of particular psychotropic substances from or to the Party which has not accepted the Commission’s decision.

17. The provisions governing Schedule II, III or IV which pursuant to subparagraph (e) a Party would have to apply to a substance whose transfer to Schedule I from a less strictly controlled Schedule it has not accepted, would authorize the Party to permit the use of that substance “for the manufacture of non-psychotropic substances or products” as well as for the “capture of animals”. Article 4, which forms part of each of the three régimes

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<sup>288</sup> See article 9.

<sup>289</sup> See the preceding paragraph of the present comments on the subparagraphs under consideration.

governing Schedules II, III or IV, grants that authority, but only in respect of substances in those Schedules, expressly excluding substances in Schedule I. However, under subparagraph (*e*) a Party would be authorized to apply to a substance transferred to Schedule I the rules governing the Schedule in which it was previously included and which might be Schedule II, III or IV. On the other hand, those rules constitute only a “minimum” of what a Party should implement under subparagraph (*e*). Here again it is suggested that the need for using a substance in Schedule I for the capture of animals will hardly ever be a part of the “exceptionally circumstances” which under paragraph 7 introductory subparagraph might justify a Party not to accept the inclusion of a substance in Schedule I. A Party applying under subparagraph (*e*) any régime to a substance in that Schedule therefore should not permit its use for that purpose. The same consideration will normally also apply to the use of substance in Schedule I “for the manufacture of non-psychoactive substances or products”. A Party acting under subparagraph (*e*) should normally also prohibit that use; but it is not entirely impossible that a Party’s urgent need of such a substance for that manufacture might in the future become very important, so as to justify its refusal to accept the transfer of that substance to Schedule I. In that event, a Party which authorizes the use of a substance in Schedule I, to which it applies subparagraph (*e*), for the manufacture of non-psychoactive substances or products should apply as strict controls as would be required to prevent diversion of that substance into the illicit traffic. Inadequate controls might also in this case cause the Board to apply the (sanction) procedure of article 19.<sup>290</sup>

18. A Party which does not accept the inclusion of a previously uncontrolled substance in Schedule II, III or IV could also authorize the use of that substance for the “manufacture of non-psychoactive substances or products” and “for the capture of animals”. It would be bound to apply strict controls to prevent diversion into the illicit traffic. The reasons for the requirement of strict controls, indicated in the preceding paragraphs of the present comments, are also valid in cases covered by subparagraphs (*b*), (*c*) or (*d*). It will of course be noted that even the full régimes applicable to Schedules II, III or IV authorize such manufacture and use in the capture of animals.

19. Under article 4, paragraph (*a*) a Party may permit for personal use the carrying by international travellers of small quantities of preparations containing a substance in Schedule II, III or IV. Under that article, and consequently under the full régime applicable to substances in Schedule I, a Party may not authorize such carrying of preparations containing a substance in Schedule I. Article 4, paragraph (*a*) does not present an additional obligation imposed by the Convention upon Governments, but in respect of preparations containing a substance in Schedule II or III an exception from their obligations relating to the international trade pursuant to article 12. That relief from obligations is not listed in subparagraphs (*b*) or (*c*), and therefore does not free Parties which in respect of substances in Schedule II

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<sup>290</sup> See the preceding paragraph of the present comments.

or III are bound to enforce the rules of those subparagraphs, from applying to the carrying by international travellers of preparations containing such substances the provisions of article 12 as required by the subparagraphs.<sup>291</sup>

20. As regards preparations containing a previously uncontrolled substance which has been included in Schedule II, a Party which has not accepted that inclusion, and must thus implement subparagraph (b), is required to apply the import certificate and export authorization system outlined in article 12, paragraph 1, to international travellers carrying such preparations, except in respect to another Party which also has not accepted that control of the substance in question.

21. A Party bound to implement the rules of subparagraph (c) in respect of a previously uncontrolled substance included in Schedule III is required to apply to international travellers carrying preparations containing that substance, the rules of article 12, paragraph 2 concerning the declaration of exports, except in respect of another Party which also has not accepted the inclusion of the substance in Schedule III.

22. It is held that a Party which has not accepted the inclusion in Schedule I of a previously uncontrolled substance should under no circumstances permit the carrying by international travellers of preparations containing that substance, no matter to which country they may be going. It is true that under the specific rules of subparagraph (a) alone the Party would not be prevented from permitting, under the controls of the import certificate and export authorization system, such carriage to the territory of a Party which has not notified to the Secretary-General its non-acceptance of the inclusion of the substance in Schedule I, and, even without such controls, to a Party which has not accepted that inclusion; but the provisions of subparagraph (a) are only a "minimum" which the Party not having accepted the inclusion of the substance concerned in Schedule I is required to apply. The Party must also take into account the control measures enumerated in article 7 whose paragraph (f) subjects the export and import of such substances and consequently, pursuant to article 3, paragraph 1, also of their preparations, to conditions which exclude the carriage by international travellers of preparations of substances in Schedule I. Such carriage is also not permitted under article 4, introductory paragraph.<sup>292</sup> It can hardly be assumed that a Party would consider a need for permitting international travellers to carry preparations of a substance in Schedule I to be part of the "exceptional circumstances" justifying pursuant to paragraph 7, introductory subparagraph, its non-acceptance of the inclusion of that substance in that Schedule.

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<sup>291</sup> See below the comments on article 13, paragraph 1 regarding the prohibition of the carrying by international travellers of preparations, contrary to prohibitions or restrictions pursuant to article 13; see also below paragraphs 25 and 35 to 38 of the present comments on subparagraphs (a) to (e).

<sup>292</sup> See above paragraph 19 of the present comments.

23. It is submitted that for reasons similar to those outlined in the preceding paragraph a Party should also under subparagraph (e) not permit the carrying by international travellers of preparations containing a substance included by the Commission in Schedule I. It does not matter which of the three régimes governing Schedule II, III or IV the Party may otherwise be authorized to apply to the substance in question. As far as preparations containing a substance in Schedule II or III are concerned, a Party may under subparagraph (e) authorize international travellers to carry them.

24. A Party which is bound to apply subparagraph (d) to a previously uncontrolled substance whose inclusion by the Commission in Schedule IV it has not accepted may authorize international travellers to carry small quantities of preparations of that substance. The Party could do this even if it had not notified to the Secretary-General its non-acceptance of the Commission's action. The limited régime prescribed by subparagraph (d) as well as the full régime applicable to substances in Schedule IV authorize the permission of such carriage.

25. However, under all régimes prescribed by subparagraphs (a) to (e) a Party is not authorized to permit, contrary to prohibitions or restrictions of other Parties pursuant to article 13, the carriage by international travellers of preparations containing a psychotropic substance. It does not matter in which Schedule the substance in question is included.

26. It may be noted that a Party, by its non-acceptance of the inclusion of a substance in a Schedule, is never relieved of its obligation to require licences for manufacture of, trade in, and distribution of that substance in accordance with article 8. This requirement is maintained by all five subparagraphs (a) to (e) under consideration, under subparagraphs (a) to (d)<sup>293</sup> expressly and under subparagraph (e) by reference to the Schedule from which the substance concerned was transferred by the Commission. That Schedule could be Schedule II, III or IV, all of which are subject to the licensing requirements of article 8.

27. Not only the manufacturing, trade and distribution activities themselves have to be licensed under the five subparagraphs, but also the establishments and premises<sup>294</sup> in which the manufacture, trade in or distribution takes place. The licensing requirement applies not only to the psychotropic substances themselves, but also to their preparations. It will be noted that as regards licensing, even the limited régimes of the Vienna Convention under subparagraphs (a) to (d) are in that respect more strict than the Single Convention. It will be recalled that the Single Convention does not make obligatory the licensing of establishments and premises in which the trade or distribution of preparations of "narcotic" drugs<sup>295</sup> takes place.<sup>296</sup>

<sup>293</sup> See clauses (i) in subparagraphs (a), (b), (c) and (d).

<sup>294</sup> See above comments on article 1, paragraph (l).

<sup>295</sup> i.e. drugs controlled by the Single Convention; see article 1, paragraph 1, subparagraph (j) of that Convention.

<sup>296</sup> Article 30, paragraph 1, subparagraph (b), clause (ii) of the Single Convention.

28. As under article 8 a “licence” or “other similar control measure” is required under subparagraphs (a) to (d).<sup>297</sup> It is held that the phrase “other similar control measure” covers the same substance as the word “licence”, namely a written governmental permit whose issuance is at least to some extent left to the discretion of the competent domestic authorities. It does not matter whether such a permit is called “licence” or referred to by a word having the same or another root. A permit to which every person or corporate body fulfilling the conditions required by law would have a claim, would not be a “licence or other similar control measure” in the meaning of subparagraphs (a) to (d) or of article 8, although it may be called “licence” or be referred to by a similar term in the national law or domestic administrative practice concerned.<sup>298</sup>

29. The provision regarding licensing also includes the obligation of Parties to impose all those controls which form part of a “licensing” system.<sup>299</sup> It may be mentioned also in this place that the requirement of a licence or “other similar control measure” does not apply “to persons duly authorized to perform and while performing therapeutic or scientific functions”.<sup>300</sup>

30. A State enterprise authorized by the competent governmental authorities to manufacture, trade in, or distribute psychotropic drugs and controlled by measures<sup>298</sup> normally associated with the idea of licensing is to be considered to be “under licence or other similar control measure”, and so are a State enterprise’s establishments and premises allocated by the competent authorities to such activities.

31. The limited régimes of subparagraphs (a), (b) and (c)<sup>301</sup> and the full régimes applicable to Schedules II, III or IV and consequently any régime which would be required by subparagraph (e)<sup>302</sup> stipulate that psychotropic substances which they control “should be supplied or dispensed for use by individuals pursuant to medical prescription only, except when individuals may lawfully obtain, use, dispense or administer such substances in the duly authorized exercise of therapeutic or scientific functions”.

32. Under subparagraph (c) and—as explained further below—under subparagraph (e), when a régime applicable to Schedule IV is required, Parties may under the conditions of article 9, paragraph 3, authorize the supply of small quantities of psychotropic substances without medical prescription.

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<sup>297</sup> And under subparagraph (e) by virtue of its reference to a Schedule (II, III or IV) each of which is controlled by article 8.

<sup>298</sup> See below the comments on article 8, paragraph 1; see also *1961 Commentary*, article 29, paragraph 1 [paragraph 1 of the comments (p. 317)].

<sup>299</sup> See below the comments on article 8, paragraph 1, paragraph 2, subparagraphs (a), (b) and (c) and paragraph 4.

<sup>300</sup> Article 8, paragraph 3.

<sup>301</sup> Clauses (ii) of these subparagraphs.

<sup>302</sup> Under subparagraph (e) one of the régimes applicable to Schedule II, III or IV would have to be applied; see article 9, paragraph 1.



That exception from the prescription requirement may however in all cases be granted only in respect of substances in Schedule III or IV because article 9 is without modification cited in subparagraph (c) as it is in subparagraphs (a) and (b), and forms part of any régime which may have to be applied under subparagraph (e)<sup>302</sup>. Article 9, paragraph 3 permits the exception only in respect of substances in Schedules III and IV. Consequently the exception is not part of the régime of subparagraph (a) applicable to substances in Schedule I, or of the régime of subparagraph (b) applicable to substances in Schedule II. It would also not be a part of the control system under subparagraph (e) when the application of the régime governing Schedule II in regard to substances in Schedule I or of that of Schedule III in regard to substances in Schedule I or II or of that in Schedule IV in regard to substances in Schedule I or II would be prescribed. The exception would however be among the provisions applicable under subparagraph (e) when the régime governing Schedule IV would be required for a substance placed in Schedule III.

33. Substances in Schedule I are under their full régime not subject to the rules of article 9 concerning medical prescriptions<sup>303</sup>. They are governed by article 7, paragraph (a) prohibiting all use of substances in Schedule I except for “scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their [i.e. the Parties’] Governments or specifically approved by them”. It is submitted that the implementation of that restrictive provision may hardly ever be required, in addition to the measures of subparagraph (a) concerning previously uncontrolled substances placed in Schedule I or in addition to the controls prescribed pursuant to subparagraph (e) in regard to a substance transferred to Schedule I from a Schedule subject to a less strict control. The need for not applying article 7, paragraph (a) to a substance placed by the Commission in Schedule I will most probably normally be the principal factor in creating the “exceptional circumstances” justifying pursuant to article 2, paragraph 7, introductory paragraph, a Party’s non-acceptance of the inclusion of the substance concerned in Schedule I. While in regard to the control of substances in Schedule I Parties are under subparagraph (a) required to “take into account” the provisions of article 7 and under both subparagraphs (a) and (e) have to consider the rules of those subparagraphs to be a minimum of the controls which they have to impose, it may be assumed that they will normally not find it possible to apply article 7, paragraph (a) to a substance whose inclusion in Schedule I they have not accepted.<sup>304</sup> They may apply article 9, paragraphs 1 and 2 instead.

34. Under subparagraph (d), which contains the régime which a Party is bound to apply to a previously uncontrolled substance whose inclusion in Schedule IV it has not accepted, the supply and dispensation of that substance for use by individuals may be permitted without medical prescription.

<sup>303</sup> Article 9, paragraphs 1 and 2.

<sup>304</sup> See above paragraphs 25 to 27 of the comments on article 2, paragraph 7, introductory subparagraph.

35. Article 13 requires Parties to comply with those prohibitions of, and restrictions on, the import of substances in Schedules II, III or IV which other Parties have notified to them through the Secretary-General. Under the limited régimes of article 2, paragraph 7, subparagraphs (b), (c) and (d) the Parties have the same obligation.<sup>305</sup> When under subparagraph (e) they are required to apply the régime of Schedule III or IV to a substance in Schedule II or the régime of Schedule IV to a substance in Schedule III,<sup>306</sup> the Parties are also bound to respect such prohibitions or restrictions.

36. Although article 13 excludes from its scope substances in Schedule I, Parties which have not accepted the inclusion in Schedule I of a previously uncontrolled substance are nevertheless under subparagraph (a) bound to respect prohibitions of and restrictions on the import of that substance, notified to them by other Parties in the way indicated in article 13 in regard to substances in other Schedules.<sup>307</sup>

37. However, under subparagraph (e) it may be doubtful whether a Party which has not accepted the Commission's transfer to Schedule I of a substance listed in Schedule II, III or IV is bound to respect prohibitions of, and restrictions on the import of that substance, notified by other Parties. Article 13 is part of all three régimes (i.e. those governing Schedule II, III or IV), one of which a Party may have to enforce in such a case; but as stated in the preceding paragraph of these comments, the text of article 13 does not apply to substances in Schedule I.

38. If under subparagraph (e) article 13 would not be applied to a substance in Schedule I in case of its transfer to that Schedule from a less strictly controlled régime, Parties could, in regard to a Party which has not accepted the transfer, not maintain the prohibitions of or restrictions on the import of that substance which they imposed pursuant to that article while the substance was still in Schedule II, III or IV. Although an interpretation having that result cannot be excluded by the text of subparagraph (e) read in connexion with the rules of article 13 governing Schedules II, III and IV, it would hardly be compatible with the spirit of the Vienna Convention. The controls required by subparagraph (e) constituting only a minimum, a Party which has not accepted the transfer to Schedule I of a substance previously subject to a less strict régime should comply with the prohibitions of and restrictions on the import of that substance, notified by other Parties in the way provided for in article 13 in regard to substances in other Schedules. If its failure to do so resulted in a significant diversion of the substance in Schedule I into illicit channels, it might risk that its non-acceptance of the substance in that Schedule would be considered by the Board to be a reason for initiating the (sanction) procedure of article 19 under paragraph 7 thereof.

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<sup>305</sup> Clause (iv) of subparagraphs (b) and (c), and clause (ii) of subparagraph (d).

<sup>306</sup> Substances included by the Commission in Schedule IV are never controlled by subparagraph (e).

<sup>307</sup> Subparagraph (a), clause (iv).

39. Article 7, paragraph (*f*), in addition to requiring the application to substances in Schedule I of the import certificate and export authorization system outlined in article 12, paragraphs 1 and 3, stipulates that the export and import of those substances should be prohibited “except when both the exporter and importer are the competent authorities or agencies of the exporting country or region,<sup>308</sup> respectively, or other persons or enterprises which are specifically authorized by the competent authorities of their country or region for the purpose”.<sup>309</sup> That additional control imposed by the first sentence of article 7, paragraph (*f*) upon the international trade in substances in Schedule I is not explicitly required under subparagraph (*a*) or (*e*).

40. While under subparagraph (*a*) Parties are required to “take into account” article 7, and under subparagraph (*a*) as well as under subparagraph (*e*) to consider the controls prescribed by those subparagraphs to be a “minimum”, it is nevertheless submitted that they would normally not be legally bound to apply to the international trade in a substance whose inclusion in Schedule I they have not accepted, the controls described in the first sentence of article 7, paragraph (*f*); but in practice they would have to do so in the trade with Parties which have not refused to accept the inclusion of the substance concerned in Schedule I.

41. Parties would under the limited régimes of subparagraphs (*a*) and (*b*) have to apply to the international trade in previously uncontrolled substances included in Schedule I or II the import certificate and export authorization system outlined in article 12, paragraphs 1 and 3, but only in respect to Parties which have not refused to accept the inclusion.<sup>310</sup> Under those subparagraphs, neither the import certificate and export authorization system nor the provisions of article 12, paragraph 2 concerning export declarations would have to be applied to the international trade in previously uncontrolled substances included in Schedule I or II, *between* Parties which have not accepted the addition of the substance concerned to Schedule I or II, as the case may be.

42. It is however suggested that Parties which do not apply the import certificate and export authorization system to such a trade may—although under subparagraphs (*a*) and (*b*) they are entitled not to do so—risk that the Board may consider a significant diversion from such trade into illicit channels to be a cause for initiating the (sanction) procedure of article 19, pursuant to paragraph 7 thereof. That risk may also exist in the case of an exporting Party not applying the import certificate and export authorization system to such a trade because it is prevented from doing so by the refusal of the importing Party to apply that system, even though both the exporting and the importing Party are not required to do so under subparagraphs (*a*) or (*b*).

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<sup>308</sup> Article 1, paragraph (*k*) and the above comments thereon; see also paragraph 10 of the general comments on article 1.

<sup>309</sup> See below the comments on article 7, paragraph (*f*).

<sup>310</sup> Clause (iii) of subparagraphs (*a*) and (*b*).

43. A Party entitled under subparagraph (a) not to apply and not applying the import certificate and export authorization system to an export or import of a substance in Schedule I may nevertheless sometimes provide for effective control if, pursuant to article 7, paragraph (f), first sentence, it prohibits exports and imports of the substance concerned in Schedule I “except when both the exporter and importer are the competent authorities or agencies of the exporting and importing country and region, respectively, or other persons or enterprises which are specifically authorized by the competent authorities of their country or region for the purpose”.<sup>311</sup>

44. However, under subparagraph (e) a Party is bound to apply the import certificate and export authorization system only to a substance in Schedule I transferred from Schedule II, but not to a substance in Schedule I transferred from Schedule III or IV, and never to a substance transferred to Schedule II. When required to apply that system it must do so also in respect to another Party which has not accepted the inclusion of the substance concerned in Schedule I.

45. Under subparagraph (e) a Party is bound to impose upon the international trade in substances in Schedule I or II transferred from Schedule III no more than the system of export declarations described in article 12, paragraph 2; but that obligation exists in respect of the export to all Parties, including those which have not accepted the inclusion of the substance involved in Schedule I or II. However, in the case of a substance in Schedule I or II<sup>312</sup> transferred from Schedule IV, the limited régime of subparagraph (e) does not require the application of the system of export declarations nor of the import certificate and export authorization system.

46. Nevertheless Parties which have not accepted the transfer of a substance to Schedule I or II from Schedule III or IV will in practice hardly ever be able to avoid the application of the import certificate and export authorization system.<sup>313</sup> Their trade partner will normally not have refused to accept the inclusion of the substance in Schedule I or II. Moreover, Parties which have not accepted the inclusion in Schedule I or II may also have to take into account the risk that their failure to apply the import certificate and export authorization system might lead to relevant diversions into illicit channels, and consequently cause the Board to initiate the (sanction) procedure of article 19 in accordance with its paragraph 7.

47. It may here be recalled again that the controls required by subparagraph (e) are only the “minimum” which Parties should apply. It may also be difficult to explain why under subparagraph (e) a substance moved to

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<sup>311</sup> See paragraph 39 of the present comments on subparagraphs (a) to (e).

<sup>312</sup> Or in Schedule III.

<sup>313</sup> As regards the practical need for applying the additional control of article 7, paragraph (f), first sentence to the international trade in substances in Schedule I, see paragraph 40 of the present comments on subparagraph (a) to (e).

Schedule I or II from Schedule III or IV<sup>314</sup> should under subparagraph (e) not be controlled by the import certificate and export authorization system, while a previously uncontrolled substance placed in Schedule I or II is so controlled pursuant to subparagraph (a) or (b) respectively. It is quite probable that at least some of the representatives at the 1971 Conference who took part in formulating the compromise of which subparagraph (e) was a part, intended to prescribe by that subparagraph that the controls of a substance required by that provision should be applied *in addition* to those applicable under subparagraphs (a), (b) or (c) to a substance placed by the Commission in the same Schedule. Such an intention might have been motivated by the consideration that the additional controls would be only those which a Party had to impose upon the substance while it was still in the less strictly controlled Schedule; but that intention, if it existed, has not been implemented by the text of subparagraph (e) as adopted by the 1971 Conference.

48. As regards a substance in Schedule II, importing Parties could under subparagraph (e) impose upon an exporting Party which has not accepted the inclusion of the substance concerned in Schedule II the unequivocal *obligation* to apply a system of control which would be essentially the same as the import certificate and export authorization system of article 12, paragraph 1. They could do so by prohibiting, pursuant to article 13, paragraph 1, the importation of the substance concerned while authorizing individual imports by special import licence under paragraph 3 of that article. It may be mentioned in this context that they could obtain the same result in respect of their imports of substances in Schedule II, III or IV and their preparations to which by virtue of the provisions relating to the Schedule concerned or under article 2, paragraph 7, subparagraphs (a) to (e) exporters might not have to apply the import certificate and export authorization system. Importing Parties could, by resorting to article 13, even arrange that their imports of preparations exempted under article 3, paragraphs 2 and 3, from a Party which has made the exemption, be subject to the requirement of their authorization by special import licence.

49. It is finally suggested that it would be not only in the interest of the effectiveness of international control but also advantageous<sup>315</sup> to a Party which has not accepted the inclusion of a substance in Schedule I or II if it would apply the import certificate and export authorization system to such a substance not only if it was previously not controlled—as it would be bound to do under subparagraphs (a) and (b)—but also if the substance concerned was previously in Schedule III or IV—in which case the Party might legally not be required to apply that system.<sup>316</sup>

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<sup>314</sup> A substance transferred to Schedule I from Schedule II would under subparagraph (e) be subject to the import certificate and export authorization system; see paragraph 44 above of the present comments on subparagraphs (a) to (e).

<sup>315</sup> See paragraph 46 of the present comments on subparagraphs (a) to (e).

<sup>316</sup> See paragraph 44 of the present comments.

50 Under subparagraph (c) Parties are bound to apply to a previously uncontrolled substance whose inclusion in Schedule III they have not accepted the rules of article 12, paragraph 2 concerning export declarations, but not in respect of Parties which have likewise refused to accept that inclusion. The words in clause (iii) “the obligations relating to export provided in article 12” do not refer to all provisions of that article relating to export, but only to the system of export declarations defined in paragraph 2 of the article. That interpretation follows from the consideration that clause (iii), like the other provisions of subparagraph (c), apply to substances in Schedule III. Under subparagraph (e) a Party is not required to apply the rules of article 12, paragraph 2 to a substance previously listed in Schedule IV whose transfer to Schedule III it has not accepted.<sup>317</sup>

51. Under subparagraph (d) a Party is not required to apply to a previously uncontrolled substance, whose addition to Schedule IV it has not accepted, either the import certificate and export authorization system or the system of export declarations defined in article 12, paragraph 2. It would not have to do so even if it had not refused to accept that addition to Schedule IV, and consequently was bound to apply the full régime applicable to that Schedule.<sup>318</sup>

52. The statistical reports which Parties have to furnish under subparagraphs (a) to (c) differ from those which they would have to supply in respect of the same substances under subparagraph (e).<sup>319</sup>

53. Parties have to furnish to the Board in respect of substances in Schedule I the same information under the limited régime of subparagraph (a) as under the full régime applicable to that Schedule. It may be noted that above in paragraph 16 of the present comments the view has been proffered that under subparagraph (a) substances in Schedule I could in some cases be used for the manufacture of non-psychoactive substances and products, whereas such use is pursuant to article 4<sup>320</sup> not authorized under the full régime; but subparagraph (a) does not require Parties to furnish statistics on the quantities of substances in Schedule I used for that manufacture. It is, however, submitted that under the conditions of article 19 the Board could ask for that information if needed to explain an unsatisfactory control situation as defined in paragraph 1, subparagraph (a) and paragraph 7 of that article. The Commission may also in appropriate cases be authorized to request such data under article 16, paragraph 1, introductory paragraph.<sup>321</sup>

54. Under subparagraph (e) a Party would have to supply to the Board in respect of substances in Schedule I all the data required by the full régime

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<sup>317</sup> Subparagraph (e) refers only to those substances in Schedule III which would be transferred from Schedule IV.

<sup>318</sup> An inclusion in Schedule IV can never be governed by subparagraph (e).

<sup>319</sup> A substance placed in Schedule IV, if previously not controlled is subject to subparagraph (d); subparagraph (e) never applies to substances in that Schedule.

<sup>320</sup> See also article 5, paragraph 1 and article 7, paragraph (a).

<sup>321</sup> See below the comments on article 16, paragraph 1; see also the comments on article 16, paragraphs 4 and 5.

governing such substance only if the substance concerned was transferred to Schedule I from Schedule II. In addition, the Party would also have to furnish figures on the quantities of the substance in Schedule I used for the manufacture of non-psychoactive substances or products, as it would in case of a transfer from Schedule III or IV. It has been submitted in paragraph 17 of the present comments that under subparagraph (e) such use could in some cases take place.<sup>322</sup> If the substance in question was transferred to Schedule I from Schedule III or IV, only the data required under the full régime applicable to Schedule III or IV respectively would have to be furnished to the Board. That means that in both cases information on the quantities exported to and imported from each country or region and on those held as stocks by manufacturers would not have to be supplied. However, Parties would instead have to send to the Board figures on the total quantities exported and imported without having to specify origin or destination. Moreover, the Board, in respect of a substance transferred to Schedule I from Schedule III or IV, could request a Party which did not accept the transfer, to furnish figures on the quantities exported to and imported from each country or region; but it would have to treat as confidential both its request and the information which it received in response thereto.<sup>323</sup>

55. Under subparagraph (b) a Party would be bound to furnish in respect of a substance in Schedule II the same statistical information as under the full régime. In addition to the data which it would have to furnish under subparagraph (a) in respect of a substance in Schedule I, it would under subparagraph (b) have to send to the Board in respect of a substance in Schedule II figures on the quantities used in the manufacture of exempt preparations<sup>324</sup> and on those used for the manufacture of non-psychoactive substances or products.

56. Under the minimum régime of subparagraph (e) Parties would in respect of a substance transferred to Schedule II not have to furnish all the data which they would be bound to supply under the full régime governing that Schedule. They would have to send to the Board in respect of such a substance only the information required by the full régime governing the Schedule from which the substance in question would have been transferred to Schedule II. That Schedule could be either Schedule III or IV. The differences between the data to be sent to the Board under the full régime and those to be furnished under subparagraph (e) would in respect of a

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<sup>322</sup> See article 16, paragraph 4, subparagraph (a) and (d); preparations of substances in Schedule I cannot be exempted; see above paragraph 5 of the present comments on article 2, paragraph 7, subparagraphs (a) to (e); consequently the provision requiring supply of information on the quantities of a substance in Schedule I used for the manufacture of exempt preparation does not apply in this case under subparagraph (e); see article 16, paragraph 4, subparagraph (c).

<sup>323</sup> See article 16, paragraph 4, subparagraphs (b) and (d) and paragraph 5.

<sup>324</sup> Preparations containing a substance in Schedule I can never be exempted; see above paragraph 5 of the present comments on article 2, paragraph 7, subparagraphs (a) to (e).

substance in Schedule II be the same as those outlined in paragraph 54 of the present comments as differences between the information to be supplied under the full régime and that under subparagraph (e) in respect of a substance transferred to Schedule I from Schedule III or IV. However, in respect of a substance transferred to Schedule II from Schedule III, figures on the quantities of that substance used for the manufacture of exempt preparations would also have to be supplied to the Board under subparagraph (e). That information need not be given if the substance was transferred to Schedule II from Schedule IV.<sup>325</sup>

57. A Party is under subparagraph (c) not bound to furnish to the Board statistical data in respect of a previously uncontrolled substance whose addition to Schedule III it has not accepted; but under subparagraph (e), a Party has to furnish in respect of a substance whose transfer to Schedule III from Schedule IV it has not accepted the statistical information which under the provisions of the Vienna Convention has to be given to the Board in respect of substances in Schedule IV.<sup>326</sup>

58. Subparagraph (d), which defines the obligations of Parties that have not accepted the inclusion in Schedule IV of a previously uncontrolled substance, does not require that any statistical information be furnished to the Board.<sup>327</sup>

59. As regards information to be furnished to the Commission in respect of psychotropic substances controlled by one of the limited régimes defined in subparagraphs (a) to (d), see below, the comments on article 16, paragraph 1.

60. None of the four limited régimes described in subparagraphs (a) to (d) expressly provides that Parties should require manufacturers of, or traders in the substance concerned to maintain records. It appears however to be implied in subparagraphs (a) and (b) that Governments have to require the maintenance of such records as would enable them to collect the information needed to furnish to the Board the statistical returns provided for in those subparagraphs.

61. Under subparagraph (e), Parties are bound to impose on manufacturers and traders the obligation to maintain such records as would be required under that régime relating to a Schedule, which they have to apply to the substance involved. That means that in respect of a substance in Schedule I the rules regarding substances in Schedule II, III or IV would have to be applied. In respect of a substance in Schedule II the rules regarding substances in Schedule III or IV would have to be observed; and in regard to a substance in Schedule III those regarding a substance in Schedule IV would have to be implemented. Which of those rules would have to be enforced

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<sup>325</sup> Article 16, paragraph 4, subparagraphs (b), (c) and (d) and paragraph 5.

<sup>326</sup> Article 16, paragraph 4, subparagraphs (b) and (d), and paragraph 5.

<sup>327</sup> Subparagraph (e) cannot govern any inclusion in Schedule IV; see also foot-note 318.



depends on the Schedule in which the substance concerned was listed before its transfer to its new Schedule.

62. It will be noted that under each of the last clauses of subparagraphs (a), (b), (c) and (d) penal provisions as defined in article 22 need in respect of the substance concerned cover only the violation of such laws and regulations as Parties have enacted in order to enforce the limited obligations which they have under those subparagraphs.

63. The preceding paragraphs of the present comments which describe the differences between the limited régimes to be applied under subparagraphs (a) to (c) and those to be enforced under subparagraph (e) in regard to the same Schedule offer a rather complex picture. It must be admitted that it would be quite difficult for a Government to apply, and for the international organs to survey, the implementation of such complicated provisions. It may, however, be assumed that those theoretical difficulties based on the letter of the law would in practice be only very minor. Cases in which Parties find it necessary not to accept the addition of a substance to a Schedule will most probably be very rare, if they occur at all.<sup>328</sup>

64. It is suggested that Parties entitled to apply subparagraph (e) should in addition implement such provisions of subparagraph (a), (b) or (c) regarding the Schedule to which the substance in question is added as would not be required under subparagraph (e). They would in this way enforce all those provisions which the 1971 Conference obviously considered to be a minimum in respect of a substance in a particular Schedule, in addition to such controls as they had already implemented in regard to the substance concerned before its transfer to its new Schedule. In some cases that would mean not the addition of a control measure, but the substitution of a more strict control measure required by subparagraph (a) or (b) for a less strict measure prescribed by subparagraph (e);<sup>329</sup> e.g. the application of the import certificate and export authorization system instead of the system of export declarations, described in article 12, paragraph 2, to a substance moved to Schedule I or II from Schedule III.<sup>330</sup>

65. As regards the relationship between the provisions of article 2, paragraph 7, subparagraphs (a) to (e) and article 14, see below, the general comments on article 14.

## *Paragraph 8*

### *General comments*

1. The paragraph under consideration is closely patterned after article 3, paragraph 8 of the Single Convention. The observations of the 1961

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<sup>328</sup> See paragraph 32 of the above comments on article 2, paragraph 7, introductory paragraph.

<sup>329</sup> See article 23 of the Vienna Convention.

<sup>330</sup> See above, paragraph 47 of the present comments on article 2, paragraph 7, subparagraphs (a) to (e).

Commentary on subparagraphs (a), (b), (c) and (d) of that article<sup>331</sup> may therefore *mutatis mutandis* also be relevant in respect of the provisions of article 2, paragraph 8 of the Vienna Convention.

2. As regards the relationship between the review procedure of article 2, paragraph 8 and the rights and obligations of Parties which pursuant to article 2, paragraph 7 do not accept a decision of the Commission adding a substance to a Schedule, see paragraphs 17 to 23 of the above comments on article 2, paragraph 7, introductory subparagraph.

3. A decision of the Commission terminating pursuant to article 3, paragraph 4, wholly or partially a Party's exemption of a preparation from some control measures is not subject to the review procedure of paragraph 8.

**Paragraph 8, subparagraph (a)**

**8. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within 180 days from receipt of notification of the decision. The request for review shall be sent to the Secretary-General together with all relevant information upon which the request for review is based.**

*Commentary*

1. The subparagraph under consideration does not expressly state that only decisions of the Commission amending any of the Schedules of the Vienna Convention are subject to review by the Council pursuant to paragraph 8, as does the corresponding provision of article 3, paragraph 8, subparagraph (a) of the Single Convention in respect of decisions of the Commission altering Schedules of the latter treaty. It is nevertheless held that a refusal of the Commission to make a change in a Schedule of the Vienna Convention, in whatever form and under whatever designation that negative action may be taken, is not a "decision" within the meaning of subparagraph (a) under consideration.<sup>332</sup> Decisions of the Commission which add a previously uncontrolled substance to a Schedule, transfer a substance from one Schedule to another or delete a substance from a Schedule without transferring it to another Schedule are "decisions" in the meaning of subparagraph (a).

2. A Party may achieve by a request for review the following:

(a) Cancellation of a decision of the Commission placing a previously uncontrolled substance in a Schedule;

(b) Inclusion of a previously uncontrolled substance in another Schedule than that in which it was placed by the Commission;

<sup>331</sup> Pages 99 to 107 of the English text of the 1961 Commentary.

<sup>332</sup> See paragraph 2 of the above comments on article 2, paragraph 7, introductory subparagraph.

(c) Transfer of a controlled substance to another Schedule than that chosen by the Commission;

(d) Cancellation of the Commission's transfer of a substance from one Schedule to another without restoring it to its former Schedule, thus freeing it from all control by the Vienna Convention;

(e) Cancellation of a decision of the Commission to free a substance from control by deleting it from the Schedule in which it is entered without transferring it to another Schedule; and

(f) Cancellation of a decision of the Commission freeing a substance from control by the Convention, and simultaneously having it transferred to another Schedule than that in which it was entered prior to the Commission's decision.

3. A Party may obtain the changes indicated in the preceding paragraph also by making a notification under article 2, paragraph 1, thus initiating a new consideration of the substance concerned by the World Health Organization and the Commission pursuant to paragraphs 4 and 5 or 6 of that article. It may in that way also achieve a change in a Schedule in a case in which the Commission had refused to make the alteration in the earlier procedure.

4. The Party must send to the Secretary-General the request for review within 180 days<sup>333</sup> from the date of its receipt of the Commission's decision. The appellant Party may find it advisable to send its request by registered airmail, asking for a postal return receipt unless it has its appeal handed to the United Nations Secretariat by a member or messenger of its local delegation. The Secretary-General will have a record of the date of receipt by the Party of the Commission's decision if—as has been suggested earlier in these comments<sup>334</sup>—he has dispatched the communication of that decision to Parties by registered airmail with a request for a return receipt.

5. It would often speed up the review procedure if the appellant Party could transmit to the Council its request for review in several or all of the working languages of that organ. A delay in the procedure could cause Parties considerable legislative or administrative difficulties or inconveniences due to a prolonged period of uncertainty about the control status of the substance concerned.

6. A Party may ask for the Council's review for all the reasons which the Commission took or was entitled to take into account in arriving at its decision pursuant to article 2, paragraphs 5 and 6. The Party may in particular also claim that the Commission's decision is incompatible with the World Health Organization's "assessments as to medical and scientific matters".<sup>335</sup>

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<sup>333</sup> Under article 3, paragraph 8, subparagraph (a) of the Single Convention the period is 90 days.

<sup>334</sup> See paragraph 5 of the above comments on article 2, paragraph 7, introductory subparagraph.

<sup>335</sup> See paragraphs 14 to 25 and in particular paragraphs 21 to 25 of the comments on article 2, paragraphs 5 and 6.

7. The Convention does not specifically require that the Council should consider as “determinative” the World Health Organization’s “assessments as to medical and scientific matters” in cases which it reviews. It is, however, difficult to conceive that the Council would base its decision on medical or scientific reasons which differ from those which the World Health Organization presented to the Commission, unless it receives under subparagraph (b) comments from the World Health Organization which contain views different from those which that Organization held in the procedure before the Commission.<sup>336</sup>

8. It will be noted that only a Party can request a review by the Council of the Commission’s decision. The Secretary-General appears to be authorized to reject *a limine* a request for review by a non-Party. He may, however, choose instead to inform the appellant Government of the legal problem and to suggest that it withdraw its request. If the Government refuses to do so, he may forward the request for review to the Council, leaving it to that organ to take the appropriate action. If the character as a Party of the State concerned is doubtful on legal grounds, the Secretary-General may prefer to transmit direct to the Council the request for review without informing that State of his legal doubts. He could thus avoid taking a position on a question which may be controversial and sometimes also have difficult political implications.<sup>337</sup>

9. In view of the fact that the Convention does not expressly exclude from the Council’s review refusals of the Commission to make a change in a Schedule, it is suggested that the Secretary-General should not reject *a limine* an appeal against such a refusal. It may be opportune for the Secretary-General to forward such an appeal to the Council, leaving it to that organ to reject the appeal as inadmissible if it should share the view expressed in paragraph 1 of the present comments.

#### *Paragraph 8, subparagraph (b)*

**8. (b) The Secretary-General shall transmit copies of the request for review and the relevant information to the Commission, to the World Health Organization and to all the Parties, inviting them to submit comments within ninety days. All comments received shall be submitted to the Council for consideration.**

#### *Commentary*

1. It is here again suggested that the Secretary-General should transmit by registered air-mail the copies of the request for review with the invitations to make comments, and that he ask for postal return receipts. It would also

<sup>336</sup> 1961 *Commentary*, paragraph 6 of the comments on article 3, paragraph 8, subparagraph (a), (pp. 100 and 101).

<sup>337</sup> 1961 *Commentary*, paragraph 9 of the comments on article 2, paragraph 8, subparagraph (b), (p. 104).

be useful if he would send such a copy and invitation to the Board, although the Convention does not provide for it. A representative of the Board normally takes part in the Council's and its Social Committee's deliberations of questions concerning narcotic drugs and psychotropic substances, and his task would be facilitated by early information about the questions involved in the request for review.

2. The Secretary-General is not bound to forward all the supporting information which he receives from the appellant Party, but only that part which he considers "relevant". He is given this discretionary power for reasons of economy, since the material furnished by the Party may be very bulky.

3. The period of 90 days commences for each addressee from its receipt of the Secretary-General's communication.<sup>338</sup> However, the provision regarding the invitation of the Commission to submit comments within 90 days requires some consideration. If at the time at which the invitation is extended the Commission is in session or scheduled to meet soon so as to be able to furnish the comments in time, the Secretary-General can enable the Commission to do so by making the required arrangements. He would have to place the item on the provisional agenda of the Commission if it is not yet in session;<sup>339</sup> or if the invitation is made during a session, he would have to address the communication to the assembled Commission. In both cases he would have to furnish each member of the Commission with a copy of the request for review, of the relevant supporting information and of his invitation to make comments. On the other hand, if the Commission is not scheduled to meet early enough<sup>340</sup> to be able to make its comments in time, it would be in accord with the purpose of subparagraph (b) if the Secretary-General would not solicit the comments of the Commission as a whole, but those of its individual members. It is suggested that the Secretary-General should for this purpose address to the *members* of the Commission, i.e. to the Governments represented on it,<sup>341</sup> the invitation to make comments, at the same time as to Parties and the World Health Organization. He might by such a procedure avoid unduly delaying the

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<sup>338</sup> See also the *1961 Commentary*, paragraph 5 of the comments on article 2, paragraph 8, subparagraph (b), (p. 102).

<sup>339</sup> Rules 5 and 6 of the *Rules of Procedure of the Functional Commissions of the Economic and Social Council* (document E/4767), United Nations publication, Sales No. 70.I.9.

<sup>340</sup> The Commission has at present only one regular session every second year although it had recently in addition three "special" sessions: 2 in 1972 and 1 in 1974; resolution of the Economic and Social Council 1156 (XLI) II of 5 August 1966; see also the decision of the Council adopted at its 1837 meeting on 28 July 1972 in which it reaffirmed the principle that its subsidiary organs should not meet more frequently than every other year; *Official Records of the Economic and Social Council, Fifty-third Session, Supplement No. 1* (E/5209), (p. 24); see also Council resolution 1848 (LVI).

<sup>341</sup> The Commission is at present composed of Governments; see paragraph 1 of the above comments on article 1, paragraph (b); see also *1961 Commentary*, paragraph 2 of the comments on article 7 of the Single Convention and foot-notes 6, 7, 8 and 9 thereto (pp. 120 and 121).

Council's decision and thus prolonging the uncertainty about the control status of the substance in question with its consequential inconveniences for some national administrations.<sup>342</sup> The members of the Commission should be asked to furnish their comments as early as possible, but in any event within 90 days from receipt of their respective invitations. As far as the Commission is concerned, the "ninety days" should be counted from the day on which the invitation is addressed to the assembled Commission, or if the assembled Commission cannot be consulted at the time of the communication of the invitation, from the date at which the last of its members has received the invitation.

4. It may also be helpful in speeding up the procedure if Governments and the World Health Organization could submit their comments in as many working languages of the Council as possible. By so doing, the World Health Organization could also ensure that its views, which might be of a complicated technical nature, would be accurately presented in all those languages. At the time of this writing the Director-General of the World Health Organization is authorized to make the comments on behalf of his Organization.<sup>343</sup> The Council may also consider written comments of the Board, of other intergovernmental organizations, of non-governmental organizations of any kind and even of private individuals if it so desires.

5. Late comments furnished pursuant to the subparagraph under consideration, i.e. comments which are dispatched after the 90 day period, are not excluded from the Council's consideration. In the light of the present practice of the Council, one may assume that those late comments would in any event be taken into consideration by the Council which are received in time to be included in documents circulated to the members of that organ not later than six weeks before the beginning of the session having the review on its agenda.<sup>344</sup>

#### *Paragraph 8, subparagraph (c)*

**8. (c) The Council may confirm, alter or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States Members of the United Nations, to non-member States Parties to this Convention, to the Commission, to the World Health Organization and to the Board.**

#### *Commentary*

1. As regards the effects of the Council's decision on a Party which under article 2, paragraph 7, introductory paragraph has not accepted the

<sup>342</sup> See also paragraph 5 of the above comments on paragraph 8, subparagraph (a).

<sup>343</sup> Resolution WHA 18.46 (May 1965) of the World Health Assembly; see also World Health Assembly resolution WHA 7.7 (May, 1954).

<sup>344</sup> Rule 13, paragraph 4 of the *Rules of Procedure of the Economic and Social Council* (document E/5715), United Nations publication, Sales No. E.75.I.15.

Commission's decision which was reviewed by the Council, see paragraphs 17 to 23 of the comments on article 2, paragraph 7, introductory paragraph; in this regard see also paragraph 2 of the general comments on paragraph 8; as regards the alterations and reversals which the Council may make, see paragraph 2 of the comments on paragraph 8, subparagraph (a).

2. Requests for review filed by non-Parties must be rejected by the Council; and so should requests for review of refusals by the Commission to amend any of the Schedules; see paragraphs 1, 8 and 9 of the comments on paragraph 8, subparagraph (a).

3. The text of the Convention does not state the reasons on which the Council may base its decision. The Council will of course be guided by the purpose of the Convention, to protect public health by preventing and combating the abuse of psychotropic substances and the illicit traffic in them, without unduly restricting their availability for legitimate purposes.<sup>345</sup> The Council has very wide discretion in selecting the reasons for its decision. As has been stated earlier, it appears that the Council is also not bound by the "assessments" which the World Health Organization under article 2, paragraph 5 or 6 has communicated to the Commission as to "medical and scientific matters". It may, however, be assumed that the Council would hardly ever base its decision on medical or scientific considerations which would differ from those which the World Health Organization presented in the procedure before the Commission, or in the comments that it submitted to the Council itself under paragraph 8, subparagraph (b). The views included in the comments, if differing from those given to the Commission, being later, should of course be preferred.<sup>346</sup>

4. In a case in which the substance which has been the subject of review by the Council is brought again before the Commission in a new procedure under article 2, paragraph 5 or 6 initiated by a new notification pursuant to paragraph 1 of that article, it may be assumed that the Commission, being a functional Commission of the Council, would not base its new decision on grounds rejected by the Council unless new scientific or factual findings, and in particular later experience, would warrant such course of action.

5. Article 3, paragraph 8, subparagraph (c) of the Single Convention, which covers the same subject as article 2, paragraph 8, subparagraph (c) of the Vienna Convention, states that "the decision of the Council (in the review procedure of the former treaty) shall be final". That means that the Council decides as the last instance in the procedure governing changes in the Schedules of the Single Convention under article 3 thereof. The Vienna Convention does not make such a statement regarding the decisions of the Council in its review procedure. It is nevertheless submitted that this omission does not affect the "finality" of the Council's decision under the Vienna Convention. The Council is in fact the last instance in the procedure under

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<sup>345</sup> See paragraph 5 of the comments on article 2, paragraph 1 and foot-note 120.

<sup>346</sup> Paragraph 7 of the comments on paragraph 8, subparagraph (a).

article 2 of that Convention, although the legal status of a substance determined by the Council may later be revised by the Commission in a new procedure initiated by a new notification pursuant to article 2, paragraph 1.<sup>347</sup>

6. The Single Convention expressly provides for authority of the General Assembly over decisions of the Commission taken in the course of the performance of its treaty functions.<sup>348</sup> However, it excludes from that authority the Council's decisions in its review procedure, by referring to them as "final". The Vienna Convention does not contain a provision concerning the authority of the General Assembly over decisions of the Commission or the Council.

7. As regards the functions of the Commission under treaties preceding the Single Convention, the view has been held that the authority which the Council has over the Commission's "Charter" functions does not extend to that organ's "treaty" functions. This applies also to the authority of the General Assembly of the United Nations;<sup>349</sup> but whatever views one may hold on the authority of the General Assembly over decisions of the Commission and the Council taken in the course of the performance of functions conferred upon them under the terms of the Vienna Convention and not by the Charter,<sup>350</sup> there cannot be any doubt that the Council's decisions in the review procedure of paragraph 8 under consideration are not subject to modification by the General Assembly. This appears to follow from the nature of the decisions here involved. These decisions are binding upon Parties to the Vienna Convention,<sup>351</sup> while decisions of the General Assembly on that matter could only have the force of recommendations.

**Paragraph 8, subparagraph (d)**

**8. (d) During pendency of the review, the original decision of the Commission shall, subject to paragraph 7, remain in effect.**

**Commentary**

1. The provision under consideration is materially the same as article 3, paragraph 8, subparagraph (d) of the Single Convention, except that the latter

<sup>347</sup> See the preceding paragraph of the present comments; see also paragraph 3 of the comments on paragraph 8, subparagraph (a).

<sup>348</sup> Article 7 of the Single Convention; see also paragraphs 4 to 9 of the comments on article 1, paragraph (b) of the Vienna Convention.

<sup>349</sup> Article 60 of the *Charter of the United Nations*; see *1961 Commentary*, paragraphs 3 and 5 of the comments on article 7 and foot-note 13 thereto (pp. 121 and 122) and paragraph 4 of the comments on article 3, paragraph 8, subparagraph (c) (p. 105).

<sup>350</sup> See below the comments on article 17, paragraph 1.

<sup>351</sup> But not on Parties which pursuant to article 2, paragraph 7 did not accept the Commission's decision which was the subject of the Council's review; see paragraphs 17 to 23 of the comments on article 2, paragraph 7, introductory subparagraph; see also paragraph 2 of the general comments on article 2, paragraph 8 and paragraph 1 of the present comments on subparagraph (c).



provision does not contain an exception for Parties which have not accepted the Commission's decision involved. The Single Convention does not provide for the right of Parties not to accept decisions of the Commission placing a drug under control or shifting it from one régime to another.

2. See paragraph 22 of the above comments on article 2, paragraph 7, introductory subparagraph.

### Paragraph 9

**9. The Parties shall use their best endeavours to apply to substances which do not fall under this Convention, but which may be used in the illicit manufacture of psychotropic substances, such measures of supervision as may be practicable.**

### Commentary

1. Paragraph 9 of article 2 of the Vienna Convention corresponds to article 2, paragraph 8 of the Single Convention. Consequently, the observations of the 1961 Commentary on the provision of the Single Convention<sup>352</sup> apply *mutatis mutandis* also to the provision of the Vienna Convention.

2. The Vienna Convention does not have in its Schedules substances which themselves do not have the dangerous properties defined in article 2, paragraph 4, but are only readily convertible into substances that have such properties, nor does it provide for authority to add such convertible substances to its Schedules. It does not provide for the application to "precursors" of any of the four control régimes governing psychotropic substances. It will be recalled that the Single Convention differs in this respect from the Vienna Convention. The former treaty contains in its Schedules I and II substances which themselves are not dangerous drugs liable to abuse, but only convertible into such drugs.<sup>353</sup> Consequently, article 2, paragraph 8 of the Single Convention is intended only for such substances as are not readily convertible into dangerous drugs while it is the purpose of article 2, paragraph 9 of the Vienna Convention to cope with problems which may result from the use of all substances that may be used by clandestine manufacturers of psychotropic substances, those that are readily convertible into psychotropic substances as well as those that are not.

3. It must be admitted that the provision of article 2, paragraph 9 of the Vienna Convention is not only very vague, but also very weak; but in considering the reluctance of the 1971 Conference<sup>354</sup> to provide in this

<sup>352</sup> pp. 70 and 71 of the English text of the 1961 Commentary.

<sup>353</sup> See paragraph 7 of the general comments on article 2 of the Vienna Convention, paragraphs 16 and 18 of the comments on article 2, paragraph 1 and paragraph 2 of the comments on article 2, paragraph 4.

<sup>354</sup> 1971 Records, vol. II, minutes of the twenty-fifth meeting of the Committee on Control Measures, paragraphs 21 to 51, (pp. 180 to 181) and summary records of the nineteenth plenary meeting, paragraphs 2 to 8 (pp. 74 and 75); Conference document E/CONF.58/L.5/Add.6/Rev.1.

connexion for strong controls, one has to keep in mind that the range of chemical groups to which substances liable to abuse as defined in article 2, paragraph 4, and consequently materials readily convertible into such substances, may belong is potentially unlimited.<sup>355</sup> In view of that wide range, the 1971 Conference obviously found it impossible<sup>356</sup> to prepare a definition which would on the one hand cover the precursors that should be subject to one of the four régimes applicable to psychotropic substances, but on the other hand exclude materials that now or in the future may be indispensable in important economic activities. Such activities can hardly be carried on efficiently if they are subjected to controls such as those which govern psychotropic substances or narcotic drugs.

4. Under the paragraph under consideration Parties have to impose only such measures of supervision as are “practicable”, i.e. which can reasonably be expected of them. What is “practicable” may vary from country to country and also at different times in the same country. It will depend on the economic character of the country and on the particular economic activities in which it is engaged.

5. Paragraph 9 is so vague that it is practically left to the discretion of each Party acting in good faith to decide on the measures which it should adopt in order to implement that provision.

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<sup>355</sup> Document E/CN.7/519, paragraph 3; see also the minutes of the twenty-fifth meeting of the Committee on Control Measures, referred to in the preceding foot-note, paragraphs 23-25.

<sup>356</sup> The minutes referred to in the preceding foot-note, paragraph 23.

## Article 3

### SPECIAL PROVISIONS REGARDING THE CONTROL OF PREPARATIONS

#### *Paragraph 1*

1. Except as provided in the following paragraphs of this article, a preparation is subject to the same measures of control as the psychotropic substance which it contains, and, if it contains more than one such substance, to the measures applicable to the most strictly controlled of those substances.

#### *Commentary*

1. Paragraph 1 corresponds to paragraph 3 of article 2 of the Single Convention concerning its control of preparations of narcotic drugs.<sup>357</sup> However, the provision of the Vienna Convention differs from the provision of the Single Convention in that it does not provide that, in the case of preparations, Parties are not required to furnish to the Board statistics different from those dealing with the psychotropic substances which the preparations contain. This means that theoretically the Board could under the provisions of article 16, paragraphs 4 and 5 require Parties to furnish figures on the quantities of *preparations* held in stock by manufacturers, exported and imported, in addition to those data on the psychotropic substances which the preparations contain.<sup>358</sup> The Board does not need that statistical information on the preparations distinct from the information on the basic psychotropic substances which they contain. The Board is authorized under article 16, paragraph 4, introductory subparagraph and paragraph 6 to prepare the forms in accordance with which Parties are required to furnish their statistical returns, and to determine the manner in which they should do so. The Board has used that authority<sup>359</sup> to prescribe that whatever the form of the psychotropic substances may be, the statistical data concerning them

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<sup>357</sup> Other than preparations in Schedule III of the Single Convention; see article 2 paragraph 4 of that treaty.

<sup>358</sup> If *preparations* are used for industrial purposes in accordance with article 4, paragraph (b), the Board could also under article 16, paragraph 4, subparagraph (d) request information on the quantities of the preparations so used, in addition to statistics on the quantities of the psychotropic substances which the preparations contain. See also the last sentence of article 16, paragraph 4 expressly excluding the quantities of manufactured *preparations* from the manufacturing statistics.

<sup>359</sup> The Board has used that authority in anticipation of the coming into force of the Vienna Convention; see Council resolution 1576 (L); see also resolution I of the 1971 Conference.

should represent the weight of each psychotropic substance, excluding the weight of any non-psychotropic substance which may be combined or mixed with it.<sup>360</sup> The difference between the Vienna Convention and the Single Convention, pointed out above, is therefore in practice without any importance.

2. Paragraph 1 determines also the régime which Parties are required to apply to preparations of psychotropic substances which under article 2, paragraph 7 they may subject to one of the limited régimes provided for in that provision.<sup>361</sup>

3. It has been pointed out earlier that in the case of a preparation which contains a psychotropic substance to which a Party has to apply the full régime of Schedule III or IV, as well as a substance which the Party may subject to one of the limited régimes mentioned in article 2, paragraph 7, subparagraphs (a) to (c), it may sometimes be difficult to decide which of the two substances is more strictly controlled.<sup>362</sup> For a suggested evaluation of the strictness of different control régimes in such cases, see paragraph 2 of the comments on article 2, paragraph 7, subparagraphs (a) to (e).

4. It is not quite accurate to say that except as provided in article 3, the Vienna Convention subjects a preparation to the same measures of control as the psychotropic substance which it contains. International travellers may pursuant to article 4, paragraph (a) carry preparations of substances in Schedules II, III or IV, but not the psychotropic substances in other forms than preparations. Parties have under article 16, paragraph 4 to furnish to the Board statistical data on the manufacture of psychotropic substances, but not on that of preparations containing them.<sup>363</sup>

### *Paragraphs 2 and 3*

**2. If a preparation containing a psychotropic substance other than a substance in Schedule I is compounded in such a way that it presents no, or a negligible, risk of abuse and the substance cannot be recovered by readily applicable means in a quantity liable to abuse, so that the preparation does not give rise to a public health and social problem, the preparation may be exempted from certain of the measures of control provided in this Convention in accordance with paragraph 3.**

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<sup>360</sup> Form P of the Board (fourth edition, October 1974), instructions Nos. 3 and 5; as regards the exclusion of the quantities of manufactured preparations see article 16, paragraph 4, concluding sentence of the Vienna Convention.

<sup>361</sup> Paragraphs 2 and 3 of the comments on article 2, paragraph 7, subparagraphs (a), (b), (c), (d) and (e).

<sup>362</sup> *Ibid.*

<sup>363</sup> The provisions of article 11, paragraph 6 and article 16, paragraph 4, subparagraph (c) are by reference provisions of article 3; see subparagraphs (b) and (e) of paragraph 3 of article 3.

3. If a Party makes a finding under the preceding paragraph regarding a preparation, it may decide to exempt the preparation, in its country or in one of its regions, from any or all of the measures of control provided in this Convention except the requirements of:

- (a) Article 8 (licences), as it applies to manufacture;
- (b) Article 11 (records), as it applies to exempt preparations;
- (c) Article 13 (prohibition of and restrictions on export and import);
- (d) Article 15 (inspection), as it applies to manufacture;
- (e) Article 16 (reports to be furnished by the Parties), as it applies to exempt preparations; and
- (f) Article 22 (penal provisions), to the extent necessary for the repression of acts contrary to laws or regulations adopted pursuant to the foregoing obligations.

A Party shall notify the Secretary-General of any such decision, of the name and composition of the exempt preparation, and of the measures of control from which it is exempted. The Secretary-General shall transmit the notification to the other Parties, to the World Health Organization and to the Board.

#### *Commentary*

1. The Vienna Convention provides for two procedures by which individual Parties may by their unilateral action be exempted from controls which they would otherwise have to apply. The first of those procedures is laid down in article 2, paragraph 7. The exemptions obtained under that provision apply to the psychotropic substance concerned and its preparations, and cannot be terminated by the Commission.<sup>364</sup> The second of those procedures is provided for in article 3, paragraphs 2 and 3. The exemptions achieved in that second procedure can wholly or partially be terminated by the Commission. In both cases an exemption is valid only for the Party which obtained it by its unilateral action. Under both procedures different Parties may have different international obligations in respect of the same substance and its preparations, or in respect of the same “exempt” preparation. Consequently, the international régime governing such substances and preparations could become very complex, and the effectiveness of the import certificate and export authorization system, where applicable, sometimes impaired. On the other hand, Parties to the Single Convention have under the same conditions always the same international obligations in respect of narcotic drugs and their preparations.<sup>365</sup> Preparations of narcotic drugs can be exempted from measures of international control only by the Commission, acting in accordance with a recommendation of the World Health Organization.<sup>366</sup> The measures from which exemption is granted are in all cases the

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<sup>364</sup> Or by the Council; see paragraphs 17 to 23 of the comments on article 2, paragraph 7, introductory subparagraph.

<sup>365</sup> As well as in respect of the cultivation of the opium poppy, coca bush and cannabis plant.

<sup>366</sup> Article 3, paragraph 4 of the Single Convention.

same, and are laid down in the treaty.<sup>367</sup> All exemptions of preparations are equally valid for all Parties.<sup>368</sup>

2. The reasons for which a Party may under paragraphs 2 and 3 exempt a preparation from measures of control are materially the same as those for which under the Single Convention the Commission acting in accordance with a recommendation of the World Health Organization, or under the amended 1925 Convention that Organization, could take such a step.<sup>369</sup>

3. Two conditions must be fulfilled to warrant an exemption. Firstly, the material with which the psychotropic substance concerned is combined should have such pharmacological effects as to counteract the abuse liability of the psychotropic substance. Those effects must be sufficiently strong so as to eliminate the abuse liability, or to reduce it to a medically acceptable minimum. The effects will not only depend on the potency of the counteractive material, but also on the quantity of the psychotropic substance and on the proportions of that substance and of that material which the preparation contains.

4. Secondly, the psychotropic substance should not be recoverable by “readily applicable means in a quantity liable to abuse”. That condition may be the result of the physical or chemical properties of the counteractive material, but also of the nature of the “compounding” by which the preparation is made.

5. The “abuse” liability which must be eliminated or reduced to a medically acceptable minimum is the capacity of the psychotropic substance contained in the preparation to produce that abuse which it is the purpose of the Vienna Convention to prevent and combat, and which is defined in article 2, paragraph 4. It is not required that the preparation should have no undesirable side effects whatsoever. It is, however, suggested that a Party should take the nature of all such side effects into account when it considers the exemption of a preparation pursuant to paragraphs 2 and 3. An exemption would in any event be warranted only if required to render more easily available a useful medicine, i.e. in the interest of public health. Not only the “abuse” liability of a preparation but also other strong harmful side effects of a preparation should exclude it from exemption.

6. It is suggested that it may be assumed that the psychotropic substance contained in the preparation would not be recoverable “by readily applicable means in a quantity liable to abuse” if the recovery would be impracticable for an abuser as well as for an illicit trafficker. Such factors would be relevant as the technical difficulty and the expense of the process of recovery. The recovery would be impracticable for the individual abuser if he could by the instruments, solvents or other means available to him obtain only a minimal

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<sup>367</sup> Article 2, paragraph 4 of that Convention.

<sup>368</sup> Paragraphs 4 to 6 of the general comments on article 2.

<sup>369</sup> Article 3, paragraph 4 of the Single Convention; see also article 8 of the 1925 Convention as amended by the 1946 Protocol.

yield which would not be sufficient to achieve the effects which he craves (i.e. a state of well-being or absence of discomfort).<sup>370</sup> The recovery would be practical for an illicit trafficker only if by the means available to him he could extract such quantities of the psychotropic substances at such costs as would make his criminal activity profitable in the light of the price he could obtain in the contraband market. The conditions (such as the availability of chemical solvents and controls if any imposed upon them) which may make it practicable for an abuser or illicit trafficker to extract a psychotropic substance from an exempt preparation may be different in different countries.

7. The exemption of a preparation would not be excluded if the “abuse”<sup>371</sup> problem which might result from the exemption could safely be expected to be only insignificant since it would not present a “public health and social problem” in the sense in which that phrase is used in the Convention.<sup>372</sup>

8. The factors which a Government may have to take into account when considering an exemption may be summed up as follows:

- (a) Content of the psychotropic substance;
- (b) Potency of the psychotropic substance, including the strength of its abuse liability and of other harmful side effects;
- (c) Content of the counteracting material or materials with which the psychotropic substance is compounded;
- (d) Proportions of the psychotropic substance and the counteracting material or materials which the preparation contains;
- (e) Properties of the counteracting material or materials, including not only pharmacological effects but also such chemical qualities as might render impracticable the recovery of the psychotropic substance;
- (f) Practicability of the recovery of the psychotropic substance by illicit traffickers and abusers;
- (g) Extent of the probable abuse of the exempted preparation, including in particular the question whether it would present a “public health and social problem”;
- (h) Therapeutic value and extent of the need for wide use of the preparation for legitimate purposes; and
- (i) Impact of the exemption on the control of the psychotropic substance concerned in other countries.<sup>373</sup>

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370 Paragraph 24 of the comments on article 2, paragraph 4.

371 See above paragraph 5 of the present comments.

372 As regards the meaning of this phrase, see paragraphs 5 to 8 of the comments on article 2, paragraph 4.

373 See also *1961 Commentary*, paragraph 7 of the comments on article 3, paragraph 4 of the Single Convention (page 92).

9. A Party which under article 2, paragraph 7 is authorized to apply a limited control régime to a psychotropic substance may exempt a preparation of that substance from control measures pursuant to article 3, paragraphs 2 and 3. It is bound to impose on such a preparation all the control measures listed in paragraph 3, subparagraphs (a) to (f), including those of them which it would not be required to carry out in regard to the psychotropic substance itself and its non-exempted preparations.<sup>374</sup>

10. Preparations containing a substance in Schedule I cannot be exempted; the same applies to combinations in dosage form<sup>375</sup> of two or more psychotropic substances which do not contain any counteracting non-psychotropic material, as well as to a single psychotropic substance in dosage form which is not compounded with such a material. Such a combination or individual psychotropic substance, although not containing any other material, is a preparation as defined in article 1, paragraph (f). It is, however, submitted that such preparations cannot be exempted because only preparations which are compounded with one or more counteractive non-psychotropic materials can be freed from measures of control pursuant to the two paragraphs under consideration.

11. A psychotropic substance in dosage form which does not contain any admixture is not "compounded". The requirement that the recovery of the psychotropic substance should not be practical can also not apply to a pure psychotropic substance. If the preparation in dosage form containing a psychotropic substance is combined only with materials which are not counteractive, no matter whether they are inert or even have some pharmacological effects, it is not "compounded in such a way" that it "presents no, or a negligible, risk of abuse".

12. It may perhaps theoretically be possible that two or more psychotropic substances combined in a preparation have such counteractive effects as to exclude or reduce to a minimum the risk of abuse of the preparation, and that they are combined in such a way as to make impracticable the extraction of psychotropic substances for abuse. It is nevertheless submitted that it appears to be the better view that the language of paragraph 2 would not permit the exemption of such a combination unless it contains also one or more counteractive non-psychotropic materials. That view is based on the consideration that the words used in paragraph 2 for defining the preparations which may be exempted have to be understood in the sense in which they are traditionally employed in the field of international drug control. The definition of paragraph 2 follows very closely the definition of article 8 of the 1925 Convention<sup>376</sup> describing the preparations which may be exempted from the controls of that treaty. It follows also the similarly worded definition of the Single Convention

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<sup>374</sup> See paragraphs 4 to 11 of the comments on article 2, paragraph 7, subparagraphs (a) to (e).

<sup>375</sup> See paragraph 3 of the comments on article 1, paragraph (f).

<sup>376</sup> In the unamended text as well as in the text as amended by the 1946 Protocol.



describing some preparations which are included in its Schedule III<sup>377</sup> and thus exempted from some controls which would otherwise apply.<sup>378</sup> In those texts the word “compounded” is employed to refer to a process of combining a controlled drug with a non-controlled ingredient counteracting the abuse liability of the drug concerned.<sup>379</sup> Many participants in the 1971 Conference were technical experts in matters of international drug control. The presumption is justified that they and that Conference as a whole normally understood the words which they used in formulating rules of international control, in the traditional technical sense familiar to them. It can also be seen that a number of other provisions of the Vienna Convention follow the language employed in earlier drug treaties for corresponding rules.

13. A Party may exempt a preparation from all control measures which it would otherwise have to apply except those listed in paragraph 3, subparagraphs (a) to (f). It has been noted earlier that it must impose on the exempt preparation all the controls referred to in those subparagraphs although some of them may not be obligatory in respect of the same preparation if not exempted—as in the case of a preparation containing a psychotropic substance to which the Party concerned may apply a limited régime pursuant to article 2, paragraph 7.<sup>380</sup> A Party should also not exempt a preparation from such control measures as would significantly increase the risk of its extended abuse or the ease of recovery of the psychotropic substance in relevant quantities.

14. The Party concerned should notify the Secretary-General not only of the trade names of the exempted preparation<sup>381</sup> but also of the international non-proprietary name, or lacking such a name, of the designation, used in the Schedule involved, of each psychotropic substance which the preparation contains. The description of the composition of the preparation should indicate its exact chemical structure, including the formulae of all its ingredients. If a Party decides that its exemption of a preparation should not be effective in its total territory, it is bound to state in its notification to the Secretary-General the “region” or “regions” to which its decision applies. It should also name those of the control measures mentioned in paragraph 3, subparagraphs (a) to (f) which it would intend to continue to apply.

15. A Party would be bound not to implement the exemption from any control measure which it had decided to authorize but had not indicated in

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377 Paragraph 2 of Schedule III, see also paragraph 1, subparagraph (a) of that Schedule both prior to the amendment of the Schedule by the Commission; Commission on Narcotic Drugs, report on the twenty-first session (1966), *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 2*, paragraph 68.

378 Article 2, paragraph 4 of the Single Convention.

379 The Single Convention also requires that *inter alia* a preparation of a narcotic drug has to be combined with an uncontrolled counteractive substance in order to qualify for exemption; article 3, paragraph 4 of that treaty.

380 See above paragraph 9 of the present comments and foot-note 374.

381 The same preparation may be made by more than one manufacturer or traded by different traders under different names.

its notification to the Secretary-General. Such an omission may be corrected by an additional notification supplementing the earlier one. A Party should also delay the implementation of exemptions for such a reasonable period of time as would in its opinion be required by the Secretary-General for transmission of its notification to the other Parties, and for those Parties to take note of the content of the notification for the purposes of their own control administration. That delay is not required by the text of the treaty, but would be consonant with its purposes and with the requirements of effective international control.

16. It would be useful if the Secretary-General would also submit to the Commission a copy of the notification.<sup>382</sup>

17. A Party having exempted a preparation is required to control under licence or “other similar control measure” not only the manufacture of that preparation but also the establishments and premises in which such manufacture takes place. It is not sufficient for a Party to select the manufacturers and approve the establishments and premises to be used by them, by the issue of licences or permits. It is bound to carry out all those control measures which are generally considered to form a “licensing system”.

18. A State enterprise which is authorized by the Government to manufacture exempted preparations and is subjected to controls similar to those which constitute a licensing system when applied to private enterprises manufacturing such preparations, is to be considered to be “under licence or other similar control measures” for the purposes of paragraph 3, subparagraph (a). So are premises and establishments which the Government permits a State enterprise to use for such manufacture and which it subjects to controls of that kind.<sup>383</sup>

19. The compounding of exempted preparations by pharmacies or other authorized retail outlets for sale on prescription does not constitute “manufacture” in the sense of subparagraph (a), but distribution or sale of the psychotropic substance or substances which the preparations contain. The same applies to the compounding of exempted preparations by medical practitioners for their patients, or by veterinarians for animals which they treat.<sup>384</sup>

20. The records required pursuant to subparagraph (b) are records to be kept by manufacturers of exempted preparations showing “the quantity of each psychotropic substance used in the manufacture of an exempt preparation”, as well as “the nature, total quantity and initial disposal of the exempt preparation manufactured therefrom”. The records concerning the

<sup>382</sup> See also article 2, paragraph 2 and paragraph 8, subparagraphs (b) and (c).

<sup>383</sup> See below the comments on article 8, paragraph 1, paragraph 2, subparagraphs (a), (b) and (c) and paragraph 4; see also paragraphs 27 to 30 of the above comments on article 2, paragraph 7, subparagraphs (a) to (e).

<sup>384</sup> See paragraphs 5 to 7 of the above comments on article 1, paragraph (i); see also the *1961 Commentary*, paragraph 4 of the comments on article 29, paragraph 1 of the Single Convention (pp. 317 to 318).

quantities of psychotropic substances in Schedule II or III used in the manufacture of exempt preparations must be preserved by the manufacturer for a minimum period of two years. There is no provision in the Vienna Convention prescribing the minimum period for which the other records regarding exempt preparations should be preserved. They must, however, be retained for a reasonable time to be useful for purposes of governmental control. It is suggested that preservation for a period of less than one year would not be sufficient.<sup>385</sup>

21. A Party is not required to apply the import certificate and export authorization system, provided for in article 12, paragraphs 1 and 3, to a preparation which contains a substance in Schedule II and which it has exempted from that control; but other Parties will have to continue applying the controls of that system to the exempt preparation concerned unless they have decided to make and notified to the Secretary-General the same exemption. Consequently, the Party which has made the exemption may experience some difficulties in implementing it.

22. If a Party which has made the exemption wishes to import the preparation in question from a Party which has not made the same exemption, it will have to issue an import authorization in order to enable the latter Party to authorize the export. The latter Party is bound to require the import authorization before issuing the export authorization.<sup>386</sup>

23. A Party which has made the exemption could permit exports of the exempt preparation concerned to Parties which have not made the same exemption, without applying the import certificate and export authorization system; but it could do so only in violation of the law of the importing countries. It may be assumed that the exporting Party would be very reluctant to commit such a violation.<sup>387</sup> It is moreover suggested that the Party's failure to apply in such a case the import certificate and export authorization system could hardly be reconciled with the purposes of the Vienna Convention.<sup>388</sup>

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<sup>385</sup> Article 11, paragraphs 6 and 7; and article 16, paragraph 4, subparagraph (c).

<sup>386</sup> Article 12, paragraph 1, subparagraph (c).

<sup>387</sup> See also article 31, paragraph 1, subparagraph (a) of the Single Convention.

<sup>388</sup> The same kind of difficulties cannot arise in regard to the international trade in preparations in Schedule III of the Single Convention, i.e. in preparations which are exempted from some control measures that would otherwise have to be applied to them (article 2, paragraph 4 of the Single Convention), because under that treaty all Parties are equally relieved from the obligation to apply the import certificate and export authorization system to exempted preparations. Moreover, an exporting Party would not be authorized to permit exports of exempted preparations to a country or territory in violation of the laws and regulations of that country or territory; it would consequently have to apply the import certificate and export authorization system to exports to a country or territory which—although not bound by the treaty to do so—would choose to continue applying that system to exempted preparations. An importing Party would also have to issue an import authorization if it wishes to import exempted preparations from a country which would continue requiring the application of the import certificate and export authorization system; see article 31, paragraph 1, subparagraph (a) of the Single Convention and *1961 Commentary* on article 31, paragraph 1 of that Convention, paragraph 4 of the comments (p. 349).

24. Moreover, a Party which has exempted a preparation of a substance in Schedule II from the requirement of applying the import certificate and export authorization system could pursuant to article 13, paragraph 3 be obligated by other Parties, including those which have made the same exemption, not to permit the export of that preparation to their territories without their authorization by special import licence.<sup>389</sup>

25. It may also be mentioned that a Party is not bound to apply the rules concerning export declarations, laid down in article 12, paragraph 2, to the export of a preparation of a substance in Schedule III which it has exempted from that control.

26. The provisions of article 13 concerning the prohibition of and restrictions on export and import apply to exempt preparations in the same way as to psychotropic substances in Schedules II, III and IV and their non-exempted preparations.<sup>390</sup>

27. Under the terms of the exemption which it adopts pursuant to paragraph 3 a Party may exclude from its obligation to furnish to the Board statistical data on an exempt preparation all information other than figures on the quantities of substances in Schedule II or III used in the manufacture of that preparation.

28. As regards information to be furnished to the Commission in respect of exempt preparations, see below the comments on article 16, paragraph 1.

#### *Paragraph 4*

**4. If a Party or the World Health Organization has information regarding a preparation exempted pursuant to paragraph 3 which in its opinion may require the termination, in whole or in part, of the exemption, it shall notify the Secretary-General and furnish him with the information in support of the notification. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission and, when the notification is made by a Party, to the World Health Organization. The World Health Organization shall communicate to the Commission an assessment of the preparation in relation to the matters specified in paragraph 2, together with a recommendation of the control measures, if any, from which the preparation should cease to be exempted. The Commission, taking into account the communication from the World Health Organization, whose assessment shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may decide to terminate the exemption of the preparation from any or all control measures. Any decision of the**

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<sup>389</sup> See also paragraph 48 of the comments on article 2, paragraph 7, subparagraphs (a) to (e).

<sup>390</sup> Paragraph 6 of the general comments on article 13.

Commission taken pursuant to this paragraph shall be communicated by the Secretary-General to all States Members of the United Nations, to non-member States Parties to this Convention, to the World Health Organization and to the Board. All Parties shall take measures to terminate the exemption from the control measure or measures in question within 180 days of the date of the Secretary-General's communication.

### *Commentary*

1. The procedure concerning the partial or total termination of an exemption is very similar to that laid down in article 2, paragraphs 1, 2, 4, 5 and 6 for changes in the Schedules. What has been stated above in the comments on those provisions therefore also applies *mutatis mutandis* to the corresponding rules of the procedure to be followed by WHO and the Commission under article 3, paragraph 4. One may however note one important difference: decisions of the Commission terminating exemptions are not subject to the right of Parties not to accept them, nor to review by the Council, as are its decisions making changes in the Schedules.

2. The procedure under the subparagraph under consideration can be initiated by a notification of a Party of WHO. Either is *bound* to do so if it has information which *in its opinion* may require the total or partial termination of an exemption. That information may indicate that the exempted preparation in question presents a significant risk of abuse or of practicable recovery of the psychotropic substance or substances which it contains, to such an extent as to constitute a public health and social problem, either in the territory of the Party which made the exemption or, as a consequence of that exemption, in another country.<sup>391</sup> The information may consist of new elements, i.e. of factors which have appeared or have become known after the exemption was made, of factors which the exempting Party did not take into consideration, or of an evaluation of factors different from that of the exempting Party. The same facts which a Party has to take into account in determining whether it may exempt a preparation will also have to be considered by the Party or WHO in judging whether the information in the possession of that Organization or Party—as the case may be—may require a total or partial termination of the exemption. As regards those facts, see paragraphs 3 to 8 of the comments on article 3, paragraphs 2 and 3.

3. As has been stated earlier,<sup>392</sup> international control of a substance is warranted only if lack of control in one country weakens control in another country in which the abuse of that substance constitutes a “public health and social problem”. If one accepts that opinion, one may accordingly conclude that the termination of an exemption is justified only if the lack of control caused by the exemption in the territory of a Party which has taken that

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<sup>391</sup> Paragraphs 5 to 8 of the comments on article 2, paragraph 4.

<sup>392</sup> Paragraph 8 of the above comments on article 2, paragraph 4.

action weakens or risks weakening the efforts of control by another country in which the abuse of the psychotropic substance contained in the exempted preparation presents a real or potential “public health and social problem”.

4. The information in the possession of the Party or of WHO may require the restoration of all or only of some of the control measures from which the Party concerned has freed itself by the exemption. It may require the termination of the exemption in the whole territory in which it is in effect, or only in one or more regions of that territory while its continuation in another “region” or “regions” may be tolerated. It is held that the phrase “termination; . . . in part, of the exemption” covers the termination of the exemption only in respect of some of the control measures, but not in respect of others to which the exemption applies, as well as the termination of the exemption only in one or more “regions” but not in other parts of the territory in which the exemption is in effect, no matter whether in regard to all control measures in question or only in regard to some of them.

5. At the time of this writing it is the Director-General who is authorized to perform the functions of WHO under article 3, paragraph 4.<sup>393</sup>

6. As under the procedure of article 2, paragraphs 1 to 6 the question arises also under article 3, paragraph 4 whether the Party in question or WHO can terminate the procedure by withdrawing the notification initiating it. It is submitted that it would be the better opinion that the notification cannot be withdrawn, in any event after it has been forwarded by the Secretary-General, without the express or implied agreement of the Commission. In any case, withdrawal of the notification for the purpose of ending the procedure would not be desirable, since the Vienna Convention provides for that procedure not only in the interest of the Party (or WHO) which sent the notification to the Secretary-General, but in that of all Parties, and indeed of the international society as a whole. Paragraph 20 of the comments on article 2, paragraph 1 applies also to article 3, paragraph 4.

7. The Secretary-General may either reject *a limine* a notification of a State which is not a Party to the Vienna Convention or transmit it to the other Parties, WHO and the Commission, leaving it to these organs to take the appropriate measures. It is suggested that the considerations which may guide the Secretary-General to choose the one or other alternative are the same as those which he may take into account in handling notifications under article 2, paragraph 1.<sup>394</sup>

8. The Secretary-General is not bound to forward all the information which he receives from the Party or WHO in support of its notification, but only that part which he selects as being relevant.

9. The Secretary-General should transmit the notification with accompanying information also to the Party from which he received the

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<sup>393</sup> See above, foot-note 343.

<sup>394</sup> See paragraphs 2 and 3 of the above comments on article 2, paragraph 2.

communication. He should also send to WHO a copy of the notification and the information which he selects to be attached to the notification, if it is that Organization which initiated the procedure, even though he is not required to do that. It would also be useful if he would send the same communication to the Board.<sup>395</sup>

10. It is held that in making “an assessment of the preparation in relation to the matters specified in paragraph 2” WHO may have to take into account all the factors which have been suggested earlier for consideration by a Party which examines the possibility of exempting a preparation.<sup>396</sup> Those factors have also been indicated as being relevant to the decision of WHO or of a Party whether information in possession of that Organization or Party—as the case may be—may require the termination in whole or in part, of an exemption.<sup>397</sup>

11. The WHO “assessment” of the preparation need not be limited to an evaluation of medical, chemical or other scientific factors. It may cover also other elements such as the availability of instruments, solvents and other means for the recovery of the psychotropic substance contained in the preparation, the costs of such a recovery, its profitability for illicit traffickers and the impact of an exemption on the effectiveness of control of the psychotropic substance concerned in other countries. In making the assessment WHO has to take into account all factors which may be relevant to determining whether or to what extent the exemption of a preparation is justified under the conditions of paragraph 2.

12. The WHO may recommend:

(a) The termination of the entire exemption in the whole territory in which the exemption is in effect; or

(b) The termination of the exemption only in regard to some of the control measures to which it applies, in the whole territory in which the exemption is in effect;

(c) The termination of the entire exemption but only in respect of one or more “regions” of the territory in which the exemption is in effect; or

(d) The termination of the exemption only in regard to some of the control measures to which it applies and only in regard to one or more regions in which the exemption is in effect; or

(e) Toleration of the continuation of the exemption. Recommendations restricted to one or more regions could only be made in the case of Parties which have established “regions” as separate entities for the purposes of the Vienna Convention.<sup>398</sup>

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<sup>395</sup> See paragraphs 5, 6 and 7 of the comments on article 2, paragraph 2 which contain comments also valid for article 3, paragraph 4.

<sup>396</sup> See paragraphs 3 to 8 of the comments on article 3, paragraphs 2 and 3.

<sup>397</sup> See paragraphs 2 to 4 of the present comments.

<sup>398</sup> Article 1, paragraph (k) and article 28.

13. The WHO is bound to make the assessment and the recommendation to which paragraph 4 refers.

14. On the other hand the Commission does not appear to be required to take any action, as the words “The Commission . . . *may* decide . . .” indicate. It has very wide discretionary powers in choosing its course of action.<sup>399</sup> It is not limited to making a choice between accepting the recommendation of WHO or rejecting it. It may decide on substantive or territorial limits of termination of the exemption which differ from those recommended by WHO. It may resolve to tolerate the continuation of exemptions which that Organization has recommended to terminate, and it may also terminate exemptions whose discontinuation has not been recommended.

15. The Commission is, however, required to take into account in its decision process, the “communication”, i.e. the assessment and recommendation of WHO, and to consider that assessment as “determinative as to medical and scientific matters”.<sup>400</sup> The views of WHO on such matters as the following would have to be accepted by the Commission: continued abuse liability or lack of such liability of the exempted preparation; its therapeutic value and the extent of need for its wide use for legitimate purposes; and the relevance in regard to abuse liability or practicability of recovery or both, of the potency and content of the psychotropic substance or substances and of the counteracting materials included in the preparation, of the proportion of the psychotropic substance and counteracting materials in that content, and of such chemical properties of the ingredients as may render relatively easy or very difficult their separation. On the other hand, the Commission need not accept the opinion of WHO on such questions as the availability in the legal or contraband trade, of instruments, solvents or other means for the recovery of the psychotropic substance contained in the preparation, the profitability of that recovery for an illicit trafficker, or the impact of the exemption on the control in other countries.

16. The Commission will have to take into account all the factors which have to be considered by a Party when deliberating an exemption, by WHO in making its assessment and recommendation and by a Party or WHO when deciding whether information in their possession may require the total or partial termination of an exemption. A number of those factors have been mentioned earlier.<sup>401</sup> In short, it will have to consider all elements which may be relevant to the question whether and to what extent an exemption is justified under the conditions of article 3, paragraph 2.

17. Article 3, paragraph 4 uses the same words for the factors which the Commission, in addition to the assessment and recommendation of WHO,

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<sup>399</sup> See also paragraph 48 of the comments on article 2, paragraph 4 and paragraph 19 of the comments on paragraphs 5 and 6 of that article.

<sup>400</sup> See also paragraphs 14 to 24 of the comments on paragraphs 5 and 6 of article 2.

<sup>401</sup> See paragraphs 3 to 8 of the comments on article 3, paragraphs 2 and 3; and paragraphs 2 to 4 and 10 of the comments on paragraph 4 of that article.



should bear in mind as article 2, paragraph 5<sup>402</sup> does in regard to the Commission's procedure for amending a Schedule, namely, "economic, social, legal, administrative and other factors". It is submitted that while it is not entirely impossible that economic factors would be relevant to a decision on an amendment of a Schedule, it is hardly possible to imagine a situation in which the Commission could be guided by economic considerations in determining whether an exemption should be terminated.

18. Notwithstanding its discretionary authority<sup>403</sup> pursuant to the paragraph under consideration, one may assume that the Commission will—as a rule—terminate an exemption fully or to the extent required by the situation concerned, in all cases in which WHO has found that the exempted preparation is liable to abuse, and the Commission itself establishes that the exemption weakens or may weaken the effectiveness of control in another country than that which has exempted the preparation. On the other hand, it is not very probable that the Commission would terminate an exemption in a case in which WHO has determined that the preparation in question is not liable to abuse, and in which WHO and the Commission itself, each for reasons within its competence, have established that the psychotropic substance contained in that preparation is not recoverable by readily applicable means in a relevant quantity.<sup>404</sup>

19. Although paragraph 4 does not expressly provide for this, it appears obvious that the Commission "may seek further information from the World Health Organization or from other appropriate sources".<sup>405</sup> As has been suggested above in the comments on article 2, paragraphs 5 and 6, it is submitted that in the procedure according to article 3, paragraph 4 the Commission would equally not be authorized to seek from any source other than WHO information as to medical or scientific matters covered in that Organization's communication.<sup>406</sup>

20. The variety of decisions which the Commission may make is the same as that described in paragraph 12 above in regard to the recommendations of WHO.

21. Only those actions of the Commission pursuant to the paragraph under consideration are "decisions" in the sense of article 17, paragraph 2 which terminate an exemption in "whole or in part". They require adoption by a two-thirds majority of the total membership of the Commission, no

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402 Article 2, paragraph 6 refers to those words.

403 See paragraph 14 of the present comments on article 3, paragraph 4.

404 See also paragraphs 21 to 24 of the above comments on article 2, paragraphs 5 and 6.

405 See article 2, paragraph 5; see also paragraph 26 of the comments on article 2, paragraphs 5 and 6.

406 That conclusion can not only be drawn from the "determinative" character of the World Health Organization's assessment as to "medical and scientific matters", but also from principles governing the interagency relations between the United Nations and the World Health Organization.

matter how many members may be absent, abstain or although present not participate in the voting.<sup>407</sup>

22. The Commission may take its decisions also by mail or means of telecommunication if it decides to provide for such a procedure. However, the Commission can take such a vote only if each of its members receives a copy of the WHO communication and no member objects to such a vote. On the other hand, the decision would not require unanimity for its adoption. A two-thirds majority of its total membership would be sufficient. See also paragraphs 3 and 4 of the comments on article 2, paragraphs 5 and 6 which apply also to adoption of decisions by mail or means of telecommunication under article 3, paragraph 4.<sup>408</sup>

23. The phrase “all Parties” refers to those Parties which have exempted the preparation in question from control measures to which the decision of the Commission applies. Several Parties may have exempted the preparations from measures all of which may not be the same. They must terminate the exemption from those measures which are affected by the Commission’s decision. However, in the light of different conditions prevailing in the territories of different Parties, the Commission’s decision terminating “in whole or in part” an exemption need not apply to the same control measures in regard to different Parties. This appears to follow from the fact that a Party may even make an exemption effective only in some of its “regions” and not in others, and may also make different exemptions of the same preparation for different “regions” of its national territory, and that the Commission may give its decision to terminate an exemption, a different scope in regard to different regions of the same Party.<sup>409</sup> It is however suggested that situations will not very often exist in which the Commission may find it advisable to make differences of that kind.

24. A decision of the Commission to terminate, in whole or in part, an exemption made by one or more Parties, does not seem to prevent another Party from making later an exemption not in accordance with the terms of the Commission’s decision. Such an exemption could theoretically be justified in view of special circumstances prevailing in the territory of that Party. The same might also be valid for a Party whose exemption has been terminated by the Commission, if changed conditions, new experience or new knowledge warrant such an action. It may however be safely assumed that all Parties will act in good faith, and that Parties will rarely find it necessary to make an exemption which would relate to those control measures governing a preparation whose continuation the Commission has disallowed by an earlier decision in regard to any Party.

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<sup>407</sup> See also paragraph 2 of the above comments on article 2, paragraphs 5 and 6; paragraph 10 of the general comments on article 2; and below comments on article 17, paragraph 2.

<sup>408</sup> See also foot-note 231.

<sup>409</sup> Article 3, paragraph 3, introductory subparagraph; see also paragraphs 12 and 20 of the comments on article 3, paragraph 4.

25. The period of 180 days runs from the date appearing on the document by which the Secretary-General notifies Governments and organizations of the Commission's decision. However, the text of paragraph 4 would also permit the interpretation that the 180 days are to be counted from the date of dispatch of the Secretary-General's communication. In order to avoid different interpretations of that provision, it is suggested that the Secretary-General should dispatch the communications on the date appearing on the document. It appears also advisable that he should send the communications by registered air mail with a request for a return receipt.

26. It appears advisable that the Secretary-General should inform Governments and organizations not only of a decision of the Commission to terminate an exemption—as he is required to do—but also of the refusal of the Commission to terminate an exemption, although paragraph 4 does not seem to require it.

27. In view of the fact that universal implementation of the provisions of the Vienna Convention is desirable, the Commission may in some cases request the Secretary-General to communicate its decision to States which are neither Members of the United Nations nor Parties to the Vienna Convention. It is suggested that the Commission should in that event indicate those States by name.<sup>410</sup>

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<sup>410</sup> See also paragraph 4 of the comments on article 2, paragraph 7, introductory subparagraph.

## Article 4

### OTHER SPECIAL PROVISIONS REGARDING THE SCOPE OF CONTROL

#### *Introductory paragraph and paragraph (a)*

**In respect of psychotropic substances other than those in Schedule I, the Parties may permit;**

**(a) the carrying by international travellers of small quantities of preparations for personal use; each Party shall be entitled, however, to satisfy itself that these preparations have been lawfully obtained;**

#### *Commentary*

1. It will be noted that under paragraph (a) Parties may not permit the carriage of psychotropic substances in any form other than in the form of their preparations. The term "preparation" as defined in article 1, paragraph (f) applies not only to psychotropic substances combined, in a solution or mixture, with a non-psychotropic substance, but also to a psychotropic substance or a combination of two or more psychotropic substances, not compounded with non-psychotropic substances, provided that the substance or combination of substances is in dosage form, i.e. in form of a measured small quantity ready for consumption by a patient.<sup>411</sup>

2. Since Parties may permit international travellers to carry the preparations only for *personal use*, they may do so only in respect of preparations in dosage form. This applies also to combinations of psychotropic substances with non-psychotropic material.<sup>412</sup>

3. Paragraph (a) applies only to small quantities needed for personal use, i.e. to such quantities as the traveller may require during his journey or voyage and until he is able to provide himself with the medicine in question in the country of destination.

4. In view of the express provision that each Party (i.e. the countries of transit and destination) is entitled to satisfy itself that the preparations have been lawfully obtained, it would be useful to require the traveller to carry a medical prescription or in cases in which the prescription is withheld by the pharmacist, a duplicate or satisfactory copy of the prescription showing that

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<sup>411</sup> For the definition of "dosage form" see paragraph 3 of the comments on article 1, paragraph (f).

<sup>412</sup> See also paragraph 8 of the comments on article 1, paragraph (f).

the preparations have been lawfully acquired. It is suggested that the provision just referred to does not have a constitutive but only a declaratory character. The Parties would have that right of control also without that provision.<sup>413</sup>

5. Since the preparations have to be carried for personal use, paragraph (a) does not cover preparations which the traveller may carry for use by an animal accompanying him.

6. Because preparations of substances in Schedule IV are not subject to the rules of article 12 governing the international trade in psychotropic substances, Parties are not required to apply to the carriage by international travellers of such preparations, the limiting conditions to which they must under paragraph (a) subject the carriage of preparations in Schedule II or III.

7. The application of paragraph (a) may in practice give rise to some difficulties. A situation may exist in which the country of origin but not a country of transit or the country of destination would permit the carriage of preparations according to paragraph (a). It may also happen that the different Parties involved may impose different conditions on such carriage. It would obviously not be within the spirit of co-operation required for the effective implementation of the Vienna Convention knowingly<sup>414</sup> to permit the carriage of preparations concerned by international travellers who in the course of their journey would cross or arrive in a country which does not authorize the exception of paragraph (a) from the controls of article 12 governing the international trade in psychotropic substances. Moreover the international traveller may in such a situation become involved in legal difficulties, and even be prosecuted for violation of the laws of the country in question. On the other hand it will be very difficult for the competent officials of the country of origin permitting the carriage authorized by paragraph (a) to maintain up-to-date information on the application of that paragraph in the numerous countries which persons carrying preparations may cross or to which they may travel. Moreover, in order to prevent the difficulties just outlined, it would be necessary to require international travellers to declare in advance of their departure, their intention to carry the preparations concerned and the countries of transit and destination. The competent officials of the country of origin would have to have the right to prohibit the carriage if they were aware that either a country of transit or that of destination does not grant the freedom authorized by paragraph (a). It is suggested that such a procedure would be very impractical and would deprive paragraph (a) of much, if not of practically all, of the value which it is intended to have for the health of international travellers.

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<sup>413</sup> The 1971 Conference rejected a proposal to provide that each Party should be entitled to determine, "by requiring the presentation of a medical prescription", whether the substances carried by an international traveller were legally obtained. The Conference deleted the words "by requiring the presentation of a medical prescription"; Conference document E/CONF.58/C.4/L.43; 1971 Records, vol. II, Minutes of the nineteenth meeting of the Committee on Control Measures, paragraph 14 (p. 163).

<sup>414</sup> See also article 31, paragraph 1 of the Single Convention.

8. It is difficult to foresee the different ways by which Parties would wish to cope with the problem, under their different administrative systems and practices. The following measures are suggested, by way of example, although they may not be entirely satisfactory: The authorities issuing or renewing passports or other international travel documents should hand to the travellers a printed note that the international carriage of preparations to be described in that note, although legal in their home country, may not be permitted without authorization in other countries. The note may also name those countries, which in the knowledge of the passport authorities at the time of the issue of the document, authorize the carriage of preparations pursuant to paragraph (a), and indicate the preparations whose carriage each of them permits. It should contain a suggestion that it would be advisable that travellers who desire to carry the preparations in question through or to other countries, obtain information on the relevant legal rules in the countries concerned. Travellers may in some cases obtain that information from the local diplomatic or consular missions of those countries, from airlines, shipping companies or travel agencies. It will be noted that similar procedures are applied in regard to other legal difficulties, such as those relating to currency controls or in regard to health hazards, which international travellers may experience.

9. Paragraph (a) authorizes Parties to exempt from the controls of article 12, but not from those required by article 13, the carriage of preparations by international travellers. A Party which has been notified by another Party of its prohibition of the import of a psychotropic substance under article 13, paragraph 1, is required to take measures to ensure<sup>415</sup> that international travellers departing from its territory do not carry preparations containing the psychotropic substance in question to the territory of the Party which has prohibited its import. It does not matter whether that territory will be crossed by the traveller in transit or is the destination of his journey. Parties have that obligation also in regard to preparations containing a substance in Schedule IV. They may, however, permit an international traveller departing from their territory to carry preparations containing the prohibited substance to the territory of the Party which has banned its import if that Party has given to the traveller the required special import licence pursuant to article 13, paragraph 3.

10. The Convention does not indicate the *specific* measures which a Party has to take to ensure that a prohibited substance (including its preparations) is not exported from its territory to the territory of the Party which has banned the import. It is submitted that it may in practice be very difficult to carry out that obligation, particularly in regard to preparations whose carriage by international travellers the Party concerned has permitted pursuant to paragraph (a), and even more so in respect of preparations containing a substance in Schedule IV whose export is not controlled by article 12 and is in fact free except in cases in which it is prohibited or restricted under article 13; but that practical difficulty does not relieve a

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<sup>415</sup> Article 13, paragraph 2.

Party from its obligation. Different Parties may choose different measures for that purpose, depending on their particular administrative systems and practices. A Party may e.g. instruct its border authorities to retain preparations of a prohibited substance carried by travellers if they find in the course of their control of documents of persons leaving the country that they will in the course of their journey cross or arrive in a country which has prohibited the import of that substance. It is admitted that such a retention may sometimes be very inconvenient for a traveller who may suffer if he cannot use the preparation during his journey.

11. In their efforts to prevent international travellers from carrying preparations in violation of the legal rules or of the prohibitions or restrictions under article 13 of a country which they cross, Parties from whose territory the travellers depart may ignore those countries of transit over which the travellers will fly without landing.<sup>416</sup>

12. It would help to overcome or to reduce the practical difficulties which Parties may experience in applying paragraph (a) if the Commission recommended to the Parties to follow uniform rules which it had prepared for that purpose and if the Parties accepted that recommendation. It would also be useful if Parties would communicate to each other, through the Secretary-General, the rules which they follow in implementing paragraph (a).<sup>417</sup>

13. Preparations carried by international travellers over a border are “exported” and “imported” in the meaning of “export” and “import” as defined in article 1, paragraph (h). It is nevertheless suggested that the quantities so carried need not be included in the figures on exports and imports according to article 16, paragraph 4, subparagraph (a) and (b) and paragraph 5. It would practically be very difficult to obtain the required data. The controls which would be necessary would deprive article 4, paragraph (a) of most of its value. Finally the amounts involved will be only very insignificant for statistical purposes, and one may apply in this case the old legal maxim “*de minimis non curat praetor*”.

14. It may be noted that article 4, paragraph (a) frees Parties from applying the provisions of article 12 to the carriage of psychotropic substances in Schedules II, III and IV by *international* travellers for personal use. It may however be assumed *a fortiori* that Parties may also apply the rule of that provision to interregional travel. Moreover Parties are not obligated to prohibit such carriage by *domestic* travellers even in cases in which the travellers have procured the psychotropic substances illegally, since the Convention does not require Parties to prohibit the unauthorized possession, for personal consumption, of substances in those Schedules. Article 5, paragraph 3 makes such a prohibition only “desirable”.

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<sup>416</sup> Article 12, paragraph 3, subparagraph (h).

<sup>417</sup> Article 16, paragraph 1, subparagraph (a).

15. As regards the implementation of article 4, paragraph (a) in the case of a psychotropic substance to which a Party applies one of the limited régimes described in article 2, paragraph 7, subparagraphs (a) to (e), see paragraphs 19 to 25 of the above comments on those provisions.

### *Paragraph (b)*

**(b) The use of such substances in industry for the manufacture of non-psychotropic substances or products, subject to the application of the measures of control required by this Convention until the psychotropic substances come to be in such a condition that they will not in practice be abused or recovered;**

### *Commentary*

1. Paragraph (b) corresponds to the provisions of article 2, paragraph 9 of the Single Convention.<sup>418</sup>

2. In view of the wide range of chemical substances which may be controlled by the Vienna Convention, paragraph (b) may be of greater practical importance than the related provision of the Single Convention is in regard to drugs subject to that treaty.

3. Article 5, paragraph 2 limits to medical and scientific purposes the manufacture of, trade in, and use of substances in Schedules II, III and IV, i.e. the substances to which article 4, paragraph (b) applies. The text of paragraph (b) seems to except from that limitation only the use of such substance for the industrial activities in question. It is however submitted that the manufacture of and domestic and international trade in substances in Schedules II, III and IV may also be permitted for use in the making of non-psychotropic substances. Paragraph (b) would otherwise be ineffective. It cannot be assumed that it was the intention of the 1971 Conference that the use of psychotropic substances for the industrial purposes defined in that paragraph should be allowed only to those manufacturers who themselves made the psychotropic substances involved originally for medical and scientific purposes. Manufacture of and trade in psychotropic substances for industrial use pursuant to subparagraph (b) is of course subject to all controls which the Vienna Convention requires for the manufacturing or trade activities in question.

4. Prohibitions and restrictions pursuant to article 13 apply also to exports and imports of psychotropic substances for use in the making of non-psychotropic substances in accordance with paragraph (b).

5. Subparagraph (b) provides that such use of psychotropic substances for the manufacture of non-psychotropic substances as it permits should be

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<sup>418</sup> 1961 *Commentary* on article 2, paragraph 9 of the Single Convention (pp. 71 to 73).



“subject to the application of the measures of control required by this Convention until the psychotropic substances come to be in such a condition that they will not in practice be abused or recovered”. The Vienna Convention does not provide for control measures governing such manufacture. Its provisions relating to “manufacture” do not apply since its term “manufacture” does not cover the making of non-psychotropic substances (article 1, paragraph (i)); but the “manufacture” to which article 4, paragraph (b) refers involves some activities of “trade” in psychotropic substances such as the acquisition of such substances. Those activities are subject to the control measures applicable to “trade” although not requiring their limitation to “medical and scientific purposes”; but while the controls governing “trade” are to a large extent the same as those relating to “manufacture”, they are not always sufficient for manufacturing activities. The following paragraphs therefore indicate some control measures whose application to the manufacture of non-psychotropic from psychotropic substances would appear to be essential or at least desirable. See also paragraph 9 of the above comments on article 1, paragraph (i).

6. Manufacture using psychotropic substances for the making of non-psychotropic substances should be under licence or other similar control measure, and be subjected to all those controls which a licensing system implies, unless that activity is carried on by a State enterprise specially authorized by the Government for that purpose and controlled by similar measures as those to be enforced under a licensing system. The establishments and premises in which the manufacture of non-psychotropic substances pursuant to paragraph (b) takes place should also be governed by a system of licensing or of similar controls or if used by a State enterprise be authorized and adequately controlled by the Government.<sup>419</sup> The kind of records which the maker of non-psychotropic substances should be required to keep should *mutatis mutandis* be those which a manufacturer of psychotropic substances would be required to maintain in accordance with article 11, and should therefore depend on the Schedule in which the substance that the manufacturer uses is listed. The records concerning the disposal<sup>420</sup> of psychotropic substances should indicate not only the quantities of the psychotropic substances used in the making of non-psychotropic substances but also the quantities of each kind of non-psychotropic substance made and sold. They should also show the quantities of those non-psychotropic substances sold to individual purchasers, who should be identified. In view of the provision of article 16, paragraph 4, subparagraph (d), records indicating the quantities of substances in Schedules II, III and IV used in the manufacture of non-psychotropic substances would in any event be obligatory.

7. The premises and records of manufacturers using psychotropic substances pursuant to paragraph (b) as well as their stocks of such substances

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<sup>419</sup> Article 8, paragraphs 1, 2 and 4.

<sup>420</sup> Required only in regard to manufacturers of substances in Schedule II or III; see article 11, paragraph 2; see also paragraphs 3 to 5 of that article.

and the non-psychotropic substances made therefrom should be inspected;<sup>421</sup> and Governments are required to report to the Board the quantities of each psychotropic substance used pursuant to that paragraph.<sup>422</sup> In short, the manufacturer of non-psychotropic substances from psychotropic substances should be controlled as if he were a manufacturer of the psychotropic substance which he uses.

8. It is hardly possible to indicate the measures by which the psychotropic substances used pursuant to paragraph (*b*) would “come to be in such a condition that they will not in practice be abused or recovered”. The measures to be taken will depend on the properties of the psychotropic substances involved or of the products obtained therefrom. It may however be mentioned that a similar problem arises in regard to alcohol, which a Government subjects to high taxes if intended for consumption, but exempts from such taxation if intended for industrial purposes or for external medical use. It is required in such a case that the alcohol not destined for consumption be “denatured”, i.e. be made unfit for drinking.<sup>423</sup>

9. Any substance may be abused. What is meant by “abused” in the paragraph under consideration is the kind of “abuse whose prevention is the aim of the Vienna Convention, i.e. “abuse” in the sense of article 2, paragraph 4.

10. The restoration of the psychotropic substance to a condition in which it may be abused or its recovery in such a condition from the non-psychotropic substance must be impractical. A mere possibility of such a restoration or recovery, however difficult or expensive, would not exclude the use of a psychotropic substance pursuant to paragraph (*b*). The technical difficulties and expenses of the process of recovery or restoration, as well as the minute size of the yield, may make it impractical for a potential abuser or for an illicit trafficker to use the non-psychotropic substance for his illicit purposes.<sup>424</sup>

11. The words “or products” in the phrase “non-psychotropic substances or products” seem to be a pleonasm.

12. As regards the possible use of a substance in Schedule I, under the paragraph under consideration, by a Party which under article 2, paragraph 7, introductory subparagraph has not accepted its inclusion in that Schedule, see paragraphs 16 and 17 of the comments on article 2, paragraph 7, subparagraphs (*a*) to (*e*); see also paragraph 18 of those comments.

13. Except as indicated in the preceding paragraph of the present comments, the Parties would under the introductory paragraph and paragraph (*b*) of article 4 appear to be prevented not only from using substances in Schedule I for the making of products containing those substances but

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<sup>421</sup> Article 15.

<sup>422</sup> Article 16, paragraph 4 subparagraph (*d*).

<sup>423</sup> See also article 2, paragraph 9, subparagraph (*a*) of the Single Convention.

<sup>424</sup> See also paragraphs 4 to 6 of the comments on article 3, paragraphs 2 and 3.

made harmless by denaturing or by other means and not recoverable, but also from using them for the making of chemically entirely different and harmless products. The Parties would however not be kept from transforming substances in Schedule I into substances in other Schedules where possible, and then using the latter as authorized pursuant to paragraph (b).

*Paragraph (c)*

**(c) The use of such substances, subject to the application of the measures of control required by this Convention, for the capture of animals by persons specifically authorized by the competent authorities to use such substances for that purpose.**

*Commentary*

1. Use for the capture of animals cannot be considered as use “for medical and scientific purposes” as this phrase is used in article 5, paragraph 2, except when this is done for the purpose of medical treatment of the animal or for that of subjecting it to scientific purposes. It may however be noted in this place that the use of some drugs subject to the Single Convention in the management of wild life, has on one occasion not been considered to be incompatible with that Convention’s provision limiting the use of drugs exclusively to medical and scientific purposes.<sup>4 2 5</sup>

2. Only persons who are adequately qualified for the “effective and faithful” implementation of the necessary controls<sup>4 2 6</sup> should obtain the specific authorization required under subparagraph (c). It is suggested that the authorization should normally be granted only to official game wardens in wild life reservations, to persons employed in zoological gardens or to police officers, and that it should indicate the psychotropic substances which would be allowed. The authorization should also impose such custodial conditions as are necessary to safeguard the psychotropic substances concerned against theft or other diversion.

3. The person authorized to use psychotropic substances should keep such records as would under article 11, paragraphs 3 and 4 have to be maintained by retail distributors of the substances in question.

4. As regards the application of paragraph (c) by Parties which pursuant to article 2, paragraph 7, introductory subparagraph have not accepted the Commission’s decision regarding the psychotropic substance concerned, see paragraphs 16 to 18 of the comments on article 2, paragraph 7, subparagraphs (a) to (e).

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<sup>4 2 5</sup> Article 4, paragraph (c) of the Single Convention; see *Report of the Commission on Narcotic Drugs on its Twenty-first Session (1966)*, *Official Records of the Economic and Social Council; Forty-second Session, Supplement No. 2 (E/4294)*, paragraphs 61 and 62; and *Report of the Commission on Narcotic Drugs on its Twenty-second Session (1968)*, *Official Records of the Economic and Social Council; Forty-fourth Session, Supplement No. 2 (E/4455)*, paragraph 43.

<sup>4 2 6</sup> See also article 8, paragraph 4.

Article 5  
LIMITATION OF USE TO  
MEDICAL AND SCIENTIFIC PURPOSES

*Paragraph 1*

1. Each Party shall limit the use of substances in Schedule I as provided in article 7.

*Commentary*

1. Article 7 does not expressly limit the manufacture of, trade in, export, import, distribution, stocks and possession of substances in Schedule I to medical and scientific purposes. It prohibits however all use of those substances "except for scientific and very limited medical purposes".<sup>427</sup> It is submitted that this restriction of the purposes of use also implies the same limitation of the purposes for which substances in Schedule I may be manufactured, traded, distributed, held in stock and possessed.

2. In restricting the use of substances in Schedule I to scientific and "very limited medical purposes" the 1971 Conference was obviously guided by the assumption that those substances have at present very little if any therapeutic value.<sup>428</sup> It will be recalled that this very limited value was one of the reasons for which a substance was included in Schedule I, the other reason having been the specially serious risk which it presents for public health.<sup>429</sup>

3. It is however submitted that it cannot have been the intention of the 1971 Conference to prohibit or unduly impede any medically justified therapeutic use of substances in Schedule I. One cannot foresee at present whether a substance in that Schedule may in the future be found to be very useful in the treatment of frequently occurring diseases. It may sometimes be held in such a case to be advisable to permit such use while maintaining the strict controls applicable to Schedule I, and consequently not to transfer the substances in question from Schedule I to another Schedule.

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<sup>427</sup> Article 7, paragraph (a).

<sup>428</sup> Conference documents E/CONF.58/C.4/L.2 and L.7; *1971 Records*, vol. II, minutes of the twelfth meeting of the Committee on Control Measures, paragraphs 1 to 17 (pp. 150 and 151).

<sup>429</sup> Paragraphs 50 and 51 of the above comments on article 2, paragraph 4.

4. It is suggested that the obligation of Parties to *restrict* the use of substances in Schedule I to “scientific and very limited medical purposes” should be implemented by authorizing only a *restricted* number of medical practitioners to use those substances for therapeutic purposes. Article 7, paragraph (a) does not expressly provide that only a restricted number of physicians may receive that authority, but merely that they should be “duly authorized”.

5. The limitation of medical use according to article 7, paragraph (a) may be understood also to require that Parties should not authorize the use of substances in Schedule I for medical indications for which other substances than those in Schedule I would have substantially the same therapeutic advantages.<sup>4 30</sup>

6. It is however hardly possible to define exactly for all Parties and for all times what “very limited medical” use means. It follows from sound medical principles that the very dangerous properties of substances in Schedule I suggest restrictions on their therapeutic use, as do very harmful side effects of all medicines; but it cannot be assumed that the Convention requires that all Parties follow the same rules in this regard. Legitimate differences of opinion may exist on the therapeutical value of a drug, on the importance of its harmful side effects and on the need for accepting the side effects of a drug in view of its usefulness. Questions of that kind may sometimes even have to be decided in the light of the particular problems of an individual patient. Parties may follow different rules in implementing their obligation to permit only a very limited medical use of substances in Schedule I. In adopting such rules they may be guided by their own understanding of the value of the substance in question and of the degree of its harmfulness. Some Parties may find it to be incompatible with their principle of freedom of medical practice to prescribe even to the restricted number of physicians whom they authorize to use substances in Schedule I, which drugs they may use in cases to be determined by the Government. They may prefer to issue recommendatory rules rather than mandatory ones, since the latter may in their view be irreconcilable with principles of sound medical practice.

7. Such a policy implementing the principle of “very limited medical use” by authorizing only a small number of physicians to use substances in Schedule I and by discouraging the medical use of those substances may not lead to objections even of those Governments which hold that Parties are bound to outlaw the use of a substance in that Schedule for all medical indications for which a substance not listed in Schedule I and having at least equally effective properties is available. Although it may be admitted that the latter position may be more in agreement with the sentiment of the majority of the 1971 Conference, it cannot be overlooked that it is not the purpose of the Vienna Convention to impose upon Governments particular health policies, whose adoption would properly be within their own domestic

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<sup>4 30</sup> See also article 3, paragraph 5 of the Single Convention.

jurisdiction, but to ensure that weakness or lack of control in one country does not weaken or endanger the effectiveness of control in another country.<sup>431</sup> A Party which adopts the first of the two positions just outlined, but ensures by faithful implementation of the controls required by article 7 that substances in Schedule I are not illegally exported to other countries, may be held by Parties adopting the second of two positions<sup>432</sup> not to violate their national interests. Such Parties may in a case of that kind not wish to impose their own interpretation of article 7, paragraph (a) on another Party.

8. The phrase “very limited medical purposes” includes also veterinary purposes.

9. See also article 2, paragraph 7, subparagraph (a) article 32, paragraph 4.

### *Paragraphs 2 and 3*

2. Each Party shall, except as provided in article 4, limit by such measures as it considers appropriate the manufacture, export, import, distribution and stocks of, trade in, and use and possession of, substances in Schedules II, III and IV to medical and scientific purposes.

3. It is desirable that the Parties do not permit the possession of substances in Schedules II, III and IV except under legal authority.

### *Commentary*

1. Paragraph 2 corresponds to article 4, paragraph (c) of the Single Convention. The observations of the *1961 Commentary* on that provision of the Single Convention apply, *mutatis mutandis*, also to the paragraph of the Vienna Convention.<sup>433</sup>

2. The phrase “medical purposes” as used by the Single Convention and earlier drug treaties includes also veterinary and dental purposes. It has not been uniformly interpreted by Governments. Its meaning has also been differently understood by some Governments at different times.<sup>434</sup> It may be assumed that the phrase has in the Vienna Convention the same meaning as in the Single Convention. In view of the fact that it seems now to be rather generally accepted that the Single Convention’s limitation of the use of drugs to medical and scientific purposes does not prevent the use of “narcotic”

<sup>431</sup> See also paragraph 8 of the above comments on article 2, paragraph 4.

<sup>432</sup> As regards this second position, see also paragraph 5 of the present comments.

<sup>433</sup> *1961 Commentary*, paragraphs 11 to 13 of the comments on article 4 (p. 111).

<sup>434</sup> Article 4, paragraph (c) of the Single Convention, article 5 of the 1925 Convention; see also article 5, paragraph 2, subparagraph (a) and article 6, paragraph 1, subparagraph (a) of the 1931 Convention; article 2, article 5, introductory paragraph and article 6, paragraph 1 of the 1953 Protocol; and article 9 of the 1912 Convention.

drugs (i.e. of drugs subject to that treaty) for a medically justified maintenance of drug addiction, it must be assumed that article 5, paragraph 2 does not prohibit the use of psychotropic substances in Schedules II, III and IV for a medically justified maintenance of dependence on such a substance. However psychotropic substances are now rarely if ever used for that purpose.

3. The meaning of the term “medical purposes” may change in accordance with the evolution of medical science. The paragraph under consideration not only permits a use justified by the system of medicine which is sometimes called “western medicine”, but would also allow use of psychotropic substances recognized by legitimate systems of indigenous medicine such as those existing in China, India, Sri Lanka and Pakistan. It cannot be excluded that medicines used in those systems and not in “western medicine” would in the future be placed in Schedule II, III or IV of the Vienna Convention.

4. The requirement that stocks should be limited to medical and scientific purposes does not involve any obligation to limit the *quantities* of the stocks held by individual enterprises or by the country as a whole. It does not matter whether the word “stocks” as used in the paragraph under consideration is meant to include what the Single Convention calls “special stocks” or not. It may safely be assumed that parties would hold “special stocks” only for medical and scientific purposes, i.e. stocks held by the Government for special Government purposes and to meet exceptional circumstances.<sup>435</sup>

5. Contrary to its meaning in the Single Convention,<sup>436</sup> the term “stocks” as used in paragraph 2 does not exclude the quantities held “by retail pharmacists or other authorized retail distributors and by institutions or qualified persons in the duly authorized exercise of therapeutic or scientific functions”.

6. The provision of paragraph 2 regarding “stocks” means that Parties should limit to medical and scientific purposes the holding of substances in Schedules II, III and IV by enterprises engaged in any phase of the trade (including manufacture and non-profit distribution) in those substances. Since it cannot be assumed that the 1971 Conference intended to use in that paragraph overlapping terms, one must conclude that the term “possession” as used in paragraphs 2 and 3 does not include the possession of psychotropic substances for purposes of trade. The word “possession” in those provisions

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<sup>435</sup> See paragraphs 7 to 9 of the general comments on article 1; the term “stocks” as used in article 16, paragraph 4, subparagraph (a) does not include “special stocks”; for a discussion of the meaning of special stocks see *1961 Commentary*, paragraphs 1 to 8 of the comments on article 1, paragraph 1, subparagraphs (w) and (x), (pp. 31 to 34).

<sup>436</sup> Article 1, paragraph 1, subparagraph (x), clause (iv). As used in article 16, paragraph 4, subparagraph (a) of the Vienna Convention the word “stocks” excludes such quantities held by retail outlets as those held by wholesalers other than manufacturers; on the other hand “stocks” in article 8, paragraph 2, subparagraph (c) and article 15 includes psychotropic substances held by retail outlets.

has therefore a different meaning from that in article 4, paragraph (c) and article 33 of the Single Convention.<sup>437</sup>

7. The distinction between holding stocks, i.e. possession for purposes of trade, and “possession” for other purposes was motivated<sup>438</sup> by the desire to enable Governments to apply different rules to those different kinds of possession, and in particular to make it clear that they need not subject to penal sanctions the possession of substances in Schedules II, III and IV for personal use.<sup>439</sup>

8. To understand the word “possession” as including possession for purposes of trade could also hardly be reconciled with the text of paragraph 3. It would mean that Parties might permit persons to possess without legal authority substances in Schedules II, III and IV for trade. It cannot be assumed that the 1971 Conference intended to create such a serious gap in the international control system. The “possession” to which paragraph 3 applies is possession for personal consumption. The small amounts involved in such an unauthorized possession could not present a significant source for the illicit traffic; but it must be emphasized that paragraph 3 declares it to be desirable that even possession for personal consumption should not be permitted “except under legal authority”. Parties are required not to permit possession for trade, except under legal authority.

9. The question whether possession is an “action” in the sense of article 22, paragraph 1, subparagraph (a) will be discussed further below; but even if that question is answered in the affirmative, Parties which do not permit possession of substances in Schedules II, III and IV for personal consumption “except under legal authority” nevertheless need not treat unauthorized possession of those substances for such consumption as a punishable offence, when committed intentionally. Such possession would not be an “action contrary to a law or regulation adopted in pursuance of” obligations of the Party concerned under the Vienna Convention since the prohibition of possession of substances in Schedules II, III and IV for personal use except under legal authority, although recommended by the Convention, is not an obligation of Parties.<sup>440</sup>

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<sup>437</sup> 1961 *Commentary*, paragraphs 16 to 25 of the comments on article 4 of the Single Convention and comments on article 33 of that treaty (pp. 111 to 114 and 402 to 404); the word “possession” in article 7, paragraph (b) of the Vienna Convention appears to have a broader meaning.

<sup>438</sup> Documents E/CONF.58/C.4/L.47, E/CONF.58/C.4/L.52, E/CN.7/SR.627 (pp. 135 to 137 of the French text), E/CN.7/SR.657 (pp. 137 and 138), E/CN.7/SR.667 (pp. 105 and 106), E/CN.7/SR.668 (pp. 109 to 111) and 1971 *Records*, vol. II, Minutes of the twentieth meeting and of the twenty-first meeting (paragraphs 1 to 4) of the Committee on Control Measures (pp. 164 to 167) and paragraphs 11 to 18 of the summary records of the thirteenth plenary meeting (pp. 49 and 50).

<sup>439</sup> As regards the application of article 36 of the Single Convention to the possession of narcotic drugs, see 1961 *Commentary*, paragraph 18 to 23 of the comments on article 4 of the Single Convention (pp. 112 and 113).

<sup>440</sup> See article 22, paragraph 1, subparagraph (a) and below the comments thereon.



10. It is admitted that the “ordinary”<sup>441</sup> meaning of the term “stocks” may perhaps be held not to include such small quantities as an abuser of psychotropic substances possesses for supplying without consideration a friend dependent on psychotropic substances or for sale in order to obtain the means required for the acquisition of psychotropic substances which he needs for satisfying his own craving. If that view is accepted, the holding of such small quantities would be “possession” in the sense of paragraphs 2 and 3, and for the reason given in the preceding paragraph of the present comments would not have to be treated as a punishable offence. A Party which does not attach that restricted meaning to the term “stocks” could, of course, hold that possession of small quantities for supplying, *gratis*, a friend or for sale in order to obtain the means for supporting the seller’s own dependence on psychotropic substances is not a “serious” offence, and consequently need not be punished “by imprisonment or other penalty of deprivation of liberty”.<sup>442</sup>

11. It is however suggested that it appears to be the better opinion that the term “possession” as used in paragraphs 2 and 3 does not include possession for supplying, *gratis*, a friend, and in any event not that for sale in order to obtain the means required for supporting the seller’s dependence.

12. As is submitted in the comments on article 22, paragraph 1, subparagraph (a), unauthorized acquisition or use of psychotropic substances as such need not be treated as a punishable offence under that provision. As regards substances in Schedules II, III and IV, that view is also backed up by the consideration that the 1971 Conference did not impose an obligation on Parties to prohibit the possession of those substances for personal consumption “except under legal authority” because it intended to leave it to the discretion of each Party to punish or not to punish persons abusing them.

13. While the Spanish text of paragraph 3 uses the phrase “*si no es con autorización legal*” which corresponds very closely to the English phrase “*except under legal authority*”, the French text reproduces that phrase by the words: “*sauf dans les conditions prévues par la loi*”. It appears that the French version shows much more clearly than those two other versions what is intended by that phrase. Paragraph 3 declares it to be desirable that the “possession” to which it refers should be permitted only in accordance with the conditions laid down in the law for the “possession” of the psychotropic substances in Schedules II, III and IV. It does not recommend that such “possession” should necessarily be subject to a permit.

14. The phrase in paragraph 2 “by such measures as it considers appropriate” leaves Parties very wide discretion in choosing the means for ensuring that the activities enumerated in that paragraph be limited to

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<sup>441</sup> Article 31, paragraph 1 of the Vienna Convention on the Law of Treaties, referred to in foot-note 135 above.

<sup>442</sup> Article 22, paragraph 1, subparagraph (a).

medical and scientific purposes;<sup>443</sup> the Parties are however bound to include among those measures all the administrative controls required by the treaty. For the reasons given earlier,<sup>444</sup> the measures to be adopted to limit “possession” and “use” to medical and scientific purposes need not include penal sanctions, while manufacture, export, import, distribution, holding of stocks and trade when carried on contrary to a law or regulation enacted to implement controls required by the Convention in respect of them must be treated as punishable offences under article 22, paragraph 1, subparagraph (a) if committed intentionally. The Parties are bound to endeavour to limit “possession” and use to medical and scientific purposes not only by the administrative controls prescribed by the Convention such as the licensing of trade activities, requiring medical prescriptions etc., but also by fighting the illicit traffic in accordance with article 21 and preventive action and other steps pursuant to article 20.

15. Only paragraphs (b) and (c), but not paragraph (a) of article 4 present exceptions from the rule of article 5, paragraph 2.<sup>445</sup>

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<sup>443</sup> As suggested above, the term “stocks” implies an “activity” namely the holding (or possession) of psychotropic substances for trade; see paragraph 6 of the present comments.

<sup>444</sup> Paragraphs 6, 7, 9 and 12 of the present comments.

<sup>445</sup> As regards a possible exception from the requirement of article 7, paragraph (a) to restrict the use of substances in Schedule I to “scientific and very limited medical purpose”, see article 32, paragraph 4.

## Article 6

### SPECIAL ADMINISTRATION

It is desirable that for the purpose of applying the provisions of this Convention, each Party establish and maintain a special administration, which may with advantage be the same as, or work in close co-operation with, the special administration established pursuant to the provisions of conventions for the control of narcotic drugs.

#### *Commentary*

1. The term “special administration” is often misunderstood. This appears to be the reason for the opposition of some delegates to the inclusion of that term in the Single Convention during the 1961 Conference. It may also explain—at least in some part—why the Vienna Convention does not impose on Parties an obligation to maintain a “special administration” for the purpose of applying its provisions. The provision of article 6 contains only a recommendation to that effect.

2. The term “special administration” can be found in earlier drug control treaties: article 15 of the 1931 Convention; article 11, paragraph 5 of the 1936 Convention and article 17 of the Single Convention. It has always been understood that the obligation to establish a “special administration” does not require Parties to set up a single authority. It has also always been recognized that the constitutional, legal and administrative systems of many countries do not permit the establishment of a single authority for all the purposes of drug control, which requires action in many different substantive fields. It is also obvious that the implementation of the provisions of the Vienna Convention requires in many countries action by different Government departments on the central and local level in many technical fields.

3. The term “special administration” as used in its technical sense in the field of drug control includes any special administrative arrangements to provide for liaison among the various national, central and local, governmental units entrusted with functions of control and to co-ordinate their work. Such arrangements may consist of the establishment of a special unit in the competent central Government department, of an interdepartmental committee or of other administrative means in conformity with the constitutional and administrative structure of the Government concerned.<sup>446</sup>

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<sup>446</sup> 1961 *Commentary*, comments on article 17 of the Single Convention (pp. 206 and 207); see also 1931 *Commentary*, paragraph 162.

4. Such administrative arrangements are required to ensure effective work and to avoid overlapping on the national level. They are also needed to ensure that each communication of an international organ relating to drug control reaches the competent Government agency concerned, and that the Foreign Office or other national agency charged with international relations in the drug field should be able to collect all the information which it has to furnish to international organs.

5. It may be mentioned that in general it is in the interest of effective drug control that as many functions in that field as possible be concentrated in a special central Government unit, although the establishment of a single authority for all functions will rarely be possible.<sup>447</sup>

6. The problem of the abuse of narcotic drugs, i.e. of drugs subject to the Single Convention, and that of the abuse of psychotropic substances are normally very similar. In fact, the problem of a particular drug under the Single Convention may sometimes resemble more closely the problem of a psychotropic substance than the problem of other drugs under the Single Convention. Whether a substance is subjected to the Single Convention or to the Vienna Convention is often determined by legal reasons rather than technical considerations. All drugs which are at present controlled by the Single Convention because they are themselves liable to abuse and not only because they are “convertible” into such dangerous drugs are covered by the definition of substances which may be placed under the Vienna Convention.<sup>448</sup>

7. It is consequently a matter of economy and efficiency that national administrative structures dealing with a particular technical problem relating to drugs controlled by the Single Convention should also deal with the same problem presented by psychotropic substances. In any event, close co-operation between an organ charged with functions relating to drugs under the Single Convention and another organ having the same or similar functions in regard to psychotropic substances is indispensable. It is for that reason that article 6 states that a “special administration” established for the purpose of carrying out the provisions of the Vienna Convention “may with advantage be the same as, or work in close co-operation with, the special administration established pursuant” to article 15 of the 1931 Convention or article 17 of the Single Convention.

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<sup>447</sup> The establishment of such a “single authority” may be possible in a very small country or “region” where all functions relating to drug control may sometimes be entrusted even to a single officer also charged with tasks in other fields.

<sup>448</sup> Article 2, paragraph 4 of the Vienna Convention; see paragraphs 10, 11, 16 and 17 of the above comments on article 2, paragraph 1, and paragraph 39 of the comments on article 2, paragraph 4.

## Article 7

### SPECIAL PROVISIONS REGARDING SUBSTANCES IN SCHEDULE I

#### *Introductory paragraph, paragraphs (a) and (e)*

In respect of substances in Schedule I, the Parties shall:

(a) Prohibit all use except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their Governments or specifically approved by them;

...

(e) Require that persons performing medical or scientific functions keep records concerning the acquisition of the substances and the details of their use, such records to be preserved for at least two years after the last use recorded therein; and

#### *Commentary*

1. As regards the interpretation of the phrase “very limited medical purposes”, see the above comments on article 5, paragraph 1; for possible exceptions see article 2, paragraph 7, subparagraph (a) and article 32, paragraph 4.

2. The phrase “scientific purposes” covers also scientific research for other than medical purposes, including industrial purposes.<sup>449</sup>

3. The phrase “duly authorized” has a very broad meaning. Governments have thus a considerable measure of discretion in adopting, in accordance with their own policies of administering public health and with their own views on sound medical principles, the required strict rules regarding authorization of the users of substances in Schedule I. The user must be “duly” authorized, i.e. in accordance with national law and regulations of the Party concerned, and also—it is suggested—in accordance with the requirements and purposes of the Vienna Convention, with which that law and those regulations have to conform.

4. It may also be pointed out that the meaning of the phrase “duly authorized” in article 7, paragraph (a) differs from the meaning given to these words on article 8, paragraph 3.<sup>450</sup> Under the latter provision medical

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<sup>449</sup> 1971 *Records*, vol. II, minutes of the fifth meeting of the Committee on Control Measures, paragraphs 13 and 14 (p. 135).

<sup>450</sup> Or in article 30, paragraph 1, subparagraph (c) of the Single Convention corresponding to article 8, paragraph 3 of the Vienna Convention.

practitioners and scientists are considered to be “duly authorized” if under the laws of their respective countries they are entitled to perform their therapeutic or scientific functions, no matter whether those laws grant that authority without special individual licences, to all persons who have obtained a relevant academic degree or passed prescribed examinations, or only by the issue of individual licences to the persons concerned.<sup>451</sup> It is submitted that it would be incompatible with the purpose of article 7, paragraph (a) if all persons authorized to practice medicine or to do scientific research were permitted to use substances in Schedule I. It is held that only those medical practitioners or scientists who are individually authorized by the competent Government unit to use a substance in Schedule I are to be considered to be “duly authorized” for the purposes of the paragraph under consideration. As regards medical practitioners, the view that individual authorizations are required is also supported by the provision that Parties should allow only a “very limited medical” use. The permits of the medical practitioners or scientists should indicate the particular substance or substances which they are allowed to use, and all those conditions which the authorities desire to impose in the interest of effective control. It is however admitted that the issue of permits authorizing the use of all substances in Schedule I is not excluded by article 7, paragraph (a). Some Government may consider that advisable in the case of permits granted to medical practitioners.

5. Only a restricted number of medical practitioners should be authorized to use substances in Schedule I for therapeutic purposes. That appears to follow from the obligation of Parties to permit only a “very limited” medical use of substances in Schedule I.<sup>452</sup> To restrict the number of “duly authorized” practitioners and scientists as well as of the “establishments” in which they are authorized to carry out their research or medical treatment would also be in the interest of effective control. The method by which that restriction might have to be carried out might be different in different countries, depending on their views on the principles which should govern the organization of the medical profession and freedom of medical practice.

6. The phrase “duly authorized persons” appears to refer only to natural persons and not to juridical persons. It would not be in accordance with the purpose of paragraph (a) to permit a “duly authorized” corporate body to use substances in Schedule I for medical treatment or research by persons in its employ who are not “duly authorized” in the sense of that paragraph. On the other hand, duly authorized natural persons may be aided by persons who are not so authorized, but work under their supervision and responsibility in research or medical treatment with substances in Schedule I. However, a corporate body which would engage in such research or medical treatment by “duly authorized persons” would also have to be authorized by the Government for that purpose. This appears to follow from paragraph (c) requiring “close supervision” of the activities carried on pursuant to paragraph (a). In any event it could do so—as also could “duly authorized”

<sup>451</sup> 1961 *Commentary*, paragraphs 1 and 2 of the comments on article 30, paragraph 1, subparagraph (c) of the Single Convention (pp. 332 and 333).

<sup>452</sup> See paragraphs 4 to 7 of the above comments on article 5, paragraph 1,

individuals—only in an establishment “directly under the control” of the Government or “specifically approved” by it. The corporate body or its department engaged in the research or medical treatment would thus be subject to the strict controls required by paragraphs (a) and (c).

7. The word “establishment”<sup>453</sup> as used in the paragraph under consideration means a place devoted to medical treatment or scientific research, including premises and fixtures. There was however no agreement at the 1971 Conference regarding a more exact meaning of that term. The view was expressed by one representative that “the establishment must constitute an institution and be more than just an individual physician working in his room”.<sup>454</sup> Others held that a private hospital, even if operated by an individual psychiatrist, would be an “establishment” for the purposes of the paragraph under consideration.<sup>455</sup> Another representative held that “the term ‘establishment’ referred to any place where medical and scientific work was being done. There was no need to specify its size, the type of installation or the number of staff employed . . . Governments could be depended upon to interpret the clause judiciously and were not likely to abuse it. The wording of the article was flexible enough to cover future research techniques and establishments which might later be regarded as appropriate and it would be unwise to restrict it to the types of institutions recognized at the present time as suitable. No more detailed definition of the term ‘establishment’ should be attempted.”<sup>456</sup> The same representative stated that in the view of his Government even the private office of a physician might be an “establishment”.

8. In view of those differences of opinion at the 1971 Conference and of the vagueness of the term “establishment”, it is justified to understand that term in a very broad sense. However, as paragraph (a) confines the therapeutic use of substances in Schedule I to establishments which are directly under the control of a Government or specifically approved by it, such use outside of a hospital, other medical institution or doctor’s office so controlled or approved would in any event be prohibited. Consequently, the administration of substances in Schedule I by doctors on house calls could never be authorized. It is admitted that theoretically this could in the future be in the way of adequate medical treatment, since it cannot be excluded that a substance in Schedule I might be found to have important therapeutic advantages in urgent cases, not possessed by substances not in that Schedule, and since the removal of the substance in question from the Schedule pursuant to article 2, paragraph 6 would require some time; but the text of article 7, paragraph (a) does not permit any other opinion.

9. The paragraph under consideration requires that the “establishments” should be “directly under the control” of the Government or “specifically

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453 See above comments on article 1, paragraph (1).

454 1971 *Records*, vol. II, summary records of the tenth plenary meeting, paragraphs 29 and 30 (p. 37).

455 *Ibid.*, paragraphs 22, 24, 25 and 27.

456 *Ibid.*, paragraph 36; see also paragraph 23, and paragraph 37 (p. 38).

approved” by it. A somewhat similar phrase is used in article 2, paragraph 5, subparagraph (b), of the Single Convention where it is required that the “clinical trials” mentioned therein should be “conducted under or subject to the *direct* supervision and control of the Party”. The 1961 Commentary<sup>457</sup> referring to the meaning of the word “direct” in this context states that it indicates that “reporting to the authorities on clinical trials and keeping detailed records of the research activities and of the drugs used would not be sufficient. It appears that Governments would also from time to time, have to inspect, by visits of officials, the execution of the clinical trials in question”. It is held that such controls would in any event also have to be exercised over the therapeutic or research activities carried on in the “establishments directly under the control of their Governments”. It is, however, held that the requirements of “direct” control under article 7, paragraph (a) of the Vienna Convention are more far-reaching than under article 2, paragraph 5, subparagraph (b) of the Single Convention, because under the former provision not only the research (or therapeutic) activities have to be under direct Government control but also the “establishment” itself in which that work is undertaken.

10. In order to be considered “directly under the control” of the Government pursuant to the paragraph under consideration, the establishment must also be subject to the authority of a Government agency to the extent that in administrative matters as well as in the performance of its research functions its management is bound to carry out general and particular instructions of that agency and in respect to its therapeutic work to follow the general rules prescribed by that agency from time to time.<sup>458</sup>

11. The “direct” control over the establishment may be exercised not only by central Government agencies but also by local public authorities.

12. It is not necessary that the “establishment” should be owned by the Government agency; what is relevant is not the formal legal position of the establishment, but the reality of its “direct” control by the Government. An establishment which is owned by a Governmental body but not controlled as suggested above would therefore not be an establishment “directly under the control” of the Government for the purposes of paragraph (a), while a privately owned establishment subject to such controls would.

13. It would not be sufficient for the purposes of article 7, paragraph (a) to define in a general rule the characteristics of the establishments which *are* approved for the research or medical treatment in question. The approval by the national or local Government agency must be “specific”, i.e. given to a particular place of research or treatment. What is required is “approval”. One may also note that the word “approved” and not the word “authorized” is used. It would not be sufficient to “authorize” an establishment, leaving it to the owner or management of the establishment to carry out changes in the

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<sup>457</sup> 1961 Commentary, paragraph 13 (b) of the comments on article 2, paragraph 5 of the Single Convention (p. 68).

<sup>458</sup> See also *ibid.*, paragraph 13 (c) of the comments.



premises and other safety conditions prescribed in the authorization. Before giving the approval the Government should assure itself that the establishment is, by the structure of its premises and otherwise, particularly also by its equipment and furnishing, already suitable for the research or medical work for which it is to be approved, and safeguarded against theft or other diversion of the substances in Schedule I which are to be employed. What is to be approved is not a plan of an establishment or an already existing establishment which is to be changed, but an establishment found by the Government to be already fully satisfactory for the tasks for which it is destined.

14. It is not necessary that the administration of the establishment “specifically approved” by the Government be obligated to follow general or specific instructions of a Government agency in regard to its research or medical work, although a Party would of course not be prevented from requiring that, and in particular also an advance approval of each project or of some kinds of projects of research;<sup>459</sup> but in view of the general rule of article 7, paragraph (c) requiring “close supervision” and the more detailed provision of paragraph (e) of that article concerning the keeping of records, such an establishment has to be subjected to much tighter controls than persons or institutions using other substances than those in Schedule I for the performance of their scientific or medical functions.

15. The close supervision pursuant to article 7, paragraph (c) appears to imply that the administration of an “approved” establishment—as also that of an establishment “directly under the control” of the Government<sup>460</sup>—has rather frequently to report to the competent Government agency on its research or therapeutic work. A Party may, but is not necessarily bound to, demand *advance* information on each research project. It may in particular be advisable to require such information on research undertaken on a human being. Each case of completed treatment of a human being with substances in Schedule I should be reported, although not necessarily each administration of such a substance; so should each completed research on a human being.

16. The requirement of “close supervision” also implies that the establishments mentioned in paragraph (a) would have to be more frequently inspected by Government officials than medical or scientific institutions using other substances than those in Schedule I. Inspections of the premises, stocks and records have to be undertaken.<sup>461</sup> It would sometimes also be advisable that Government officials observe actual processes of research undertaken by the “duly authorized persons” in an establishment “specifically approved” by the Government as—it has been suggested above in paragraph 9 of the present comments—would be mandatory in the case of an establishment “directly under the control” of the Government.

17. It will be noted that article 7, paragraph (e) provides that “persons performing medical or scientific functions keep records” while article 11,

<sup>459</sup> Article 23.

<sup>460</sup> See above paragraph 10 of the present comments.

<sup>461</sup> Article 15.

paragraph 3 requires Parties in regard to substances in Schedule II to impose a corresponding obligation on “*institutions* for hospitalization and care and scientific institutions”.<sup>462</sup> Under the latter provision individual medical practitioners employing substances in Schedule II for therapeutic purposes and individual scientists using such substances for research would not be required to maintain records.<sup>463</sup> However, under article 7, paragraph (*e*) “duly authorized” individual medical practitioners and scientists using substances in Schedule I pursuant to paragraph (*a*) of that article in a directly controlled or specifically approved establishment are required to maintain the records. They should also have that responsibility if they carry on the research or medical treatment within the framework of a corporate body, which in its turn should also have the obligation to see to it that the records be kept. Parties are bound to impose that obligation on the corporate bodies concerned because—as it is held—the word “persons” in paragraph (*e*) refers to juridical as well as natural persons. Parties would in any event have to do so as part of their obligation pursuant to paragraph (*c*) to provide for “close supervision” of research and medical treatment undertaken pursuant to paragraph (*a*), even though they may not accept the suggested meaning of the word “persons” in paragraph (*e*). It will be recalled that above in paragraph 6 of the present comments it has been submitted that the phrase “duly authorized persons” in paragraph (*a*) refers only to natural persons.

18. The records pursuant to paragraph (*e*) on the acquisition of substance in Schedule I should in any event show the identity of the seller or other source, the date of acquisition, the name of the substance, its pharmaceutical form and the amount of the acquired substance. The “details” of use recorded should include each individual administration for therapeutic purposes or use for research purposes, the reason for administration, and in regard to research not only the purpose of the research project involved, but also the particular purpose of the individual use in question, the name of the medical practitioner administering the substance or of the scientist using it, the name of the substance, its pharmaceutical form, its amount, the name of the person to which it was administered for therapeutic purposes or research or the animal involved, as the case may be, and the date of administration or use. All entries should be made on the same day on which the transaction (acquisition) or use takes place.

19. The records are to be preserved for at least two years after the last *entry* included therein. It is suggested that this broad understanding of the phrase “after the last use recorded therein” undoubtedly accords with the purpose of article 7, paragraph (*e*). It would in many cases defeat that

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<sup>462</sup> Similarly also article 11, paragraph 4 in regard to substances in Schedule III although the records under that provision may be less detailed.

<sup>463</sup> Under article 34, paragraph (*b*) of the Single Convention scientists are required to keep records of drugs used for research. Medical practitioners are however not bound to keep records of drugs used for therapeutic purposes although they are bound to record the sale of drugs to other persons than their own patients; *1961 Commentary*, on article 34, paragraph (*b*) of the Single Convention, paragraphs 2 and 3 of the comments (pp. 408 and 409).

purpose if users of substances in Schedule I were permitted to discard records containing entries concerning such substances, which are less than two years old. This period is to be counted from the date of the last entry if the records are maintained in form of a bound book. If they are kept in form of a card file, those cards which do not have any information less than two years old may be discarded.<sup>464</sup>

20. It may be noted that the Vienna Convention does not explicitly prescribe any minimum period for which other required records of use of psychotropic substances should be preserved.<sup>465</sup>

### **Paragraph (b)**

**(b) Require that manufacture, trade, distribution and possession be under a special licence or prior authorization;**

### *Commentary*

1. The authorization required for manufacture of, trade in, and distribution of substances in Schedule I is called “special licence or prior authorization”, while that for such activities with other psychotropic substances is called “licence or other similar control measure”.<sup>466</sup> That difference in terminology does not indicate in which way the controls over substances in Schedule I should be more strict than the control over other psychotropic substances, as obviously the 1971 Conference intended that they should be. It is submitted that in any event all measures expressly required by, or implied in, the system of control “under licence or other similar control measure” for activities with substances in Schedules II, III and IV pursuant to article 8, paragraphs 1, 2 and 4 must also—and even more strictly—be applied to the same activities with substances in Schedule I. The requirement of a more “strict” application of those controls may also be deduced from the obligation of Parties laid down in paragraph (c) to provide for “close supervision” of the activities and acts mentioned in the paragraph to which the present comments relate.

2. The terms “trade” and “distribution” cover also retail trade and retail distribution. It may however be concluded from the provision of paragraph (f) that the term “trade” does not include export and import trade. Otherwise exporters and importers, other than the “competent authorities or agencies of the exporting and importing country or region”, would, in addition to being “specifically authorized by the competent authorities” pursuant to paragraph (f), need a “special licence or prior authorization” according to paragraph (b) for their exports or imports, i.e. they would need

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<sup>464</sup> 1961 *Commentary* on article 34, paragraph (b) of the Single Convention, paragraph 23 of the comments (p. 413).

<sup>465</sup> Article 11, paragraphs 3, 4 and 7; see below comments on article 11, paragraph 7.

<sup>466</sup> Article 8, paragraph 1 and paragraph 2, subparagraph (b).

two general permits for the same activity in addition to a separate authorization of each individual transaction under paragraph (*f*) and article 12, paragraph 1. It can hardly be assumed that the 1971 Conference intended to require two general permits for the *same* purpose. Moreover, the term “trade” in article 5, paragraph 2 does not cover “export” or “import”. In two provisions where “trade” is to include export and import trade this is expressly stated.<sup>467</sup> A manufacturer of substances in Schedule I who exports them requires a “special licence or prior authorization” pursuant to paragraph (*b*) for his manufacturing activities<sup>468</sup> and must be “specifically authorized by the competent authorities” for his exports.<sup>469</sup> It is submitted that a person or enterprise which is specifically authorized by the competent authorities pursuant to paragraph (*f*) to engage in export or import or both may be considered to be authorized to obtain by purchase the substances which are needed for export and to sell the substances which are acquired by import. A “special licence or prior authorization” pursuant to paragraph (*b*) to engage in “trade” is not required for that purpose.

3. The term “special” refers not only to “licence”, but also to “prior authorization”. It is held that there is no substantive difference between the term “licence” and the term “prior authorization”. The insertion of the additional phrase “prior authorization” seems to have been motivated by the desire to make clear that the authorization which should be required need not be a “licence” in the technical sense of the administrative language of the Party concerned. Both terms “licence” and “prior authorization” refer to the same thing: a written governmental authorization—whatever may be its designation in the municipal law involved—whose issuance is to some degree left to the *discretion* of the competent national authorities concerned.<sup>470</sup> The activities mentioned in the paragraph under consideration may be carried on only by persons or corporate bodies which are specially authorized to engage in them in regard to the substance in question. A general authorization covering all psychotropic substances or—it is suggested—even one covering only all psychotropic substances in Schedule I would not be sufficient. The “special licence” or special “prior authorization” need not necessarily be granted in a separate document. It can also be included in a document containing other authorizations such as a licence concerning other substances

<sup>467</sup> Article 8, paragraph 1 and paragraph 2, subparagraph (*a*); see also subparagraph (*b*).

<sup>468</sup> As regards manufacture by a State enterprise see below paragraph 4 of the present comments.

<sup>469</sup> Unless the exports are made by the “competent authorities or agencies” referred to in article 7, paragraph (*f*), which may have manufactured the substances in question.

<sup>470</sup> See paragraph 28 of the comments on article 2, paragraph 7, subparagraphs (*a*) to (*e*); 1961 Commentary, comments on article 29, paragraph 1 (paragraph 1 of the comments, page 317), on article 29, paragraphs 2, subparagraph (*b*) (paragraph 4 of the comments, pp. 321 to 322) on article 30, paragraph 1, subparagraph (*a*) (paragraphs 1 and 3 of the Comments, pp. 328 and 329), on article 30, paragraph 1, subparagraph (*b*), clause (ii) (paragraphs 1 and 3 of the Comments, pp. 331 and 332) and article 31, paragraph 3, subparagraph (*a*) (paragraph 1 of the comments, p. 353); see below comments on article 8, paragraph 1 and paragraph 2, subparagraph (*b*) of the Vienna Convention; see above paragraph 17 of the comments on article 3, paragraphs 2 and 3.

in Schedule I, which would however have to be named, other psychotropic substances, narcotic drugs or even generally pharmaceuticals; but in all such cases the authority to engage in the activity concerned with the substance in Schedule I in question would have to be *specifically* mentioned.

4. A State enterprise specifically charged with one of the activities mentioned in paragraph (b) in regard to a substance in Schedule I is to be considered to be specially licenced or to have obtained a special prior authorization for that purpose, but such a State enterprise must be subjected to the same strict controls as a private enterprise or co-operative.<sup>471</sup>

5. It follows from the need for applying very strict controls to the activities mentioned in subparagraph (b) and from the obligation of Parties to provide for close supervision of them that the number of special licences or special prior authorizations has to be held to a minimum. The same conclusion must also be drawn from the obligation of Parties pursuant to paragraph (a) to prohibit all use of substances in Schedule I except for scientific and very limited medical purposes.

6. A special licence or special prior authorization according to subparagraph (b) may be granted only to persons who are technically and morally “adequately qualified for the effective and faithful execution of the provisions of such laws and regulations as are enacted” pursuant to the Vienna Convention for the control of the activities to which paragraph (b) refers. Where such activities are to be carried on by a corporate body (or a State enterprise) its managerial or supervisory personnel should have such qualifications.<sup>472</sup> In view of the very dangerous nature of the substances in Schedule I, the required standards of those qualifications should be very high.

7. Establishments and premises<sup>473</sup> in which activities mentioned in paragraph (b) may take place are also to be subjected to the requirement of a special licence or special prior authorization, which has to indicate whether the permission relates to manufacture or to trade or distribution. The permit should also indicate which substances in Schedule I it allows. That kind of control of “establishments” and “premises” is not expressly mentioned in the Vienna Convention in reference to substances in Schedule I, but only in regard to other psychotropic substances; but its obligatory character follows from what has been said above in paragraph 1 of the present comments, and obviously from the purpose of the provisions of the Vienna Convention concerning substances in Schedule I. It cannot be assumed that the 1971 Conference intended to impose a régime of licensing controls on establishments and premises in which manufacture of, trade in, or distribution of

<sup>471</sup> See above paragraph 30 of the comments on article 2, paragraph 7, subparagraphs (a) to (e) and paragraph 18 of the comments on article 3, paragraphs 2 and 3; see also below the comments on article 8, paragraph 1 and paragraph 2, subparagraph (b).

<sup>472</sup> Article 8, paragraph 4; see also the *1961 Commentary*, paragraphs 1 to 3 of the comments on article 34, paragraph (a) of the Single Convention (pp. 405 and 406).

<sup>473</sup> For a definition of the terms “establishment” and “premises” see above comments on article 1, paragraph (l); see also paragraphs 7 and 8 of the comments on article 7, paragraphs (a) and (e).

substances in Schedule II, III or IV may take place,<sup>474</sup> but not on those in which such activities in regard to substances in Schedule I may be carried on.

8. For the same reasons Parties are also required to control “all duly authorized persons and enterprises carrying on or engaged” in activities subject to paragraph (b) and to “provide that security measures be taken with regard” to establishments and premises in which such activities take place “in order to prevent theft or other diversion of stocks”.<sup>475</sup> The obligation to provide for such security measures also comprises a requirement to exercise some measure of control over persons employed by enterprises engaged in those activities. Only such steps of control would have to be taken as would be necessary and practical under the special circumstances of the individual case concerned. It would, for instance, not be practical, and consequently also not be required, to submit to a physical search each worker leaving a place in which manufacture, trade or distribution pursuant to paragraph (b) takes place; but such a measure as exclusion from participation in the manufacturing, trading or distribution process of persons suspected of illicit traffic would obviously be mandatory. That control may be implemented by imposing, in the “special licence” or special “prior authorization”, on the manufacturer, trader or distributor an obligation to dismiss persons at the request of the control authorities, or not to employ other persons than those approved by them. Other ways of implementing that aim may have to be chosen by Parties in the light of their own constitutional or legal principles.

9. The activities to which paragraph (b) refers as well as the possession of substances in Schedule I may be permitted only for “scientific and very limited medical purposes”, although the Vienna Convention does not have an express provision to that effect; but that restriction appears to follow from article 7, paragraph (a). It cannot be assumed that the 1971 Conference, while requiring Parties to limit in their own territory the use of substances in Schedule I to “scientific and very limited medical purposes”, intended to leave them the freedom to manufacture those substances for export to non-Parties for purposes of abuse. The exclusion of substances in Schedule I from the scope of article 5, paragraph 2 requiring the limitation to medical and scientific purposes of the manufacture, export, import, distribution and stocks of, trade in, and use and possession of, psychotropic substances also indicates that the 1971 Conference intended to submit, in regard to those activities and acts, substances in Schedule I to an even more strict limitation than other psychotropic substances. For the reasons just stated it may also be assumed that exports and imports governed by article 7, paragraph (f) may also be authorized only for “scientific and very limited medical purposes”.<sup>476</sup> Article 7, paragraph (a) expressly provides for that strict limitation in respect of the use of substances in Schedule I.

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<sup>474</sup> Article 8, paragraph 2, subparagraph (b).

<sup>475</sup> Article 8, paragraph 2, subparagraphs (a) and (c). The “stocks” mentioned in that provision include psychotropic substances held by retail outlets; see foot-note 436 above.

<sup>476</sup> See below comments on article 7, paragraph (f) as regards the implementation of the obligation to limit exports to such restricted purposes.

10. The word “possession” in article 7, paragraph (b) does not appear to exclude the holding of “stocks”, i.e. possession for the purpose of trade (including sale by the manufacturer, exporter, importer and non-commercial distributor).<sup>477</sup> It appears to cover the holding of substances in Schedule I for any purpose. That interpretation also accords with normal meaning of “possession” in the language of international drug control.<sup>478</sup> Some questions arise in this context.

11. If the word “possession” has the meaning suggested in the preceding paragraph of the present comments, does article 7, paragraph (b) require that possession by manufacturers, traders (including exporters and importers), distributors and users pursuant to article 7, paragraph (a) should also be “under a special license or prior authorization”? Or should it be assumed that the authorization of such enterprises or persons to engage in their activities with substances in Schedule I implies also a right to possess such substances in the course of their business or work? If that assumption is accepted, does it follow that only possession for other purposes than authorized trade, distribution, therapeutic use or research has to be “under special license or prior authorization”? But it can hardly be seen what kind of possession for such other purposes could be legitimate under the terms of the Vienna Convention and consequently could be permitted by “special license or prior authorization”. The only effect of the inclusion in paragraph (b) of the word “possession” would be that of ensuring that any possession of substances in Schedule I for other purposes than authorized trade, distribution, or use for research or medical treatment would be prohibited, since it could hardly ever be authorized—and this is certainly desirable. It is however suggested that there may be some legitimate difference of opinion as to whether the text of paragraph (b) permits the conclusion that only possession for other purposes than authorized trade (including trade by manufacturers, exporters or importers), distribution, medical treatment or scientific research requires a “special license” or special “prior authorization”.

12. By requiring such a permit for possession for any purpose Parties could implement the provision of article 7, paragraph (d) providing that they “restrict the amount supplied to a duly authorized person to the quantity required for his authorized purposes”. The “special licences” or “prior authorizations” would in such a case have to be issued rather frequently, e.g., every three months and more frequently on application. Moreover, Parties could in that way limit the quantities of substances in Schedule I which may be made by a manufacturer, who would not be permitted to make more than he would be authorized to possess by his “special licence” or “prior authorization”. Such a quantitative limitation of manufacture is not expressly

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<sup>477</sup> See paragraphs 6 to 8 of the comments on article 5, paragraphs 2 and 3 as regards the meaning of “possession” in those provisions; see also foot-note 437 above.

<sup>478</sup> As regards the possible exclusion of possession for personal consumption from the term “possession” in article 36, paragraph 1 of the Single Convention, see *1961 Commentary* on article 4 of that Convention, paragraphs 17 to 19 of the comments (p. 112).

required by the Vienna Convention, since paragraph (*d*) provides only for restriction of the “amount supplied”; but it may not only be desirable from the view point of effective control, but perhaps also mandatory as a treaty obligation which is implied in the provision of paragraph (*a*), limiting all use of substances in Schedule I to scientific and very limited medical purposes, and in that of paragraph (*c*), requiring Parties to provide for “close supervision” of the manufacture of, trade in, distribution, use and possession of those substances.<sup>479</sup>

13. Parties which hold that under paragraph (*b*) they are bound to require a “special license” or special “prior authorization” only for possession for other purposes than authorized trade, distribution, medical treatment or scientific research would—it is suggested—nevertheless have to maintain some system of permits for the purpose of implementing their obligation to restrict supplies pursuant to paragraph (*d*). In actual administrative practice their burdens may not be less than those of Parties which require a “special licence” or “prior authorization” for any possession of substances in Schedule I and use those permits for the purpose of limiting supplies pursuant to that paragraph. Such permits, whether issued in accordance with paragraph 12 or paragraph 13 of the present comments, would also represent an authorization to acquire the substances concerned.

14. It follows from paragraph (*b*) that Parties are bound to prohibit the unauthorized possession for any purpose of substances in Schedule I, and to enact laws or regulations to that effect.<sup>480</sup>

15. Whether or how far a Party is bound to consider the unauthorized possession of substances in Schedule I contrary to such a law or regulation to be an “action contrary to a law or regulation adopted in pursuance of its obligations” under the Vienna Convention and consequently to treat it under article 22, paragraph 1, subparagraph (*a*) as a punishable offence when committed intentionally gives rise to some questions which are discussed below in the comments on that provision.

16. It may be recalled in this place that a Party which under article 22, paragraph 1, subparagraph (*a*) considers unauthorized possession for any purpose of substances in Schedule I to be a punishable offence when committed intentionally may hold that unauthorized possession of such substances for personal consumption is not a “serious” offence, and consequently need not punish the offender by a penalty of deprivation of liberty if it does not substitute treatment for punishment. It may instead fine him, or merely censure or admonish him. The same may apply to some cases in which the offender possesses small quantities for consumption by a friend, or for sale to earn money required to support his own dependence on psychotropic substances. Moreover, contrary to the related provisions of the

<sup>479</sup> See also below the comments on article 7, paragraph (*c*).

<sup>480</sup> As regards possession of substances in Schedules II, III and IV, see paragraphs 7 to 11 of the above comments on article 5, paragraphs 2 and 3; see also below the comments on article 22, paragraph 1, subparagraph (*a*).



Single Convention in its unamended text, article 22, paragraph 1, subparagraph (b) of the Vienna Convention authorizes Parties to substitute in all cases which they have to treat as punishable offences under paragraph 1, subparagraph (a) of that article, measures of treatment<sup>481</sup> for the conviction or punishment of offenders who are abusers of psychotropic substances.

17. Police, court and other public officers exercising governmental functions in respect of substances in Schedule I are of course to be considered to be authorized to possess them in accordance with the terms and conditions of their public functions.

18. As regards the records to be maintained by authorized manufacturers, traders, distributors, exporters and importers, see below the comments on article 11, paragraph 1; for the records to be maintained by authorized users for therapeutic or scientific purposes, see paragraphs 17, 18 and 19 of the comments on article 7, paragraphs (a) and (e).

19. Pursuant to article 15 manufacturers, exporters, importers and wholesale and retail distributors (including commercial and non-commercial distributors) of all psychotropic substances are to be subjected to a system of inspection. That provision therefore applies also to the manufacture, trade and distribution governed by article 7, paragraph (b), as well as to the exporters and importers, including the government authorities and agencies, referred to in article 7, paragraph (f).<sup>482</sup> However, enterprises (including State enterprises and Government agencies) engaging in the manufacture of, trade in, export, import or distribution of substances in Schedule I will generally have to be more frequently inspected than such enterprises dealing with other psychotropic substances. In particular inspectors should also ascertain whether the enterprises (“duly authorized” persons) dealing with substances in Schedule I comply with the restrictions imposed by the Government on their supplies pursuant to article 7, paragraph (d). The need for the application of a very strict system of inspection to the activities mentioned in paragraphs (b) and (f) arises from the very dangerous nature of the substances in Schedule I which are involved. Such a strict system should also be a part of the “close supervision” which Parties are expressly required by paragraph (c) to exercise over the manufacture, trade and distribution mentioned in paragraph (b). The same close supervision, including a strict régime of inspections, should also be imposed upon the exporters and importers (including the Government authorities and agencies) to which paragraph (f) refers, although the Vienna Convention does not explicitly require it. Such close supervision is also warranted by the consideration that

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<sup>481</sup> Including also education, after-care, rehabilitation and social reintegration. Such measures may be taken either as an alternative to conviction or punishment or in addition to punishment; see below comments on article 22, paragraph 1, subparagraph (b). The 1972 Protocol amending the Single Convention, by its article 14, includes a very similar provision in that Convention (article 36, paragraph 1, subparagraph (b) of the amended text of the Single Convention).

<sup>482</sup> As regards inspection of authorized users for therapeutic or scientific purposes, see paragraph 16 of the comments on article 7, paragraphs (a) and (e).

international consignments can generally be more easily diverted into illicit channels than domestic shipments in a country administering effective controls.

20. The manufacturers, traders and distributors to which paragraph (b) relates, as well as the importers and exporters mentioned in paragraph (f)<sup>483</sup>, should be required to furnish to the control authorities not only the information which the Government needs for preparing its statistical returns for the Board but also such other data as the authorities may need for the exercise of strict control. Such data may relate to the condition of the premises, to the kind of arrangements made to prevent theft or other diversion, to the nature of the records which are kept and to the persons who are employed. It is not suggested that all Parties should require reports on all those details which have just been mentioned by way of example, or on any of them, or only on them. The contents of such reports may have to be different in different countries, and will have to be determined by each Government in the light of its own particular requirements of effective control. Governments may sometimes find it useful to obtain copies of the records kept by the enterprises dealing with substances in Schedule I or even reports on each individual transaction.

21. The compounding of preparations of substances in Schedule I in pharmacies would always be manufacture under article 1, paragraph (i) and article 7, paragraph (b), because it would never be done on “prescription”; see article 9, paragraph 1.

### *Paragraph (c)*

**(c) Provide for close supervision of the activities and acts mentioned in paragraphs (a) and (b);**

### *Commentary*

1. It will be noted that paragraph (c) requires “close supervision” of the activities and acts mentioned in paragraphs (a) and (b), but not of the activities referred to in paragraph (f). If—as has been suggested earlier<sup>484</sup>—the word “trade” in paragraph (b) does not include export and import trade, it follows that paragraph (c) does not cover exports and imports as such.

2. It is nevertheless suggested that Parties should provide for “close supervision” of exports and imports of substances in Schedule I. The dangerous character of such substances as well as the fact that international consignments normally present a much greater risk of diversion into illicit

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<sup>483</sup> Governments will know what exports and imports they have authorized, and often also learn from their customs authorities the quantities which were exported and imported; they may however find it useful to obtain from importers and exporters figures on their transactions even in cases in which they receive the same information from their customs offices.

<sup>484</sup> Paragraph 2 of the comments on article 7, paragraph (b).

traffic than domestic shipments<sup>485</sup> render such supervision necessary. It was certainly an oversight that the 1971 Conference did not include in the Vienna Convention an unambiguous explicit provision to that effect.<sup>486</sup>

3. It is moreover submitted that “close supervision” of exports and imports of substances in Schedule I is an implied treaty obligation. Paragraph (c) refers to “activities” and “acts”, and consequently covers doubtlessly also “possession” mentioned in paragraph (b). It has been suggested in an earlier comment<sup>487</sup> that the word “possession” as used in that provision includes possession by exporters and importers. Close supervision of the possession of substances in Schedule I by exporters and importers necessarily involves close supervision of their acquisitions and disposals, and this includes their exports and imports.

4. Provision should be made for close supervision not only of “persons or enterprises specifically authorized” to export or import substances in Schedule I, but also for that of State enterprises engaging in such activities and of the “competent authorities or agencies” referred to in paragraph (f).

5. It will be noted that the Spanish text uses the phrase “*una estricta vigilancia*” for the English phrase “close supervision” and the French “*une surveillance étroite*”. Although the words “close” and “*estricta*” are not synonymous, it is nevertheless held that those three language versions of paragraph (c) have the same meaning. It is suggested that “strict” supervision involves the need for “close” supervision and “close” supervision is strict supervision.

6. The phrase “close supervision” has a very broad meaning. It was obviously chosen to enable each Party to organize its system of “close supervision” in accordance with its own administrative principles and particular requirements of control.<sup>488</sup>

7. It is however suggested that “close supervision” will normally have to include a system of rather frequent and thorough inspections. It may also require periodical reporting by manufacturers, traders (including exporters and importers), distributors and users for therapeutical or scientific purposes. The reports would have to contain not only the statistical figures which the Government would need for its reports to the Board pursuant to article 16, paragraph 4 but also such other data as the control authorities might find useful for the exercise of their functions. In some cases Governments may also require reports on individual transactions and on individual cases of

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485 See also paragraph 19 of the comments on article 7, paragraph (b).

486 The authors of paragraph (c) may not have been aware that the term “trade” in paragraph (b) may in the light of other provisions of the Convention be understood to exclude export and import trade.

487 Paragraph 10 of the comments on article 7, paragraph (b); see also paragraphs 11 and 12 of those comments.

488 See in this context also the words “such measures as it considers appropriate” in article 5, paragraph 2 or the words “taking into account the professional and trade practices in their countries” in article 11, paragraph 4.

medical treatment or research, as being necessary for the implementation of their obligation to provide for “close supervision” as they may understand it.<sup>489</sup>

8. For other references to “close supervision”, see paragraphs 15 and 16 of the comments on article 7, paragraphs (a) and (e) and paragraphs 1, 5, 12, 19 and 20 of the comments on paragraph (b) of that article.

### **Paragraph (d)**

**(d) Restrict the amount supplied to a duly authorized person to the quantity required for his authorized purpose;**

### *Commentary*

1. Paragraph (d) concerning substances in Schedule I is the only provision of the Vienna Convention requiring quantitative limitations. The Vienna Convention does not provide for a limitation of the quantities of substances in Schedule II, III or IV which may be supplied to an authorized person (including natural and juridical persons).<sup>490</sup>

2. The text of the paragraph under consideration does not seem to require that Parties limit the quantities of substances in Schedule I which manufacturers may make. However, reasons similar to those which make it advisable to limit the amounts of substances in Schedule I which may be supplied to “a duly authorized person” would also warrant the limitation of the quantities of such substances which a manufacturer may make. First, only small amounts of substances in Schedule I are needed, since article 7, paragraph (a) restricts their use to scientific and *very limited medical purposes*. Secondly, limiting available supplies of substances in Schedule I to the quantities actually needed for legitimate purposes and thus preventing the accumulation of surpluses which are unsalable, i.e. which cannot be sold for illicit purposes, may eliminate or at least weaken the temptation of legally authorized manufacturers or traders to divert some of their stocks of substances in Schedule I to illicit channels.<sup>491</sup>

<sup>489</sup> See paragraph 20 of the comments on article 7, paragraph (b).

<sup>490</sup> See also paragraph 4 of the comments on article 5, paragraphs 2 and 3; see however article 19, paragraph 5; article 21; article 24, paragraph 1 and paragraph 2, subparagraph (a); article 29, paragraph 3; article 30, paragraph 2, subparagraph (a) and article 31, paragraph 1, subparagraph (b) of the Single Convention; and article 2 (providing for new paragraphs 4 and 5 of article 9 of the Single Convention), article 5 (providing for an amended text of paragraph 5 of article 12 of the Single Convention), article 9 (providing for new subparagraphs (e), (f), (g) and (h) of paragraph 1 and for an amended text of paragraph 5 of article 19 of the Single Convention) and article 11 (providing for the new article 21 *bis* of the Single Convention) of the 1972 Protocol.

<sup>491</sup> The second reason is one of the basic assumptions of international narcotics control. While its validity was generally recognized in the earlier decades of the international drug régime, its value particularly in regard to manufactured drugs in countries which apply effective controls is now sometimes disputed.

3. It is therefore suggested that in accordance with the purposes of paragraph (d) that Parties should limit the quantities of substances in Schedule I which a manufacturer would be authorized to make. As regards administrative measures by which that could be accomplished, see paragraphs 12 and 13 of the comments on article 7, paragraph (b). Those comments apply also to the limitation of supplies to authorized persons other than manufacturers.

4. The phrase “duly authorized person” covers persons “duly authorized” pursuant to paragraph (a) to use substances in Schedule I for scientific or “very limited medical” purposes; manufacturers, traders and distributors who have obtained “a special licence” or “prior authorization” pursuant to paragraph (b), no matter whether they are natural or juridical persons; the “competent authorities or agencies” which are referred to in paragraph (f); and the “persons or enterprises specifically authorized” by the competent authorities pursuant to that paragraph.

#### *Paragraph (f)*

**(f) Prohibit export and import except when both the exporter and importer are the competent authorities or agencies of the exporting and importing country or region, respectively, or other persons or enterprises which are specifically authorized by the competent authorities of their country or region for the purpose. The requirements of paragraph 1 of article 12 for export and import authorizations for substances in Schedule II shall also apply to substances in Schedule I.**

#### *Commentary*

1. Paragraph (f) provides for two kinds of authorizations for exports and imports of substances in Schedule I: a general authorization to engage in such transactions, and individual authorizations which a “competent authority” or “agency” or “other person” or “enterprise” so generally authorized must in addition have for individual exports or imports. The general authorization may, in the case of the “competent authorities or agencies” to which that paragraph refers be expressly granted by a special administrative act, or be implied in the governmental functions with which they are charged. In the case of the “other persons or enterprises” mentioned in that provision, the general authorization which is required has to be “specifically” granted by the “competent authorities”. The “competent authorities or agencies” should be permitted to engage only in the export or import of those substances in Schedule I to which their governmental functions specifically relate, or which have specifically been authorized by a special administrative act; so should the “other persons or enterprises” be permitted to engage only in the export or import of those substances in Schedule I which have specifically been permitted in their general authorization granted by the “competent authorities”.

2. The authorization according to article 12, paragraph 1 to make an individual export or import of substances in Schedule I may be granted only to the “competent authorities or agencies” or “other persons or enterprises” which have the general authorization referred to in the preceding paragraph. It may on the other hand be mentioned in this place that an authorization to make an individual export or import of substances in Schedule II may be granted also to persons who pursuant to article 8, paragraph 1 are not under “licence” or “other similar control measure” in order to be entitled to engage in the export or import *trade* in such substances, as is required by that paragraph. But only such individual international transactions of that kind may be permitted to persons who pursuant to article 8, paragraph 1 are not authorized to engage in the international trade (including the non-commercial business of distribution) in the psychotropic substances in Schedule II concerned, as do not form part of such an export or import *trade* (e.g. imports of small quantities, made by a physician for the treatment of his patients or the occasional exchange of samples made by scientists for the purpose of research).<sup>492</sup>

3. The phrase “other persons or enterprises” covers natural and juridical persons; it includes also commercial State enterprises specifically entrusted with the export or import, or both, of the substances in Schedule I in question.

4. A Party authorizing under article 7, paragraph (*f*) and article 12, paragraph 1 an export may normally rely on the good faith of the importing country that the importer is a “competent authority” or “agency” or “other person” or “enterprise” “specifically authorized by the competent authorities”, as required by article 7, paragraph (*f*). It may however in appropriate cases request the importing Party to confirm the fact. The importing Party may similarly rely on the good faith of the exporting Party that the exporter has the qualifications required by paragraph (*f*).

5. The Vienna Convention does not expressly provide that the export and import of substances in Schedule I may be permitted only for medical and scientific purposes.<sup>493</sup>

6. However, for the reasons given above in paragraph 9 of the comments on article 7, paragraph (*b*) there cannot be any doubt that the 1971 Conference did not intend to authorize such exports and imports for other than “scientific and very limited medical purposes”. It is submitted that Parties have an obligation to prohibit exports and imports of substances in Schedule I for other purposes. Here again Parties may rely on the good faith of other Parties that an export or import—as the case may be—has not been

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<sup>492</sup> See also 1961 *Commentary*, paragraph 8 of the comments on article 31, paragraph 3, subparagraph (*a*), (pp. 355 and 356) and below the comments on article 8, paragraph 1.

<sup>493</sup> As is expressly required by article 5, paragraph 2 in respect of other psychotropic substances.

authorized for such other purposes. However, they may—and should make appropriate inquiries whenever they consider that advisable.<sup>494</sup>

7. The authorization “specifically” granted by the “competent authorities” need not be a separate document. It may be included in other documents authorizing trade activities in regard to psychotropic substances, narcotic drugs or other pharmaceuticals; but only such exports or imports or both and only of such substances in Schedule I may be considered to be permitted as are “specifically authorized” in such a document. A State enterprise specifically charged with the export or import of a substance in Schedule I may be considered to be “specifically authorized by the competent authorities” to engage in the export or import—as the case may be—of that substance; but it must be subjected to the same controls as “other persons or enterprises”.<sup>495</sup>

8. The exporters and importers to which paragraph (*f*) refers and especially the “other persons or enterprises” (including State enterprises) must be subjected to all controls which form the substance of a licensing system particularly also including the measures provided for in article 8, paragraph 2 only in regard to substances in Schedules II, III and IV.<sup>496</sup>

9. Only such natural persons may be permitted to engage in international transactions as are technically and morally “adequately qualified for the effective and faithful execution of the provisions of such laws and regulations as are enacted” in pursuance of the Vienna Convention for the control of the exports and imports to which paragraph (*f*) refers; and only such enterprises may obtain that authority as have managerial or supervisory personnel with such qualifications. It is doubtlessly also an obligation of Parties to ensure that “the competent authorities or agencies” exporting or importing substances in Schedule I as well as commercial State enterprises entrusted with such transactions have such personnel. That obligation of Parties outlined in the present paragraph forms part of the obligations of control that they have under paragraph (*f*) although article 8, paragraph 4 expressly providing for such personal requirements in the case of article 7, paragraph (*b*) concerning substances in Schedule I does not explicitly apply to article 7, paragraph (*f*). It is moreover submitted that the phrase in article 8, paragraph 4 “who obtain licences in accordance with this Convention” is meant to apply to authorizations to engage in any phase of trade in all psychotropic substances no matter whether the authorizations are specifically granted by the control authorities or are implied in the authorized functions of the trader as in the case of the importing or exporting “competent authorities or agencies” to which article 7, paragraph (*f*) refers.<sup>497</sup>

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494 See also paragraph 1 of the comments on article 5, paragraph 1.

495 See also paragraph 4 of the comments on article 7, paragraph (*b*).

496 See also paragraph 1 of the comments on article 7, paragraph (*b*).

497 See also paragraph 6 of the comments on article 7, paragraph (*b*); see below the comments on article 8, paragraph 4.

10. For the reasons given above in paragraph 19 of the comments on article 7, paragraph (b) and in the comments on paragraph (c) of that article, the exporters and importers mentioned in paragraph (f) should be subjected to a régime of close supervision such as is required pursuant to paragraph (c) for the activities governed by paragraph (b). For a strict régime of inspection and a system of reports which importers and exporters of substances in Schedule I should make to control authorities, see paragraphs 19 and 20 of the comments on article 7, paragraph (b).

11. It appears to be advisable that only one “competent authority” or “agency” of a country or region should be entrusted with exports or imports of substances in Schedule I. The number of persons or enterprises “specifically authorized” to engage in such trade should also in any event be held to a minimum. It would be desirable from the viewpoint of effective control not to permit more than one international trader in substances in Schedule I, no matter whether that trade is to be carried on by a “competent authority”, an “agency”, a “person” or “a private or State enterprise”.<sup>498</sup>

12. For the same reason as those given in paragraph 7 of the comments on article 7, paragraph (b) in regard to the activities to which that provision applies, the “establishments” and “premises” on which the “other persons or enterprises” referred to in paragraph (f) may carry on their international trade should also be subject to a specific authorization which should indicate the substances in respect of which the use of the establishment or premises concerned is permitted. Parties should use the same standards which they apply in granting such authorizations, in selecting the establishments and premises to be used by the “competent authorities”, competent “agencies” or State enterprises in their international trade pursuant to paragraph (f).<sup>499</sup>

13. For the same reasons Parties should also control all “duly authorized”<sup>500</sup> exporters and importers to which paragraph (f) refers, no matter whether a “competent authority”, “agency”, “other person” or “enterprise”, and provide for security measures to be taken with regard to establishments and premises in which the export or import trade in substances in Schedule I takes place, in order to prevent theft or other diversion.<sup>501</sup> The way in which they should exercise those controls should *mutatis mutandis* be similar to that indicated in paragraph 8 of the comments on article 7, paragraph (b).

14. Article 13 concerning the prohibition of and restrictions on export and import of psychotropic substances normally<sup>502</sup> does not apply to

<sup>498</sup> See also paragraph 5 of the comments on article 7, paragraph (b).

<sup>499</sup> See also paragraph 7 of the comments on the provision referred to in the preceding foot-note and foot-note 473 above.

<sup>500</sup> See also article 8, paragraph 2, subparagraph (a).

<sup>501</sup> See also article 8, paragraph 2, subparagraph (c).

<sup>502</sup> See, however, article 2, paragraph 7, subparagraph (a), clause (iv) and paragraphs 36 to 38 of the above comments on article 2, paragraph 7, subparagraphs (a) to (e); see also those comments as regards the application of article 13 to a substance in Schedule I under a limited régime pursuant to article 2, paragraph 7, subparagraph (e); see also paragraphs 39 and 40 of those comments.



substances in Schedule I. By an appropriate application of the import certificate and export authorization system Parties may obtain the same effects as those which would result from an application of article 13 to substances in Schedule I.

15. Parties are bound to require that all exporters and importers referred to in paragraph (*f*), including “the competent authorities or agencies” engaging in the international trade in substances in Schedule I, maintain the records mentioned in article 11, paragraph 1.<sup>503</sup>

16. Paragraph (*f*) is one of the provisions<sup>504</sup> in which the word “region” appears as an indication of the possibility of applying it separately to a region, i.e. to a part of the area of a Party set apart as a separate entity for the purposes of the Vienna Convention.<sup>505</sup> Other provisions may also be so applied, although not expressly, referring to a “region”.

17. Article 12, paragraph 1 expressly provides for the application of the import certificate and export authorization system to substances in Schedule I as well as to those in Schedule II. An earlier draft of that provision referred only to substances in Schedule II. The 1971 Conference obviously overlooked adjusting the text of the last sentence of paragraph (*f*) to the new text of article 12, paragraph 1 as finally adopted. In fact, in view of that final text the last sentence of paragraph (*f*) became superfluous.

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503 See below the comments on that provision.

504 For others, see foot-note 5 above.

505 See above comments on article 1, paragraph (*k*).

## Article 8

### LICENCES

#### *Paragraph 1*

**1. The Parties shall require that the manufacture of, trade (including export and import trade) in, and distribution of substances listed in Schedules II, III and IV be under licence or other similar control measure.**

#### *Commentary*

1. The paragraph under consideration contains the substance of several provisions of the Single Convention: article 29, paragraph 1 (referring to manufacture), article 30, paragraph 1, subparagraph (a) (referring to trade and distribution) and article 31, paragraph 3, subparagraph (a) (referring to international trade).<sup>506</sup> Many of the comments made on those provisions by the 1961 *Commentary* apply *mutatis mutandis* also to article 8, paragraph 1 of the Single Convention.

2. While the system of governmental authorizations referred to as “licence or other similar control measure” applies only to substances in Schedules II, III and IV, a similar system, although—it is submitted—on stricter terms, is to be applied to all activities involving substances in Schedule I. That latter system is referred to by the following phrases which are different from those used in article 8, paragraph 1 and which vary according to the particular activities to which they relate: “duly authorized”,<sup>507</sup> “special licence or prior authorization”<sup>508</sup> and “specifically authorized”.<sup>509</sup>

3. There is no difference in substance between the designation “licence” and the phrase “other similar control measure”. It is submitted that the latter alternative expression is used only in order to indicate that the Governmental authorization to which both expressions refer need not be called “licence” in the municipal legislation concerned, nor be designated by any corresponding term in other languages, nor be technically a licence in the sense of the municipal administrative terminology in question. A licence (or “other similar

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<sup>506</sup> Other provisions of the Single Convention relating to licences: article 23, paragraph 2, subparagraphs (b) and (c) and by implication article 26, paragraph 1 and article 28, paragraph 1.

<sup>507</sup> Article 7, paragraph (a).

<sup>508</sup> Article 7, paragraph (b).

<sup>509</sup> Article 7, paragraph (f).

control measure”) in the sense of article 8, paragraphs 1 and 2, is a written governmental authorization whose issuance is to some extent left to the discretion of the government office concerned. It does not matter what name is given to that authorization in the applicable municipal law. A permit to which every person or corporate body fulfilling the conditions required by law would have a legal claim would not be a “licence” or “similar control measure” for the purposes of article 8, paragraph 1 or paragraph 2, subparagraph (*b*).

4. Article 8 uses the expressions “licence” or “other similar control measure” for two different kinds of government permits: for the authorization to engage in a phase of the trade in psychotropic substances in Schedule II, III or IV, and for the authorization to use a particular establishment or particular premises for that purpose.

5. A State enterprise entrusted with carrying on any of the trade activities referred to in paragraph 1 is obviously authorized by the Government to do so, and consequently is to be considered to be “under licence or other similar control measure” as required by that provision; but such a State enterprise is to be subjected to all those control measures which form part of a system of licensing.

6. The various trade activities mentioned in the paragraph under consideration are to be “*under* licence or other similar control measure”. It is not sufficient that Parties require that persons or corporate bodies engaging in such activities have a government authorization to that effect. They must apply to those activities not only those controls specially mentioned in paragraph 2, but all the others which are normally understood to be a part of a licensing system.

7. The government authorization required by paragraph 1 or paragraph 2, subparagraph (*b*) need not be granted in a separate document. It may be included in another document such as an authorization to engage in a phase of trade in narcotic drugs, or more generally in pharmaceuticals; but the authorized activity: manufacture, wholesale trade, retail trade, export trade, import trade or the kind of non-commercial distribution, must be specifically mentioned. An authorization to manufacture psychotropic substances in Schedule II, III or IV or to engage in any other phase of trade in such substances may cover all of them. It need not specify which particular substances are allowed. It is however, suggested that it would be advisable to require that a manufacturing permit name the individual substances which it authorizes.<sup>510</sup>

8. An authorization pursuant to paragraph 1 to engage in a particular phase of trade in psychotropic substances may be granted to an individual, a partnership or a corporate body (including a co-operative).

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<sup>510</sup> As regards substances in Schedule I see: paragraph 4 of the comments on article 7, paragraph (*a*) and (*e*), paragraph 3 of the comments on article 7, paragraph (*b*) and paragraph 1 of the comments on paragraph (*f*) of that article.

9. An authorization to manufacture psychotropic substances may be considered to cover all operations which normally are within the scope of a manufacturer's business. This includes the right to buy psychotropic substances which he is entitled to make himself, but which he has not in stock for the execution of an order.

10. The making of preparations including those exempted pursuant to article 3, paragraphs 2 and 3 is "manufacture" for the purpose of article 8, paragraphs 1, 2 and 4. However, the compounding of preparations on prescription in pharmacies is not "manufacture" according to the definition of that term in article 1, paragraph (i), but retail distribution of, or retail trade in, the psychotropic substances which the preparations contain. The word "pharmacies" as used in that provision is intended to cover all licensed retail outlets of psychotropic substances. The compounding of preparations by a medical practitioner for his patient is also not "manufacture", but dispensation or administration of the psychotropic substances contained in the preparations in the "duly authorized"<sup>511</sup> performance of his therapeutic functions.<sup>512</sup>

11. The sale of substances in Schedules II, III or IV and their preparations by a medical practitioner to his own patients for their use or to persons for use by animals which he treats is not (retail) "trade" or "distribution" for the purpose of article 8, paragraphs 1 and 2, and consequently need not be subjected to the governmental authorizations provided for in paragraph 1 and paragraph 2, subparagraph (b). Such sale is to be considered dispensation or administration of the psychotropic substances concerned by the medical practitioner in the "duly authorized"<sup>511</sup> performance of his therapeutic functions.

12. However, if physicians are authorized to sell psychotropic substances to other persons than their own patients, they are to be considered to engage in retail "trade" and are to be subjected to the requirement of government authorizations pursuant to paragraph 1 and paragraph 2, subparagraph (b).<sup>513</sup>

13. Persons who do not engage in the import or export trade in, or in a non-commercial enterprise of international distribution of, the substances to which paragraph 1 refers do not need the governmental authorizations pursuant to that paragraph and paragraph 2, subparagraph (b) for such international non-commercial transactions as an import by a physician for the treatment of his own patients, or an exchange of samples by scientists for use

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<sup>511</sup> Article 8, paragraph 3.

<sup>512</sup> Paragraphs 1 to 8 of the above comments on article 1, paragraph (i); see also *1961 Commentary*, paragraph 4 of the comments on article 29, paragraph 1 of the Single Convention (pp. 317 and 318).

<sup>513</sup> See paragraph 7 of above comments on article 1, paragraph (i); see also *1961 Commentary*, paragraph 7 of the comments (p. 330) on article 30, paragraph 1, subparagraph (a) and paragraph 4 of the comments (p. 333) on paragraph 1, subparagraph (c) of that article of the Single Convention.

in their research work; but such individual non-commercial transactions relating to substances in Schedule II are subject to the import certificate and export authorization system of article 12, paragraphs 1 and 3, and those relating to substances in Schedule III to paragraph 2 of that article providing for export declarations.<sup>514</sup>

14. It is suggested that it is in the interest of effective control that the number of authorized manufacturers, wholesale traders, exporters and importers should be small. That is particularly important in respect of substances in Schedule II.<sup>515</sup>

15. The competent Government department should not only have wide discretion to grant or refuse an authorization to engage in a phase of the trade in substances in Schedule II, III or IV, but also to revoke it and to change the conditions under which it was granted. The discretionary power to revoke such an authorization may have to be limited to the extent necessary to make possible the economical conduct of the business by law-abiding persons.<sup>516</sup>

16. The system of government authorizations pursuant to paragraph 1 enables a Government to restrict the number of businesses engaged in the various phases of the trade in substances in Schedules II, III and IV, to impose conditions of conduct on the traders, particularly in regard to record keeping and reports to be furnished to the control authorities, to ensure high technical and moral standards of the management of enterprises engaged in such trade activities as required by article 8, paragraph 4, and to eliminate enterprises by administrative action if advisable in the interest of effective control.<sup>517</sup>

*Paragraph 2, subparagraph (a)*

**2. The Parties shall:**

**(a) Control all duly authorized persons and enterprises carrying on or engaged in the manufacture of, trade (including export and import trade) in, or distribution of substances referred to in paragraph 1;**

*Commentary*

1. The language used in the paragraph under consideration follows that of article 29, paragraph 2, subparagraph (a) (relating to manufacture), of

<sup>514</sup> See also paragraph 2 of the above comments on article 7, paragraph (f).

<sup>515</sup> As regards substances in Schedule I see paragraph 5 of the comments on article 7, paragraphs (a) and (e), paragraph 5 of the comments on paragraph (b) of that article and paragraph 11 of the comments on paragraph (f) of that article.

<sup>516</sup> See also *1961 Commentary*, paragraph 8 of the comments on article 29, paragraph 1 (p. 318) and paragraph 3 of the comments on article 30, paragraph 1, subparagraph (a) of the Single Convention, (p. 329).

<sup>517</sup> See also the *1961 Commentary*, paragraph 9 of the comments on article 29, paragraph 1 (pp. 318 and 319) and paragraph 3 of the comments (p. 329) on article 30, paragraph 1, subparagraph (a) of the Single Convention.

article 30, paragraph 1, subparagraph *(b)*, clause (i) (relating to trade and distribution) and of article 31, paragraph 3, subparagraph *(b)* (relating to international trade) of the Single Convention;<sup>518</sup> but the language of the Vienna Convention differs in one important aspect from that of those earlier provisions. The provisions of the Vienna Convention requires only the control of all “duly authorized” persons and enterprises, while the provisions of the Single Convention (and of the earlier drug control treaties) do not contain the qualifying phrase “duly authorized”, but prescribe the control of *all* persons and enterprises. The authors of the Vienna Convention obviously inserted the qualifying words because they wanted to make sure that Parties were not bound to adopt such measures as the physical search of all persons entering or leaving a place of manufacture, trade or distribution. In fact, the word “persons” used in those provisions of the Single Convention has been interpreted to mean all physical persons participating in the manufacturing or trading process, not only the owners or managers of the firm, but also office workers and manual labourers.<sup>519</sup>

2. It has however been understood that the provisions of the Single Convention referred to in the preceding paragraphs of the present comments have to be applied in a reasonable and practical manner. That excludes of course such extreme measures as the physical search of all persons each time they enter or leave the place of business, or the continuous presence of a Government inspector on the premises. An example mentioned of control measures which would be required was the exclusion from work in the business concerned of persons convicted or suspected of the illicit traffic.<sup>520</sup>

3. It is submitted that some reasonable and practical measures of control must also under the terms of the Vienna Convention be applied to all persons working in places of manufacture of or trade in psychotropic substances in Schedules II, III and IV. That would also include the exclusion from such places of persons known to the authorities to have been convicted of offences of illicit traffic, and of those reasonably suspected of engaging in the illicit traffic. An obligation to carry out such measures appears to be implied in the requirement of article 8, paragraph 2, subparagraph *(a)* to control all authorized enterprises, and also in that of subparagraph *(b)* to control under licence or similar control measure the establishments and premises as well as in that of subparagraph *(c)* to provide for the security measures mentioned therein in order to prevent theft or other diversion.<sup>521</sup>

<sup>518</sup> See also article 6, first paragraph of the 1925 Convention and article 10, first paragraph of the 1912 Convention.

<sup>519</sup> 1961 *Commentary*, paragraph 1 of the comments on article 29, paragraph 2, subparagraph *(a)* (p. 320), paragraph 3 of the comments on article 30, paragraph 1, subparagraph *(b)*, clause (i) (p. 331) and paragraph 3 of the comments on article 31, paragraph 3, subparagraph *(b)* (p. 356) of the Single Convention.

<sup>520</sup> 1961 *Commentary*, paragraph 3 of the comments on article 29, paragraph 2, subparagraph *(a)* (p. 320) and paragraph 2 of the comments on article 30, paragraph 1, subparagraph *(b)*, clause (i) (pp. 330 and 331) of the Single Convention.

<sup>521</sup> As regards substances in Schedule I, see paragraphs 7 and 8 of the above comments on article 7, paragraph *(b)* and paragraph 13 of the comments on article 7, paragraph *(f)*.

4. The term “control” is very broad and it is thus to a large extent left to the judgement of the Parties themselves to determine which measures they have to take under subparagraph (a). The range of controls which may have to be adopted under that provision is wider than that of the measures under paragraph 1 and paragraph 2, subparagraph (b) which—it has been suggested—are those that are normally understood to form a part of a licensing system.<sup>522</sup>

5. The phrase “duly authorized” as used in the paragraph under consideration differs from the meaning of the same phrase as used in article 8, paragraph 3 and also from that of the identical words in article 7, paragraph (a) or paragraph (d). It is submitted that it covers the persons and enterprises “under licence or other similar control measure” pursuant to article 8, paragraph 1, but also the persons referred to in article 8, paragraph 3 as “duly authorized” to perform therapeutic or scientific functions. That paragraph does not exempt the persons whom it defines from all the provisions of article 8, paragraphs 1 and 2, but only from those of them “relating to licensing or other similar control measures”, i.e. from the provisions of paragraph 1 and paragraph 2, subparagraphs (b) and (c), but not from that of paragraph 2, subparagraph (a).<sup>523</sup> Although the text of paragraph 2, subparagraph (c) in connexion with subparagraph (b) of that paragraph leads to the conclusion that pursuant to paragraph 3 it does not apply to the “duly authorized” medical practitioners and scientists to which the latter paragraph refers, it is nevertheless suggested that Parties are bound to see to it that medical practitioners and scientists take such measures as may reasonably be expected of them, to prevent theft or other diversion of their supplies of substances in Schedules II, III or IV. That obligation appears to be a part of the general obligation under paragraph (a) to “control” the medical practitioners and scientists.

6. The term “enterprise” covers also the buildings or parts of buildings (premises) and their appurtenances and equipment used in any of the activities to which paragraph 1 refers; but it may be mentioned here again that the “controls” which Parties pursuant to paragraph 2, subparagraph (a), have to exercise over the duly authorized “enterprises” are only those which are practical, i.e. can reasonably be expected of them.

### *Paragraph 2, subparagraph (b)*

#### **2. The Parties shall:**

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<sup>522</sup> See paragraph 6 of the comments on article 8, paragraph (1); see also paragraph 1 of the comments on article 7, paragraph (b) and paragraph 8 of the comments on paragraph (f) of that article.

<sup>523</sup> See also the 1961 *Commentary*, paragraphs 5 and 6 of the comments on article 30, paragraph 1, subparagraph (c) (p. 333) and paragraph 4 of the comments on paragraph 1, subparagraph (b), clause (i) of that article of the Single Convention (p. 331).

**(b) Control under licence or other similar control measure the establishments and premises in which such manufacture, trade or distribution may take place; and**

### *Commentary*

1. The provision under consideration corresponds to article 29, paragraph 1, subparagraph (b) (relating to manufacture) and article 30, paragraph 1, subparagraph (b), clause (ii) (relating to trade and distribution) of the Single Convention.<sup>524</sup> The comments of the *1961 Commentary* on these provisions of the Single Convention apply *mutatis mutandis* also to the provision of the Vienna Convention.

2. The “licence or other similar control measure” required pursuant to subparagraph (b) is a written authorization to be granted by the competent Government department to use the establishments and premises in question:

3. The authorization under subparagraph (b) must be obtained in addition to that required under paragraph 1.

4. The authorization under the subparagraph under consideration need not be a “licence” in the technical meaning of the particular national administrative law concerned. It need not form a separate document. It may be included in the document containing the authorization pursuant to paragraph 1.

5. The word “establishments” as used in subparagraph (b) means places of manufacture, trade or distribution including their premises, fixtures and staff if any. For the definition of “premises” see article 1, paragraph (l).<sup>525</sup>

6. A manufacturer, trader or distributor may use more than one establishment and several premises. A separate authorization should be required for each establishment and for each of the premises. Parties have to require a separate authorization for the use of premises even though they form part of an authorized establishment.<sup>526</sup> Authorizations to use different establishments and different premises of the same manufacturer, trade or distributor may be combined in a single document which may also contain the authorization pursuant to paragraph 1.

7. It appears to be desirable from the view point of effective control that the number of establishments and premises authorized for use for manufacture of psychotropic substances should be small. The same consideration is

<sup>524</sup> See also article 10, second paragraph, subparagraph (a) of the 1912 Convention and article 6, second paragraph, subparagraph (a) of the 1925 Convention.

<sup>525</sup> See above the comments on article 1, paragraph (l). As regards the broader and more vague meaning of the word “establishment” in article 7, paragraph (a) see paragraphs 7 and 8 of the comments on article 7, paragraphs (a) and (e).

<sup>526</sup> *1961 Commentary*, paragraph 3 of the comments on article 29, paragraph 2, subparagraph (b) (p. 321) and paragraph 4 of the comments on article 30, paragraph 1, paragraph (b), clause (ii) (p. 332) of the Single Convention.



also to some extent valid for establishments and premises used for wholesale, export or import trade in such substances.

8. In accord with the purpose of subparagraph *(b)* Governments are bound to see to it that the establishments and premises which they authorize should by the structure of the building or of the part of the building used and by prescribed equipment facilitate control and offer reasonable protection against theft or other diversion. They should impose on the users of the establishments and premises appropriate conditions to that effect.

9. The word “may” means “is permitted to”.<sup>527</sup>

10. According to paragraph 3, subparagraph *(b)* does not apply to the premises used by “duly authorized” medical practitioners or scientists for the performance of their therapeutic or scientific functions.<sup>528</sup>

11. It will be noted that under the Single Convention “establishments” and “premises” in which trade in or distribution of preparations of narcotic drugs may take place are not subject to “control under licence”.<sup>529</sup> That control of preparations applies under the Single Convention only to manufacture.<sup>530</sup> Article 8, paragraph 2, subparagraph *(b)* of the Vienna Convention applies to all phases of trade in basic substances and their preparations.<sup>531</sup>

12. It has of course been noted that paragraph 2, subparagraph *(b)*, like paragraphs 1, 2, subparagraphs *(a)* and *(c)* and paragraph 3, apply explicitly only to substances in Schedules II, III and IV.<sup>532</sup> Paragraph 4 applies also to substances in Schedule I.<sup>533</sup>

### ***Paragraph 2, subparagraph (c)***

#### **2. The Parties shall:**

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<sup>527</sup> 1961 *Commentary*, paragraph 7 of the comments on article 29, paragraph 2, subparagraph *(b)* of the Single Convention (p. 322); see also 1971 *Records*, vol II, paragraph 34 of the Minutes of the seventh meeting and paragraph 9 of the Minutes of the eighth meeting of the Committee on Control Measures (pp. 141 and 142).

<sup>528</sup> See also paragraph 5 of the above comments on article 8, paragraph 2, subparagraph *(a)*.

<sup>529</sup> Article 30, paragraph 1, subparagraph *(b)*, clause (ii) of the Single Convention; see also article 6, second paragraph, subparagraph *(a)* of the 1925 Convention (applying only to the manufacture of basic drugs). By application of article 10 of the 1925 Convention preparations of extracts and tinctures of cannabis became however (basic) drugs for the purpose of that treaty.

<sup>530</sup> Article 29, paragraph 2, subparagraph *(b)* in connexion with article 2, paragraph 3 of the Single Convention.

<sup>531</sup> Article 3, paragraph 1. As regards substances in Schedule I see paragraphs 7 to 16 of the comments on article 7, paragraphs *(a)* and *(e)*, paragraph 7 of the comments on article 7, paragraph *(b)* and paragraph 12 of the comments on article 7, paragraph *(f)*.

<sup>532</sup> As regards substances in Schedule I see foot-note 531.

<sup>533</sup> See below the comments on that paragraph.

**(c) Provide that security measures be taken with regard to such establishments and premises in order to prevent theft or other diversion of stocks.**

*Commentary*

1. The Single Convention—like the earlier drug control treaties—does not contain an explicit provision like that presented in the subparagraph under consideration; but several of its provisions imply an obligation of Governments to require that persons or enterprises engaged in any phase of the narcotic drugs trade take measures against theft or other diversion.

2. The text of subparagraph (c) appears to apply only to the “establishments and premises” mentioned in subparagraph (b), i.e. to establishments and premises in which the manufacture of, trade (including export and import trade) in, or distribution of substances in Schedule II, III or IV may take place. Therefore it does not appear to apply to the distribution (administration and dispensation) of those substances by “duly authorized” medical practitioners or scientists in the performance of therapeutic or scientific functions, nor to any phase of the trade in substances in Schedule I.

3. It is however submitted that subparagraph (c) is only intended to emphasize a particular kind of control measure whose adoption is already required by implication in other provisions of the Vienna Convention. The 1971 Conference apparently desired to mention those measures in relation with the requirement of subparagraph (b) to “control under licence or similar control measure” the “establishments and premises” in question in order to indicate one of the principal purposes of that control, i.e. the prevention of theft or diversion.<sup>534</sup> Subparagraph (c) can hardly be interpreted to mean that Parties are not bound to adopt measures to prevent theft or other diversion of substances in Schedule I which under the provisions applying to them the Parties have an obligation to control more strictly than other psychotropic substances.<sup>535</sup> It has been suggested in earlier comments that Parties have indeed an obligation to adopt such measures in regard to substances in Schedule I.<sup>536</sup>

4. It has also been suggested earlier that it follows from the obligation of Parties to “control” medical practitioners and scientists pursuant to article 8, paragraph 2, subparagraph (a) that they require the practitioners and scientists to take such measures as can reasonably be expected of them, to prevent theft or other diversion of their supplies of substances in Schedules II, III or IV.<sup>537</sup>

<sup>534</sup> 1961 *Commentary*, paragraph 5 of the comments on article 29, paragraph 2 subparagraph (b) (p. 322).

<sup>535</sup> Article 7, particularly its paragraphs (a), (b), (c) and (f).

<sup>536</sup> See paragraph 13 of the comments on article 7, paragraphs (a) and (e) paragraph 8 of the comments on article 7, paragraph (b) and paragraph 13 of the comments on article 7, paragraph (f).

<sup>537</sup> Paragraph 5 of the comments on article 8, paragraph 2, subparagraph (a).

5. The term “stocks” as used in the subparagraph under consideration also covers the substances held by retail distributors.

### Paragraph 3

3. The provisions of paragraphs 1 and 2 of this article relating to licensing or other similar control measures need not apply to persons duly authorized to perform and while performing therapeutic or scientific functions.

### Commentary

1. Paragraph 3 corresponds to article 30, paragraph 1, subparagraph (c) of the Single Convention. The comments of the 1961 *Commentary* on that provision of the Single Convention therefore apply *mutatis mutandis* to the provision of the Vienna Convention.

2. Medical practitioners, i.e. physicians, veterinarians and dentists, are “duly authorized” to perform “therapeutic functions”. It does not matter whether they obtain their authorization by a special licence or under a general rule of the law of their country authorizing all those persons to engage in medical practice who have acquired a relevant medical degree or passed a required examination. “Duly authorized” medical practitioners need not be “under licence or other similar control measure” pursuant to paragraph 1 in order to be able to administer, dispense or sell to their patients substances in Schedule II, III or IV. The office of such practitioners also need not be “under licence or similar control measure” according to paragraph 2, subparagraph (b). Their authority to dispense includes not only the “making up and giving out of” those substances and their preparations, but also the compounding of preparations for their own patients. They may also do that for the purpose of administering or selling the preparations to their patients. Medical practitioners who sell substances in Schedule II, III or IV or their preparations to other persons than their own patients, or for use by animals which they do not treat, would however be subject to the requirement of a “licence or other similar control measure” pursuant to paragraph 1 and paragraph 2, subparagraph (b).<sup>538</sup>

3. Scientists may be “duly authorized” to perform scientific functions by a special Government permit or because they have the educational qualifications required for that purpose by the law of their respective countries. “Duly authorized” medical practitioners may be considered to be “duly authorized” to engage in medical research. It is also suggested that the supply of samples by a “duly authorized” scientist to another “duly

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<sup>538</sup> 1961 *Commentary*, paragraph 4 of the comments on article 30, paragraph 1, subparagraph (c) (p. 333), paragraphs 10 to 12 of the above comments on article 8, paragraph 1 of the Vienna Convention and foot-note 512.

authorized” scientist for the purpose of research may be considered to be the performance of a “scientific function” in the sense of paragraph 3.

4. The “duly authorized” medical practitioners and scientists to which paragraph 3 refers are not exempted from the control required by paragraph 2, subparagraph *(a)*.<sup>539</sup>

#### *Paragraph 4*

4. The Parties shall require that all persons who obtain licences in accordance with this Convention or who are otherwise authorized pursuant to paragraph 1 of this article or subparagraph *(b)* of article 7 shall be adequately qualified for the effective and faithful execution of the provisions of such laws and regulations as are enacted in pursuance of this Convention.

#### *Commentary*

1. The text of the paragraph under consideration follows rather closely that of article 34, paragraph *(a)* of the Single Convention, and contains its substance. The provision of the Vienna Convention does not contain those words of the paragraph of the Single Convention<sup>540</sup> which refer to State enterprises, since the former treaty does not have in its system of Government authorizations specific rules for State enterprises. It will however be recalled that the legal position of such enterprises, though under the régime of governmental authorizations under the Vienna Convention, is nevertheless very similar to that under the régime of the Single Convention.<sup>541</sup>

2. The words “or who are otherwise authorized pursuant to paragraph 1 of this article or subparagraph *(b)* of article 7” appear to be intended to indicate that the paragraph under consideration is not limited in its application to persons who obtain government authorizations called “licences” in the Vienna Convention or—it is submitted—are technically “licensed” under the national law concerned, but to all persons who have Government authorizations required under provisions of that treaty.<sup>542</sup> It has indeed been suggested earlier that there is no substantial difference between the terms “special licence” and (special) “prior authorization” in

<sup>539</sup> See paragraph 5 of the above comments on article 8, paragraph 2, subparagraph *(a)*.

<sup>540</sup> The words: “or who have managerial or supervisory positions in a State enterprise established in accordance with this Convention”.

<sup>541</sup> See paragraph 4 of the comments on article 7, paragraph *(b)*, paragraph 7 of the comments on article 7, paragraph *(f)* and paragraph 5 of the comments on article 8, paragraph 1.

<sup>542</sup> See paragraph 6 of the comments on article 7, paragraph *(b)* and paragraph 9 of the comments on article 7, paragraph *(f)*.

article 7, paragraph (b)<sup>543</sup> and between “licence” and “other similar control measure” in article 8, paragraph (a).<sup>544</sup>

3. It is thus held that “the persons” to which article 8, paragraph 4 refers include also the exporters and importers mentioned in article 7, paragraph (f) although the former provision does not explicitly mention the latter. It is suggested that this is an oversight perhaps due to the fact that the authors of paragraph 4 may have assumed that the word “trade” in article 7, paragraph (b) includes “export and import trade” as it expressly does in article 8, paragraph 1 and paragraph 2, subparagraph (a) and obviously also in paragraph 2, subparagraph (b) of that article. It will however be recalled that the opinion has been expressed earlier that the word “trade” in article 7, paragraph (b) does not cover the export and import trade.<sup>545</sup>

4. If the view stated in paragraph 2 above is accepted that article 8, paragraph 4, applies to all persons who have Government authorizations pursuant to the Vienna Convention, it follows that persons “duly authorized” to use substances in Schedule I according to article 7, paragraph (a), as well as persons “duly authorized” according to article 8, paragraph 3 to perform therapeutic or scientific functions with substances in Schedules II, III and IV, have to be adequately qualified as required by article 8, paragraph 4, although the latter need not obtain individual licences but may acquire their authority by complying with the relevant conditions of their respective national laws.<sup>546</sup>

5. It is moreover suggested that the provision of article 8, paragraph 4, covers only one specific aspect of the general obligation of Parties to control pursuant to article 8, paragraph 2, subparagraph (a) all duly authorized persons and enterprises concerned with substances in Schedules II, III and IV, and to provide pursuant to article 7, paragraph (c) for close supervision of activities and acts concerned with substances in Schedule I.<sup>547</sup> Since that control or closer supervision has to be exercised also over medical practitioners and scientists dealing with substances in Schedule II, III or IV or with substances in Schedule I—as the case may be—Parties are also on that ground required to see to it that the physicians and scientists involved have qualifications in accord with article 8, paragraph 4.

6. However, this does not mean that the Parties are bound to permit the use of substances in Schedules II, III or IV for therapeutic purposes only to

<sup>543</sup> See paragraph 3 of the comments on article 7, paragraph (b).

<sup>544</sup> See paragraph 3 of the comments on article 8, paragraph (1); the French text of article 8, paragraph 4 also corroborates this view. The English words “otherwise authorized” are rendered in French by the words “*qui possèdent des autorisations équivalentes*”. The Spanish text uses the words “*que estén de otro modo autorizadas*”, thus following more closely the English text.

<sup>545</sup> Paragraph 2 of the comments on article 7, paragraph (b); see also paragraph 2 of the comments on article 7, paragraph (c) and foot-note 486 above.

<sup>546</sup> Paragraphs 2 and 3 of the comments on article 8, paragraph 3.

<sup>547</sup> 1961 *Commentary*, paragraphs 4 and 6 of the comments on article 34, paragraph (a) of the Single Convention (p. 407).

those medical practitioners who meet with the high standards of medical education and experience normally required for medical practice in numerous countries. Article 8, paragraph 4, does not prevent Parties which do not have enough medical practitioners of such high standards, from permitting less fully trained medical personnel to use those substances for therapeutic purposes in accordance with their particular national needs.

7. Paragraph 4 applies not only to natural, but also to juridical persons including corporations, co-operatives and State enterprises. Such corporate bodies may be considered to have the required qualifications if their directing managerial or supervisory personnel has them.<sup>548</sup> It has been suggested earlier that the “competent authorities or agencies” of the country or region exporting or importing substances in Schedule I pursuant to article 7, paragraph (f) must have such personnel.<sup>549</sup> It can of course be expected that Parties would see to it that the whole personnel of such government bodies can be relied on not to violate the laws and regulations which have been enacted in pursuance of the Vienna Convention, and in particular of its article 7, paragraph (f).

8. The required “adequate qualifications” include moral and technical qualifications. The 1971 Conference used the rather vague phrase “adequately qualified” because it wished to take into account the different circumstances in different countries and to enable Parties to implement paragraph 4 in the light of their own conditions.<sup>550</sup>

9. It may be summed up that paragraph 4 applies to all phases of the trade in all psychotropic substances and their preparations. It obligates Parties also in regard to those substances in respect of which, under article 2, paragraph 7, subparagraphs (a) to (e), they are not required to give effect to all the provisions of the Vienna Convention. Under article 3, paragraphs 2 and 3, they may however exempt preparations of psychotropic substances other than substances in Schedule I from the application of paragraph 4 as they may from that of the other provisions of article 8, but only in regard to their trade (including wholesale, retail, export and import trade) and distribution, but not in regard to their manufacture.<sup>551</sup>

10. See also the *1961 Commentary*, comments on article 34, paragraph (a) of the Single Convention (pages 405 to 407) which *mutatis mutandis* apply also to article 8, paragraph 4 of the Vienna Convention.

<sup>548</sup> For the reasons of the same interpretation of the word “persons” in substantially the same provision of article 34, paragraph (a) of the Single Convention, see *1961 Commentary*, paragraph 1 of the comments on that provision (pp. 405 and 406).

<sup>549</sup> Paragraph 9 of the comments on article 7, paragraph (f).

<sup>550</sup> *1961 Commentary*, paragraph 2 of the comments on article 34, paragraph (a) (p. 406).

<sup>551</sup> Article 3, paragraph 3.

## Article 9 PRESCRIPTIONS

### General comments

1. Article 9 covers the substance of article 30, paragraph 2, subparagraph (*b*) of the Single Convention in connexion with article 2, paragraphs 2 to 4 thereof. It spells out some details which are only implied in more general provisions of the Single Convention. On the other hand it does not contain a specific provision concerning prescriptions “written on official forms to be issued in the form of counterfoil books”.<sup>552</sup>

2. The main differences between the provisions of the Vienna Convention and those of the Single Convention concerning medical prescriptions may be summed up as follows: the Vienna Convention requires a medical prescription for all psychotropic substances and their preparations except

(*a*) For substances in Schedule I and their preparations to which the more strict provision of article 7, paragraph (*a*) applies in regard to their therapeutic and scientific use;

(*b*) For substances in Schedule IV and their preparations to which the Party concerned may apply the limited control régime pursuant to article 2, paragraph 7, subparagraph (*d*);

(*c*) For preparations of substances in Schedule II, III or IV which have been exempted from the prescription requirement in accordance with article 3, paragraphs 2 and 3; and

(*d*) For substances in Schedules III or IV and their preparations which in view of local conditions have, in accordance with article 9, paragraph 3, been exempted from the prescription requirement.<sup>553</sup>

3. Under the Single Convention a medical prescription is required only for drugs in Schedule I and their preparations. It is not required for drugs in Schedule II and their preparations nor for preparations in Schedule III no matter in which Schedule the drugs they contain are listed.

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<sup>552</sup> Article 30, paragraph 2, subparagraph (*b*), clause (ii) and article 34, paragraph (*b*) of the Single Convention.

<sup>553</sup> See also article 9 of the 1925 Convention.

### Paragraph 1

**1. The Parties shall require that substances in Schedules II, III and IV be supplied or dispensed for use by individuals pursuant to medical prescription only, except when individuals may lawfully obtain, use, dispense or administer such substances in the duly authorized exercise of therapeutic or scientific functions.**

1. It will be noted that the paragraph under consideration applies only to substances in Schedules II, III or IV;<sup>554</sup> for the corresponding provision governing substances in Schedule I, see article 7, paragraph (a).

2. The wording of the paragraph under consideration follows closely that of article 30, paragraph 2, subparagraph (b), clause (i) of the Single Convention. The comments of the *1961 Commentary* on the provision of the Single Convention consequently also apply *mutatis mutandis* to the provision of the Vienna Convention.

3. A medical prescription in the sense of the Vienna Convention is an authorization given by a medical practitioner to acquire a psychotropic substance in Schedule II, III or IV or a preparation containing it for personal use, or to use it on a particular human being or animal.<sup>555</sup> It is normally a written document.

4. However, some countries permit “oral” prescriptions, which are authorizations given by a medical practitioner by telephone to an authorized (licensed) retail trader in medicines, i.e. to a pharmacist, to supply an indicated quantity of a given medicine for which a medical prescription is required. The Vienna Convention does not appear to prevent Parties from admitting oral prescriptions for substances in Schedule II, III or IV and their preparations.

5. If a Party permits such authorizations by telephone, it is of course bound to apply to them such rules as are necessary to ensure that the purpose of the requirement of medical prescriptions in the Vienna Convention is achieved, i.e. that the substances so supplied are not abused or diverted into illicit channels. Regulations enacted to that end should provide that the pharmacist should not accept oral prescriptions from physicians whom he does not know, that he should record the name of the physician, the name and address of the patient and, if the substance is sold to another person buying on behalf of the patient, the name and address of that person. He should also be required to take down all the other data which a written medical prescription for the substance concerned would have to contain. He should furthermore be bound to verify the identity of the buyer. The physician should have the obligation to confirm by a written prescription his oral authorization without any delay.

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<sup>554</sup> For exceptions see paragraph 2 of the general comments on article 9.

<sup>555</sup> *1961 Commentary*, paragraph 8 of the comments on article 30, paragraph 2, subparagraph (b) (p. 338 of the English text).



6. In respect of particularly dangerous substances, oral prescriptions should be permitted only in emergency cases. All substances in Schedule II should be considered to be dangerous for that purpose, as well as those substances in Schedule III which the Party concerned considers practical to include in that group. The oral prescription of such dangerous substances should not be permitted if their pharmacological properties indicate that they could not possibly be needed in emergency cases. In any event, only such small quantities of those dangerous substances should be supplied on an oral prescription as would be needed until a written prescription could be produced. Those quantities will vary under differing local conditions.

7. A prescription should contain information identifying the authorizing medical practitioner and the patient or the holder of the animal for which the medicine is needed. It should also be dated and indicate the exact name and the quantity of the substance to be supplied on the occasion of a single purchase, and where advisable instructions on the use of the substance. If required pursuant to the principles laid down in article 9, paragraph 2, the prescription should also state that it may not be refilled or that it may be refilled only an indicated number of times. It should in any case show the duration of its validity, which in the case of dangerous substances should be short, and may be longer in the case of less dangerous medicines.

8. Prescriptions which are not refillable or no longer refillable should be retained by the pharmacist. He should record on a refillable prescription the amount which he sells each time. If practicable, the pharmacist should also be required to make a copy of each refillable prescription for his records. It is suggested that he should be obligated to do so in the case of prescriptions for substances which the Party concerned considers particularly dangerous, e.g. for all substances in Schedule II. Again, if practicable, it would be useful if medical practitioners could issue refillable prescriptions in as many copies as the number of refillings which they permit.

9. In the case of substances which they find to be very dangerous and widely abused, Parties may consider it useful to require that the prescriptions be written on official forms in counterfoil books to be made available to medical practitioners by the competent authorities, or by the national medical associations concerned.<sup>556</sup>

10. The word "individuals" appears twice in the paragraph under consideration.<sup>557</sup> The first time it refers to patients by whom the

<sup>556</sup> Article 30, paragraph 2, subparagraph (b), clause (ii) of the Single Convention; see also above paragraph 1 of the general comments on article 9 of the Vienna Convention.

<sup>557</sup> The French text uses in both cases the word "*particuliers*". The Spanish text is however rather unclear. It uses the word "*particulares*" for the word "individuals" when it appears in the English text for the first time, i.e. for the users of psychotropic substances (patients or holders of animals); it uses the word "*éstos*" referring to "*particulares*" (i.e. meaning patients or holders of animals) for the English word "individuals" where it appears a second time and where that English word refers to persons performing therapeutic or scientific functions i.e. to medical practitioners or scientists. There appear to be some errors of drafting or translation in the Spanish text and preference has in this case to be given to the English and French texts.

psychotropic substances are to be used or to holders of animals for which the medicines are acquired. The second time the word “individuals” is according to the context meant to cover medical practitioners (physicians, dentists or veterinarians) or scientists.

11. The word “use” appears also two times. The first time it means medical consumption by the individuals themselves, or use for administration to animals which they hold; the second time it means employment by medical practitioners or scientists for their respective professional purposes.<sup>558</sup>

12. The word “dispense” means “make up and give out”, and covers also the compounding of preparations. The word “administer” means “to apply the remedy concerned to the patient or animal involved”. The second word “use” has a wider meaning. It covers, in addition to employment for research, all possible forms of therapeutic use, including “dispensing” and “administration”.<sup>559</sup>

13. The exception from the prescription requirement of individuals acting “lawfully” “in the duly authorized exercise of therapeutic or scientific functions” only states expressly what would anyway have to be concluded from the text of the Vienna Convention and from the meaning of the phrase “medical prescription”. Medical practitioners and authorized scientists are of course entitled to acquire the substances in Schedule II, III or IV for the performance of their professional functions no matter whether they obtain that authority by a special Government permit or on account of having completed prescribed studies or of having passed the examinations concerned. Even without the express provision of article 9, paragraph 1 they would not need a medical prescription for the purchase of the psychotropic substances which they need for professional purposes, just as all authorized traders (manufacturers, wholesale, retail, export and import traders) in psychotropic substances do not need a medical prescription for the acquisition of substances which they need for their legal businesses, although the Vienna Convention does not expressly exempt them from the prescription requirement. Their right to obtain the needed substances in Schedules II, III and IV in accordance with the conditions of the Vienna Convention<sup>560</sup> is implied in the business or professional functions that they are authorized to carry out pursuant to that treaty, which requires a medical prescription only for the supply or dispensation of those substances for use by individuals for their own consumption or for that of animals which they hold.<sup>561</sup> The

<sup>558</sup> The French text uses the word “*utiliser*” (in the forms “*être utilisées*” and “*utiliser*”) and the Spanish version the words “*uso*” and “*usar*” for the same two different meanings.

<sup>559</sup> 1961 *Commentary*, paragraphs 6 and 9 of the comments on article 30, paragraph 2, subparagraph (b) of the Single Convention (pp. 338 and 339); see also paragraph 2 of the comments on article 8, paragraph 3; paragraphs 10 and 11 of the comments on article 8, paragraph 1; and paragraph 6 of the comments on article 1, paragraph (1).

<sup>560</sup> For example those laid down for export or import in article 12; see also article 13.

<sup>561</sup> See above paragraph 11 of the present comments.

Convention does not require a medical prescription for the acquisition of those substances for business or professional use.

14. Moreover, the term “medical prescription”, having the meaning of an authorization given to an individual by a medical practitioner to acquire a substance in Schedule II, III or IV for personal medical use or for use on an animal which that individual holds,<sup>562</sup> cannot possibly apply to the acquisition of those substances for legal business or professional purposes.<sup>563</sup>

15. Having the power to authorize the supply or dispensation of substances in Schedules II, III and IV for use by an individual for his own consumption or for that of an animal which he holds, medical practitioners are obviously also authorized to use themselves those substances on individuals or animals.

16. Finally, therapeutic use (including “dispensing” and “administration”) or employment for purposes of research of substances in Schedules II, III or IV are also only part of the medical or scientific functions<sup>564</sup> which medical practitioners or scientists would have to be considered to be entitled to perform without any medical prescription if—as required by the Vienna Convention—they are “duly authorized”<sup>565</sup> to engage in their professions even if the Vienna Convention did not contain the express exception laid down in article 9, paragraph 1.

17. However, medical practitioners could under the Vienna Convention not be authorized to sell or dispense substances in Schedule II, III or IV to persons who are not their own patients or holders of animals which they treat, without a prescription of the medical practitioner who treats the person or animal concerned. Such a sale or dispensation could not be considered to be a “therapeutic” function in the sense of article 9, paragraph 1 or article 8, paragraph 3, but would be “trade” within the meaning of article 8, paragraph 1.<sup>566</sup>

18. The question arises whether self-administration by medical practitioners of substances in Schedule II, III or IV is a “therapeutic” function in the sense of article 9, paragraph 1. As far as the self-treatment by a physician with such substances for legitimate medical reasons is concerned, it may be

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<sup>562</sup> See above paragraph 3 of the present comments.

<sup>563</sup> See also *1961 Commentary*, paragraph 8 of the comments on article 30, paragraph 2, subparagraph (b) of the Single Convention (p. 338).

<sup>564</sup> It will be noted that article 9, paragraph 1 of the Vienna Convention expressly mentions “scientific functions” while the corresponding provision of the Single Convention (article 30, paragraph 2, subparagraph (b), clause (i)) does not. It should however not be concluded therefrom that in this respect the legal position of scientists under the Single Convention is different from their position under the Vienna Convention; see the *1961 Commentary*, paragraph 11 of the comments on that provision of the Single Convention (pp. 339 and 340).

<sup>565</sup> Article 8, paragraph 3.

<sup>566</sup> Paragraphs 11 and 12 of the comments on article 8, paragraph 1; paragraph 7 of the comments on article 1, paragraph (i); and *1961 Commentary*, paragraph 12 of the comments on article 30, paragraph 2, subparagraph (b) (p. 340)

held to be an authorized performance of a therapeutic function pursuant to that paragraph, and consequently not to require a prescription of another physician; but some States do not permit physicians to obtain narcotic drugs and some particularly dangerous psychotropic substances for their personal use without the medical prescription of another physician. It may in some other countries be advisable to adopt the same policy in order to reduce the risk of abuse by physicians of some particularly dangerous psychotropic substances. Self-administration by dentists will be the performance of an authorized therapeutic function only if it occurs within the more limited scope of their profession, while self-administration by veterinarians would pursuant to paragraph 1 never be exempted from the prescription requirement; but that provision does not prevent Parties from permitting veterinarians to acquire without medical prescription for treatment of their own animals the substances referred to in paragraph 1. In adopting appropriate national rules, one cannot however lose sight of the practical difficulties involved in any attempt to prevent medical practitioners from themselves abusing widely used substances which they employ in the course of their professional work.<sup>567</sup>

19. The exercise of those therapeutic or scientific functions is “duly authorized” in the sense of article 9, paragraph 1 which medical practitioners or scientists “duly authorized” according to article 8, paragraph 3 are entitled to perform under their respective national laws or regulations.<sup>568</sup>

20. It is advisable that medical practitioners who acquire psychotropic substances for use in their professional practice should confirm in writing to the supplier the receipt of the substances if they are not required to use official order forms. The suppliers should be bound to retain such receipts for a minimum period of two years.<sup>569</sup>

### *Paragraph 2*

**2. The Parties shall take measures to ensure that prescriptions for substances in Schedules II, III and IV are issued in accordance with sound medical practice and subject to such regulation, particularly as to the number of times they may be refilled and the duration of their validity, as will protect the public health and welfare.**

### *Commentary*

1. The purposes of the prescription requirement are to ensure that the psychotropic substances in Schedule II, III and IV are used only for sound

<sup>567</sup> 1961 *Commentary*, paragraph 10 of the comments referred to in the preceding foot-note (p. 339).

<sup>568</sup> As regards the meaning of “duly authorized” in article 8, paragraph 3 see above paragraphs 2 and 3 of the comments on that provision.

<sup>569</sup> 1961 *Commentary*, paragraph 8 of the comments referred to in foot-note 566 (pp. 338 and 339).

medical purposes, that their use is under medical supervision and that they are not diverted from outlets of retail trade or retail distribution into illicit channels. The paragraph under consideration expresses the aims of the institution of medical prescriptions in more general terms by providing for the obligation of Parties to ensure that prescriptions are issued in accordance with “sound medical practice” and “subject to such regulation . . . as will protect the public health and welfare”.<sup>570</sup> Those aims involve the promotion of the above-mentioned purposes.

2. The two requirements, namely the one that prescriptions be issued in accordance with sound medical practice, and the other that they be issued subject to such regulation as will protect public health and welfare, are somewhat overlapping. The protection of public health and welfare certainly requires that prescriptions be issued in accordance with sound medical practice.

3. Paragraph 2 lists two particular measures for the purpose of protecting public health and welfare, namely the regulation of the number of times a prescription may be refilled (which might include the prohibition of refilling) and the duration of its validity. It is submitted that the specific reference to these measures does not obligate Parties to adopt them in respect of all substances in Schedules II, III and IV. It appears however to be in accord with the purpose of paragraph 2, and more generally with their obligation pursuant to article 5, paragraph 2, to limit to medical and scientific purposes the use of psychotropic substances referred to in that provision, that Parties should restrict the number of refillings and the duration of validity of prescriptions for substances which they consider to be specially dangerous, including in particular substances in Schedule II. They should also adopt in such cases a measure not explicitly mentioned in the paragraph under consideration, namely a limitation of the amount of the psychotropic substances concerned which may be supplied on a single prescription.

4. It seems impossible to indicate for all substances in Schedules II, III and IV and for all countries and sometimes even for all parts of the same country the measures which should be adopted pursuant to paragraph 2, in particular the kind of restrictions which should be imposed on the refilling and duration of validity of prescriptions, as well as on the amounts which could be authorized by a single prescription. Such measures may have to vary not only in respect of different psychotropic substances, but also in respect of the same substances in different countries and sometimes even in different parts of the same country.

5. Such restrictions undoubtedly ensure a better medical supervision of the use of medicines, and reduce the risk of abuse and also that of diversion

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<sup>570</sup> The Spanish text agrees with the English text by using for the phrases “sound medical practice” and “public health and welfare” the words “*exigencias de la buena práctica médica*” and “*la salud y el bienestar públicos*”; the French text uses the phrases “*la pratique médicale*” (not adding “*bonne*”) and “*la santé et . . . l'intérêt publics*”. It may however be assumed that what the French text means by “*pratique médicale*” is in the context “sound medical practice” and by “*intérêt public*” the public interest in public health.

into illicit channels. On the other hand, they increase the burden of medical practitioners and may make it more difficult for them to carry out adequately other therapeutic tasks, particularly if widely used medicines are involved. Patients may also find it difficult to reconcile with their occupational duties the need for frequent visits to a physician, and in many cases they may not be able to afford the expenses in countries in which their medical costs are not, or not fully, covered by public health insurance systems. They may therefore quite often abandon the use of valuable medicines which they may urgently need for their health. When planning the imposition of restrictions on medical prescriptions, Governments will probably wish to take into account such difficulties, since meeting them is also in the interest of public health and welfare and thus justified under the express terms of paragraph 2.<sup>571</sup>

6. The Single Convention does not have an express provision corresponding to article 9, paragraph 2, of the Vienna Convention. It is however suggested that Parties to the Single Convention, being bound by article 4, paragraph (c) of that treaty to limit to medical and scientific purposes the use of "narcotic" drugs,<sup>572</sup> are required to adopt measures on the lines of those provided for in article 9, paragraph 2 of the Vienna Convention.<sup>573</sup>

### *Paragraph 3*

**3. Notwithstanding paragraph 1, a Party may, if in its opinion local circumstances so require and under such conditions, including record-keeping, as it may prescribe, authorize licensed pharmacists or other licensed retail distributors designated by the authorities responsible for public health in its country or part thereof to supply, at their discretion and without prescription, for use for medical purposes by individuals in exceptional cases, small quantities, within limits to be defined by the Parties, of substances in Schedules III and IV.**

### *Commentary*

1. The authors of paragraph 3 obviously proceeded from the consideration that it was advisable to accept, within tolerable limits, some risk of abuse of psychotropic substances if that was necessary to facilitate the availability of valuable medicines for people who needed them for legitimate medical purposes.<sup>574</sup> The requirement of a medical prescription may prevent people from obtaining needed medicines in localities which have no

<sup>571</sup> See also the fifth of the *consideranda* of the Preamble of the Vienna Convention.

<sup>572</sup> I.e. of drugs controlled by the Single Convention.

<sup>573</sup> See also *1961 Commentary*, paragraph 4 of the comments on article 30, paragraph 2, subparagraph (b) of the Single Convention (p. 337). See in this connexion also article 30, paragraph 2, subparagraph (b), clause (ii) of that treaty.

<sup>574</sup> See the fifth of the *consideranda* of the Preamble of the Vienna Convention; see also article 9 of the 1925 Convention.

physicians, and which are also very remote from places in which a physician resides. Such a situation may exist in remote mountain villages or on islands even of a country which has a satisfactory number of doctors in proportion to its population; but it may also exist in the entirety of a small country which has only a very small number of physicians in relation to its requirements. Paragraph 3 therefore provides that a Party may authorize exceptions from the prescription requirement in its whole territory or only in a part thereof. It provides for several conditions to reduce the risk of abuse, and also that of medically unjustified *bona fide* use of the psychotropic substances concerned.

2. Only substances in Schedules III and IV may be exempted from the prescription requirement under the conditions of paragraph 3. The more dangerous substances in Schedules I<sup>575</sup> and II are excluded from the scope of that provision.

3. The suppliers of the exempted substances must not only be “licensed”, as all retail traders in, or distributors of, substances in Schedules III and IV must be pursuant to article 8, paragraph 1, but, in addition, must also be specifically authorized to sell those substances without prescription. The “licence” which pharmacists or retail distributors must have need not be technically a “licence” in the sense of the national administrative law concerned. The qualification by the word “licensed” of the pharmacists and retail traders to which the paragraph under consideration refers means that they have to be “under licence or other similar control measure” according to article 8, paragraph 1.<sup>576</sup>

4. The particular reference to “pharmacists” seems to be superfluous from a purely legal viewpoint. It may perhaps be interpreted to mean that where practicable only pharmacists, i.e. retail traders exclusively or predominantly selling medicines, should be authorized to supply without medical prescription psychotropic substances in Schedules III or IV. This would have the advantage that pharmacists might have some useful knowledge to determine whether a legitimate need exists for the substances which they are asked to supply. Other retail distributors may not have such knowledge. Several delegates to the 1971 Conference expressed the opinion that only pharmacists should be permitted to sell without medical prescription substances in Schedule III or IV.<sup>577</sup> The term “retail traders” appears to refer in this place to those commercial and non-commercial retail outlets, such as dispensaries run by a nurse which are not technically “pharmacies”.

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<sup>575</sup> It will of course be recalled that substances in Schedule I cannot be supplied on medical prescription but can only be used under the strict controls of article 7, paragraph (a).

<sup>576</sup> See paragraphs 2 and 3 of the above comments on that provision.

<sup>577</sup> 1971 *Records*, vol. II, minutes of the fourteenth meeting of the Committee on Control Measures, paragraphs 12, 17 and 19 (pp. 154 and 155). As regards the meaning of “pharmacies” in article 1, paragraph (i), see paragraph 5 of the comments on that provision. In several countries narcotic drugs and psychotropic substances are sold by businesses whose trade is predominantly in other substances such as cosmetics, toiletries, toys and food.

5. The special authorization which “pharmacists or other licensed retail traders” must have in addition to the authorization pursuant to article 8, paragraph 1, may be issued by the Government unit charged with the function of drug control also in those countries in which that function is not within the jurisdiction of the “authorities responsible for public health”; but in such cases that Government unit may grant the special authorization required pursuant to paragraph 3 only to those retail distributors who have been designated by the “authorities responsible for public health”. The control unit is not required to give the special authorization to all retail traders so designated, but it should not have the power to grant that authorization to a retail trader who has not been so designated.

6. Parties may not by a general regulation authorize all retail traders in a given district to supply substances in Schedules III or IV without medical prescription; but they may do so by granting individual authorizations to all of them.

7. The special authorization pursuant to paragraph 3 should be in writing; but it need not be a separate document. It may be included in the instrument granting the retail trader concerned authority pursuant to article 8, paragraph 1, or in a more general permit to engage in the supply of pharmaceuticals.<sup>578</sup>

8. The names and “small quantities” of the substances which may be supplied without prescription may be indicated in a general regulation or in the individual special authorizations; they may also be stated in the individual authorizations within limits laid down in general rules.

9. The amounts of the “small quantities” may vary in the case of different psychotropic substances. They should not be larger than those which are actually needed in the cases concerned to prevent damage to health or to alleviate pain. The retail trader should be required to supply, within the maximum limits defined in the general regulation or in his special authorization, not more than in his judgement is needed in each particular case.

10. The “discretion” which the retail trader may apply may be circumscribed in general rules or in his special authorization.

11. The phrase “exceptional cases” does not mean “emergency cases”. It appears to emphasize the point that the supply of psychotropic substances without a medical prescription should not be a normal activity, but only an exception from the general rule of article 9, paragraph 1, requiring a medical prescription. It may also be concluded from that phrase that the supply without prescription should be permitted only in conditions which for reasons of public health justify that exception. That would, e.g., exclude the supply to persons who are known to the retail trader to visit the district in

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<sup>578</sup> 1971 *Records*, vol. II, paragraph 14 of the minutes of the fourteenth meeting of the Committee on Control Measures (p. 154).



which the exception from the prescription requirement is allowed, for the specific purpose of obtaining psychotropic substances that they cannot acquire without prescription in the district in which they reside; but *bona fide* tourists would not be excluded. It may also be assumed that the psychotropic substances should not be supplied without prescription as a remedy for any minor inconvenience; but any legitimate medical purpose would warrant a supply to an individual pursuant to paragraph 3.

12. The “conditions” under which Parties may authorize the supply of psychotropic substances in Schedules III or IV without medical prescription should on the one hand be all those which under the local conditions would warrant the exception from the prescription requirement, and on the other hand those which—as far as practical—would prevent the improper use, abuse and diversion of substances sold without prescription.

13. It is suggested that it would be very helpful to reduce those risks if Parties would require the retail traders to record each supply of a psychotropic substance without a medical prescription. Each entry should indicate the identity (name and address) of the patient as well as that of the person buying on his behalf, the name and quantity of the substance supplied and the date of the supply. It might also be useful, if practical, to require the recording of the complaint for which the substance is needed. While the Party may formulate the conditions under which it authorizes the exceptions from the prescription requirement in accordance with the local needs as it sees them, it is submitted that it is bound to require the retail trader concerned to keep such records as would facilitate control of abuse and diversion, although under the general rules of article 11, paragraph 5 no records are required in respect of the retail trade in substances in Schedule IV. The records to be kept under article 11, paragraph 4 on the retail trade in substances in Schedule III would also be inadequate for that purpose.

## Article 10

### WARNINGS ON PACKAGES, AND ADVERTISING

#### *Paragraph 1*

1. Each Party shall require, taking into account any relevant regulations or recommendations of the World Health Organization, such directions for use, including cautions and warnings, to be indicated on the labels where practicable and in any case on the accompanying leaflet of retail packages of psychotropic substances, as in its opinion are necessary for the safety of the user.

#### *Commentary*

1. It is the purpose of the paragraph under consideration to assist retail distributors, physicians and also the patients themselves in avoiding an improper use of psychotropic substances. The paragraph applies to all psychotropic substances in whatever Schedule they may be.

2. Directions for use, including cautions and warnings, need to be given only if and to the extent that, in the opinion of the Party concerned, they are necessary for the safety of the patients using them. Paragraph 1 must of course be implemented in good faith, like all other provisions of the Vienna Convention. To determine what is necessary for the safety of the user is therefore left to the judgement, but not to the discretion, of the Party concerned.

3. The words "cautions" and "warnings" have an overlapping meaning. As used in paragraph 1 "caution" has the more general sense of calling attention to the need for safe use, while "warning" means more specifically drawing attention to potential dangers including harmful side-effects.

4. It is quite usual that retail packages of medicines include leaflets containing directions for use, and often indicating potential dangers involved in the use of the medicines in question. It can also be assumed that Governments will probably find it necessary to make available in many cases to the patient, and quite often also to the pharmacists and physicians, information on the use of the medicines. They will also find that warnings of the dangers of excessive consumption and of possible harmful side effects should frequently be given to the physicians and pharmacists, and quite often also to the users. What may at present be only a commercial custom in some countries, namely the accompaniment of retail packages containing psycho-

tropic substances by leaflets containing information of the kind referred to in paragraph 1, may therefore have to be made a legal obligation for the purpose of implementing that provision.

5. The information required pursuant to paragraph 1, if found necessary for the safety of the user, must always appear on a leaflet accompanying the retail package. It must in *addition* also be shown on the label, but only where “practicable”.<sup>579</sup> It would not be “practicable” to put the whole required information on a label which would be too small for that purpose, and which because of the size of the container involved it would not be practical sufficiently to enlarge. It might also not be “practicable” to place on the label some of the information appearing in the accompanying leaflet, which the prescribing physician might in some cases consider valuable for the user, but in other cases find it better to withhold from him. He could accomplish the latter by instructing the supplying pharmacist to remove the label from the package.<sup>580</sup> Such differences in the value of information to the patient may be related to his emotional condition. The possible risk of conveying to patients information on harmful side effects of psychotropic substances prescribed for them was pointed out by a delegate to the 1971 Conference, who suggested that the prime responsibility for giving warnings of that kind should be with the prescribing physician.<sup>581</sup>

6. A “retail package” is a package containing such an amount of a psychotropic substance as may be sold for use by an individual on a single purchase; but quite often a smaller quantity than that contained in a regular “retail package” may be prescribed and sold, in which case the pharmacist would open the package and take therefrom the needed amount. What has been said in the preceding paragraph in regard to the information on the leaflet and label of the original package should in that case also apply to the new package which the pharmacist prepares for such a sale. The “retail package” may also be a bottle.

7. The Constitution of WHO authorizes the World Health Assembly “to adopt regulations concerning . . . advertising and labelling of biological, pharmaceutical and similar products moving in international commerce”. Such a regulation is binding on all members of the Organization which do not reject it within the period stated in the notice informing them of its adoption.<sup>582</sup> Moreover, the World Health Assembly has also authority to make recommendations to members with respect to any matter within the competence of the Organization,<sup>583</sup> which includes the substance matter of article 10 of the Vienna Convention.

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<sup>579</sup> 1971 *Records*, vol. II, paragraphs 76 to 78 and 80 of the summary records of the tenth plenary meeting (pp. 39 to 40) and paragraph 29 of the minutes of the eighth meeting of the Committee on Control Measures (p. 143).

<sup>580</sup> The physician could of course also instruct the pharmacist to change the label; but this would be less “practicable”.

<sup>581</sup> 1971 *Records*, vol. II, paragraph 28 of the minutes of the eighth meeting of the Committee on Control Measures (p. 143).

<sup>582</sup> Article 21 and 22 of the Constitution of WHO.

<sup>583</sup> Article 23 of the Constitution of that Organization.

8. Parties are required in implementing paragraph 1 to take into account “any relevant regulations or recommendations of the World Health Organization”.<sup>584</sup> By so doing they would be competently assisted in determining what information would pursuant to paragraph 1 be necessary for the safety of the user of psychotropic substances. Some degree of uniformity of the measures adopted by different Parties might also be achieved, and that might facilitate the international trade in such substances. Moreover, the Parties members of WHO have a legal obligation to carry out in their international trade in psychotropic substances, a relevant regulation of the World Health Assembly concerning the labelling of pharmaceuticals which they have not rejected according to article 22 of the constitution of WHO, and which consequently is binding upon them.<sup>585</sup>

9. The Vienna Convention does not specifically require that the leaflet accompanying a retail package of psychotropic substances and its label should show the exact content of the basic substance concerned by weight or percentage; but such information may sometimes have to be required when found necessary for the safety of the user pursuant to article 10, paragraph 1.<sup>586</sup>

### *Paragraph 2*

**2. Each Party shall, with due regard to its constitutional provisions, prohibit the advertisement of such substances to the general public.**

### *Commentary*

1. The paragraph under consideration applies to psychotropic substances in all Schedules.

2. The term “advertisement” as used in that paragraph refers not only to public announcements in newspapers and magazines destined for the general public, but also to those broadcast on television or radio. It refers also to announcements on posters, as well as to those in show windows intended to draw the attention of the general public. It does not include announcements in technical journals published specifically for medical practitioners, chemists or pharmacists, or to those printed on posters shown at scientific congresses or exhibitions. It also does not cover announcements in commercial literature published exclusively for members of the medical pro-

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<sup>584</sup> See World Health Assembly resolution WHA 22.50 (July 1969) recommending that Member States adopt and apply the requirements for “Good Practices in the Manufacture and Quality Control of Drugs” as formulated in the report of the Director-General (Official Records of the World Health Organization 176, Annex 12, part 1; paragraph 9 of those “Good Practices” is headed “Labelling and Packaging”; that paragraph deals also with leaflets); see also World Health Assembly resolutions WHA 23.45 (May 1970), WHA 24.56 (May 1971) and WHA 25.61 (May 1972).

<sup>585</sup> See the preceding paragraph 7 of the present comments.

<sup>586</sup> See however article 30, paragraph 5 of the Single Convention and article 19 of the 1931 Convention.

fession or for pharmacists or other licensed traders in psychotropic substances.

3. In countries in which it would on constitutional grounds be impossible to prohibit the advertisement of psychotropic substances in newspapers or magazines, it might sometimes at least be possible to do so in regard to advertisements on television and the radio and in show window displays.

4. The phrase “with due regard to its constitutional provisions” has in paragraph 2 the same meaning as the phrase “subject to its constitutional limitations” “or subject to the constitutional limitations of a Party” in other provisions of the Vienna Convention.<sup>587</sup>

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<sup>587</sup> Article 22, paragraph 1, subparagraph (a) and paragraph 2, introductory subparagraph; see however the comments on the introductory paragraph of article 21 of the Vienna Convention and *1961 Commentary*, comments on article 35, introductory paragraph of the Single Convention (pp. 416 and 417).

## Article 11

### RECORDS

#### General comments

1. The Single Convention has only one provision<sup>588</sup> concerning the maintenance of records, which interpreted literally would apply to all phases of the trade in all narcotic<sup>589</sup> drugs and all their preparations<sup>590</sup> excepting only the “production”<sup>591</sup> of opium, coca leaves, cannabis and cannabis resin. It appears however that some kind of understanding exists among Parties to that Convention that retail traders (pharmacists) need not record the retail sale of narcotic drugs in Schedule II and their preparations and of all preparations in Schedule III of the Single Convention.<sup>592</sup>

2. The provisions of the Vienna Convention relating to the maintenance of records differ in respect of psychotropic substances in different Schedules. There is also a special provision in regard to the records of preparations exempted pursuant to article 2, paragraphs 2 and 3 of that treaty. Those provisions are laid down in article 11, article 3, paragraph 3, subparagraph (b), article 7, paragraph (e) and article 9, paragraph 3.

3. Some provisions of the Vienna Convention concerning statistical information to be furnished to the Board imply an obligation of Parties to require the maintenance of certain records.

4. Article 16, paragraph 4, subparagraph (d) requires Parties to furnish to the Board annual statistical reports, in regard to each substance listed in Schedule II, III or IV, on the quantities used pursuant to article 4, paragraph (b) “for the manufacture of non-psychotropic substances or products”. In order to carry out that obligation Parties must require such manufacturers to keep records of the psychotropic substances so used.

5. Parties are, pursuant to article 16, paragraph 4, subparagraph (a), also bound to furnish to the Board annual statistical information on the stocks of

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<sup>588</sup> Article 34, paragraph (b).

<sup>589</sup> i.e. drugs controlled by the Single Convention.

<sup>590</sup> Even those in Schedule III of the Single Convention.

<sup>591</sup> Article 1, paragraph 1, subparagraph (t) of the Single Convention.

<sup>592</sup> *1961 Commentary*, paragraph 11 of the comments on article 2, paragraph 2 of the Single Convention (pp. 57 and 58) and paragraph 13 of the comments on article 2, paragraph 4 of that Convention (p. 63). Article 1 of the 1972 Protocol amending *inter alia* article 2, paragraph 4 of the Single Convention expressly exempts from the obligation to keep, pursuant to article 34, paragraph (b) of that treaty, records of transactions in preparations in Schedule III “their acquisition and retail distribution.”

substances in Schedules I and II held by manufacturers, but article 11 requires<sup>593</sup> only that all persons (or enterprises) engaged in any phase of the trade in substances in Schedule I keep records of the quantities of those substances held by them in stock. It does not explicitly provide that manufacturers of substances in Schedule II should maintain records of the stocks of such substances which they hold. In order to be able to implement their obligation to furnish the required information to the Board, Parties must obtain from manufacturers the relevant data on stocks of substances in Schedule II held by them, and consequently must require them to keep such records as would enable them to furnish the needed figures.<sup>594</sup>

6. See in this context also article 2, paragraph 7, subparagraph (a), clause (v) and subparagraph (b), clause (v) and paragraph 60 of the above comments on article 2, paragraph 7, subparagraphs (a) to (e).

7. It is more generally suggested that in addition to the records expressly provided for in the Vienna Convention, Parties are bound to require the maintenance of such records as would enable them to collect the information which they are obligated to furnish to the Board (or the Commission) under the provisions of article 16.

### *Paragraph 1*

1. The Parties shall require that, in respect of substances in Schedule I, manufacturers and all other persons authorized under article 7 to trade in and distribute those substances keep records, as may be determined by each Party, showing details of the quantities manufactured, the quantities held in stock, and, for each acquisition and disposal, details of the quantity, date, supplier and recipient.

### *Commentary*

1. In determining the details which should be recorded under paragraph 1 Parties have a considerable degree of discretion. They should, however, be guided by the two principal purposes for which the records are required. First, they should enable the person or enterprise engaged in the phase of the trade in question to furnish to the national authorities the data which the latter need for compiling the reports to the Board or Commission pursuant to article 16 or for other purposes of control. Secondly, they should enable the supervisory Government authorities not only to determine whether a diversion into illicit channels has taken place, but also more generally to examine the legitimacy of each individual transaction, particularly by comparing the entries in the records of one enterprise with the

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<sup>593</sup> Paragraph 1 of that article.

<sup>594</sup> Manufacturers of substances in Schedule II who keep the records required under article 11, paragraph 2, are of course able to compute those figures; but the results of such a computation must be recorded, which is not expressly prescribed by article 11.

corresponding entries in the records of another enterprise, and also by verifying their correctness in the light of the stocks actually available in the business concerned.

2. It is within the discretion of Parties to determine the form in which the records should be kept (bound books, file of cards, order of the cards).

3. The term “manufacture”<sup>595</sup> as used in paragraph 1 covers not only a process by which basic substances and their salts in Schedule I are obtained, but also the making of preparations in accordance with its definition in article 1, paragraph (*i*). The compounding of preparations in pharmacies would in the case of article 11, paragraph 1, also always be covered by the term “manufacture” because under article 1, paragraph (*i*) it is excluded from that term only if done on prescription, and substances in Schedule I are not supplied on prescription.<sup>596</sup>

4. The separation of substances in Schedule I from the plants which yield them is also “manufacture” for the purpose of the paragraph under consideration. It may be noted in this context that a reservation pursuant to article 32, paragraph 4, could not free a Party from the obligation to apply article 11, paragraph 1 to that kind of “manufacture” since it could be made only in respect of the provisions of article 7. That may cause some practical difficulties which a Party could avoid by making an appropriate reservation pursuant to article 32, paragraph 3.<sup>597</sup>

5. The words “trade” and “distribute” cover also the retail trade and retail distribution, as the words “trade” and “distribution” do in article 7, paragraph (*b*); but contrary to the meaning of “trade” and “distribution” in that subparagraph, “trade” and “distribute” as used in article 11, paragraph 1 covers also the exports and imports to which article 7, paragraph (*f*) refers.

6. The term “disposal” not only covers any alienation (transfer of ownership or possession) but also destruction by any process, and use for the manufacture of other psychotropic substances and for compounding preparations. In the case of destruction, its date, its method and the nature and quantity of the substances destroyed should be shown in the records. The French text uses the word “*cession*” and the Spanish text the word “*entrega*,” both having a narrower meaning than the English word “disposal” for which they stand. It is suggested that in this case the English text should be given preference, since it accords more with the purposes of the treaty.

7. The term “stocks” is not defined in the Vienna Convention. As used in the paragraph under consideration “stock” does not include what is called in the Single Convention “special stocks”, i.e. the amounts held by the Government for special Government purposes and to meet exceptional

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<sup>595</sup> As used in the form “manufactured”; the word “manufacturers” has to be construed accordingly.

<sup>596</sup> Article 9, paragraph 1.

<sup>597</sup> See below the comments on article 34, paragraph 4; see also paragraph 14 of the above comments on article 1, paragraph (*i*).



circumstances, which means for military purposes and for use in such catastrophic events as large-scale epidemics and major earthquakes.<sup>598</sup> Contrary to the Single Convention, the phrase “held in stock” as used here includes also the quantities held by retail outlets, i.e. by authorized retail traders and retail distributors.<sup>599</sup>

8. The records of the quantities held in stock need not necessarily show the exact figures of the amounts held at any given moment, but those figures have to be computed and entered in the records from time to time, if feasible at not too long intervals. The bookkeeping computation should also periodically be compared with the results of actual inventories taken, and discrepancies which are found in that process should be entered in the records with such details as explain them. In any event, the records should always be in such a condition as to facilitate the task of Government inspectors<sup>600</sup> to compute the stocks which should be available.

9. The term “manufacturers” includes natural and juridical persons; so does the term “persons”. The latter term also covers the “competent (Government) authorities or agencies” which pursuant to article 7, paragraph (f) export and import substances in Schedule I.

10. As regards the entries in the records concerning manufacture, the following information should in any case be given:

(a) The date of supply of raw materials, whether substances controlled by the Vienna Convention or not,<sup>601</sup> their nature and quantity, and the identity of the supplier;

(b) The details of the use of raw materials, their nature and quantities, the products obtained therefrom, the nature and quantities of the substances in Schedule I and their preparations made and—as far as practicable—also the exact dates of the beginning and completion of the manufacturing processes of each lot;

(c) The details of any other use of raw materials not exclusively used for the manufacture of substances in Schedule I, the products obtained from such other use, their nature and quantities and—as far as practicable and needed for determining at a given moment the size of the stocks of raw materials and of all of the products obtained therefrom—the dates of the beginning and completion of the production processes of each lot; in the case of sale of such raw materials the quantities, the date of the transaction and the identity of the recipient should be shown, and in case of destruction its date and method as well as the nature and quantities of the substances

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<sup>598</sup> Article 1, paragraph 1, subparagraph (w) of the Single Convention and *1961 Commentary*, paragraphs 4 to 6 of the comments on article 1, paragraph 1, subparagraphs (w) and (x) of the Single Convention (pp. 32 and 33); see also paragraph 7 of the general comments on article 1 of the Vienna Convention.

<sup>599</sup> Article 1, paragraph 1, subparagraph (x), clause (iv) of the Single Convention.

<sup>600</sup> Article 15 of the Vienna Convention.

<sup>601</sup> It is theoretically possible that some substances in Schedule I may be made from other substances which would be in that Schedule.

destroyed should be indicated; see above paragraph 6 of the present comments.

11. In the case of disposal by alienation (transfer of ownership or possession), it would be advisable that the records of the supplier indicate the governmental authority of the recipient to acquire and deal with the substance in Schedule I in question, or the permit showing the quantity of that substance which may be supplied to the recipient pursuant to article 7, paragraph (*d*), or both.<sup>602</sup>

12. Article 7, paragraph (*e*) provides for an obligation of “persons performing medical or scientific functions” with substances in Schedule I to keep such records as are described therein. It has been submitted earlier that under that provision not only natural but also juridical persons have that obligation.<sup>603</sup> It may be pointed out in this context that article 7, paragraph (*e*) is the only international treaty provision in the field of drug control which imposes upon individual medical practitioners an obligation to keep records of substances which they employ for therapeutic purposes, and—it is noted—that provision applies only to substances in Schedule I. The Single Convention does not require medical practitioners to maintain records of the drugs which they use for their professional work,<sup>604</sup> nor does the Vienna Convention provide for such an obligation in regard to substances in Schedules II, III and IV.<sup>605</sup>

#### *Paragraphs 2 to 4*

**2. The Parties shall require that, in respect of substances in Schedules II and III, manufacturers, wholesale distributors, exporters and importers keep records, as may be determined by each Party, showing details of the quantities manufactured and, for each acquisition and disposal, details of the quantity, date, supplier and recipient.**

**3. The Parties shall require that, in respect of substances in Schedule II, retail distributors, institutions for hospitalization and care and scientific institutions keep records, as may be determined by each Party, showing, for each acquisition and disposal, details of the quantity, date, supplier and recipient.**

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602 Paragraphs 12 and 13 of the above comments on article 7, paragraph (*b*).

603 Paragraph 17 of the comments on article 7, paragraphs (*a*) and (*e*).

604 Article 34, paragraph (*b*) of the Single Convention and *1961 Commentary*, paragraph 2 of the comments on that provision (p. 408); individual scientists do not have that privileged position under the Single Convention, *1961 Commentary*, paragraph 3 of the comments just mentioned (pp. 408 and 409).

605 Article 11, paragraphs 2 to 5 of the Vienna Convention, as regards the records which “persons performing medical or scientific functions” with substances in Schedule I are required to keep, see paragraphs 17 to 19 of the above comments on article 7, paragraphs (*a*) and (*e*).

4. The Parties shall ensure, through appropriate methods and taking into account the professional and trade practices in their countries, that information regarding acquisition and disposal of substances in Schedule III by retail distributors, institutions for hospitalization and care and scientific institutions is readily available.

#### *Commentary*

1. Paragraph 2 deals with the manufacturing and wholesale level and the international phase of the trade<sup>606</sup> in psychotropic substances in Schedules II and III, paragraph 3 with the retail level of that trade in substances in Schedule II, and paragraph 4 with the retail level of that trade in substances in Schedule III.

2. Under all three paragraphs Parties have a considerable degree of discretion in determining the details of the records which should be kept. Paragraph 4 describes that discretion in a somewhat more specific way than the other two paragraphs. It stipulates that Parties should ensure “through appropriate methods and taking into account the professional and trade practices in their countries” that the required information is “readily available”, i.e. recorded for that purpose, while paragraphs 2 and 3 define the discretion of Parties by providing that the records containing the required data should be kept “as may be determined by each Party”.<sup>607</sup> In any event, Parties may prescribe whether the records should be kept in bound volumes or on cards, the type of binding, the order of the cards, the handling of necessary corrections etc.

3. The purposes of the records to be kept in respect of the manufacturing, the wholesale and the international phase of the trade in substances in Schedules II and III are basically the same as those of the records concerning all phases of the trade in substances in Schedule I.<sup>608</sup> The same applies to the records regarding the retail trade (distribution) in substances in Schedule II pursuant to article 11, paragraph 3. Those records should on the one hand enable the enterprises concerned to furnish to their national control authorities the information which the latter require for compiling reports to the Board or the Commission pursuant to article 16, and on the other hand make it possible for these authorities to discover diversions into the illicit traffic and beyond that to examine not only the legality but also the medical or scientific justification of each individual transaction.

4. The purposes of the records to be kept pursuant to paragraph 4 in regard to the retail distribution of substances in Schedule III are somewhat more limited. While—like the records mentioned in the preceding paragraph of the present comments—they must be adequate for the purpose of

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606 “Trade” in the broadest sense including non-commercial activities.

607 Article 11, paragraph 1, uses the same phrase in respect of records, concerning substances in Schedule I; so does paragraph 5 in regard to substances in Schedule IV.

608 See above paragraph 1 of the comments on article 11, paragraph 1.

collecting the required information, if any, pursuant to article 16, they need not necessarily contain all the details which would enable the control authorities to examine the legitimacy of each *individual* sale or of each individual use in a hospital or research institution. They should however show enough information to enable the control authorities to examine in a general way whether the retail enterprise or the institution concerned applies adequate care to prevent diversion or medically unjustified use of substances in Schedule III. The 1971 Conference did not wish to impose upon Parties the obligation to require the retail distributors or institutions concerned to keep extensive and very burdensome records of numerous transactions in, or of uses of, very frequently employed psychotropic substances. The Conference was obviously guided by the consideration that the requirements of strict control should in this case be reconciled with the need for easy availability and low costs of widely employed useful medicines.

5. It is also in order not to require Parties to impose very heavy burdens on medical practitioners or scientists that the Vienna Convention does not prescribe that those practitioners or scientists should keep records of their acquisition and use of psychotropic substances in Schedules II and III.<sup>609</sup>

6. Article 16, paragraph 4, subparagraph (a) provides, *inter alia*, that Parties should furnish to the Board annual statistical reports on the stocks of substances in Schedule II held by manufacturers of those substances. Article 11, paragraph 2, describing the records which manufacturers of substances in Schedule II should maintain, does not mention the recording of “stocks”.<sup>610</sup> However, records of manufacturers maintained in accordance with paragraph 2 would make it possible to determine the amounts of substances in Schedule II which at a given moment should be available in “stocks”. In any event the records of manufacturers of such substances should contain all the details necessary to make that determination. Moreover, manufacturers should be required to compute periodically their stocks of substances in Schedule II and to enter in their records the figures which they obtain. They should also be held to take at such intervals as are practicable—inventories of their substances in Schedule II and to enter in their records discrepancies between the results of such inventories and the figures arrived at by the bookkeeping operation, with such details as explain the differences. It will be noted that such computation and inventory-taking is under the Vienna Convention not required in regard to substances in Schedule III held by their manufacturers in stock. It is however suggested that it would be in the interest of effective control if that would nevertheless be done at certain intervals, e.g. biennially.<sup>611</sup>

7. The terms “manufacturers”, “wholesale distributors”, “exporters and importers” and “retail distributors” refer to natural and juridical persons including State enterprises.

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<sup>609</sup> See also paragraph 12 of the comments on article 11, paragraph 1.

<sup>610</sup> See however article 11, paragraph 1.

<sup>611</sup> See also paragraph 8 of the comments on article 11, paragraph 1.

8. The words “manufacturers” and “manufactured” in paragraph 2 cover all processes by which psychotropic substances in Schedules II or III, their salts or preparations are obtained, including processes of refining the basic substances. They do not, however, cover the making of preparations on prescription in pharmacies. Such compounding of preparations is to be considered as part of the process of retail distribution. The making of preparations by medical practitioners for administration or dispensation to their patients or to animals which they treat is part of their professional activity in respect of which they are not required to keep records. The term “manufacture” covers also the separation of the psychotropic substances from the plants which yield them.<sup>612</sup>

9. The term “wholesale distributors” in paragraph 2 as well as the term “retail distributors” in paragraphs 3 and 4 cover commercial and non-commercial distributors. The term “retail distributors” does not refer to medical practitioners who administer, dispense or sell psychotropic substances as part of their therapeutic work.<sup>613</sup>

10. The phrase “institutions for hospitalization and care and scientific institutions” refers to institutions owned by corporate bodies, including Government bodies as well as to those owned by private individuals, but not to individual medical practitioners or scientists. Individual medical practitioners and scientists are not required to maintain records of substances in Schedules II and III which they acquire or use for their respective professional activities.<sup>614</sup>

11. An “institution” is an organization for the promotion of some public objective.<sup>615</sup> The objective is to be considered “public” if it is in the public interest although it may not be pursued by public (governmental) authorities, but by private persons or corporate bodies. *Bona fide* organizations for hospitalization and care or scientific purposes are acting in the public interest, and are therefore “institutions” in the sense of paragraphs 3 and 4.

12. In practice it may not always be easy to distinguish between individual medical practitioners or scientists who are working with a few assistants and are not required to maintain records of their acquisitions and disposals of substances in Schedules II and III, and “institutions for hospitalization and care and scientific institutions”, on the other hand, which should be bound to keep the detailed records regarding substances in Schedule II pursuant to paragraph 3, and the less detailed records in respect of substances in Schedule III pursuant to paragraph 4.

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612 See above, comments on article 1, paragraph (i); see also paragraphs 3 and 4 of the comments on article 11, paragraph 1.

613 1961 *Commentary*, paragraph 2 of the comments on article 34, paragraph (b) of the Single Convention (p. 408); see also paragraph 8 of the present comments.

614 Paragraph 12 of the comments on article 11, paragraph 1.

615 *The Concise Oxford Dictionary of Current English*, fifth edition, Oxford, Clarendon Press, 1964, p. 631.

13. It may be assumed that Parties will not always apply the same criteria in making that distinction. Some of the factors which may be relevant in this context may be suggested: whether for the purpose of hospitalization, care or research—as the case may be—a separate building or a separate floor in a large building has been set apart, the nature and size of the equipment, the size of the personnel and the degree of organization of the work. Such factors will normally be interrelated, but may also be in relationship to the quantities of substances in Schedule II or III used for therapeutic or scientific purposes. It may nevertheless happen that what is in one country considered to be a small hospital is in another country held to be a large doctor's office, or that the same kind of structure is considered in one case a laboratory of an individual scientist and in another case a scientific institution.

14. It may be practical and also useful from the viewpoint of effective control to attach, in making that distinction, particular importance to the extent of use of substances in Schedule II or III in the activity concerned. Some Governments may find it useful for the purpose of paragraphs 3 and 4 to treat as an "institution" a doctor's office or a scientist's laboratory whose use of those substances exceeds a maximum fixed by law.

15. The French text uses in paragraphs 3 and 4 three different terms for the English word "institutions", namely: "*établissements (hospitaliers)*", "*centres (de traitement)*" and "*institutions (scientifiques)*". What has been said in paragraphs 12-14 applies also to the distinction between those "*établissements*", "*centres*" and "*institutions*", on the one hand, and offices of individual medical practitioners and laboratories of individual scientists on the other hand.<sup>616</sup>

16. The terms "exporters" and "importers" refer to natural or juridical persons engaged in the international trade in psychotropic substances in Schedules II or III or in the non-commercial business of distributing them internationally,<sup>617</sup> i.e., to those exporters and importers who pursuant to article 8, paragraph 1, must be "under licence or other similar control measure"; they do not cover such persons as physicians who may occasionally import such substances for the treatment of their own patients, or to scientists who exchange samples of those substances for research purposes.<sup>618</sup> Such physicians and scientists are not covered by article 8, paragraph 1,<sup>619</sup> but are only bound to obtain the Government authorizations provided for in article 12, paragraph 1 for all individual international transactions in substances in Schedule II, or to declare their exports of

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<sup>616</sup> The Spanish text follows the English version by using only "*instituciones*" for the English word "institutions". It employs on the other hand the wider term "*asistencia*" for the narrower English and French words "care" and "*traitement*". However, this does not cause a different meaning of paragraphs 3 and 4 in those three language versions read as a whole.

<sup>617</sup> e.g., a National Red Cross Society or the International Committee of the Red Cross may be considered to be engaged in that non-commercial business.

<sup>618</sup> See also above, paragraph 13 of the comments on article 8, paragraph 1.

<sup>619</sup> Or by article 8, paragraph 2, subparagraphs (b) and (c).

substances in Schedule III to their respective national authorities pursuant to article 12, paragraph 2, which authorities in their turn have an obligation to send a copy of such a declaration to the competent authorities of the importing country or region concerned.<sup>620</sup> Parties are thus able to obtain information on the export and import of substances in Schedules II<sup>621</sup> and III without requiring separate reports from the persons who engage in such international transactions. It is nevertheless suggested that persons who make those occasional exports or imports should be required to keep copies of the documents relating to their international transactions.

17. What has been stated above in regard to the term “disposal” in article 11, paragraph 1, and to the corresponding words “*cession*” and “*entrega*” in the French and Spanish texts of that provision,<sup>622</sup> applies also, *mutatis mutandis*, to the use of the same words in article 11, paragraphs 2, 3 and 4 of those three language versions.

18. The “details of the quantities manufactured” which should be recorded in respect of substances in Schedules II and III pursuant to paragraph 2 should be the same as those to be recorded in regard to the manufacture of substances in Schedule I in accordance with paragraph 1.<sup>623</sup>

19. It appears that the records which Parties are bound to require pursuant to paragraph 4 may be very different from country to country, not only because the “professional and trade practices” vary in different countries but also because the wording of that paragraph is in rather general terms. It is held that the discretion which pursuant to paragraph 4 Parties have in determining the nature and details of the required records is much wider than under the preceding paragraphs of article 11.

20. It has been suggested earlier<sup>624</sup> that it was the apparent intention of the 1971 Conference not to impose upon retail distributors, hospitals or research institutions a heavy burden by requiring them to maintain extensive and also expensive records, and thus to affect the ease of availability of substances in Schedule III, which may have great therapeutic usefulness and consequently may be very frequently prescribed.<sup>625</sup> That consideration does not apply to the manufacturing, wholesale and international phases of the trade in those substances. The recording requirements in respect of those

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620 Article 12, paragraph 2, subparagraphs (b) and (c).

621 And of course of those in Schedule I pursuant to article 12, paragraph 1 which applies also to substances in Schedule I; see also article 7, paragraph (f).

622 Paragraph 6 of the above comments on article 11, paragraph 1.

623 See paragraph 10 of the above comments on article 11, paragraph 1; as regards substances in Schedules II and III the records should also contain information on the “disposal” of such substances by employing them in the manufacture of non-psychotropic substances pursuant to article 4, paragraph (b); see also paragraph 6 of the comments on article 11, paragraph 1.

624 See above paragraph 4 of the present comments.

625 See above paragraph 50 of the comments on article 2, paragraph 4.

phases are therefore the same as in respect of substances in Schedule II, and less strict requirements are provided only for the retail level of the trade in substances in Schedule III.<sup>626</sup>

21. It is therefore suggested that in choosing the “appropriate methods” pursuant to paragraph 4 Parties should be guided by that basic consideration of the 1971 Conference. It is submitted that Parties would on that ground act in accordance with the purposes of the Vienna Convention, and particularly also with those of its article 11, paragraph 4, if they require retail distributors and the institutions mentioned in that provision to maintain a record of each individual acquisition of a substance in Schedule III. That record should indicate such details as the nature and the form in which the substance was acquired,<sup>627</sup> the quantity, the date and the supplier. It is held that to require such a record even constitutes a legal obligation of Parties implied in the general terms of paragraph 4. It is also very probable<sup>628</sup> that the maintenance of a record of that kind is also a “professional” or a “trade practice” in most if not in all countries whose practice Parties have to take into account in implementing paragraph 4.

22. Parties on the other hand under paragraph 4 are not bound to require retail distributors, hospitals or research institutions to record each individual disposal of a substance in Schedule III, although some of them may find that desirable; but they should apply a less strict régime of that kind regarding records only to the extent justified by the need to avoid imposing a too heavy burden on the retailers and institutions. It would not be in accord with the purpose of paragraph 4 if they weakened the rules regarding the maintenance of records in cases in which stricter rules would not impose a significant burden, or only a burden fully justified by considerations of public health, which are, however, not only the aim of preventing abuse, but also that of not restricting unduly the availability of very useful medicines and—as far as possible—of not increasing the expenses of their distribution.<sup>629</sup> It is for that reason that it has been submitted in the preceding paragraph of the present comments that Parties are bound to require the retailers and institutions in question to keep detailed records of all individual acquisitions of substances in Schedule III; it is also for that reason that those retailers and institutions, if not required to maintain a detailed record of each individual disposal of a substance in Schedule III, should in any event have “readily available” such information as would facilitate the task of the national control authorities of ascertaining at least in a general way whether a particular retail distributor or institution applies adequate care to prevent

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<sup>626</sup> Even less strict requirements are pursuant to article 11, paragraph 5, prescribed for substances in Schedule IV which may have to be used even more frequently than substances in Schedule III.

<sup>627</sup> i.e., the composition of the medicine concerned (by description or by reference), whether in form of a tablet (pill), ampoule or powder.

<sup>628</sup> At the time of this writing the Secretary-General does not have sufficiently comprehensive information on that matter.

<sup>629</sup> See the fifth *considerandum* of the Preamble of the Vienna Convention.



improper use or diversion of substances in Schedule III.<sup>630</sup> Retail distributors therefore should e.g. be required to record details of the sale,<sup>631</sup> for use by an individual, of an amount of a substance in Schedule III which exceeds a maximum determined in a regulation to be enacted for that purpose.<sup>632</sup> They should also be obligated to preserve non-refillable or no longer refillable prescriptions.<sup>633</sup>

23. The records on retail distribution of substances in Schedule II which retail distributors, including hospitals and research institutions, but normally not individual physicians,<sup>634</sup> are required to maintain pursuant to paragraph 3 have to contain about the same information as the records on retail distribution of substances in Schedule I to be kept according to paragraph 1. Medical practitioners selling substances in Schedule II to other persons than their own patients or holders of animals which they treat are however to be considered to be retail distributors for the purpose of paragraph 3. Records on retail distribution of substances in Schedule II should, in addition to the data on acquisition, indicate the exact identity of each substance in Schedule II (or its preparation) sold or otherwise distributed, the date of sale or other distribution and the identity of the recipient. However, contrary to the rules governing the records of retail distribution of substances in Schedule I, those regarding substances in Schedule II are not explicitly required to indicate the quantities held in stock as computed periodically; but they should nevertheless show all data necessary for calculating the stocks which should be available. It would moreover be advisable that the retail distributors of substances in Schedule II also record, at reasonable intervals, the figures on stocks which they compute as well as those which indicate the quantities found available by actual inventory-taking.<sup>635</sup> The records on retail distribution of substances in Schedule II may consist of a file of the medical prescriptions or their copies, whose contents would have to be supplemented as required under paragraph 3.<sup>636</sup>

24. As regards records to be kept on the retail distribution of substances in Schedule III (and IV) pursuant to article 9, paragraph 3, see paragraph 13 of the above comments on that provision.

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630 See also above, paragraph 4 of the present comments.

631 Name of substance or preparation, quantity, recipient, date of sale.

632 Retail distributors should be prohibited from selling to anybody except a medical practitioner, scientist, hospital or research institute a quantity of a substance in Schedule III exceeding a legal maximum.

633 See also paragraphs 3 and 4 of the above comments on article 9, paragraph 2.

634 See also paragraphs 11 and 12 of the above comments on article 8, paragraph 1, paragraph 2 of the comments on paragraph 3 of that article, paragraph 17 of the comments on article 9, paragraph 1 and paragraph 7 of the comments on article 1, paragraph (i).

635 See also paragraphs 7 and 8 of the above comments on article 11, paragraph 1.

636 See also the *1961 Commentary*, paragraph 22 of the comments on article 34, paragraph (b) of the Single Convention (p. 413).

## Paragraph 5

**5. The Parties shall require that, in respect of substances in Schedule IV, manufacturers, exporters and importers keep records, as may be determined by each Party, showing the quantities manufactured, exported and imported.**

### *Commentary*

1. Parties have a considerable measure of discretion in determining the details and the form of the records which should be maintained according to the paragraph under consideration. The words which the paragraph uses to define that discretion, namely “as may be determined by each Party”, are the same as those used for the same purpose in paragraphs 1, 2 and 3.<sup>637</sup>

2. As regards the term “manufacture” and the exclusion from the term “manufacture” of the compounding of preparation by pharmacists (retail distributors) on prescription and by medical practitioners in course of the exercise of their therapeutic functions, see article 1, paragraph (i) and the comments thereon; see also paragraphs 10 to 12 of the comments on article 8, paragraph 1, paragraphs 3 and 4 of the comments on article 11, paragraph 1, and paragraphs 7 and 8 of the comments on article 11, paragraphs 2 to 4, which comments apply *mutatis mutandis* also to article 11, paragraph 5.

3. It will be noted that paragraph 5 requires the recording only of “the quantities manufactured”, while paragraphs 1 and 2 provide for the recording of the “*details* of the quantities manufactured”. Some Parties may however find it advisable to require that the records on the manufacture of substances in Schedule IV should be sufficiently detailed to enable them to verify whether the figures on the “quantities manufactured” are exact. They may consider it useful for that purpose that the records on the manufacture of substances in Schedule IV should contain data similar to those which have been suggested for inclusion in the records on the manufacture of substances in Schedules I, II and III in paragraph 10 of the comments on article 11, paragraph 1 and in paragraph 18 of the comments on paragraphs 2, 3 and 4 of that article.

4. The terms “exporters” and “importers” refer to natural and juridical persons engaged in the international trade in substances in Schedule IV or in the non-commercial business of distributing them internationally. They do not apply to physicians who occasionally import those substances for use in their practice, or to scientists who occasionally exchange them with colleagues of other nations. Although paragraph 5 does not apply to them, it would be advisable to require such physicians and scientists to preserve documents relating to their international transactions.

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<sup>637</sup> See paragraphs 1 and 2 of the comments on article 11, paragraph 1; and paragraph 2 of the comments on paragraphs 2 to 4 of that article.

5. It is suggested that the records of the exporters and importers should clearly identify the recipient or supplier—as the case may be—by giving his name and address; they should indicate the date of dispatch or receipt of the consignment, the identity of the substance or preparation concerned (by giving its name—and as far as practicable—also its chemical composition by describing it or by reference), and the quantity shipped or received. It may be kept in mind that adequate records of exports and imports of substances in Schedule IV are very important from the viewpoint of control, since those transactions are under the Vienna Convention<sup>638</sup> not subject to the requirement of a special Government authorization unless the importing Party concerned has made a relevant notification pursuant to article 13,<sup>639</sup> nor need they be declared to the authorities of the exporting or importing country.<sup>640</sup> Such records of the exporters and importers of substances in Schedule IV could be helpful to the national authorities whenever they find it necessary to examine whether a shipment of such a substance was legitimate. It is however admitted that under paragraph 5 Parties may have the right to limit themselves to requiring only the recording of the quantity of each export and import. However, in view of the provision of article 16, paragraph 5, Parties have also an implied obligation to require the recording of the country or region of origin of each import and that of the country or region of destination of each export.

6. It is obvious that records such as those required pursuant to the paragraph under consideration will very often not give a clear picture of the business activities of an enterprise engaged in the manufacture, export or import of substances in Schedule IV. Taking into account that substances in Schedule IV present a smaller although still significant risk to public health and may sometimes be of great therapeutic usefulness,<sup>641</sup> the 1971 Conference found it advisable to provide for less strict rules regarding records of substances in Schedule IV in order not to place unduly heavy burdens on their manufacturers and distributors.<sup>642</sup>

7. The information which a Government can collect from records such as those maintained according to paragraph 5 is nevertheless very useful. It enables the Government to obtain a picture of the supplies of a substance in Schedule IV available for domestic purposes, and to draw therefrom conclusions as to the extent of the legitimate use of that substance and in some measure also of its abuse. The statistical information which the Board

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638 See article 12, paragraphs 1 and 3, and article 7, paragraph (f); although their individual transactions may not require a special Government authorization the “exporters” and “importers” of substances in Schedule IV must be “under licence or other similar control measure” pursuant to article 8, paragraph 1; see also paragraph 4 of the present comments.

639 See in particular paragraph 3 of that article.

640 See article 12, paragraph 2.

641 See paragraph 50 of the above comments on article 2, paragraph 4.

642 Fifth *considerandum* of the Preamble of the Vienna Convention.

will receive on the basis of those records<sup>643</sup> will also enable it to make similar evaluations of the situation in different countries, particularly if according to article 16, paragraph 5, it requests information on the quantities of substances in Schedule IV imported from, and exported to, each country or region.<sup>644</sup>

8. As regards the records to be maintained by retail distributors of substances in Schedule IV on their sale of such substances without medical prescription pursuant to article 9, paragraph 3, see paragraph 13 of the above comments on that provision. As regards records to be kept in respect of those substances used for the manufacture of exempt preparations see below, the comments on article 11, paragraph 6. As regards the recording of the quantities used for the manufacture of non-psychotropic substances pursuant to article 4, paragraph (b), see below, paragraph 8 of the comments on article 11, paragraph 6.

### *Paragraph 6*

**6. The Parties shall require manufacturers of preparations exempted under paragraph 3 of article 3 to keep records as to the quantity of each psychotropic substance used in the manufacture of an exempt preparation, and as to the nature, total quantity and initial disposal of the exempt preparation manufactured therefrom.**

### *Commentary*

1. The obligation of Parties to apply the paragraph under consideration is also mentioned in article 3, paragraph 3, subparagraph (b).

2. Paragraph 6 applies only to substances in Schedules II, III and IV, since preparations of substances in Schedule I cannot be “exempted” pursuant to article 3, paragraph 2.

3. The paragraph applies also to substances in Schedule IV, although Parties are under article 16, paragraph 4, subparagraph (c) required to report to the Board only the quantities of substances in Schedules II and III used for the manufacture of exempt preparations.

4. The records pursuant to paragraph 6 are needed to ensure that the records of persons or enterprises engaged in any phase of the trade in substances in Schedule II or III, which manufacture exempted preparations, can give a full account of their use (“disposal”) of those substances. Those records might also present a useful addition to the records to be maintained by manufacturers of substances in Schedule IV pursuant to article 11, paragraph 5. The requirement of recording the initial disposal of exempt

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<sup>643</sup> Article 16, paragraph 4, subparagraph (b) and paragraph 5; see also paragraph 4, subparagraph (d).

<sup>644</sup> Article 1, paragraph (k) and the above comments on that provision.

preparations is intended to assist the national control authorities in verifying whether an entry showing the use of a quantity of a psychotropic substance for the manufacture of exempted preparations is correct. It is not prescribed in paragraph 6, but it may be useful, to require that persons or enterprises obtaining exempt preparations from their manufacturers enter in their records the date of acquisition, nature and quantity of the exempt preparations acquired.

5. A pharmacist (retail distributor) who compounds on prescription an exempt preparation is not required to record that pursuant to paragraph 6. Such compounding is not “manufacture” for the purpose of article 6. It is part of the process of his retail distribution which he need not be required<sup>645</sup> to record if the preparation contains a substance in Schedule III or IV.<sup>646</sup> If a retail distributor compounds on prescription a preparation containing a substance in Schedule II he would pursuant to article 11, paragraph 3 be required to record as sale the quantity of the psychotropic substance included in the preparation. A physician compounding an exempt preparation for use in his medical practice is not required to record that act in any way.<sup>647</sup>

6. The term “disposal” not only refers to alienation (transfer of ownership or possession), but also to destruction by any process. The Spanish text uses “*destino*” and the French text “*cession*” for that English term. Since it is the purpose of paragraph 6 to enable the national control authorities to obtain a full account of the psychotropic substances used for the manufacture of exempt preparations and to verify that account, it appears to be necessary to require the entry in the records of any kind of *disposal*—no matter what might have been its nature—and not only transfers of ownership (“*cession*”). The use of the word “*destino*” in the Spanish text seems to accord even less with the purpose of paragraph 6. It is in this context hardly relevant to know the initial *destination* or *purpose* of the manufactured exempt preparations. It follows that the English text should on that point be given preference.<sup>648</sup>

7. The following entries should be made in the records pursuant to paragraph 6:

(a) The name of the psychotropic substance used for the manufacture of an exempt preparation as given in the national legislation concerned;

(b) The quantity of the psychotropic substance used for such manufacture;

(c) If practicable, the date of commencement and completion of the manufacturing process of each particular lot;

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<sup>645</sup> See above, paragraphs 22 and 23 of the comments on article 11, paragraphs 2 to 4.

<sup>646</sup> And not in addition a substance in Schedule II.

<sup>647</sup> See paragraphs 8, 9 and 10 of the above comments on article 11, paragraphs 2 to 4.

<sup>648</sup> See also paragraph 6 of the comments on article 11, paragraph 1 and paragraph 17 of the comments on paragraphs 2 to 4 of that article.

(d) The name, nature (i.e. its chemical structure indicated by description or reference) and amount of the exempt preparation produced from a particular quantity of a psychotropic substance, entered in the records pursuant to line (b) above;

(e) The name, nature and quantity of an exempt preparation disposed of;

(f) The nature of disposal (whether sale, destruction or otherwise);

(g) The identity of the recipient if any; and

(h) The date of disposal.

8. It has been suggested earlier<sup>649</sup> that in view of their obligations pursuant to article 16, paragraph 4, subparagraph (d), to report to the Board the quantities of substances in Schedules II, III and IV used for the manufacture of non-psychotropic substances,<sup>650</sup> Parties are bound to require manufacturers of such non-psychotropic substances to maintain records of the psychotropic substances so used. It is suggested that Parties should in respect of that use require the maintenance of records similar to those prescribed for the use of psychotropic substances for the manufacture of exempt preparations. What has been suggested in the preceding paragraph of the present comments should *mutatis mutandis* also apply to the records of the manufacturers of the non-psychotropic substances.<sup>651</sup>

### Paragraph 7

**7. The Parties shall ensure that the records and information referred to in this article which are required for purposes of reports under article 16 shall be preserved for at least two years.**

### Commentary

1. It is submitted that the phrase “required for purposes of reports under article 16” covers not only the figures directly needed for the computation of the statistics to be furnished to the Board, but also those entries in the records which may be necessary to enable the control authorities to verify the accuracy of those figures. However, there cannot be any doubt that opinions may legitimately differ as to the entries which may be necessary for that purpose. Some Governments may hold that not only all entries provided for in article 11, but also additional records, are needed to

<sup>649</sup> Paragraph 4 of the general comments on article 11.

<sup>650</sup> Article 4, paragraph (b).

<sup>651</sup> It has been mentioned earlier that a Party which pursuant to article 2, paragraph 7, has not accepted the inclusion of a substance in Schedule I could exceptionally authorize the use of such a substance for the manufacture of non-psychotropic substances. It should in that case require the manufacturers concerned to maintain records of the substance in Schedule I so used. It is suggested that those records should be the same as those referred to in paragraphs 7 and 8 of the comments on article 11, paragraph 6; see paragraphs 16 and 17 of the above comments on article 2, paragraph 7, subparagraph (a) to (e).

enable them to verify whether the information which they collect for purposes of reporting pursuant to article 16 is exact. Others may be inclined to assume that some of the entries prescribed by article 11 are not necessary for that purpose. They may, for example, hold that records indicating the quantities of substances in Schedule IV used in the manufacture of exempt preparations are not needed in this context, because they have no obligation to report them to the Board. Some Governments may also be of the opinion that the records concerning the retail distribution of substances in Schedules II and III according to article 11, paragraphs 3 and 4, and perhaps even that the same records required for substances in Schedule I under article 11, paragraph 1, are not so needed particularly in so far as those records concern substances not acquired from their manufacturers or importers, but from intermediary wholesale distributors. Such Governments may consider that other means of verification such as frequent inspections are sufficient.

2. The phrase “required for purposes of reports under article 16” refers not only to reports to the Board, but more generally to reports pursuant to article 16, and that includes also reports to be furnished to the Commission pursuant to paragraphs 1 to 3 and 6 of that article. While—as is submitted further below—<sup>652</sup> there may be some limitation on the power of the Commission to request Parties to furnish statistical information, it is held that if “*necessary for the performance of its functions*” the Commission may ask for some statistical information on matters not specifically placed by the Vienna Convention within the jurisdiction of the Board. That broad view of the phrase just mentioned appears to justify also a rather broad view regarding the “records and information” which should be preserved for at least two years.

3. It will also be noted that not only the needed “information” but also the needed “records” must be preserved under paragraph 7. That means that records which contain *any* information “required for purposes of reports under article 16” are covered by that provision, although that information forms only a part and even only a minor part of their contents.

4. It may also often be unfeasible in practice to separate that part of records which is needed for purposes of reports under article 16 from another part which is not so needed.

5. Records which are not preserved for a minimum period of two years also lose much of their value for purposes of control. One has to keep in mind in this context that it is not the practice of Governments to provide for frequent inspections of retail distributors of psychotropic substances, and that it cannot be expected that this will basically change in the future.<sup>653</sup> Moreover, it would be particularly hazardous from the viewpoint of public health if any of the records required pursuant to article 11, paragraph 1 in

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<sup>652</sup> See below the comments on article 16, paragraph 1.

<sup>653</sup> Article 15 provides that Parties should provide for inspections of the various phases of the trade in psychotropic substances (including the retail distribution) and that the inspections should be made as frequently as “they consider necessary”.

regard to substances in Schedule I are not preserved for a minimum period of two years. That might render it extremely difficult for control authorities to verify the correctness of the records which are to be maintained by users of substances in Schedule I pursuant to article 7, paragraph (e), and which in their turn have to be preserved for at least two years after the last entry<sup>654</sup> recorded therein.

6. It is therefore suggested for practical reasons and on grounds of effective control that it would be advisable to preserve for a minimum period of two years also those records provided for in article 11 which according to paragraph 7 of that article do not need to be so preserved.

7. If the records are in the form of a bound book, the period of two years is to be counted from the date of the last relevant entry contained therein. In the case of records maintained in the form of a card file, those cards which do not contain any relevant information which is less than two years old could be discarded.<sup>655</sup>

8. It will be noted that the period of two years is a minimum period. Preservation for more than two years may in many cases be desirable.

9. As regards the records of persons who use substances in Schedule I in the exercise of medical or scientific functions, see paragraphs 17 to 19 of the above comments on article 7, paragraphs (a) and (e).<sup>656</sup>

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<sup>654</sup> Article 7, paragraph (e) employs the words "after the last use recorded therein"; but what is obviously meant is the last entry of use or acquisition.

<sup>655</sup> See above paragraph 2 of the comments on article 11, paragraph 1, paragraph 2 of the comments on paragraphs 2 to 4 of that article and paragraph 1 of the comments on paragraph 5 of the same article.

<sup>656</sup> See also *1961 Commentary* on article 34, paragraph (b) of the Single Convention regarding records to be kept under that treaty (pp. 407 to 414).



## Article 12

### PROVISIONS RELATING TO INTERNATIONAL TRADE

#### General comments

1. As the Single Convention does for the international trade in, or the non-commercial business of international distribution of, “narcotic drugs” and their preparations including preparations in Schedule III, the Vienna Convention requires for such trade in, or distribution of, psychotropic substances and their preparations a general governmental authorization,<sup>657</sup> which normally has to be explicit, but in a few cases may be implied.<sup>658</sup>

2. The Single Convention does not provide for any exception from that requirement of a general governmental authorization. The Vienna Convention provides for one exception: article 3, paragraph 3, subparagraph (a), concerning those preparations of substances in Schedule II, III or IV which pursuant to article 3, paragraphs 2 and 3 have been expressly exempted from that requirement.

3. Under the Single Convention a general authorization such as that mentioned in paragraph 1 of the present comments is not required for medical practitioners or scientists who occasionally import small quantities of “narcotic” drugs or their preparations for therapeutic or scientific purposes, nor for scientists who exchange such drugs or their preparations for research purposes. Patients who import minor amounts for their own medically prescribed use also do not need such a general authorization.<sup>659</sup>

4. Similarly, as regards substances in Schedules II, III and IV, the Vienna Convention does not require the general government authorization referred to in paragraph 1 of the present comments for such non-commercial inter-

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<sup>657</sup> Article 31, paragraph 3, subparagraph (a) and article 2, paragraphs 3 and 4 of the Single Convention; article 7, paragraph (f) and article 8, paragraph 1 of the Vienna Convention. As regards the authorization of establishments and premises to be used in such trade or distribution, see article 30, paragraph 1, subparagraph (b), clause (ii) of the Single Convention and article 8, paragraph 2, subparagraph (b) of the Vienna Convention; see also paragraph 12 of the above comments on article 7, paragraph (f) of the Vienna Convention; see also *1961 Commentary*, paragraph 2 of the general comments on article 30 (p. 328).

<sup>658</sup> “State enterprises” under the Single Convention; see its article 31, paragraph 3, subparagraph (a); paragraphs 1 and 7 of the above comments on article 7, paragraph (f) of the Vienna Convention and paragraph 5 of the comments on article 8, paragraph 1 of that treaty.

<sup>659</sup> *1961 Commentary*, paragraph 8 of the comments on article 31, paragraph 3, subparagraph (a) of the Single Convention (pp. 355 and 356).

national transactions as the occasional import of such substances by a physician for use in his practice, or for the exchange of such substances by scientists for purposes of research.<sup>660</sup> However, even such non-commercial transactions in substances in Schedule I can under the Vienna Convention be made only by government agencies, persons or enterprises having the implied or explicit government authorization pursuant to its article 7, paragraph (f).

5. Like the corresponding provisions of article 31, paragraphs 4 to 16 of the Single Convention, article 12 of the Vienna Convention containing rules governing individual international transactions applies not only to “international trade”, but also to such non-commercial international consignments as those referred to above in paragraphs 3 and 4 of the present comments; so does article 13 of the Vienna Convention concerning the prohibition of and restrictions on export and import of substances in Schedule II, III or IV.

6. As under article 31 of the Single Convention, the government authorization required under articles 12 and 13 for individual international transactions must not be granted to exporters and importers who—where required—do not have explicit or implied general government authorization to engage in the international transactions concerned.

7. The rules of the Vienna Convention governing individual exports and imports differ in several respects from those of the Single Convention.

8. Both treaties provide for a system of government authorizations of individual imports and exports. That system as it appears in the Single Convention is generally known as “import certificate and export authorization system”. The corresponding system of the Vienna Convention has in the present Commentary also been referred to by that designation,<sup>661</sup> although the Vienna Convention does not distinguish between “import certificate” and “import authorization”—as does the Single Convention—calling both documents “import authorization”.<sup>662</sup>

9. The Single Convention requires a special government authorization of individual imports<sup>663</sup> and exports of all “narcotic” drugs and their

<sup>660</sup> See paragraph 13 of the above comments on article 8, paragraph 1.

<sup>661</sup> See the list entitled “Abbreviations” preceding the text of the present Commentary, pages (vii) and (viii).

<sup>662</sup> Article 31, paragraph 4, subparagraph (c), paragraph 5 and paragraph 9 of the Single Convention; *1961 Commentary*, paragraphs 2 to 4 of the comments on article 31, paragraph 4, subparagraphs (a) and (d) of the Single Convention (pp. 357 and 358) and paragraphs 2 to 4 of the comments on paragraph 5 of that article (pp. 363 and 364); see article 13, paragraph 3 of the Vienna Convention for the term “special import licence”; the French text of that treaty although also not distinguishing between “*autorisation d'importation*” and “*certificat d'importation*” employs the latter term for “*autorisation d'importation*” in the last sentence of article 12, paragraph 1, subparagraph (b) and paragraph 3, subparagraph (c), second sentence, following in that the text of article 31, paragraph 4, subparagraph (c) and paragraph 9, first sentence of the Single Convention which however in its turn distinguishes between an import authorization and an import certificate.

<sup>663</sup> The import authorization may allow an importation in more than one consignment (article 31, paragraph 4, subparagraph (d) of the Single Convention).

preparations, excepting only preparations listed in its Schedule III. It establishes the same requirement for poppy straw.<sup>664</sup> The Vienna Convention requires such a special authorization only for international transactions in substances in Schedules I and II,<sup>665</sup> excepting preparations in Schedule II which are expressly exempted from that requirement pursuant to its article 3, paragraph 3 in regard to the Party concerned.

10. The Single Convention does not exempt from the application of the import certificate and export authorization system the carrying by international travellers of small quantities of preparations of narcotic drugs (other than preparations in its Schedule III) for personal use. Preparations in Schedule III are in any event exempted from that control.<sup>666</sup> Article 4, paragraph (a) of the Vienna Convention, on the other hand, exempts such carrying of preparations<sup>667</sup> of substances in Schedules II and III from the rules of article 12 concerning the control of the international trade, but not from those of article 13 concerning the prohibition of and restriction on export and import.<sup>668</sup> The text of article 4, paragraph (a) applies also to preparations of substances in Schedule IV. This is however without any practical importance, since those substances and their preparations are neither subject to the import certificate and export authorization system of article 12, paragraphs 1 and 3, which applies to substances in Schedules I and II, nor to the system of export declarations which article 12, paragraph 2 establishes for substances in Schedule III.<sup>669</sup>

11. Each Party to the Vienna Convention may also pursuant to its article 13 require that other Parties take measures to ensure that those substances in Schedules II, III and IV and their preparations which it specifies are not exported to its territory. It may by "special import licence" according to paragraph 3 of that article authorize such "prohibited" imports, which are in that case subject to a system of rules which are basically the same as those of the import certificate and export authorization system applicable to substances in Schedules I and II and their preparations according to article 12 paragraph 1.

12. Under article 31, paragraph 1, subparagraph (a) of the Single Convention, Parties are required not knowingly to permit the export of "narcotic" drugs and their preparations (including preparations in Schedule III of that treaty) to any country except in accordance with the laws and regulations of that country. The Vienna Convention does not contain an express provision of that kind. It would however hardly be compatible with

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664 Article 25, paragraph 2 of the Single Convention.

665 Article 12, paragraphs 1 and 3; see also article 7, paragraph (f).

666 Article 31, paragraph 16 and article 2, paragraph 4 of the Single Convention.

667 Article 1, paragraph (f) of the Vienna Convention; paragraph 8 of the above comments on that provision; and paragraphs 1 and 2 of the comments on article 4, paragraph (a).

668 Paragraphs 9 to 12 of the comments on article 4, paragraph (a).

669 Paragraph 6 of the comments on article 4, paragraph (a).

the spirit of international co-operation required by the Vienna Convention if Parties knowingly permitted the export of any psychotropic substance or its preparations in violation of laws and regulations of the importing country, although they may not have a treaty obligation to that effect.

13. The Single Convention limits the export and import of all “narcotic drugs” and their preparations (including preparations in its Schedule III) to medical and scientific purposes.<sup>670</sup> The text of the Vienna Convention imposes that limitation only on the export and import of substances in Schedules II, III and IV and their preparations.<sup>671</sup> It has however been submitted earlier that the Parties have nevertheless an obligation to limit the export and import of substances in Schedule I and their preparations to “scientific and very limited medical purposes”.<sup>672</sup>

14. Article 12 of the Vienna Convention applies not only to the trade between States, but also to the trade between different “regions” (article 1, paragraph *(k)*) of the same State; see however below, the comments on article 12, paragraph 3, subparagraph *(i)*.

15. As regards exceptions from the import certificate and export authorization system of article 12, paragraph 1, and from the system of export declarations of article 12, paragraph 2, in certain bilateral relations, see article 2, paragraph 7, subparagraph *(a)*, clause *(iii)*, subparagraph *(b)*, clause *(iii)* and subparagraph *(c)*, clause *(iii)*.

***Paragraph 1, subparagraph (a)***

**1. *(a)* Every Party permitting the export or import of substances in Schedule I or II shall require a separate import or export authorization on a form to be established by the Commission, to be obtained for each such export or import whether it consists of one or more substances.**

***Commentary***

1. The subparagraph under consideration corresponds to article 31, paragraph 4, subparagraph *(a)* and paragraph 5, last sentence of the Single Convention.

2. The Single Convention does not provide for establishment by the Commission of forms<sup>673</sup> of export or import authorizations. It requires only

<sup>670</sup> Article 4, paragraph *(c)*; for exceptions see article 49 and article 27, paragraph 1 of the Single Convention.

<sup>671</sup> Article 5, paragraph 2, in connexion with article 3, paragraph 1.

<sup>672</sup> Paragraph 6 of the above comments on article 7, paragraph *(f)*; see also paragraph 9 of the comments on article 7, paragraph *(b)* and paragraph 1, but also paragraphs 2 to 8 of the comments on article 5, paragraph 1.

<sup>673</sup> 1961 *Commentary*, paragraph 4 of the comments on article 31, paragraph 5 (p. 364).

that the Parties should “follow as closely as may be practicable the form of import certificate approved by the Commission”.<sup>674</sup> The “import certificate” of the Single Convention is not the same as the “import authorization” of that treaty. It is a document issued by the Government of the importer and certifying to the Government of the exporter that the importer has been authorized to import given quantities of “narcotic” drugs in a particular shipment to be authorized by the Government of the exporter, i.e. by an “export authorization”. Since an “import authorization” may under the Single Convention allow an importation of the approved total quantity in more than one consignment,<sup>675</sup> several “import certificates” may under the Single Convention relate to a single “import authorization”. The sum of the quantities of “narcotic” drugs whose approval for importation has been confirmed to the Government of the exporter by two or more “import certificates” relating to the single “import authorization”, must not exceed the total allowed by that authorization. Where the importation is authorized only in one consignment, an authenticated copy of the “import authorization” may take the place of an “import certificate”.<sup>676</sup> While one “import authorization” may under the Single Convention allow an importation in more than one consignment, a single “export authorization” cannot do so in respect of an authorized export. Each separate export consignment requires under the Single Convention a separate “export authorization”.

3. The Vienna Convention does not contain any provision stipulating that an import authorization may allow an importation in more than one consignment, and consequently does not provide for an “import certificate”, i.e. for a document distinct from an “import authorization”. It is submitted that the omission of such a provision indicates the intention of the authors of that treaty to require a separate “import authorization” for each import consignment of substances in Schedule I or II. This might prove to be inconvenient in cases in which an importer finds that at a particular moment his supplier does not have in stock the whole quantities of substances that he is authorized to import. He would in such a case be required to obtain them in several consignments, and consequently would have to apply for additional import authorizations.

4. Some Governments may perhaps not accept that interpretation, and may hold that although the Vienna Convention does not expressly permit, it also does not prohibit, an import authorization allowing an importation in more than one consignment. They would in that case have to take measures to ensure that the total of the quantities whose export in more than one consignment is authorized by two or more export authorizations—as the case may be—does not exceed the amount permitted by the single import authorization on the basis of which the export authorizations are issued.

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<sup>674</sup> Article 31, paragraph 5 of the Single Convention.

<sup>675</sup> Article 31, paragraph 4, subparagraph (*d*) of that treaty.

<sup>676</sup> 1961 *Commentary*, paragraphs 2 to 4 of the comments on article 31, paragraph 4, subparagraphs (*a*) and (*d*) of the Single Convention (pp. 357 to 358 of the English text). The administrative terminology or practice of some countries uses the terms “import authorization” and “import certificate” interchangeably.

5. It has been mentioned above<sup>677</sup> that under the Single Convention the Parties are only required to “follow as closely as may be practicable the form of ‘import certificate’ approved by the Commission”,<sup>678</sup> Moreover that Convention does not require Parties to use a particular form either of the “import authorization”,<sup>679</sup> or of the “export authorization”, although it prescribes the contents of those two documents.<sup>680</sup> The Vienna Convention, on the other hand, obligates the Parties to issue those authorizations on *forms* to be established by the Commission.

6. Those forms as drafted and approved by the Commission may be reproduced by the Secretary-General and placed at the disposal of each Party in a sufficient number of copies. Parties may however also use copies which they reproduce themselves, particularly if they wish to use a language not employed by the United Nations for documents of that kind.

7. By its practice in issuing import authorizations a Party can in respect of substances in Schedules I and II obtain results very similar to those which it can achieve in respect of substances in Schedules II, III and IV by resort to article 13; by application of article 13 a Party can ensure that in relation to other Parties its imports of substances in Schedules III and IV are subjected to a system of authorizations very similar to those applicable to substances in Schedules I and II pursuant to article 12, paragraph 1.

8. See also the *1961 Commentary*, comments on article 31, paragraph 4, subparagraphs (a) and (d) and paragraph 5 (pp. 357 to 359 and 363 to 364).

#### *Paragraph 1, subparagraph (b)*

*(b)* Such authorization shall state the international non-proprietary name, or, lacking such a name, the designation of the substance in the Schedule, the quantity to be exported or imported, the pharmaceutical form, the name and address of the exporter and importer, and the period within which the export or import must be effected. If the substance is exported or imported in the form of a preparation, the name of the preparation, if any, shall additionally be furnished. The export authorization shall also state the number and date of the import authorization and the authority by whom it has been issued.

#### *Commentary*

1. The subparagraph under consideration corresponds to article 31, paragraph 4, subparagraphs (b) and (c) of the Single Convention.

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<sup>677</sup> Paragraph 2 of the present comments.

<sup>678</sup> Article 31, paragraph 5.

<sup>679</sup> As regards the difference between an “import certificate” and an “import authorization” see paragraph 2 of the present comments.

<sup>680</sup> Article 31, paragraph 4, subparagraphs (b) to (d).

2. The forms to be drafted and approved by the Commission pursuant to paragraph 1, subparagraph (a) must cover all the points mentioned in subparagraph (b), and also provide space for certifications pursuant to the second and third sentence of paragraph 3, subparagraph (c). The authorizations should also expressly state that the importation<sup>681</sup> or exportation—as the case may be—of the substance or substances referred to therein is approved.

3. The Vienna Convention does not state the intergovernmental organ which is authorized to establish international non-proprietary names for the purpose of article 12, paragraph 1, subparagraph (b) and paragraph 2, subparagraph (b), clause (ii). There can however be no doubt that the 1971 Conference intended to refer in those provisions to names which may be established by the World Health Organization, it being left to that Organization to select them in accordance with procedures determined or to be determined by its competent organs.<sup>682</sup> The Secretary-General should obtain from the World Health Organization all those names which relate to substances in the Schedules of the Vienna Convention, and communicate them to all parties, to States non-Parties and to the Board.

4. The nature of the substance or its preparation concerned must be clearly identified in the import and export authorization. It would be advisable to indicate the designation of the substance in the Schedule also in cases in which it is possible to state its international non-proprietary name.

5. An indication of the pharmaceutical form (ampoule, pill, powder, etc.) of the psychotropic substance or its preparation in question is expressly required, and is indeed indispensable for control purposes; but in the case of preparations information on the chemical composition of the preparation should normally also be given. The composition of a preparation need not be

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681 Article 12, paragraph 1, subparagraph (c).

682 The “Revised General Principles for Guidance in Devising International Non-Proprietary Names for Pharmaceutical Preparations” are contained in an annex to resolution EB.37.R9 of the Executive Board of the World Health Organization (January 1966). (The Executive Board decided by resolution EB.43.R9 (February 1969) that the term “pharmaceutical preparations” be changed to “pharmaceutical substances” wherever applicable; the resolution of January 1966 authorized the Director-General of the World Health Organization to make such revisions of those General Principles as may be desirable in the light of advances in science and of experience and as may be suggested by the members of the WHO Expert Advisory Panel on the International Pharmacopoeia and Pharmaceutical Preparations (Substances) designated to deal with the selection of non-proprietary names; see also resolution WHA 3.11 (May 1950) of the World Health Assembly, resolutions of the Executive Board of the World Health Organization (EB.12.R24 (May 1953) and EB.15.R7 (January 1955) and *Official Records of the World Health Organization* No. 60, Annex 3; see furthermore, Commission on Narcotic Drugs, report on the twelfth session, paragraph 54, *Official Records of the Economic and Social Council, Twenty-fourth Session, Supplement No. 10* (E/3010/Rev.1) and *1961 Commentary*, paragraphs 1 to 4 on article 30, paragraph 3 of the Single Convention (pp. 341 to 342) and paragraphs 2 to 5 of the comments on article 31, paragraph 4, subparagraphs (b) and (c) of that treaty (pp. 360 to 361); see finally also World Health Assembly resolution WHA 16.36, paragraph 4, subparagraph (b) clause (i) (May 1963).

given in cases in which it is unequivocally indicated by the name of the preparation, and in which it can safely be assumed that the control officers concerned of the exporting and importing country will be aware of the composition of a preparation bearing that name. In cases in which the preparation in question has no name or in which it is doubtful whether the control officers will be informed of the composition of the preparation concerned by learning its name, an indication of the exact composition of the preparation appears to be required.

6. Since an export authorization can be issued only on the basis of a corresponding import authorization, it must clearly identify that import authorization. This can normally be done by indicating the reference number and date of the import authorization and the authority by whom it has been issued. In the rare cases in which that would not be sufficient, the export authorization should contain such additional data as are necessary to identify the import authorization in question. It may be recalled in this context that Parties are under article 16, paragraph 2, bound to communicate to the Secretary-General the names and addresses of the governmental authorities which are entitled to issue import and export authorizations pursuant to article 12, paragraph 1, and that the latter has to make available those data to all Parties. It is essential that he furnish that information also to all States which are not parties to the Vienna Convention.

7. The French text uses in the last sentence the term “*certificat d'importation*” for “*autorisation d'importation*”. It does not denote what is called in the Single Convention “*certificat d'importation*”.<sup>683</sup>

8. See also the *1961 Commentary*, comments on article 31, paragraph 4, subparagraphs (b) and (c) of the Single Convention (pp. 360 to 362).

***Paragraph 1, subparagraph (c)***

**(c) Before issuing an export authorization the Parties shall require an import authorization, issued by the competent authority of the importing country or region and certifying that the importation of the substance or substances referred to therein is approved, and such an authorization shall be produced by the person or establishment applying for the export authorization.**

*Commentary*

1. The subparagraph under consideration covers the substance of the first sentence of article 31, paragraph 5 of the Single Convention. It uses the

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<sup>683</sup> See paragraph 2 of the comments on article 12, paragraph 1, subparagraph (a) and foot-note 662.



term “region”,<sup>684</sup> thus expressly providing that it has to be applied not only to inter-State, but also to interregional trade.

2. The word “person” seems to refer in this context to natural persons, and the word “establishment” to other exporters, including private and public corporate bodies such as State enterprises or Government agencies.<sup>685</sup>

3. An export authorization may be granted only to the exporter named in the import authorization. As regards substances in Schedule II, an export authorization may also be granted to scientists for the purpose of sending them to foreign researchers, and an import authorization may be granted to physicians for use of such substances in their practice, to scientists for purposes of research and to patients for their own medically prescribed use, although these persons may not have the general governmental authorization pursuant to article 8, paragraph 1, to engage in international transactions in such substances.<sup>686</sup>

4. Only one exporter may be named in the export authorization, and only one importer in the import authorization. Such authorizations must not be transferable.<sup>687</sup>

5. An export authorization can be granted only in accordance with the conditions of the corresponding import authorization. It may however prescribe additional conditions compatible with the terms of the import authorization.

6. The import certificate and export authorization system must also be applied to a shipment of a substance in Schedule I or II which is sent from one area to another area of the same State, but which has to cross the territory of another State, unless the consignment is to be transported by aircraft not landing in the foreign State. That system has to be applied in such a case although the two areas do not form different “regions”<sup>688</sup> or parts of them. This follows from the provisions of article 12, paragraph 1, subparagraph (c) and (d) and paragraph 3, subparagraphs (d) and (e), according to which an export consignment of a substance in Schedule I or II must be accompanied by a copy of the export authorization. Such an authorization should be granted to an exporter only if he produces a corresponding import

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684 See foot-note 5 for other provisions using that term. Nearly all provisions of the Vienna Convention concerning administrative controls are to be applied separately to different “regions”, i.e., to parts of a State set apart by a Party for that purpose although they do not expressly provide for such a “regional” application.

685 For the meaning of “establishment” in other provisions, see above the comments on article 1, paragraph (l), paragraphs 7 and 8 of the comments on article 7, paragraph (a) and paragraphs 5 and 6 of the comments on article 8, paragraph 2, subparagraph (b).

686 Paragraph 4 of the above general comments on article 12; see also the 1961 *Commentary* on article 31, paragraph 4, subparagraphs (a) and (d) of the Single Convention, paragraph 10 of the comments (p. 359).

687 1961 *Commentary*, paragraphs 3 and 6 of the comments referred to in the preceding foot-note (pp. 357 and 358).

688 Article 1, paragraph (k).

authorization, and the transit of such a substance not accompanied by that copy should not be permitted. However, the application of that system may sometimes appear to be not very practical in the case of consignments shipped from the main territory of the exporting State to one of its enclaves which is surrounded by the territory of the State of transit and is located in the border region of the two States. That may in particular appear to be so where international agreements limit the control which the State of transit may exercise over shipments of the exporting State to its enclave or vice versa. Although obviously not compatible with the letter of the Vienna Convention (unless permitted under article 12, paragraph 3, subparagraph *(i)*), the two States may in the case of substances in Schedule II perhaps find it sufficient to apply to such shipments other effective controls than the rules of the import certificate and export authorization system.<sup>689</sup>

7. The import certificate and export authorization system must be applied by Parties also to a shipment of a substance in Schedule I or II to the territory of a non-Party or to a non-metropolitan territory of a Party to which the Vienna Convention does not apply pursuant to its article 27 or 29.<sup>690</sup>

**Paragraph 1, subparagraphs (d) and (e)**

**(d)** A copy of the export authorization shall accompany each consignment, and the Government issuing the export authorization shall send a copy to the Government of the importing country or region.

**(e)** The Government of the importing country or region, when the importation has been effected, shall return the export authorization with an endorsement certifying the amount actually imported, to the Government of the exporting country or region.

*Commentary*

1. The two subparagraphs under consideration correspond to article 31, paragraphs 6 and 7 of the Single Convention. The comments of the *1961 Commentary* on article 31, paragraph 6 and paragraph 7, subparagraph *(c)* and those on paragraph 7, subparagraphs *(a)* and *(b)*<sup>691</sup> apply *mutatis mutandis* also to the two subparagraphs under consideration.

2. Both subparagraphs expressly provide for their separate application to “regions”.<sup>692</sup>

<sup>689</sup> Article 12, paragraph 3, subparagraph *(i)* of the Vienna Convention; see also *1961 Commentary* on article 31, paragraph 4, subparagraphs *(a)* and *(d)* of the Single Convention, paragraph 8 of the comments (pp. 358 and 359).

<sup>690</sup> See article 18 of the 1925 Convention; the Single Convention also does not contain a provision of that kind; see *1961 Commentary*, paragraph 7 of the comments referred to in the preceding foot-note (p. 358).

<sup>691</sup> *1961 Commentary*, pp. 365 to 368.

<sup>692</sup> Article 1, paragraph *(k)*; paragraph 1 of the above comments on article 12, paragraph 1, subparagraph *(c)*; foot-notes 684 and 685.

3. The copy of the export authorization may be enclosed in or attached to the consignment in the same way as other documents needed for customs clearance. It is, however, advisable to do this in such a way as appears necessary to safeguard the document against loss, and thus to prevent detention of the consignment or delay in its arrival which may result from the application of the provisions of article 12, paragraph 3, subparagraphs *(d)* and *(e)*. When attaching or enclosing the copy of the export authorization, the shipper should also take into account that it is necessary to prevent the document from attracting the attention of potential illicit traffickers to the nature of the consignment.

4. Like the Single Convention, the Vienna Convention requires the Government of the importing country or region to return to the Government of the exporting country or territory the copy of the export authorization which it has received from the authorities of the exporter pursuant to subparagraph *(d)*, with an endorsement certifying the amount actually imported. That should be done without any undue delay, particularly if the total amount indicated in the authorization as having been exported did not reach the importer. Speed in the return of the export authorization with the required endorsement would be helpful to the Government of the exporting country or region in its investigation of a possible diversion.

5. Contrary to the Single Convention,<sup>693</sup> the Vienna Convention does not expressly require that the Government of the exporting country or region, when the period fixed for the importation has expired without arrival of the consignment, should also return the copy of the export authorization with an endorsement to that effect. It is however submitted that the obligation to report by endorsement on the returned export authorization the amount actually imported also implies an obligation to report in the same way that the amount permitted by the export authorization has not been imported at all.

6. Again, contrary to the Single Convention,<sup>694</sup> the Vienna Convention does not expressly require that if a lesser quantity than that specified in the export authorization is actually exported, the quantity actually exported shall be stated by the competent authorities on the export authorization or on any official copy thereof; but omission to do so would deprive of much of its value the provision of article 12, paragraph 1, subparagraph *(d)* requiring the Government issuing the export authorization to send a copy to the Government of the importing country or region. Without information in the export authorization on the quantity actually exported, the latter Government would not be able to determine the amount for which it could consider the importer to be accountable unless and until the Government having issued the export authorization, and having received from the Government of the importing country or region a returned copy of that authorization with an endorsement stating the amount allegedly received by the importer, informs

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<sup>693</sup> Article 31, paragraph 7, subparagraph *(a)* of that treaty.

<sup>694</sup> Article 31, paragraph 7, subparagraph *(c)*.

that Government of a difference between the amount actually exported and that allegedly received. Such a delay would render much more difficult investigations of diversions into illicit channels. It can therefore be assumed that the Government of the exporter has under the two subparagraphs under consideration an implied obligation to see to it that its competent authorities state on the export authorization or on an official copy thereof to be sent to the Government of the importer, the quantity actually exported if that amount is lesser than that specified in the export authorization. If the Government of the exporter has already sent to the Government of the importer a copy of the export authorization which does not indicate the reduced quantity, it should without any undue delay send to the latter Government an appropriately revised copy stating the quantity actually exported.

*Paragraph 2, subparagraph (a)*

**2. (a) The Parties shall require that for each export of substances in Schedule III exporters shall draw up a declaration in triplicate, on a form to be established by the Commission, containing the following information:**

- (i) The name and address of the exporter and importer;**
- (ii) The international non-proprietary name, or, failing such a name, the designation of the substance in the Schedule;**
- (iii) The quantity and pharmaceutical form in which the substance is exported, and, if in the form of a preparation, the name of the preparation, if any; and**
- (iv) The date of dispatch.**

*Commentary*

1. The Single Convention does not contain provisions corresponding to those of article 12, paragraph 2 of the Vienna Convention, since it requires the application of the import certificate and export authorization system—like that outlined in article 12, paragraph 1, of the Vienna Convention for substances in that treaty's Schedules I and II—for all narcotic drugs and their preparations, excepting only preparations in its Schedule III.

2. It will be noted that article 12, paragraph 2, applies only to substances in Schedule III of the Vienna Convention. Individual international transactions in those substances accordingly need not be approved by, but only reported to, the control authorities; but persons or enterprises engaging in the international trade in substances in Schedule III have to be “under licence or other similar control measures” pursuant to article 8, paragraph 1.<sup>695</sup>

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<sup>695</sup> For the implied authorization of State enterprises, see paragraph 5 of the above comments on article 8, paragraph 1; for some exceptions, see paragraph 13 of those comments.

3. The form of export declaration as drafted and approved by the Commission may be reproduced and distributed to Governments by the Secretary-General, or may be reproduced by the Governments themselves.<sup>696</sup>

4. The exporter should be required to draw up his export declaration in quadruplicate, in order to be able to retain one copy for his own records.

5. It would be useful to give in the declaration the name of the substance in the Schedule also in those cases in which an international non-proprietary name is available and—as is required—is indicated.<sup>697</sup>

6. Information on the “pharmaceutical form” (ampoule, pill, powder, etc.) is to be given in such a way as to facilitate the task of the control officers to verify the identity of the exported substance. It is suggested that in the case of a preparation the information given in the declaration should also make it possible for the control authorities to determine its content or the psychotropic substance or substances included. In cases in which it can safely be expected that the name of the preparation will unequivocally indicate to control officers its chemical composition, that name would suffice. In other cases, the declaration should contain direct information on that composition.<sup>698</sup>

7. The Vienna Convention does not require that international travellers carrying for personal use small quantities of preparations of substances in Schedule III make a declaration pursuant to article 12, paragraph 2.

8. As regards an exception from the requirement of an export declaration pursuant to article 12, paragraph 2, in certain bilateral relations, see article 2, paragraph 7, subparagraph (c), clause (iii); as regards the exception of some “exempt preparations”, see article 3, paragraph 3.

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

***(b)*** Exporters shall furnish the competent authorities of their country or region with two copies of the declaration. They shall attach the third copy to their consignment.

***(c)*** A Party from whose territory a substance in Schedule III has been exported shall, as soon as possible but not later than ninety days after the date of dispatch, send to the competent authorities of the importing country or region, by registered mail with return of receipt requested, one copy of the declaration received from the exporter.

<sup>696</sup> For a form of export declaration drafted by the Secretary-General but at the time of this writing not yet approved by the Commission, see document E/CN.7/547/Add.2, annex V.

<sup>697</sup> As regards international non-proprietary names, see paragraph 3 of the above comments on article 12, paragraph 1, subparagraph (b); see also paragraph 4 of those comments and foot-note 682.

<sup>698</sup> See also paragraph 5 of the comments referred to in the preceding foot-note.

**(d) The Parties may require that, on receipt of the consignment, the importer shall transmit the copy accompanying the consignment, duly endorsed stating the quantities received and the date of receipt, to the competent authorities of his country or region.**

*Commentary*

1. The copy of the export declaration may be enclosed in or attached to the consignment in the same manner as documents required for customs clearance. It is however suggested that this should be done in a way which does not attract to the nature of the shipment the attention of persons who might divert it for illicit purposes.<sup>699</sup>

2. All three subparagraphs expressly provide for their separate application to “regions”.<sup>700</sup>

3. The exporter should be required to send *immediately* two copies of the declaration to his competent authority in order to enable that authority to send to the competent authority of the importing country or region one of those copies “as soon as possible but not later than ninety days after the date of dispatch” of the consignment.

4. The word “Parties” in subparagraph (d) appears to require some consideration. It is submitted that if that word were understood to refer to the importing Parties, subparagraph (d) would hardly serve any purpose, since it is obvious that without any treaty authority an importing Party could require an importer to transmit to its control authorities the copy of the export declaration referred to in that subparagraph and endorsed as required therein. It may also be noted in this context that subparagraph (d) authorizes the Parties to require that the importer transmit the document involved “to the competent authorities of *his* country or region”. That text apparently refers to, or at least also includes, authorities other than those of the Party requiring the transmission. The English version of an earlier text of subparagraph (d)<sup>701</sup> before the 1971 Conference had the possessive pronoun “their” in place of “his” in accordance with the view of several delegates that under paragraph 2 no administrative burdens should be imposed upon the importing Parties, which would often be developing countries.<sup>702</sup>

<sup>699</sup> See also paragraph 3 of the above comments on article 12, paragraph 1, subparagraphs (d) and (e).

<sup>700</sup> Article 1, paragraph (k); see also foot-notes 684 and 5 above.

<sup>701</sup> For this earlier text, see document E/CONF.58/C.4/L.32 (1971 *Records*, vol. I, p. 82). The French version of that text already agrees with the final text of subparagraph (d).

<sup>702</sup> The Revised Draft Protocol, prepared by the Commission and serving the 1971 Conference as a working document, in its article 11, paragraph 2 corresponding to article 12, paragraph 2 of the Vienna Convention does not contain a provision having the substance of subparagraph (d). The Legal Adviser to the 1971 Conference stated that article 11, paragraph 2 of the Revised Draft Protocol imposed obligations only on exporting Parties; see 1971 *Records*, vol. I, pp. 23 *et seq.* and vol. II, paragraph 24 of the minutes of the tenth meeting of the Committee on Control Measures (p. 147).

5. It is also held that the phrase “the Parties may require” cannot be interpreted to mean that the exporting and importing Party may, in agreement, provide for the requirement referred to in subparagraph (*d*), which so interpreted would also not serve any purpose. It is obvious that the importing Party does not need the agreement of the exporting Party to impose upon the importer an obligation to transmit to its authorities the endorsed copy of the export declaration.

6. It therefore appears to be the better opinion that under subparagraph (*d*) an exporting Party may impose upon an importing Party an obligation to require its importer to transmit to its competent authorities the copy of the export authorization as provided for in that subparagraph. That obligation also implies that the importing Party has to investigate any discrepancy between the quantity exported, as indicated in the copy of the export declaration which it has received from the Government of the exporting Party pursuant to subparagraph (*c*), and the quantity received by the importer according to the endorsed copy of the export declaration which he has transmitted to the competent authorities of the importing Party. The importing Party must also report such a discrepancy to the exporting Party concerned, and more generally co-operate closely with that Party and any other Party in question in that investigation.<sup>703</sup>

7. The Vienna Convention does not prescribe any particular way in which a request pursuant to subparagraph (*d*) should be made. It may be held that an exporting Party may make that request in respect of a particular shipment, or of all shipments of indicated substances in Schedule III, or of all substances in that Schedule. The request regarding all shipments of indicated substances or of all substances in Schedule III may be addressed to particular Parties or to all Parties. It may be communicated to the importing Parties concerned, directly or through the Secretary-General. It would be advisable that such a communication should in any event be sent by registered mail with return of receipt requested.

8. If—as subparagraph (*d*) appears to allow—some requests are made to all Parties in regard to all substances in Schedule III, other requests are made to those Parties only in regard to one or several of such substances, and yet other requests are made only to one or more Parties in respect of all, or only of one or more, of those substances, a very complex situation would arise. Different importing countries would in such a case have to apply different rules to the import of different substances in Schedule III, and to the import of the same substances from different countries. It is suggested that it would not only simplify the task of applying subparagraph (*d*) but would also advance the effectiveness of control of the international trade in substances in Schedule III if all exporting Parties through the Secretary-General requested all importing Parties, and indeed all importing States whether Parties to the

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<sup>703</sup> See also article 21, paragraph (*c*) and the statement of the Secretary of the International Narcotics Control Board, paragraph 22 of the minutes referred to in the preceding foot-note.

Vienna Convention or not, pursuant to subparagraph (*d*) to require importers to transmit to their competent authorities the copy of the export declaration referred to in that provision.

**Paragraph 3, introductory subparagraph and subparagraph (a)**

**3. In respect of substances in Schedules I and II the following additional provisions shall apply:**

**(a) The Parties shall exercise in free ports and zones the same supervision and control as in other parts of their territory, provided, however, that they may apply more drastic measures.**

*Commentary*

1. Subparagraph (*a*) corresponds to article 31, paragraph 2 of the Single Convention. Its English and French texts are nearly literally the same as those of the provision of the Single Convention;<sup>704</sup> its Spanish text differs from that of the Single Convention only in that the Vienna Convention uses the word “*supervisión*” and the Single Convention the word “*inspección*” for the English word “supervision” and the French word “*surveillance*”. The comments of the *1961 Commentary* on article 31, paragraph 2, of the Single Convention therefore apply *mutatis mutandis* also to the provision of the Vienna Convention.<sup>705</sup>

2. It is clear that the fact that a Party makes a part of its territory a free port or a free zone does not relieve that Party from implementing in that territory its obligations under the Vienna Convention. The provision of subparagraph (*a*) only expresses and emphasizes what would in any event be the obligation of the Parties. The authors of the Vienna Convention<sup>706</sup> appear to have found it necessary to stress that point because only a very limited supervision is normally carried out over shipments of goods from abroad into free ports or free zones, or from those ports or zones to foreign destinations. In fact, the conditions often prevailing in free ports and free zones may render such areas convenient for operations of illicit traffickers, and that should often be a reason for applying in them even stricter control measures than in other areas. The Vienna Convention points to that by referring to the possibility of applying “more drastic measures”.<sup>707</sup>

3. The phrase “their territory” is used in subparagraph (*a*) in the sense of “the area under their control”.<sup>708</sup>

<sup>704</sup> The English text of the Vienna Convention uses the singular “their territory” while that of the Single Convention employs the plural “their territories”. The same difference exists between the two French texts.

<sup>705</sup> See also article 14 of the 1925 Convention.

<sup>706</sup> As those of the 1925 Convention and of the Single Convention.

<sup>707</sup> See also article 23.

<sup>708</sup> Paragraph 11 of the general comments on article 1 and foot-note 6.



**Paragraph 3, subparagraph (b)**

3. (b) Exports of consignments to a post office box, or to a bank to the account of a person other than the person named in the export authorization, shall be prohibited.

*Commentary*

1. The subparagraph under consideration is nearly literally the same as article 31, paragraph 8 of the Single Convention.<sup>709</sup> The comments of the 1961 *Commentary* on that paragraph of the Single Convention therefore apply *mutatis mutandis* also to the provision of the Vienna Convention.

2. It will be noted that according to the introductory subparagraph paragraph 3 subparagraph (b) applies only to substances in Schedules I and II and not to those in Schedules III and IV.

3. Subparagraph (b) prohibits any international consignment of a substance in Schedule I or II to a post office box while it forbids only those international shipments of such substances to a bank which are sent to the account of a person other than the one named in the export authorization.

4. The conditions under which substances can be sent to, and withdrawn from, post office boxes do not appear to offer satisfactory safeguards against diversion of psychotropic substances into illicit channels. The same applies, at least very often, also to banks. Moreover the premises in which the trade in or distribution of psychotropic substances or their preparations may take place must under the terms of the Vienna Convention be equipped with the necessary protective arrangements to prevent diversion. They must be controlled “under licence or other similar control measure”.<sup>710</sup> It seems hardly to be feasible to impose controls of that kind on the rooms in which post office boxes are located or on the premises in which banks may store goods received to the account of their clients. Considerations of that kind indicate the motives which moved the 1971 Conference to adopt subparagraph (b) in respect of the more dangerous psychotropic substances i.e. of those in Schedules I and II.

5. It is also suggested that although not prohibited by subparagraph (b) international consignments<sup>711</sup> of substances in Schedule I to a bank cannot easily be reconciled with the rules or in any case with the spirit of the rules of the Vienna Convention concerning the control of such substances.<sup>712</sup> It would be advisable not to admit them.

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<sup>709</sup> The French text of those provisions of the two treaties is exactly the same.

<sup>710</sup> As regards substances in Schedules II, III and IV see article 8, paragraph 2, subparagraphs (b) and (c) and article 3, paragraph 1; as regards substances in Schedule I see paragraphs 7 to 16 of the comments on article 7, paragraphs (a) and (e), paragraph 7 of the comments on article 7, paragraph (b) and paragraph 12 of the comments on article 7, paragraph (f).

<sup>711</sup> And even domestic consignments of such substances.

<sup>712</sup> See article 7, paragraph (f); see also paragraphs (b) and (c) of that article.

6. Shipments of psychotropic substances by mail present a special risk of diversion. The Parties may wish to consider the advisability of revising the provisions concerning narcotic drugs in the Universal Postal Convention, the Agreement concerning Insured Letters and Boxes and the Agreement Concerning Postal Parcels so as to cover also at least the more dangerous psychotropic substances, i.e. those in Schedules I and II.<sup>713</sup>

7. The Commission may also wish to consider the advisability of including in the form of export authorization which it has to establish pursuant to article 12, paragraph 1, subparagraph (a), a line providing for the possibility that an importing country or region excludes importation by mail.<sup>714</sup>

8. The word “person” occurring twice in subparagraph (b) refers to natural as well as juridical persons (corporate bodies of any structure whether public or private).

### *Paragraph 3, subparagraph (c)*

**(c) Exports to bonded warehouses of consignments of substances in Schedule I are prohibited. Exports of consignments of substances in Schedule II to a bonded warehouse are prohibited unless the Government of the importing country certifies on the import authorization, produced by the person or establishment applying for the export authorization, that it has approved the importation for the purpose of being placed in a bonded warehouse. In such case the export authorization shall certify that the consignment is exported for such purpose. Each withdrawal from the bonded warehouse shall require a permit from the authorities having jurisdiction over the warehouse and, in the case of a foreign destination, shall be treated as if it were a new export within the meaning of this Convention.**

### *Commentary*

1. A “bonded” warehouse is an authorized storage facility in which importers may, under the control of the customs office, deposit imported goods without paying customs duties until the goods are moved from the warehouse for domestic sale or consumption. The importer is also not required to pay customs duties if he re-exports the deposited goods. The bonded warehouse may be “public”, i.e. Government-owned, or a licensed private enterprise.<sup>715</sup>

<sup>713</sup> See also *1961 Commentary*, paragraph 6 of the comments on article 31, paragraph 8 of the Single Convention (p. 370) and foot-notes 7, 8 and 9 to those comments (also p. 370).

<sup>714</sup> See also document E/NR.FORM/Rev.2.

<sup>715</sup> *1961 Commentary* on article 31, paragraph 9 of the Single Convention, paragraphs 1 and 8 of the comments (pp. 371 and 373).

2. The control arrangements governing bonded warehouses are devised primarily for the purposes of preventing the evasion of customs duties; they may not always be fully satisfactory for the purpose of drug control. The storage facilities of a bonded warehouse may not be equipped with the special safeguards which are necessary to prevent diversion of psychotropic substances that, being potent in relatively very small quantities, may more easily be diverted without drawing the attention of control officers than more bulky goods.<sup>716</sup> Deposit in a bonded warehouse of dangerous psychotropic substances, which for illicit traffickers are very valuable, presents a risk which justifies its prohibition, or at least special precautionary measures such as those outlined in the subparagraph under consideration.

3. Consequently the first sentence of subparagraph (c) prohibits international consignments to a bonded warehouse of the most dangerous psychotropic substances, i.e. of those in Schedule I.

4. The remainder of that subparagraph, applicable only to international shipments to a bonded warehouse of substances in Schedule II, provides for rules intended to prevent the diversion of those substances into illicit channels while deposited in such a warehouse. Exports of substances in Schedules III and IV to a foreign bonded warehouse are under the Vienna Convention not subject to restrictive rules.

5. The text of subparagraph (c) concerning substances in Schedule II follows closely the wording of article 31, paragraph 9 of the Single Convention. The comments of the 1971 Commentary on that treaty provision<sup>717</sup> therefore apply *mutatis mutandis* to subparagraph (c).

6. The export of a substance in Schedule II to a foreign bonded warehouse may be authorized only if the import authorization<sup>718</sup> on the basis of which the export authorization is to be granted expressly states that the importation has been approved for the purpose of being placed in a bonded warehouse. It is suggested that the import authorization should expressly name the particular warehouse which is to receive the exported substances, in order to enable the authorities of the exporting country or region to determine whether the conditions under which that warehouse operates render it advisable to disallow the export in the interest of effective control. The export authorization, which according to subparagraph (c) has to certify that the shipment is exported for the purpose of being deposited in a bonded warehouse, should also identify the warehouse to which the consignment is to be addressed, and that warehouse should be the same as that named in the corresponding import authorization.<sup>719</sup>

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<sup>716</sup> See also paragraphs 4 and 5 of the above comments on article 12, paragraph 3, subparagraph (b) and foot-note 710 above.

<sup>717</sup> Pages 371 to 373.

<sup>718</sup> As regards the use of the phrase “*certificat d’importation*” for “*autorisation d’importation*” in the French text, see foot-note 662; see also paragraph 8 of the General Comments on article 12 and paragraph 2 of the comments on article 12, paragraph 1, subparagraph (a).

<sup>719</sup> 1961 Commentary on article 31, paragraph 9 of the Single Convention, paragraph 4 of the comments (p. 372).

7. The receipt<sup>720</sup> issued by the bonded warehouse is often evidence of the title to the deposited goods. The title can in a number of countries be transferred to another person by endorsement of that receipt. It is suggested that this method of transfer of title should not be permitted for substances in Schedule II, since it could hardly be reconciled with the rules of the Vienna Convention governing trade in those substances.<sup>721</sup>

8. The special permit of the authorities having jurisdiction over the warehouse is required in order to enable them to ensure that the removed substances do not come into the possession of persons not authorized under the Vienna Convention to acquire them. Removal of only a part of the deposited substances might often require an alteration of the packing, which pursuant to article 12, paragraph 3, subparagraph (g) requires the permission of the competent authorities. The control authorities should in that case determine whether deposited substances have been diverted. It would often be advisable to do so also on the occasion of other requests for a permit of withdrawal.

9. In the case of a withdrawal to a foreign destination, both a permit of withdrawal and an export authorization are required. The authorities may issue two separate documents, the one being the permit and the other the export authorization; or they may include the permit of withdrawal in the document containing the export authorization. In any case, the applicant for the export authorization has to produce to the authorities an import authorization of the country or region of the new destination, and to comply with all other requirements of the import certificate and export authorization system laid down in article 12, paragraph 1. He should also indicate in his request for the export authorization that the substances to be exported are stored in a bonded warehouse and name that warehouse.<sup>722</sup>

10. In view of the risk of diversion involved, it would be desirable to keep down the number of authorizations of export to a bonded warehouse, particularly to a private one.<sup>723</sup> The control agencies will wish to weigh in cases of requests for such authorizations the public interest in effective control against that in not unduly restricting the international trade in useful medicines, and thus their availability in foreign countries.<sup>724</sup>

11. The word “person” as used in subparagraph (c) refers to natural persons, and the word “establishment” to other exporters, including private as well as public corporate bodies.<sup>725</sup>

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720 Called “warehouse receipt” or “warehouse warrant”.

721 See also paragraph 9 of the comments referred to in foot-note 719, (p. 373).

722 See also paragraph 7 of the comments referred to in foot-note 719 (p. 373).

723 See above paragraph 1 of the present comments and paragraphs 8 and 9 of the comments referred to in foot-note 719 (p. 373).

724 See the Preamble, the fifth *considerandum*.

725 See foot-note 685 above and paragraph 2 of the comments on article 12, paragraph 1, sub-paragraph (c).

12. Although subparagraph (c) does not specifically refer to “regions”, it applies not only to the international trade, but also to the inter-regional trade, i.e. to the trade between two “regions” of the same State.<sup>726</sup>

**Paragraph 3, subparagraph (d)**

**(d) Consignments entering or leaving the territory of a Party not accompanied by an export authorization shall be detained by the competent authorities.**

*Commentary*

1. The text of subparagraph (d) follows closely that of article 31, paragraph 10 of the Single Convention. The comments of the 1961 *Commentary* on that paragraph of the earlier treaty<sup>727</sup> therefore apply *mutatis mutandis* also to the subparagraph under consideration.

2. Subparagraph (d) must be read together with article 12, paragraph 1, subparagraph (d). The absence of a copy of the export authorization is however not necessarily due to a violation of that provision of article 12, paragraph 1, nor a definite proof that the consignment is illegitimate. The document may have been lost during the transportation of the psychotropic substances. It is for that reason that subparagraph (d) does not require their seizure or confiscation, but only their detention, which is a provisional measure pending the results of an inquiry concerning the legitimacy of the shipment and the eventual arrival of a copy of the export authorization. If the inquiry shows that the consignment is illegitimate, the detained substances should be seized and confiscated.<sup>728</sup>

3. If the origin of the shipment cannot be established—for instance if as a result of damage caused to the packing the identity of the shipper cannot be determined—it is advisable that the detaining authorities should wait an appropriate length of time before taking a final decision on the disposal of the psychotropic substances. Their owner should have an opportunity to claim them, to prove the legitimacy of the shipment and to produce the missing copy of the export authorization.<sup>729</sup>

4. The term “territory” in subparagraph (d) means “area”.<sup>730</sup>

5. The text of the subparagraph under consideration may seem to apply only to shipments crossing the border of different States. It is however

<sup>726</sup> See foot-notes 5, 684 and 692.

<sup>727</sup> Pages 374 and 375.

<sup>728</sup> See also article 22, paragraph 3.

<sup>729</sup> 1961 *Commentary* on article 31, paragraph 10 of the Single Convention, paragraph 4 of the comments (p. 375).

<sup>730</sup> See foot-note 6 above.

submitted that the subparagraph also governs consignments crossing the borders of different regions of the same State.<sup>731</sup>

6. According to the introductory subparagraph of paragraph 3, subparagraph (*d*) applies only to consignments of substances in Schedules I and II, other psychotropic substances not requiring an export authorization. Subparagraph (*d*) does not apply to consignments of substances in Schedule III not accompanied by a copy of the declaration of export, as would be required pursuant to article 12, paragraph 2, subparagraph (*b*).

**Paragraph 3, subparagraph (e)**

**(e) A Party shall not permit any substances consigned to another country to pass through its territory, whether or not the consignment is removed from the conveyance in which it is carried, unless a copy of the export authorization for consignment is produced to the competent authorities of such Party.**

*Commentary*

1. The text of subparagraph (*e*) is nearly the same as that of article 31, paragraph 11 of the Single Convention. The comments of the *1961 Commentary* on that provision of the Single Convention<sup>732</sup> consequently also apply *mutatis mutandis* to subparagraph (*e*).

2. It is not required by the subparagraph under consideration that a person “produce” the copy of the export authorization to the competent authorities. The words “unless a copy of the export authorization . . . is produced to the competent authorities”<sup>733</sup> appeared first in the corresponding provision of article 15, paragraph 1 of the 1925 Convention, and were afterwards taken over by the Single Convention in its article 31, paragraph 11. The Parties to the 1925 Convention, as well as those to the Single Convention, have in practice not required that a copy of the export authorization should actually be “produced”, as the literal meaning of those words might suggest. They have considered it to be sufficient if the copy is enclosed in or attached to the consignment, like other commercial papers needed for customs clearance.<sup>734</sup> In the light of that practice it may be assumed that the same words in the Vienna Convention are also to be understood in that sense.<sup>735</sup>

<sup>731</sup> See also paragraphs 6 and 7 of the comments referred to in foot-note 729 (p. 375).

<sup>732</sup> Pages 376 and 377.

<sup>733</sup> A definite article or a demonstrative pronoun seems to be missing before the word “consignment” where it appears in subparagraph (*e*) in the English text a second time.

<sup>734</sup> See paragraph 3 of the above comments on article 12, paragraph 1, subparagraphs (*d*) and (*e*).

<sup>735</sup> *1961 Commentary* on article 31, paragraph 11 of the Single Convention, paragraph 2 of the comments (p. 376); see also paragraph 3 of those comments (pp. 376 to 377).

3. Subparagraph (*e*) must be read together with article 12, paragraph 1, subparagraph (*d*) and paragraph 3, subparagraph (*d*) requiring the detention of shipments not accompanied by a copy of the export authorization. Detention of the substances in question—as provided for in paragraph 3, subparagraph (*d*)—suggests itself as the principal means of implementing subparagraph (*e*).<sup>736</sup> That provisional measure should be maintained pending the outcome of an inquiry regarding the legitimacy of the shipment and the arrival of a copy of the export authorization. If the investigation shows that the consignment is illegal, it should be seized and after the required legal procedure confiscated.<sup>737</sup>

4. While it is admitted that the text of subparagraph (*e*) could be interpreted to mean that that provision applies only to consignments from one State to another State, it is nevertheless submitted that it governs also shipments from one region to another region of the same State. That conclusion is drawn from the consideration that the corresponding text of the Single Convention has also been interpreted in that sense.<sup>738</sup>

5. Again it will be noted that according to the introductory subparagraph of paragraph 3, subparagraph (*e*) applies only to consignments of substances in Schedules I and II, shipments of other psychotropic substances not requiring an export authorization.

6. The term “territory” as used in subparagraph (*e*) means “area”.<sup>739</sup>

#### *Paragraph 3, subparagraph (f)*

(*f*) The competent authorities of any country or region through which a consignment of substances is permitted to pass shall take all due measures to prevent the diversion of the consignment to a destination other than that named in the accompanying copy of the export authorization, unless the Government of the country or region through which the consignment is passing authorizes the diversion. The Government of the country or region of transit shall treat any requested diversion as if the diversion were an export from the country or region or transit to the country or region of new destination. If the diversion is authorized, the provisions of paragraph 1 (*e*) shall also apply between the country or region of transit and the country or region which originally exported the consignment.

#### *Commentary*

1. The text of subparagraph (*f*) is nearly the same as that of article 31, paragraph 12 of the Single Convention. It may be concluded that the

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<sup>736</sup> Paragraphs 1 and 6 of the comments referred to in the preceding foot-note (pp. 376 and 377).

<sup>737</sup> See also paragraph 2 of the above comments on article 12, paragraph 3, subparagraph (*d*).

<sup>738</sup> Paragraph 5 of the comments referred to in foot-note 735 (p. 377).

<sup>739</sup> See foot-note 6 above.

comments of the 1961 *Commentary* on the provision of the Single Convention<sup>740</sup> apply *mutatis mutandis* also to the provision of the Vienna Convention.

2. According to the introductory subparagraph of paragraph 3, the subparagraph under consideration applies only to consignments of substances in Schedules I and II. It is however also desirable that the authorities of a country or region of transit should take such precautionary measures as may be practicable to prevent diversion of consignments of other psychotropic substances of whose nature they may be aware. That may particularly apply to shipments of substances in Schedule III, accompanied by a copy of the export declaration pursuant to article 12, paragraph 2, subparagraph (b).

3. While the countries and regions of origin and destination have advance knowledge of exports and imports<sup>741</sup> and are thus in a position—if necessary—to take the required precautionary measures, countries or regions of transit do not have that information. The risk of diversion may consequently be particularly great in the course of transit. The Vienna Convention, following in this the Single Convention,<sup>742</sup> has therefore several provisions for the control of consignments in transit: two specific ones, subparagraphs (e) and (g), and a more general one, the subparagraph under consideration requiring *inter alia* the authorities of the countries or regions of transit to “take all due measures” to prevent diversion.<sup>743</sup>

4. The words “is permitted to pass” in the first sentence of subparagraph (f) are not intended to mean that the authorities in question are bound to take the “due measures” mentioned in that sentence only in respect of a consignment whose transit they have expressly authorized.<sup>744</sup> The practice of the Parties to the 1925 Convention and to the Single Convention under the very similarly worded corresponding provisions of those treaties<sup>745</sup> leads to the conclusion that those words—which appear also in the earlier provisions—merely mean “passes”, i.e. that they require only that the passage occur, which will be the case of all shipments whose passage is not *prohibited*. An express authorization of the passage is not a condition of the existence of the obligation provided for in the first sentence of subparagraph (f).

5. The country or region of transit is not only required to take all due measures to prevent a diversion which it has not authorized in accordance with the terms of subparagraph (f), but also to prevent the forwarding of a

<sup>740</sup> Pages 378 to 381; see also article 15, paragraph 2 of the 1925 Convention.

<sup>741</sup> Article 12, paragraph 1, subparagraphs (c) and (d).

<sup>742</sup> Article 31, paragraphs 11, 12 and 13.

<sup>743</sup> See also subparagraph (d) and the below comments on subparagraph (g).

<sup>744</sup> The words “*le passage . . . est autorisé*” in the French text as well as the words “*hayan permitido el tránsito*” in the Spanish text may even more lend themselves to that—it is suggested—incorrect interpretation.

<sup>745</sup> Article 15, paragraph 2 of the 1925 Convention and article 31, paragraph 12 of the Single Convention.



consignment addressed to another importer than the one indicated in the accompanying copy of the export authorization.

6. Governments through whose territory the psychotropic substances pass in transit are bound to take only all “due” measures, i.e. only those measures which are practical and which can reasonably be expected of them. It is submitted that they may in this respect act in the same way as they have satisfactorily done under the corresponding provisions of the 1925 Convention and of the Single Convention.<sup>746</sup>

7. The authorities of the country or region of transit may sometimes have considerable legal difficulties in determining whether an applicant for diversion is entitled to request the shipment to the new destination. They must not only establish whether the new importer is authorized to acquire the substances concerned under the administrative control law in question, but also whether the applicant is under private law entitled to dispose of the goods in transit. Who has the title to the goods or the right of disposing of them under private law will depend on the mode of transportation concerned, on the type and conditions of commercial papers employed and on the particular municipal law to be applied. Rules of private international law in force in the country or region of transit may be involved. Very often the exporter named in the copy of the export authorization may under civil law have retained the right of disposing of the psychotropic substances in transit. In some cases however the importer named in that document or even a third person may have acquired that right.

8. It is however suggested that it would be incompatible with the control rules of the Vienna Convention to approve a request for diversion made by a person who under private law has acquired a title to the psychotropic substances, but is not named as exporter or importer in the accompanying copy of the export authorization. An application for diversion made by a person acting on behalf of the exporter or importer so named and having to that effect a duly authenticated power of attorney would be admissible.<sup>747</sup>

9. Subparagraph (*f*) requires that the Government of the country or region of transit should treat any requested diversion as if the diversion were an export from the country or region of transit to the country or region of the new destination. It is held that the subparagraph does not exclude the authorization of a diversion to a person residing in the country or region of transit itself. Applying that subparagraph literally, the competent authorities of that country or region would have to issue an import authorization, and on its basis an export authorization as required by article 12, paragraph 1, sub-paragraph (*c*). It is suggested that a procedure of that kind would hardly make sense, and that a single document authorizing the diversion is sufficient.<sup>748</sup>

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<sup>746</sup> See the preceding foot-note; see also the *1961 Commentary* on article 31, paragraph 12, paragraph 2 of the comments (p. 378).

<sup>747</sup> Paragraphs 3 to 5 of the comments referred to in the preceding footnote (pp. 379 and 380).

<sup>748</sup> Paragraph 9 of the comments referred to in foot-note 746 (pp. 380 and 381).

10. All rules of the import certificate and export authorization system laid down in article 12, paragraph 1 must be applied to the shipment from the country or region of transit to the country or region of new destination, the former to be considered in regard to the diversion as exporter, and the latter as importer. That includes in particular also the rules of article 12, paragraph 1, subparagraphs *(d)* and *(e)* concerning the exchange of communications.<sup>749</sup>

11. The country or region of transit which authorizes the diversion is bound to return to the country or region which originally exported the consignment the copy of the export authorization which accompanied the consignment, endorsed as required under article 12, paragraph 1, subparagraph *(e)*, the former country or region to be considered as importer and the latter as exporter for the purpose of that provision. The country or region of transit must use for that purpose the copy of the export authorization which accompanies the consignment, since it does not receive pursuant to article 12, paragraph 1, subparagraph *(d)* a copy of that document from the country or region which is the original exporter.<sup>750</sup>

12. It would in some cases also be desirable for the Government of the country or region of transit to consult that of the country or region which originally exported to consignment, in order to determine whether the latter Government has knowledge of any reasons why the diversion should not be permitted. Such a consultation would of course not be needed if the applicant for the diversion produced an authentic document issued by the Government of the original exporter, certifying that it had no objection to an authorization of the diversion.<sup>751</sup>

13. In the case of a diversion, the substances involved must for the purpose of the statistical returns pursuant to article 16, paragraphs 4 and 5 be considered to have been exported by both the country or region in which the shipment originated and by the country or region of transit. They must be held to have been imported by the country or region of transit as well as by that of final destination.<sup>752</sup>

14. The wording of subparagraph *(f)* clearly indicates that it not only applies to consignments from one State to another State, but also to those from one region to another region of the same State. A region through which a shipment passes from another region of the same State to a destination in a third region of that State or to another State is to be considered a “region of transit”. Similarly a region through which a foreign shipment passes to a destination in another region of the same State must be held to have that character for the purpose of subparagraph *(f)*. It will be recalled that the fact that some other provisions do not explicitly provide for their separate

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<sup>749</sup> Paragraph 6 of those comments (p. 380).

<sup>750</sup> Paragraph 7 of those comments (*ibid.*); see also paragraph 4 of the above comments on article 12, paragraph 1, subparagraphs *(d)* and *(e)*.

<sup>751</sup> Paragraph 9 of those comments (pp. 380 and 381).

<sup>752</sup> Paragraph 8 of those comments (p. 380).

applications to “regions” does not exclude the need that they be so applied.<sup>753</sup>

*Paragraph 3, subparagraph (g)*

**(g) No consignment of substances, while in transit or whilst being stored in a bonded warehouse, may be subjected to any process which would change the nature of the substance in question. The packing may not be altered without the permission of the competent authorities.**

*Commentary*

1. The text of subparagraph (g) is practically the same as that of article 31, paragraph 13 of the Single Convention. It is therefore submitted that the comments of the *1961 Commentary* on the provisions of that treaty apply also to the provision of the Vienna Convention.<sup>754</sup>

2. It should be kept in mind that, according to the introductory subparagraph of paragraph 3, subparagraph (g) applies only to consignments of substances in Schedules I and II. It appears however desirable that where practicable that provision should also be applied to shipments of other psychotropic substances, particularly to those of substances in Schedule III. As regards the prohibition of changing the nature of all psychotropic substances while in transit or while being stored in a bonded warehouse, see below, paragraph 6 of the present comments.

3. It has been mentioned earlier that the conditions under which psychotropic substances are stored in bonded warehouses or are transported in transit present a particularly great risk of diversion into illicit channels. In both cases the substances may not be in the custody of persons authorized under the terms of the Vienna Convention to handle psychotropic substances.<sup>755</sup> They are also not in authorized premises equipped with all the required safeguards to prevent theft or other illicit diversions.<sup>756</sup> They are therefore particularly liable to escape control.

4. Any uncontrolled interference with the substances while stored in a bonded warehouse or while in transit may therefore offer illicit traffickers a relatively easy opportunity to obtain the goods which they need for their activities. Officials concerned with drug control were aware as early as 1925

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<sup>753</sup> Article 1, paragraph (k), article 28; see also paragraph 10 to 12 of the General Comments on article 1, the comments on article 1, paragraph (k) and foot-notes 5 and 684.

<sup>754</sup> Pages 381 to 383; see also article 17 of the 1925 Convention.

<sup>755</sup> Article 7, paragraphs (a), (b) and (f) and article 8, paragraph 1.

<sup>756</sup> Article 8, paragraph 2; see also paragraphs 7 to 16 of the comments on article 7, paragraphs (a) and (e), paragraph 7 of the comments on article 7, paragraph (b) and paragraph 12 of the comments on article 7, paragraph (f); see furthermore paragraph 2 of the comments on article 12, paragraph 3, subparagraph (c) and paragraph 3 of the comments on paragraph 3, subparagraph (f) of that article.

that narcotic drugs were often stolen from the package while in transit and replaced by other goods.<sup>757</sup> Experiences of that kind have led to the inclusion in earlier drug control treaties<sup>758</sup> of provisions corresponding to the subparagraph under consideration.

5. “While in transit” means “while in a country or region which is located between the country or region of exportation and that of importation and through which the consignment involved passes in order to arrive at its destination”.<sup>759</sup>

6. It is submitted that the phrase “any process which would change the nature of the substance in question” would cover not only a transformation by chemical processes, but also the use of the psychotropic substances for the compounding of preparations.<sup>760</sup> It will be noted that such a process would be very difficult to carry out while the psychotropic substances are being transported or stored in a bonded warehouse. Moreover, that process could legally be undertaken only by manufacturers who—in accordance with the provisions of the Vienna Convention—are authorized for that purpose, and only in authorized premises, that is, normally not while the substances are stored in a bonded warehouse or in transit. To subject to a process altering their nature any psychotropic substances, and not only those in Schedule I or II, while in transit or stored in a bonded warehouse, would therefore appear to be prohibited under the Vienna Convention, even if that treaty did not contain the specific prohibition of the first sentence of paragraph (*g*), which moreover applies only to substances in Schedules I and II.<sup>761</sup>

7. Changes in the packing may also offer an opportunity for such illegal manipulations as theft of a part of the consignment, substituting other goods for the psychotropic substances or diversion of the shipment by changing its address. It is therefore suggested that an alteration of the packing should be authorized only in the presence of a control officer.<sup>762</sup>

8. The “competent authorities” are those of the country or region through which the psychotropic substances pass in transit or in which the warehouse is located.

9. Subparagraph (*g*) applies not only to shipments from one State to another State but also to those from one region to another region of the same State.

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<sup>757</sup> League of Nations, *Records of the Second Opium Conference, held at Geneva, 17 November 1924 to 19 February 1925*, vol. I, p. 485; document C.700.M.200.1924. XI.

<sup>758</sup> Article 17 of the 1925 Convention and article 31, paragraph 13 of the Single Convention.

<sup>759</sup> 1961 *Commentary* on article 31, paragraph 13, paragraph 3 of the comments (p. 382).

<sup>760</sup> Paragraph 4 of the comments referred to in foot-note 759 (p. 382).

<sup>761</sup> Paragraph 5 of the comments referred to in foot-note 759 (p. 382 of the English text); see also article 12, paragraph 3, subparagraph (*c*) regarding the prohibition of exports of substances in Schedule I to a bonded warehouse.

<sup>762</sup> Paragraphs 6 and 7 of those comments (pp. 382 to 383).

**Paragraph 3, subparagraph (h)**

(h) The provisions of subparagraphs (e) to (g) relating to the passage of substances through the territory of a Party do not apply where the consignment in question is transported by aircraft which does not land in the country or region of transit. If the aircraft lands in any such country or region, those provisions shall be applied so far as circumstances require.

*Commentary*

1. The text of subparagraph (h) is substantially the same as that of article 31, paragraph 14 of the Single Convention. The comments on the 1961 *Commentary* on the provision of that treaty<sup>763</sup> therefore apply *mutatis mutandis* also to subparagraph (h).

2. It is obviously due to an oversight that the subparagraph under consideration refers to subparagraph (g), but not to subparagraph (d). One can hardly understand why processes which would change the nature of psychotropic substances in transit should normally be prohibited, but be allowed if the substances are transported by an airplane crossing a country or region without landing therein, and why they should remain authorized, so far as circumstances do not otherwise require, even if the aircraft makes a landing in the country or region of transit. It also does not seem to make sense that changes in the packing of the substances in transit should normally not be allowed without permission of the competent authorities, but should not require that permission if they are transported by aircraft not making a landing in the country or region of transit, or even if the airplane makes such a landing, so far as circumstances do not otherwise require.

3. The same incongruities can be found in article 31, paragraph 14 of the Single Convention, whose text was nearly literally copied by the authors of the Vienna Convention when drafting article 12, paragraph 3, subparagraph (h). The 1961 *Commentary* explains those incongruities from the drafting history of the Single Convention.<sup>764</sup>

4. It has however also been mentioned earlier that subjecting any psychotropic substances in transit, and not only substances in Schedule I or II, to processes which would change their nature would in any event be prohibited by the terms of the Vienna Convention even if its article 12, paragraph 3, subparagraph (g) did not provide for that prohibition in regard to substances in Schedules I and II. Consequently the exclusion in subparagraph (h) of the application of subparagraph (g) to substances carried by aircraft in transit under the circumstances mentioned therein does not affect the prohibition of changing the nature of psychotropic substances in

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<sup>763</sup> Pages 383 to 386; see also article 15, paragraph 3 of the 1925 Convention.

<sup>764</sup> 1961 *Commentary*, on article 31, paragraph 14 of the Single Convention, paragraphs 2 to 4 of the comments (pp. 384 and 385).

transit, no matter whether carried by aircraft or not, and no matter whether the aircraft makes a landing in the country or region of transit or not.<sup>765</sup>

5. It is moreover suggested that it would be in the interest of effective control and also in accordance with the purposes of the Vienna Convention if Parties would prohibit alterations of the packing of psychotropic substances in Schedule I or II carried in an aircraft crossing a country or region, with or without landing, or would at least require that subparagraph (*h*) notwithstanding, such changes should in all cases require the authorization of the competent authorities.<sup>766</sup>

6. The omission in subparagraph (*h*) of a reference to subparagraph (*d*) would seem to make it obligatory for a Party to detain a consignment of a substance in Schedule I or II which is not accompanied by a copy of the export authorization when, being transported in an airplane, it enters or leaves in transit that Party's country or one of its regions, no matter whether the aircraft lands or does not land in the country or region of transit. It is suggested that the implementation of such an obligation would seriously impede air traffic, and that it would also be highly impractical to force every airplane in transit to land in order to examine whether it carries a shipment of a substance in Schedule I or II not accompanied by a copy of the export authorization. Such an examination of an aircraft which makes a landing in a country or region of transit would also unnecessarily delay air transportation, unless circumstances required such an action. It would also defeat the purpose of applying the exception of subparagraph (*h*) to subparagraph (*e*) without applying it also to subparagraph (*d*).

7. It has also been the practice of Parties to the Single Convention to apply the exception of that treaty's article 31, paragraph 14, which corresponds to subparagraph (*h*) under consideration and contains the same incongruities,<sup>767</sup> also to paragraph 10 of that article, which corresponds to article 12, paragraph 3, subparagraph (*d*) of the Vienna Convention. In view of the practical problems involved and in the light of the analogous situation under the Vienna Convention, it may be expected that the Parties to that Convention will follow the practice of Governments under the Single Convention and apply the exception for the circumstances of subparagraph (*h*) also to the rule of subparagraph (*d*).<sup>768</sup>

8. In accordance with what has been stated above, it is therefore suggested that Parties should apply the exception in subparagraph (*h*) to subparagraph (*d*), but not to subparagraph (*g*). In view of the fact that this would be in the interest of effective control, but also in that of avoiding

<sup>765</sup> See paragraph 6 of the above comments on article 12, paragraph 3, subparagraph (*g*); paragraph 3 of the comments referred to in foot-note 764; and the reference in foot-note 761.

<sup>766</sup> Paragraph 3 of the comments referred to in foot-note 764; see also article 23 of the Vienna Convention.

<sup>767</sup> See paragraph 3 above of the present comments.

<sup>768</sup> Paragraphs 4 and 5 of the comments referred to in foot-note 764 (p. 385).

unnecessary delays in air traffic, it may be assumed that such a practice will meet with the general agreement of the Parties.

9. Subparagraph (*h*), like other provisions of article 12, applies not only to trade between different States, but also to that between two regions of the same State.<sup>769</sup>

10. The word “territory” in subparagraph (*h*) means “area”.<sup>770</sup>

11. The word “landing” in the last sentence of the subparagraph under consideration refers to landings for any purpose, including scheduled and unscheduled landings.<sup>771</sup>

### *Paragraph 3, subparagraph (i)*

**(i) The provisions of this paragraph are without prejudice to the provisions of any international agreements which limit the control which may be exercised by any of the Parties over such substances in transit.**

### *Commentary*

1. Subparagraph (*i*) relates only to the controls required under paragraph 3 for substances in Schedule I or II in transit. It does not refer to paragraph 1 outlining the details of the import certificate and export authorization system. The corresponding provision of article 31, paragraph 15 of the Single Convention, on the other hand, refers to all provisions of that article, including those prescribing the rules of the import certificate and export authorization system. Nevertheless both subparagraph (*i*) and the above-mentioned paragraph 15, although applying to different kinds of substances,<sup>772</sup> are materially the same, since both free only from the obligation to exercise those controls which are applicable to substances in transit; and those controls are the same under both treaties.

2. Consequently, the application by transit States of the following provisions may be affected by subparagraph (*i*) if and to the extent that such application is incompatible with provisions of international treaties which limit the control which the Parties concerned may exercise over substances in transit, including substances in Schedule I or II: subparagraph (*d*) requiring the detention of consignments which enter or leave the territory of the transit State while not accompanied by a copy of the export authorization; subparagraph (*e*) requiring Parties not to permit the passage through their

<sup>769</sup> As regards what would be a “region” of transit for the purpose of subparagraph (*h*) see paragraph 14 of the above comments on article 12, paragraph 3, subparagraph (*f*); see however the comments on subparagraph (*i*).

<sup>770</sup> See paragraph 11 of the general comments on article 1 and foot-note 6.

<sup>771</sup> See also paragraph 6 of the comments referred to in foot-note 764 (p. 385).

<sup>772</sup> The provision of the Vienna Convention to substances in Schedule I and II of that treaty, the provision of the Single Convention to “narcotic” drugs (article 1, paragraph (*j*) of the Single Convention).

territories of substances in Schedule I or II consigned to another country and not accompanied by a copy of the export authorization; the first sentence of subparagraph (*f*), requiring a Party through whose territory a shipment of such substances is permitted to pass to take all due measures to prevent the diversion of that shipment to a destination different from that indicated in the accompanying copy of the export authorization; the right of the State of transit pursuant to subparagraph (*f*) to authorize a diversion of a shipment of those substances to another destination; the provision of subparagraph (*g*) requiring the permission of the competent authorities for changes in the packing of consignments in transit; and the second sentence of subparagraph (*h*) requiring Parties to apply "so far as circumstances require" the provisions of subparagraphs (*e*), (*f*) and (*g*) to consignments of substances in Schedule I or II carried in transit by an aircraft making a landing in the country or region of transit.<sup>773</sup>

3. The text of subparagraph (*i*) follows closely the wording of article 31, paragraph 15 of the Single Convention. The comments of the 1961 *Commentary* on that provision of the Single Convention apply therefore *mutatis mutandis* to subparagraph (*i*).<sup>774</sup>

4. Like the corresponding provision of article 31, paragraph 15 of the Single Convention, subparagraph (*i*) seems to have been motivated by a concern for situations in which by an inter-State agreement the transit traffic between a country and its enclave located in the border region of a neighbouring State and surrounded by that State is entirely or partially exempted from the control of the foreign country whose territory it crosses. It is held that subparagraph (*i*) applies only to consignments from one State traversing the territory of another State, no matter whether to the territory of the former State or to that of a third State; it does not apply to shipments from one region through another region of the same State, whether they are travelling to territory<sup>775</sup> of the same State or to a foreign country.<sup>776</sup>

5. An enclave of a State which has been placed within the customs borders of the envioning State would for the purposes of the Vienna Convention have to be considered as part of the latter State or of one of its "regions".<sup>777</sup>

6. International agreements may free Parties only from the application of those provisions of paragraph 3 which concern the control over shipments

<sup>773</sup> 1961 *Commentary* on article 31, paragraph 15, paragraph 1 of the comments (p. 387).

<sup>774</sup> Pages 387 to 389; see also article 15, paragraph 4 of the 1925 Convention.

<sup>775</sup> That territory (area) may form part of the "region" of origin of the shipment or of a third "region".

<sup>776</sup> Paragraphs 2 and 4 of the comments referred to in foot-note 773 (pp. 387 and 388).

<sup>777</sup> Paragraph 3 of those comments (pp. 387 and 388); see also 1961 *Commentary*, paragraph 18 of the comments on article 1, paragraph 1, subparagraph (*y*) of the Single Convention (p. 43).



in transit, i.e., of the provisions referred to in paragraph 2 of the present comments. They cannot free Parties from their obligation to implement the other provisions of that paragraph or any other provisions of the Vienna Convention.<sup>778</sup>

7. The word “such” in the phrase “such substances” refers to the substances mentioned in the introductory subparagraph of paragraph 3, i.e. to substances in Schedules I and II.

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<sup>778</sup> Paragraph 5 of those comments (p. 388).

## Article 13

### PROHIBITIONS OF AND RESTRICTIONS ON EXPORT AND IMPORT

#### General comments

1. Article 13 contains explicit provisions of a kind that cannot be found in the Single Convention. It may however be recalled that the Single Convention, in its article 31, paragraph 1, subparagraph (a), contains a more general provision which has not been taken over by the Vienna Convention, and which requires Parties to the Single Convention not knowingly to permit the export of narcotic drugs<sup>779</sup> to any country or territory except in accordance with the laws and regulations of that country or territory. By informing the other Parties of their relevant laws and regulations,<sup>780</sup> Parties to the Single Convention can thus require all other Parties to respect the prohibitions or restrictions which they may wish to impose on their imports of narcotic drugs and their preparations. It can be seen that importing Parties have under the Single Convention all those rights which they may exercise under article 13 of the Vienna Convention.

2. The first drafts<sup>781</sup> of what finally became the Vienna Convention did not provide for control of the international trade by an import certificate and export authorization system. They included provisions<sup>782</sup> somewhat similar to those on article 13 of the Vienna Convention, designed to enable a Party which was not satisfied with that lack of control of the international trade to ensure that its own imports would be effectively controlled by measures which all the other Parties would have to apply.

3. The Revised Draft Protocol as adopted by the Commission at its first special session in January 1970<sup>783</sup> introduced the import certificate and export authorization system for substances in Schedules I and II.<sup>784</sup> Like the

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<sup>779</sup> Article 1, paragraph (j) of the Single Convention. Article 31, paragraph 1, subparagraph (a) applies also to exports of all preparations of narcotic drugs including preparations in Schedule III; see article 2, paragraphs 3 and 4 of the Single Convention.

<sup>780</sup> See also article 18, paragraph 1, subparagraph (b) of the Single Convention.

<sup>781</sup> See the two drafts prepared by the United Nations Secretariat, contained in annexes A and B of document E/CN.7/519.

<sup>782</sup> Article 7 of both drafts referred to in the preceding foot-note.

<sup>783</sup> 1971 *Records*, vol. I, pp. 23 *et sequitur*.

<sup>784</sup> Article 6, paragraph 6 and article 11, paragraph 1 of the Revised Draft Protocol; the international trade in substances in Schedule I was subjected to additional controls in article 6, paragraph 6.

first drafts, it contained a provision, already very similar to the final text of article 13 of the Vienna Convention, by which Parties could ensure, if they so wished, that their imports, although not covered by the import certificate and export authorization system, would be covered by equally effective control measures somewhat similar to those under that system;<sup>785</sup> but that provision not only applied to substances not subject to the import certificate and export authorization system, but also to substances in Schedule II controlled by that system.<sup>786</sup>

4. Article 13 of the Vienna Convention also applies not only to substances in Schedules III and IV not covered by the import certificate and export authorization, but also to substances in Schedule II subject to that system. The 1971 Conference included substances in Schedule II within the scope of an earlier draft of article 13 that did not apply to them.<sup>787</sup> It took this action because it wished to cover by the controls of that article preparations of substances in that Schedule, exempted pursuant to article 3, paragraph 3, which might not be subject to the import certificate and export authorization system insofar as the Party which made the exemption was concerned.<sup>788</sup> As a consequence of that amendment, substances in Schedule II and their preparations, other than preparations appropriately exempted pursuant to article 3, paragraph 3, are subject to the provisions of article 13 *as well as to* the import certificate and export authorization system of article 12, paragraph 1. As a result, international transactions in such substances and their preparations may be subject to a duplication of controls, requiring governmental authorizations both according to article 12, paragraph 1, subparagraph (a) and pursuant to article 13, paragraph 3.<sup>789</sup> However, by their practice in applying the import certificate and export authorization system Parties could, in respect of substances in Schedule II and their preparations other than preparations exempted from that system pursuant to article 3, paragraph 3, obtain, without resorting to article 13, observation by other Parties of their import prohibitions and restrictions.

5. Article 13 represents a compromise between, on the one hand, those who wished to subject to the import certificate and export authorization system international transactions in all or nearly all psychotropic substances and their preparations, and, on the other hand, those who thought it would be sufficient to apply that system to international transactions in the more dangerous psychotropic substances and their preparations. Its *principal* purpose is to enable Parties to apply, if they so wish, to international transactions in psychotropic substances and their preparations, not subject to the import certificate and export authorization system, an effective control

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<sup>785</sup> Article 12 of the Revised Draft Protocol; moreover that draft (article 6) subjected Schedule I to the import certificate and export authorization system.

<sup>786</sup> Article 12, paragraph 1 of the Revised Draft Protocol.

<sup>787</sup> Document E/CONF.58/C.4/L.53.

<sup>788</sup> 1971 *Records*, vol. II, minutes of the twenty-third meeting of the Committee on Control Measures, paragraphs 2, 4, 14 and 19 (pp. 173 and 174); document E/CONF.38/L.4/Add.3.

<sup>789</sup> See below the comments on article 13, paragraph 3.

régime, which moreover has some features very similar to those of that system.

6. Article 13 can be applied to international transactions which are not subject to the import certificate and export authorization system, as follows:

- (i) Transactions in substances in Schedule I and their preparations freed from the application of the import certificate and export authorization system in certain bilateral relations according to article 2, paragraph 7, subparagraph (*a*), clause (iii);<sup>790</sup>
- (ii) Transactions in substances in Schedule II and their preparations, freed from the application of the import certificate and export authorization system in certain bilateral relations according to article 2, paragraph 7, subparagraph (*b*), clause (iii);<sup>791</sup>
- (iii) Transactions in substances in Schedule II and their preparations to which pursuant to article 2, paragraph 7, subparagraph (*e*) the régime applicable to substances in Schedule III or IV may be applied, and which consequently are not subject to the import certificate and export authorization system;<sup>792</sup>
- (iv) Transactions in preparations of substances in Schedule II exempted pursuant to article 3, paragraph 3 from the application of the import certificate and export authorization system;<sup>793</sup>
- (v) The carrying by international travellers of small quantities of preparations of substances in Schedules II, III or IV for personal use pursuant to article 4, paragraph (*a*);<sup>794</sup>
- (vi) Transactions in substances in Schedule III and their preparations (subject to the export declarations pursuant to article 12, paragraph 2); and
- (vii) Transactions in substances in Schedule IV and their preparations.

7. Article 13 does not apply to the carriage, under the conditions of article 14, paragraph 1, of substances in Schedule II, III or IV and their preparations in first-aid kits of ships, aircraft or other forms of public

<sup>790</sup> See clause (iv) of that subparagraph; see paragraph 36 of the comments on article 2, paragraph 7, subparagraphs (*a*) to (*e*).

<sup>791</sup> See clause (iv) of that subparagraph; see paragraph 35 of the comments on article 2, paragraph 7, subparagraphs (*a*) to (*e*).

<sup>792</sup> As regards the problem of applying article 13 to substances in Schedule I and their preparations to which pursuant to article 2, paragraph 7, subparagraph (*e*) a Party may apply a less strict régime, see paragraphs 37 and 38 of the above comments on article 2, paragraph 7, subparagraphs (*a*) to (*e*).

<sup>793</sup> See also paragraph 48 of the comments on article 2, paragraph 7, subparagraphs (*a*) to (*e*); see also paragraphs 24 and 26 of the comments on article 3 paragraphs 2 and 3.

<sup>794</sup> See paragraphs 9 to 12 of the above comments on article 4, paragraph (*a*). As regards the carrying by international travellers of preparations of substances in Schedule I whose inclusion in Schedule I the Party concerned has not accepted pursuant to article 2, paragraph 7 (subparagraph (*a*) or (*e*)) see paragraphs 22 and 23 of the above comments on article 2, paragraph 7, subparagraphs (*a*) to (*e*).

transport engaged in international traffic, since such carriage, pursuant to that provision, is not considered to be “export”, “import” or “passage (in transit) through a country” within the meaning of the Vienna Convention.

8. In short, article 13 can be applied to all imports (and corresponding exports) of all psychotropic substances and their preparations, not subject to the import certificate and export authorization system, as well as to all imports (and corresponding exports) of substances in Schedule II and their preparations, subject to that system.<sup>795</sup>

9. Article 13 applies only to the inter-State trade and not to the interregional trade. See also paragraph 3 of the comments on article 1, paragraph (h).

### *Paragraph 1*

**A Party may notify all the other Parties through the Secretary-General that it prohibits the import into its country or into one of its regions of one or more substances in Schedule II, III or IV, specified in its notification. Any such notification shall specify the name of the substance as designated in Schedule II, III or IV.**

### *Commentary*

1. The request contained in a notification pursuant to paragraph 1 becomes effective in respect of an exporting Party upon receipt of the notification by that Party. An exporting Party, acting in good faith, is however allowed a reasonable time for taking the measures required pursuant to paragraph 2, for complying with that request.

2. The Secretary-General should therefore transmit to the Parties copies of the notification by registered air mail with return receipt requested, and inform the notifying Party of the date of receipt of the notification by each Party.

3. It would be useful if a Party desiring to obtain speedy compliance with its request by the other Parties would transmit its notification to the Secretary-General in as many of the working languages used by the United Nations Secretariat for communications of that kind at that particular moment as it can readily employ.

4. A Party may make a notification under paragraph 1 even prior to the coming into force of the Vienna Convention.<sup>796</sup> The Secretary-General should transmit that notification to other Parties as if the Convention had already come into force. This is suggested in view of resolution I of the 1971

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<sup>795</sup> See paragraph 48 of the comments on article 2, paragraph 7, subparagraphs (a) to (e); paragraph 11 of the general comments on article 12 and paragraph 7 of the comments on article 12, paragraph 1, subparagraph (a).

<sup>796</sup> Article 26.

Conference inviting States, to the extent that they are able to do so, to apply provisionally the control measures of the Vienna Convention pending its entry into force for each of them,<sup>797</sup> and also in view of the resolution of the Council endorsing that invitation.<sup>798</sup>

5. A notification received prior to the coming into force of the Vienna Convention becomes under that treaty legally effective in respect of the exporting Party concerned on the date on which that treaty enters into force in regard to that Party. It is however submitted that earlier compliance with a request contained in such a notification would, if feasible, accord with the spirit (and principles) of friendly relations among States and with the pledge of Members of the United Nations under articles 56 and 55, paragraph (b) of the Charter of the United Nations to take, in co-operation with that Organization, joint and separate action for the achievement of solutions of international health and social problems.<sup>799</sup>

6. A Party cannot choose to address a notification pursuant to paragraph 1 only to some of the other Parties. That notification must be communicated to *all* other Parties. It appears to have been the consensus of the 1971 Conference that the provisions of article 13 should not be used for the purpose of discriminating between different Parties or between different exporters.<sup>800</sup> The word "all" was inserted by the 1971 Conference in an earlier draft<sup>801</sup> to make it clear that a prohibition notified by a Party under paragraph 1 must apply to *all* other Parties.

7. The last sentence of paragraph 1 was added to an earlier draft<sup>802</sup> of that provision to make it clear that the notification of prohibition would apply to the substance concerned no matter by whom it was manufactured or who was the exporter.<sup>803</sup>

8. The indication in the notification of the name listed in the Schedule concerned is obligatory; it might also be useful to add the international

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<sup>797</sup> 1971 *Records*, vol. I, p. 128.

<sup>798</sup> Resolution 1576 (L), dated 30 May 1971.

<sup>799</sup> See also 1961 *Commentary* on article 5 of the Single Convention, paragraphs 1 and 2 of the comments (p. 115) and on article 14, paragraph 1, subparagraph (a) of that treaty, paragraph 16 of the comments (pp. 182 to 183).

<sup>800</sup> 1971 *Records*, vol. II, summary records of the thirteenth plenary meeting; paragraphs 21-24, 27, 34, 41, 42 and 45 (pp. 50 and 51); and summary records of the sixteenth plenary meeting, paragraphs 5, 6, 8 and 13 (p. 62); see also documents E/CONF.58/L.37 and L.38; see also paragraphs 43 to 77 of the summary records of the sixteenth plenary meeting (pp. 64 to 66).

<sup>801</sup> Documents E/CONF.58/C.4/L.53 and E/CONF.58/L.37; 1971 *Records*, vol. II, summary records of the sixteenth plenary meeting, decisions recorded after paragraph 42 (p. 64); see also article 12, paragraph 1 of the Revised Draft Protocol.

<sup>802</sup> Document E/CONF.58/C.4/L.53; see article 12, paragraph 1 of the Revised Draft Protocol.

<sup>803</sup> 1971 *Records*, vol. II, summary records of the thirteenth plenary meeting, paragraphs 21 to 24 (p. 50) and summary records of the sixteenth plenary meeting, decisions recorded after paragraph 42 of those records (p. 64) and document E/CONF.58/L.40.

proprietary name<sup>804</sup> if one exists and it differs from the name in the Schedule.

9. The notifying Party may exclude from the prohibition one or more preparations of the substance concerned, or limit the prohibition to one or more preparations of a substance while not barring the importation of the basic substance itself or of its other preparations; but the exact chemical composition of such a preparation or such preparations must be indicated, and the exclusion from prohibition or the prohibition applies to all the preparations concerned no matter by whom they were manufactured or who was the exporter. Identification of such preparations by their trade name would therefore not be appropriate.<sup>805</sup>

10. It may be mentioned in this context that whatever may have been the view of representatives at the 1971 Conference, there is no provision in the Vienna Convention which would prevent an importing Party from discriminating between different Parties, manufacturers and exporters: in respect of substances and preparations subject to the import certificate and export authorization system of article 12, paragraph 1, by its practice in applying that system, and in respect of substances and preparations prohibited pursuant to article 13, paragraph 1 by its practice in issuing special import licences pursuant to paragraph 3 of that article.

### *Paragraph 2*

**2. If a Party has been notified of a prohibition pursuant to paragraph 1, it shall take measures to ensure that none of the substances specified in the notification is exported to the country or one of the regions of the notifying Party.**

### *Commentary*

1. The phrase “to the country or one of the regions of the notifying Party” may require some comment. It seems obvious from the context that an exporting Party, in implementing paragraph 2, cannot choose between the total area or one of the regions of the notifying Party, no matter what may be indicated in that Party’s notification. What is obviously meant by that phrase is that a Party notified of the prohibition is required to take the measures mentioned in paragraph 2 in respect of the total national area or of one or more regions of the notifying Party, in accordance with the terms of that Party’s notification. In short, the phrase has the meaning of “to the country or one or more of the regions of the notifying Party, as the case may be”.

2. The measures required under paragraph 2 need to be taken only in regard to that country or region to which a shipment is addressed contrary to

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<sup>804</sup> As regards international non-proprietary names see paragraph 3 of the above comments on article 12, paragraph 1, subparagraph (b) and foot-note 682.

<sup>805</sup> 1971 *Records*, vol. II, summary records of the thirteenth plenary meeting, paragraphs 23 and 24 (p. 50).

a prohibition of a notifying Party. An exporting Party can under that provision not be held responsible if the exporter addresses the consignment to another country or region not affected by a relevant prohibition of a notifying Party, from which the recipient intends to forward the consignment to a country or region subject to such a prohibition.<sup>806</sup> However, under article 21, paragraphs (b), (c) and (d) the exporting Party would be bound—as far as practical—to assist and co-operate with the Party having notified the prohibition—as with other Parties—in dealing with such a situation. Shipment made intentionally contrary to terms of a prohibition notified pursuant to paragraph 1 constitutes “illicit traffic” within the meaning of article 1, paragraph (j), and if contrary to a law or regulation adopted by the exporting Party in pursuance of article 13, and offence as defined in article 22, paragraph 1, requiring the punishment of the trafficker or his treatment and rehabilitation or both.

3. The practical difficulties in implementing paragraph 2 were extensively discussed at the 1971 Conference. The opinion was proffered that a situation could arise in which the authorities of the exporting Party might not be aware of the export of a prohibited substance to a country or region which barred its import.<sup>807</sup> This will generally occur (i) in the case of shipments of substances in Schedule IV and their preparations, which are neither subject to the import certificate and export authorization system of article 12, paragraph 1 nor to the requirement of an export declaration according to paragraph 2 of that article, or (ii) in the case of shipments of preparations of substances in Schedule II which pursuant to article 3, paragraph 3 are exempted from the import certificate and export authorization system, and of those of preparations of substances in Schedule III which according to the same provision are exempted from the application of article 12, paragraph 2 concerning export declarations.

4. The difficulties which customs officers of exporting Parties would have in enforcing the required prohibitions were also discussed at the 1971 Conference. Those officers would have to consult an extensive and complicated list of the prohibitions of different substances in different countries.<sup>808</sup> That list would require frequent revisions which may sometimes be delayed.

5. The implementation of the prohibitions required under paragraph 2 may in a number of countries also need burdensome legislative measures such as the issue of a decree or of an administrative instruction in each case in which a Party makes a notification pursuant to paragraph 1. Under the constitutional, legal or administrative systems of a good many countries the enactment of such decrees would require complicated and sometimes

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<sup>806</sup> 1971 *Records*, vol. II, summary records of the sixteenth plenary meeting, paragraph 7 (p. 62).

<sup>807</sup> 1971 *Records*, vol. II, minutes of the eleventh meeting of the Committee on Control Measures, paragraph 37 (p. 149).

<sup>808</sup> 1971 *Récords*, vol. II, minutes of the twenty-third meeting of the Committee on Control Measures, paragraph 5 (p. 173).



time-consuming procedures. One representative at the 1971 Conference mentioned that his country “would have constitutional difficulties in introducing legislation to prohibit the export of substances to a country on the basis of a notification of an import prohibition from that country if those substances were on sale” in his own country.<sup>809</sup>

6. In view of the difficulties of that kind which—as a result of different legal or administrative systems, but also of divergent structures of the manufacturing industry or export trade in the field of psychotropic substances—may vary in different countries, the 1971 Conference did not adopt a provision simply requiring exporting Parties to prohibit the consignments in question.<sup>810</sup> It adopted instead a provision couched in more general and perhaps somewhat vague terms, which finally became article 13, paragraph 2 of the Vienna Convention, and by which the exporting Parties are required to “take measures to ensure” that those consignments are not exported to the country or a region involved of the notifying Party.<sup>811</sup>

7. Various views were expressed at the 1971 Conference about the meaning of that phrase. Two may be mentioned which can hardly be reconciled with the text and purpose of paragraph 2: one representative stated that he did not interpret the phrase as meaning “that the Customs authorities of a country would necessarily be obliged to hold back packages containing the substances in question that were being dispatched to another country where there was an import prohibition”.<sup>812</sup> Another delegate similarly suggested that the phrase “did not place any obligation on Customs authorities to stop the dispatch of consignments of psychotropic substances to countries which had notified an import prohibition in respect of those substances”.<sup>813</sup> It is submitted that there can be no doubt that pursuant to paragraph 2 Customs officials would have to stop the dispatch of packages which in the normal course of their duties they found to contain psychotropic substances whose import to the country or region of destination would be prohibited pursuant to paragraph 1.<sup>814</sup> Exporting Parties would however not be bound to open every package addressed to a Party which had notified a prohibition pursuant to paragraph 1 in order to determine whether the package contained prohibited substances.<sup>815</sup>

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809 *1971 Records*, vol. II, summary records of the sixteenth plenary meeting, paragraph 22 (p. 63); one delegate even suggested that it would be impossible for exporting Parties to implement article 13, paragraph 2; *1971 Records*, vol. II, summary records of the thirteenth plenary meeting, paragraph 32 (p. 50); see also *1971 Records*, vol. II, minutes of the twenty-third meeting of the Committee on Control Measures, paragraph 12 (p. 173).

810 As would be required under article 12, paragraph 3 of the Revised Draft Protocol.

811 Documents E/CONF.58/C.4/L.53 and E/CONF.58/L.4/Add.3.

812 *1971 Records*, vol. II, summary records of the thirteenth plenary meeting, paragraph 37 (p. 50).

813 *Ibid.*, paragraph 39 (pp. 50 to 51).

814 *Ibid.*, paragraph 43 (p. 51).

815 *1971 Records*, vol. II, minutes of the twenty-third meeting of the Committee on Control Measures, paragraph 9 (p. 173).

8. The phrase “take measures to ensure” appears to have been formulated to indicate that paragraph 2 does not impose an absolute obligation on Parties to give legislative effect to every notification of a prohibition according to paragraph 1, but leaves it to Parties to take such legislative or administrative action or both as the situation may demand.<sup>816</sup> A Government may for example limit itself to informing all its licensed exporters of the substances concerned of a prohibition notified pursuant to paragraph 1 and to requesting those exporters to comply with the terms of the notification, if it considers in good faith that such a measure would be sufficient effectively to implement its obligation under paragraph 2. It would however in such a situation be bound to penalize an exporter who did not comply with such a request, e.g. by cancellation of his export licence.<sup>817</sup> A Party, when limiting its implementation of paragraph 2 to such administrative measures, would also have to take into account the possibility of such exports as could licitly be made by persons not subject to a “licence or other similar control measure” pursuant to article 8, paragraph 1. It will be recalled that persons who do not engage in the import or export *trade* in, or in a non-commercial *enterprise* of international distribution of, substances in Schedule II, III or IV need not be “under licence or other similar control measure” pursuant to that provision for such international non-commercial transactions as exchange of samples by scientists for research purposes.<sup>818</sup>

9. In short, Parties are bound to take such legislative or administrative measures or both in order to implement paragraph 2 as are practical, and can reasonably be expected of them.

### *Paragraph 3*

**3. Notwithstanding the provisions of the preceding paragraphs, a Party which has given notification pursuant to paragraph 1 may authorize by special import licence in each case the import of specified quantities of the substances in question or preparations containing such substances. The issuing authority of the importing country shall send two copies of the special import licence, indicating the name and address of the importer and the exporter, to the competent authority of the exporting country or region, which may then authorize the exporter to make the shipment. One copy of the special import licence, duly endorsed by the competent authority of the exporting country or region, shall accompany the shipment.**

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<sup>816</sup>1971 *Records*, vol. II, summary records of the sixteenth plenary meeting, paragraph 30 (p. 63).

<sup>817</sup>1971 *Records*, vol. II, minutes of the twenty-third meeting of the Committee on Control Measures, paragraph 19 (p. 173); such a violation might also be an offence and be treated as such under article 22, paragraph 1.

<sup>818</sup>See above paragraph 13 of the comments on article 8, paragraph 1.

*Commentary*

1. The paragraph under consideration expressly requires that the “special import licence”<sup>819</sup> should indicate the name and address of the importer and exporter, and the authorized quantities of the substance or its preparation in question. It appears indispensable that it should also contain all the other details which have to be included in an import authorization according to article 12, paragraph 1, subparagraph (b). The “special import licence” should therefore also indicate the international non-proprietary name<sup>820</sup> of any of the substances in question, the pharmaceutical form<sup>821</sup> of the substance or its preparation involved (in the case of preparations also their chemical composition), and the period within which the import must be effected. It should also show the date of its authorization and the identity of the authorizing government unit. In view of the last sentence in paragraph 1, the name of the substance as designated in the Schedule of the Vienna Convention should always be given, and not only in the absence of an international non-proprietary name as in the case of an import authorization pursuant to article 12, paragraph 1, subparagraph (b).

2. The chemical composition of the preparation in question could be shown in the special import licence either directly by its description or indirectly by an appropriate reference. It is suggested that it might be in accordance with the prevailing sentiment of the 1971 Conference that the chemical composition should not be indicated by the preparation’s proprietary name, which should not be referred to.<sup>822</sup> The description of the chemical composition of the preparation may be omitted in a case in which that composition could be made clear by a possibly existing pharmaceutical name, which would not be a trade name owned by particular firms.

3. It may be mentioned also in this place that while it was certainly the sentiment of the 1971 Conference that article 13 should not be employed for the purpose of discriminating between different Parties or between different suppliers, there is in fact no legal provision in the Vienna Convention which would prevent a Party from engaging in such a discrimination when issuing special import licences pursuant to paragraph 3.<sup>823</sup>

4. The Vienna Convention does not require that Parties should issue the “special import licence” on a form to be established by the Commission, as it does in regard to import and export authorizations pursuant to article 12, paragraph 1, subparagraph (a). The use of such a form is also not required for the authorization to export the shipment of a substance or its preparation,

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<sup>819</sup> Called “*licencia especial de importación*” in the Spanish text, but “*permis spécial d’importation*” in the French text.

<sup>820</sup> Paragraph 3 of the comments on article 12, paragraph 1, subparagraph (b) and foot-note 682 above.

<sup>821</sup> Paragraph 5 of the comments referred to in the preceding foot-note and paragraph 6 of the comments on article 12, paragraph 2, subparagraph (a).

<sup>822</sup> Paragraph 6 of the comments on article 13, paragraph 1 and foot-note 800 above.

<sup>823</sup> See also paragraph 10 of the above comments on article 13, paragraph 1.

permitted by a special import licence according to paragraph 3. It is however submitted that it would be desirable that Parties should use such forms for authorizations under that paragraph. The Commission may wish to consider whether it should draft those forms and recommend their use. If the Commission takes that action, the Secretary-General could reproduce the forms and make them available to the Parties, or the reproduction of the forms could be left to the Parties themselves, particularly if they wish to use a language not employed by the United Nations for such documents.

5. The document authorizing an export pursuant to article 13, paragraph 3 should contain all the data which have to be included in an export authorization according to article 12, paragraph 1, subparagraph (b): identification of the importer and exporter, who must be the same as those named in the corresponding "special import licence," by giving their names and addresses; identification of the substance or its preparation by giving the non-proprietary name, if any, of the substance, its designation in the Schedule of the Vienna Convention,<sup>824</sup> the pharmaceutical form<sup>821</sup> of the substance or its preparation and, in the case of a preparation, also its chemical composition, either directly by a description or indirectly by an appropriate reference or by its name;<sup>825</sup> the quantities authorized for export; the period within which the export must be effected; the number and date of the related "special import licence" and the authority by whom it has been issued; its own date, and the government unit which has authorized the export.

6. In general, the authorization to export pursuant to paragraph 3 should contain all such data in such a form as to enable the control officers to determine whether it has been issued in accordance with the conditions laid down in the corresponding "special import licence".

7. It seems to be the better opinion that the Vienna Convention does not permit the "special import licence" to authorize an importation in more than one consignment.<sup>826</sup>

8. If a Government not accepting that view authorized in a single "special import licence" an importation in more than one consignment, the Government of the exporter would have to see to it that the total of the quantities which it authorizes for export in two or more authorizations pursuant to paragraph 3 does not exceed the amount admitted for import by the related single "special import licence".<sup>827</sup>

9. While the exporter receives from the importer the copy of the import authorization on the basis of which he applies for an export authorization pursuant to article 12, paragraph 1, subparagraph (c), he would have to

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<sup>824</sup> See above, paragraph 1 of the present comments.

<sup>825</sup> There does not appear to be any reason why a proprietary name of the preparation may not be referred to in this document; see however paragraph 2 of the present comments as regards the "special import licence".

<sup>826</sup> See above, paragraphs 3 and 4 of the comments on article 12, paragraph 1, subparagraph (a).

<sup>827</sup> Paragraph 4 of the comments referred to in the preceding foot-note.

obtain from his own competent Government authority a copy of the “special import licence” which has to accompany the shipment. That authority has to forward to him one of the two copies of the “special import licence” which it has received from the issuing authority. It would authorize the export on application by the exporter.

10. A “special import licence” or an authorization to export pursuant to paragraph 3 may generally be granted only to importers or exporters authorized pursuant to article 8, paragraph 1, as being “under licence or other similar control measure”. Those authorizations may however also be given for individual non-commercial transactions undertaken by such other persons as physicians who import the medicines concerned for use in their practice, by individuals who need the medicines concerned for their own medically authorized treatment, or scientists providing to or receiving from foreign scientists samples for scientific purposes.<sup>828</sup>

11. It has been mentioned earlier<sup>829</sup> that article 13 (including its paragraph 3) may be applied to international transactions in substances in Schedule II and their preparations,<sup>830</sup> subject to the import certificate and export authorization system of article 12, paragraphs 1 and 3. Such transactions require import and export authorizations granted in accordance with article 12, paragraph 1, subparagraphs (a), (b) and (c) as well as a “special import licence” and authorization to export pursuant to article 13, paragraph 3. It is suggested that both types of authorization need not be granted in separate documents. The “special import licence” and import authorization according to article 12, paragraph 1 can form a single document, as can the export authorization under that paragraph and the authorization to export pursuant to article 13, paragraph 3.

12. If the transactions referred to in the preceding paragraph should occur frequently, the Commission might perhaps wish to prepare for them and recommend for use by Parties two forms: one form having simultaneously the character of a special import licence according to article 13, paragraph 3 and of an import authorization according to article 12, paragraph 1; and another form having simultaneously the character of an authorization to export under that provision of article 13 and of an export authorization under the provision of article 12.

13. The contents of such joint documents and the procedure applied to their use would have to be in agreement with both the requirements of article 12, paragraph 1 and those of article 13, paragraph 3.

14. International shipments of substances in Schedule III or their preparations, falling under the terms of article 13, paragraph 3, are also not

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<sup>828</sup> See paragraph 13 of the above comments on article 8, paragraph 1 and foot-note 514.

<sup>829</sup> See above paragraphs 3, 4 and 6 of the general comments on article 13.

<sup>830</sup> Such preparations may be exempted from the import certificate and export authorization system pursuant to article 3, paragraphs 2 and 3 insofar as the Party making the exemption is concerned.

exempted from the requirement of export declarations according to article 12, paragraph 2.

15. A shipment subject to both the import certificate and export authorization system and to the requirement of a “special import licence” would have to be accompanied by a copy of the special import licence as well as by a copy of the export authorization according to article 12, paragraph 1, subparagraph (*d*); a shipment subject to both the requirements of an export declaration under article 12, paragraph 2 and of a “special import licence”, would have to be accompanied by a copy of the declaration in accordance with article 12, paragraph 1, subparagraph (*b*) as well as a copy of the special import licence.

16. The phrase “duly endorsed by the competent authority” calls for some consideration. Is it required that that authority indicate in its endorsement the quantities whose export it has authorized, or has it in addition to state the quantities which were *actually* exported? It is submitted that only a confirmation of the authorized quantities appears to be obligatory in the endorsement. A confirmation of the quantities which were actually exported need not be a part of the endorsement. To require that might unduly delay the shipment of urgently needed medicines. Moreover, neither the import certificate and the export authorization system of the Single Convention<sup>831</sup> nor that system of the Vienna Convention<sup>832</sup> requires that the authorities of the exporting country confirm on the copy of the document accompanying the export consignment<sup>833</sup> the quantities actually exported, i.e., they do not require the exporter to delay the dispatch until he has obtained from the authorities that confirmation on the document which is to accompany the shipment.<sup>834</sup>

<sup>831</sup> Article 31, paragraphs 4 to 15 of that treaty.

<sup>832</sup> Article 31, paragraphs 1 and 3 of the Convention.

<sup>833</sup> Which is in both cases a copy of the export authorization; article 31, paragraph 6 of the Single Convention and article 12, paragraph 1, subparagraph (*d*) of the Vienna Convention.

<sup>834</sup> The Single Convention, however, requires that if a lesser quantity than that specified in the export authorization is actually exported, the quantity actually exported should be stated by the competent authorities on the export authorization and on any official copy thereof; article 31, paragraph 7, subparagraph (*c*). The Government of the exporter is also bound to furnish the Government of the importer a copy of the export authorization; article 31, paragraph 6 (see also article 12, paragraph 1, subparagraph (*d*) of the Vienna Convention). It is held that the information on the lesser quantities actually exported has in any event to be indicated on the copy of the export authorization which the Government of the exporting country furnishes to the Government of the importing country. It is also held that if the former Government has already furnished that copy without an indication of the reduced quantity it is bound to supply an appropriately revised copy without undue delay; *1961 Commentary*, paragraph 2 of the comments on article 31, paragraph 6 and paragraph 7, subparagraph (*c*) (pp. 365 and 366). It has been submitted earlier that, although not expressly required by the Vienna Convention, Parties have under that treaty an implied obligation to furnish that information on reduced quantities actually exported; paragraph 6 of the above comments on article 12, paragraph 1, subparagraphs (*d*) and (*e*).

17. Paragraph 3 does not require that Parties exchange information on the quantities of substances or their preparations actually imported or exported under its terms. Governments will however obtain that information in the case of shipments which are also subject to the import certificate and export authorization system,<sup>835</sup> i.e. in the case of consignments of substances in Schedule II or their preparations.<sup>836</sup>

18. In the case of shipments of substances in Schedule III or their preparations carried out pursuant to article 13, paragraph 3, Governments of importing countries will obtain information on the quantities actually exported,<sup>837</sup> and Governments of exporting countries are able to obtain information on the quantities actually received by the importers.<sup>838</sup>

19. It is suggested that, insofar as practicable, Governments should exchange information on the quantities actually imported and exported under article 13, paragraph 3 also in those cases in which they do not have to do so under the provisions of the Vienna Convention. They need that information for the purpose of discovering and investigating thefts or other diversions from such international shipments. While that exchange may not be a legal obligation under the terms of that Convention, it would undoubtedly be in accordance with the spirit of those of its provisions which require Governments to assist each other and to co-operate closely in the campaign against the illicit traffic.<sup>839</sup>

20. It may be noted that pursuant to article 16, paragraph 2, the Government units entitled to grant authorizations under article 13, paragraph 3 must be notified by the Parties to the Secretary-General, who on his part has to forward that information to all Parties. It may in most cases appear to be advisable that those units be identical with the Government agencies competent to issue authorizations under article 12, paragraph 1.

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<sup>835</sup> Paragraphs 4 to 6 of the above comments on article 12, paragraph 1, subparagraph (d) and (e).

<sup>836</sup> See also paragraph 11 of the present comments.

<sup>837</sup> Article 12, paragraph 2, subparagraph (a), clause (iii) and subparagraph (c).

<sup>838</sup> Article 12, paragraph 2 subparagraph (d); see paragraphs 4 to 6 of the above comments on article 12, paragraph 2, subparagraphs (b), (c) and (d).

<sup>839</sup> Article 21, paragraphs (b) and (c).

## Article 14

### SPECIAL PROVISIONS CONCERNING THE CARRIAGE OF PSYCHOTROPIC SUBSTANCES IN FIRST-AID KITS OF SHIPS, AIRCRAFT OR OTHER FORMS OF PUBLIC TRANSPORT ENGAGED IN INTERNATIONAL TRAFFIC

#### General comments

1. Article 14 of the Vienna Convention, which applies only to psychotropic substances in its Schedules II, III and IV, differs from article 32 of the Single Convention, which applies to all drugs controlled by that treaty, in that it covers not only first-aid kits of ships or aircraft, but also those of other forms of public transportation, such as railway trains and motor coaches engaged in international traffic.

2. Apart from changes required by its coverage of other substances and “other forms of public transport” and by the need to refer to differently numbered provisions, the text of the provision of the Vienna Convention closely follows and is nearly literally the same as the text of the provision of the Single Convention.

3. It may therefore be assumed that as far as the first-aid kits of ships and aircraft are concerned, the interpretation given to the provisions of article 32 of the Single Convention in the practice of Parties to that treaty and in the *1961 Commentary*<sup>840</sup> is also valid in regard to the provisions of article 14 of the Vienna Convention. However, the carriage of first-aid kits by railways and motor coaches engaged in international traffic poses somewhat different problems. Moreover, as regards “forms of public transportation” other than ships and aircraft, the practices of States, if any, not being carried out in the performance of treaty obligations, cannot assist in interpreting the provisions of article 14 as they apply to them.

4. The heading of article 14 of the Vienna Convention<sup>841</sup> appears to limit its application to forms of international “public” transport, while that of article 32 of the Single Convention does not explicitly do so. Means of transportation are “public” if they are *in principle* available to the general public. It is however submitted that a particular flight of an airplane or a particular voyage of a vessel to which the general public is not admitted, e.g., flights or voyages undertaken for the transportation of particular closed groups of travellers or of military units, are covered by the provisions of

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<sup>840</sup> Pages 390 to 401.

<sup>841</sup> See also the text of paragraphs 1 and 3 of that article.



article 14 as long as the vehicles concerned form part of a system of public transportation.

5. The term “public transport” does not seem to be limited to passenger transport.<sup>842</sup> It may be useful and also safe from the viewpoint of control to carry psychotropic substances in first-aid kits of freighters under the conditions of article 14. It is however not easy to imagine a situation in which that article could be applicable to freight trains or to trucks. The same may be true in regard to aircraft used only for the transport of goods.

6. Psychotropic substances in first-aid kits of railways may be much less useful in urgent cases than those in kits of ships or airplanes if—as will often be the case—their availability depends on crossing many cars of a moving train for the purpose of informing the train employee guarding the substances and of carrying them to the sick person. Moreover travellers on railways, and also those on motor coaches engaged in international traffic, will even in case of an emergency mostly be better served by enlisting the aid of a physician at the next town or village. Sick travellers who need psychotropic substances for regular treatment will also be in a better position if in accordance with article 4, paragraph (a) they are allowed to carry the preparations prescribed for them by their physicians than if they have to obtain the required medicines from first-aid kits of moving trains or buses.

7. It is held that Parties may not make use of the relief from controls granted to them by article 14 in those cases where, pursuant to paragraph 2 of that article, they cannot take appropriate safeguards to prevent improper use of the psychotropic substances in question or their diversion for illicit purposes.

8. They may consider it particularly relevant in this context that a conductor of a train or a motor coach will generally not be able to control the situation on his vehicle as effectively as the captain of a ship or an airplane can do. Moreover, the personnel of a train crossing an international border, with the frequent exception of the conductor of the sleeping car and with the occasional exception of the engine driver, is generally replaced by a staff furnished by the railway line of the next country. A staff which is changed at each border crossing can hardly be effectively controlled by any particular single country, which under paragraphs 2 and 3 should be the country of “registry”.<sup>843</sup> It may therefore be assumed that Parties will not very easily be inclined to authorize means of public transport other than ships or aircraft to carry psychotropic substances under the rules of article 14. Beyond that, one may also hold that in view of the conditions under which the international traffic of railway trains and motor coaches takes place, article 14 will in practice very rarely if ever be applicable to them. An exception may however be presented by first-aid kits of those sleeping cars

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<sup>842</sup> 1971 *Records*, vol. II, paragraph 9 of the minutes of the twenty-second meeting of the Committee on Control Measures (p. 172).

<sup>843</sup> As regards the “country of registry” of a railway train, see below, paragraphs 7 to 11 of the comments on article 14, paragraph 2.

attached to international trains which belong to, and whose conditions are effectively controlled by, a single international corporation registered in one particular country.<sup>844</sup>

9. The ships to which article 14 applies will normally be those engaged in maritime traffic. It may be assumed that inland waterway vessels will generally have no need for first-aid kits containing psychotropic substances, since when needed in an emergency medical aid may be obtained from a place on the river or the lake—as the case may be—and since international passengers requiring preparations of psychotropic substances for regular treatment may be permitted to carry them pursuant to article 4, paragraph (a). However, Governments do not appear to be prevented from applying article 14 to first-aid kits of ships engaged in the international or interregional traffic on inland waterways (rivers, canals, lakes).<sup>845</sup>

10. Article 14 may also be applied to the interregional traffic.<sup>846</sup>

11. Such relief from obligation to apply controls as a Party may secure by its non-acceptance of a decision of the Commission pursuant to article 2, paragraph 7, does not apply to psychotropic substances which are carried in first-aid kits of ships, aircraft or other forms of public transportation engaged in international traffic and controlled by the rules of article 14. It would be incompatible with the international application of the safeguards, laws, regulations, permits and licences of the country of registry pursuant to paragraphs 2 and 3 of that article.

### Paragraph 1

**1. The international carriage by ships, aircraft or other forms of international public transport, such as international railway trains and motor coaches, of such limited quantities of substances in Schedule II, III or IV as may be needed during their journey or voyage for first-aid purposes or emergency cases shall not be considered to be export, import or passage through a country within the meaning of this Convention.**

### Commentary

1. The phrase “international carriage” as used in the corresponding provision of article 32, paragraph 1 of the Single Convention and as

<sup>844</sup> The author is indebted to Dr. Zoltan Matyassy, conseiller of the *Office central des transports internationaux par chemins de fer* in Berne, Switzerland for valuable information on the conditions under which the international railway traffic takes place. The 1961 Conference rejected a proposed provision to apply to railways the rules of the Single Convention governing the carriage of narcotic drugs in first-aid kits of ships or aircraft engaged in international traffic. *1961 Records*, vol. I, summary records of the thirty-ninth plenary meeting (p. 188).

<sup>845</sup> See also *1961 Commentary*, paragraph 11 of the comments on article 32, paragraph 1 of the Single Convention (p. 394).

<sup>846</sup> Paragraph 10 of the comments referred to in the preceding foot-note; see also article 1, paragraph (k) of the Vienna Convention.

interpreted in the practice of Parties to that treaty and in the *1961 Commentary*<sup>847</sup> is not considered to be “import, export or passage through a country within the meaning of this Convention” only as long as the narcotic drugs concerned do not cross the customs lines at points of transit or destination other than those of the country of registration of the airplane or vessel involved. The drugs are held not to have crossed those customs lines if they are not removed from the aircraft or ship, or if removed at stop-overs for a short time, they are locked in bonded storage facilities of the operator in question and in any event remain under the control of the commander of the aircraft or ship. The 1971 Conference consisted in large part of national officials engaged in drug control of their respective countries, and may therefore reasonably be assumed to have been aware of that interpretation and to have intended to give in article 14 of the Vienna Convention the phrase “international carriage”, as it relates to ships or airplanes, the same meaning as the phrase has in the Single Convention.

2. The extension of the scope of article 14 to cover “other forms of public transport, such as international railway trains and motor coaches” was made on the basis of an oral motion adopted by the Committee on Control Measures of the 1971 Conference.<sup>848</sup>

3. It is obvious that psychotropic substances carried in first-aid kits of railways or motor coaches engaged in international traffic inevitably cross the customs lines at points of transit or destination. The interpretation given to the phrase “international carriage” in respect of airplanes and ships therefore cannot be applied to railway trains or motor coaches, because it would render article 14 inapplicable to them. It is however submitted that the details of the interpretation of that phrase were adopted in the practice of States and in the *1961 Commentary* with regard to the special conditions of air traffic and shipping, in order to prevent the application of article 32 of the Single Convention from interfering with the effectiveness of national drug control in countries of transit or destination—as is indeed required by the purpose of that article of the Single Convention as well as by that of the corresponding article 14 of the Vienna Convention. While the details of the interpretation of “international carriage” by airplanes or ships cannot be applied to “international carriage” by railway trains or motor coaches, the rationale of that interpretation is valid also for the trains and coaches. Carriage of psychotropic substances in their first-aid kits in international traffic is “international carriage” within the meaning of article 14, paragraph 1 only if it is undertaken under such conditions as are required to ensure that it does not endanger the effectiveness of control of psychotropic substances in the countries of transit or destination. It can be assumed that those conditions will evolve in the practice of States applying the Vienna Convention. It is

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<sup>847</sup> *1961 Commentary*, paragraph 7 of the comments on article 32, paragraph 1 of the Single Convention; see also paragraphs 2 to 3 of those comments (pp. 390 to 392 and 393 to 394).

<sup>848</sup> *1971 Records*, vol. II, paragraphs 2, 11 and 12 and the first decision recorded after paragraph 21 of the minutes of the twenty-second meeting of the Committee on Control Measures (pp. 171 and 172).

difficult to foresee them at the time of this writing, prior to the coming into force of that treaty. It is however suggested that in any event only very small quantities of psychotropic substances could be carried by trains or coaches under the terms of article 14, paragraph 1. Really effective control over aid kits of such vehicles moving in international traffic might in most cases prove to be very difficult. It was therefore suggested earlier that article 14 would only very rarely, if ever, be applied to forms of public transport other than aircraft or ships.

4. The international carriage to which paragraph 1 refers, not being “export”, “import” or “passage (transit) through a country” within the meaning of the Vienna Convention, is exempted from those provisions of the Convention which govern import, export or transit of substances in Schedules II, III and IV, but not from other controls required by that treaty. The carriage is thus in particular not subject to article 8, paragraph 1 requiring licensing of the export and import trade, to the import certificate and export authorization system which article 12, paragraphs 1 and 3 applies to substances in Schedule II, to the requirement of export declarations which article 12, paragraph 2 establishes for substances in Schedule III, to prohibitions or restrictions pursuant to article 13, or to the obligation of Parties to furnish to the Board import and export statistics pursuant to article 16, paragraph 4, subparagraphs (a) and (b) and paragraph 5.<sup>849</sup>

5. Substances in Schedule I are expressly excluded from the scope of article 14; but even without that exclusion they could not be carried in first-aid kits of means of public transportation engaged in international traffic, because that would be incompatible with the provision of article 7, paragraph (a) controlling their use.

6. The actual amount of the “limited quantities . . . needed . . . for first-aid purposes or emergency cases” is to be determined by the “country of registry” under paragraph 3. The number of crew members, of passenger seats, the length of the journey or voyage, the medical value of the substance in question and the possible frequency of its use will be relevant in this context.<sup>850</sup>

7. The phrase “emergency cases” includes also cases in which passengers need the medicines concerned for regular medical treatment, but for some reason<sup>851</sup> do not carry them.

8. It may also be recalled in this context that it seems to be the view of some countries that their shipment of “narcotic” drugs,<sup>852</sup> for the purpose

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<sup>849</sup> See also article 2, paragraph 7, subparagraph (b), clause (iii) and (iv), subparagraph (c), clauses (iii) and (iv) and subparagraph (d), clause (ii) and article 3, paragraph 3, subparagraph (c); see also *1961 Commentary*, paragraph 5 of the comments on article 32, paragraph 1 of the Single Convention (p. 392).

<sup>850</sup> Paragraph 12 of the comments referred to in the preceding foot-note (pp. 394 to 395).

<sup>851</sup> Paragraph 13 of the comments referred to in foot-note 849 (p. 395); see also *1961 Records*, vol. II, p. 143; see also vol. I, p. 35.

<sup>852</sup> i.e., of drugs subject to the Single Convention.

of supply or replenishment of first-aid kits, to ships of their own nationality which are built in a foreign country or are calling at a foreign port constitutes “transit” through, and not “export” to, the foreign country, and consequently does not require an import authorization of that country under article 31, paragraph 4 of the Single Convention. Such Governments issue the export authorizations to accompany those shipments while in “transit” without requiring the shipper to produce, pursuant to article 31, paragraph 5 of that Convention, an import certificate of the foreign country in whose shipyard or port the vessel to be supplied is located.<sup>853</sup>

9. It may be expected that the Governments mentioned in the preceding paragraph may hold the same view regarding consignments of psychotropic substances in Schedules II, III and IV, sent, for the purpose of supplying first-aid kits, to ships of their own flag in foreign shipyards or ports. They may hold that such consignments of substances in Schedule II do not require, according to article 12, paragraph 1 of the Vienna Convention, an import authorization of the country in which the shipyard or port is located, and that export declarations of shipments of substances in Schedule III need in such a situation not be sent to the authorities of the foreign country pursuant to article 12, paragraph 2. In order to ensure the passage of the consignment in transit, they may consider it appropriate to issue copies of export authorizations or export declarations—as the case may be—to accompany the consignments.<sup>854</sup>

10. According to the Chicago Convention on International Civil Aviation<sup>855</sup> the Council of the International Civil Aviation Organization provides in the “International Standards and Recommended Practices” that each aircraft should on all international flights be equipped with accessible and adequate medical supplies appropriate to its passenger-carrying capacity. The Council recommends that such supplies should comprise a first-aid kit for normal use, and one or more medical kits for emergency use, stowed so as to be readily accessible and near an exit. The Council suggests that the first-aid kit should also include an analgesic and a central nervous system stimulant, and that the emergency kit also contain a narcotic drug in injectable form.<sup>856</sup>

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<sup>853</sup> Paragraph 15 of the comments referred to in foot-note 849 (p. 395).

<sup>854</sup> In view of the provisions of articles 7 and 14, substances in Schedule I could never be sent to the first-aid kits of the ships in foreign shipyards or ports; substances in Schedule IV are subject neither to the import certificate and export authorization system nor to the requirement of export declarations of article 12 of the Vienna Convention.

<sup>855</sup> Article 54, paragraph (1) and article 37 of that Convention, United Nations, *Treaty Series*, vol. 15, p. 295.

<sup>856</sup> International Civil Aviation Organization. *International Standards and Recommended Practices, Operation of Aircraft*. Annex 6 to the Convention on International Civil Aviation. Part I. International Commercial Air Transport. Third Edition of Part I—October 1972, chapter 6, paragraph 6.2.2 and guidance in Attachment B; see also Part II. International General Aviation. Second Edition of Part II—August 1971, chapter 6, paragraph 6.1.2.1.1, (a).

**Paragraph 2**

**2. Appropriate safeguards shall be taken by the country of registry to prevent the improper use of the substances referred to in paragraph 1 or their diversion for illicit purposes. The Commission, in consultation with the appropriate international organizations, shall recommend such safeguards.**

*Commentary*

1. The Commission may combine in one set of rules its recommendations regarding safeguards pursuant to article 14, paragraph 2 of the Vienna Convention with its recommendations regarding safeguards pursuant to article 32, paragraph 2 of the Single Convention.<sup>857</sup>

2. The organizations which the Commission is required to consult need not be intergovernmental ones. Non-governmental international organizations may also be consulted. It is left to the Commission to decide which organizations are “appropriate” international organizations within the meaning of article 14, paragraph 2, but in making the choice the Commission must observe the agreements and rules governing the relations of the United Nations with the organizations in question.<sup>858</sup>

3. Among the organizations which the Commission may wish to consult, the following may be mentioned: International Narcotics Control Board, International Labour Organisation, World Health Organization, International Civil Aviation Organization, Inter-Governmental Maritime Consultative Organization, International Union of Railways, Central Office for International Railway Transport, International Criminal Police Organization and Customs Co-operation Council.

4. Which of those or other organizations the Commission may decide to consult will of course depend on the nature of the particular safeguard which it may consider.

5. The principal groups of safeguards which the Commission may wish to recommend and Governments may consider as required under paragraph 2 are as follows:<sup>859</sup>

- (i) Measures applicable to crew members to ensure that they have the qualifications to be able to guard the psychotropic substances against theft, diversion and improper use. Provision should also be made that one crew member would be able to administer the psychotropic substances properly in all cases in which a physician would not be

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<sup>857</sup> See also Council resolution 770 E (XXX) and *1961 Commentary*, paragraph 7 of the comments on article 32, paragraph 2 of the Single Convention (pp. 397 and 398).

<sup>858</sup> *1961 Commentary*, paragraphs 5 and 6 of the comments on article 32, paragraph 2 of the Single Convention (p. 397).

<sup>859</sup> See also *1961 Commentary*, paragraph 3 of the comments on article 32, paragraph 2 of the Single Convention (pp. 396 to 397).

available. Moreover, if no physician is on board the ship, airplane or vehicle, that crew member should be required to consult a physician by radio whenever advisable and possible;

- (ii) Measures applicable to the container in which the psychotropic substances are held, to ensure that only the responsible crew member has access to the substances;
- (iii) Measures regarding records. Records should be kept by the operator as well as by a crew member. Each individual administration of a psychotropic substance and each addition or removal of psychotropic substances should be entered.
- (iv) Measures requiring periodic reports by each ship, airplane or other form of public transportation to the operator and by the operator to the supervisory authority; and
- (v) Measures regarding inspection by control officials.

6. The phrase “improper use” not only covers “abuse”, i.e. supply to a drug dependent person not justified on medical grounds, but also any use not in accordance with the requirements of medical science or good medical practice, such as administration based on a false diagnosis or otherwise not indicated by the condition of the sick passenger, or administration by a wrong method.<sup>860</sup>

7. Under the general rules determining the national jurisdiction over airplanes, railway trains and motor coaches, it is the country on whose territory the airplane or vehicle is found or over whose territory the airplane flies which has the authority.<sup>861</sup> The territorial power has also jurisdiction over ships in its territorial waters and interior waters (including ports).<sup>862</sup> The country of registry has jurisdiction over ships on the high sea<sup>863</sup> and over airplanes over the high sea.

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<sup>860</sup> Paragraph 4 of the comments mentioned in the preceding foot-note (p. 397).

<sup>861</sup> In respect of airplanes this is in any event the generally held view; article 1 of the Chicago Convention on Civil Aviation, foot-note 855 above; see also McNair, Arnold Duncan, *The Law of the Air*, third edition, London, Stevens & Co., 1964, pp. 266 and 270, for treaty provisions conferring jurisdiction on the country of registry of the airplane see: Convention on Offences and Certain Other Acts committed on board Aircraft, signed at Tokyo on 14 September 1963, article 3, American Society of International Law, *International Legal Materials*, vol. II, No. 6 (November 1963), Washington, D.C.; Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft, article 4, paragraph 1, subparagraph (a), *ibid.*, vol. X, No. 2 (March 1971), pp. 133 *et seq.*; and Convention to Discourage Acts of Violence against Civil Aviation, done at Montreal on 23 September 1971, article 5, paragraph 1, subparagraph (b), *ibid.*, vol. X, No. 6 (November 1971), pp. 1151 *et seq.*

<sup>862</sup> Convention on the Territorial Sea and the Contiguous Zone, done at Geneva on 29 April 1958, article 1, United Nations, *Treaty Series*, vol. 516, p. 205, see also articles 15, 19 and 20 of that treaty; see also the Statute annexed to the Convention on the International Régime of Maritime Ports, signed at Geneva, 9 December 1923, article 17, paragraph 3, League of Nations, *Treaty Series*, vol. 58, p. 285; the territorial power has also jurisdiction over airplanes flying over its territorial or inland waters.

<sup>863</sup> Convention on the High Seas, done at Geneva on 29 April 1958, articles 5 and 6, United Nations, *Treaty Series*, vol. 450, p. 82.

8. Without the jurisdictional provisions of paragraphs 2 and 3, an airplane or ship engaged in international traffic would in respect of its first-aid kit be subject to the different rules of two or more countries during each voyage, and so would a railway train or motor coach during each international journey. That would make very cumbersome the carrying of first-aid kits containing medicines placed under international control by the Single Convention or by the Vienna Convention, and in many cases practically impossible. Paragraph 2 ensures in particular that uniform safeguards will be applied during the whole voyage or journey, and that those of the country of registry are normally not held to be incompatible with the legal requirements of other countries. While persons applying the safeguards of the country of registry may not be subjected to penal sanctions for violation of safeguard rules of other countries, some Parties may nevertheless hold that the safeguards prescribed by other Parties are not as “appropriate” as is required by paragraph 2.<sup>864</sup>

9. To determine the country of registry of an airplane, ship or motor coach does not appear to offer any formal legal problems, although considerable factual difficulties may arise in applying the safeguards to be taken by the country of registry in the case of a ship which sails under a flag of “convenience”, i.e. which is registered in another country than the real home country of its operator.<sup>865</sup> Furthermore, the registration of a motor coach seems to be of a different nature than that of a ship or aircraft, and to have different legal effects in the area relevant to the exercise of controls required for the purposes of the Vienna Convention.

10. On the other hand railway trains as a whole are not registered; locomotives and individual railway cars may be registered, but the nature of their registration also appears to be different from that of the registration of ships or airplanes.<sup>866</sup> Its sole purpose seems to be that of identifying the railway administration owning the locomotive or car concerned. The locomotive and different cars of a single train engaged in an international journey may thus be registered in different countries. Moreover, as far as the United Nations Secretariat is aware, the railway administration of each country which an international train crosses is responsible for the management of a train moving on its rails. To make article 14 applicable to a train

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<sup>864</sup> They may in such a case limit themselves to calling the attention of the country in question to the matter, request redress by diplomatic means or inform the Commission. The question generally being a minor one, will normally not be a case for informing the Board pursuant to article 19, paragraph 1, subparagraph (a); but this would theoretically be possible. In case of a dispute on the adequacy of the safeguards article 31 could be resorted to; but this will also hardly be the case if ever in situations of that kind.

<sup>865</sup> See however article 5 of the Convention of 1958 on the High Seas, foot-note 863 above; see also *1961 Records*, vol. I, p. 36.

<sup>866</sup> The language of article 14, taken from the Single Convention and conferring jurisdiction upon the country of registry was originally intended to apply only to ships and aircraft; article 32, paragraphs 2 and 3 of the Single Convention and Conference document E/CONF.58/C.4/L.46.



would require an arrangement between the railway administrations concerned entrusting a *single* administration with the administration of the conditions on board a train moving through different countries. It is suggested that that country should for the purposes of article 14 be considered to be the country of “registry” of a train moving in international traffic, whose railway administration would be entrusted with that control and would of course also be “registered” in that country. The United Nations Secretariat is not aware of the existence of any such arrangement at present.

11. In the case of a sleeping car attached to an international train during the whole journey and belonging to an international corporation responsible for its management and control during the entire journey, the country of registry of that corporation could be considered as the country of registry for the purposes of article 14. Sleeping cars often have some kind of medicine kits for the purpose of their own passengers. As far as the United Nations Secretariat is informed, those kits do not seem at present to contain any narcotic drugs or psychotropic substances.<sup>867</sup>

### *Paragraph 3*

**3. Substances carried by ships, aircraft or other forms of international public transport, such as international railway trains and motor coaches, in accordance with paragraph 1 shall be subject to the laws, regulations, permits and licences of the country of registry, without prejudice to any rights of the competent local authorities to carry out checks, inspections and other control measures on board these conveyances. The administration of such substances in the case of emergency shall not be considered a violation of the requirements of paragraph 1 of article 9.**

### *Commentary*

1. As has been mentioned in the above comments on article 14, paragraph 1,<sup>868</sup> the “international carriage” referred to therein is exempted only from those provisions of the Vienna Convention which apply to export, import and transit, but not from its other rules governing psychotropic substances. The “carriage” implies several controlled activities or situations. The acquisition of the substances for the first-aid kits is an act of “trade”, their administration is retail trade or distribution and their consumption is “use”.<sup>869</sup> The psychotropic substances held by the operator for the purposes of the first-aid kits are “stocks” in the sense of article 5, paragraph 2.<sup>870</sup> The

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<sup>867</sup> See above foot-note 844.

<sup>868</sup> Paragraph 4 of the comments.

<sup>869</sup> In the sense of article 5, paragraph 2 and in the meaning of that word as it appears in its first place in article 9, paragraph 1.

<sup>870</sup> That holding is however not “possession” in the meaning of article 5, paragraphs 2 and 3; see paragraphs 6 to 8 of the above comments on those provisions.

storage room in which the operator holds the substances for the first-aid kits are to be considered to be “premises”;<sup>871</sup> the compartments<sup>872</sup> on the airplanes and ships used for the first-aid kits, although not literally “premises”, may be treated as such for the purposes of control. It is consequently submitted that apart from the controls prescribed by article 14, paragraphs 2 and 3, the following would in any event be required: a retail trade licence for the operator pursuant to article 8, paragraph 1, although restricted to the purposes of managing the first-aid kits; control under licence or other similar control measure of the storage room in which the psychotropic substances are kept for the first-aid kits, pursuant to article 8, paragraph 2, subparagraphs (b) and (c), including a governmental authorization of the compartments in which the first-aid kits are to be kept; records pursuant to article 11, paragraph 3 indicating each individual acquisition and administration of substances in Schedule II and their preparations, as well as records kept in accordance with existing practices in the country of registry concerned and offering “readily available” information on the acquisition and disposal (administration) of psychotropic substances in Schedule III and their preparations as required by article 11, paragraph 4; and inspection pursuant to article 15 of the storage room of the operator in which the psychotropic substances are kept, of the compartments containing the first-aid kits, and of the stocks and records.<sup>873</sup>

2. The safeguards which the country of registry must take under article 14, paragraph 2 may involve some stricter controls than those expressly required by other applicable provisions of the Vienna Convention.<sup>874</sup>

3. The validity of the “laws, regulations, permits and licences” of the country of registry during the whole voyage or journey of the conveyance in question prevents otherwise nearly certain conflicts of laws, protects the conveyances, the crew members concerned and the first-aid kits<sup>875</sup> against punitive actions provided for in the laws of other countries for the violations involved, and in fact is indispensable to render possible in practice the “international carriage” of first-aid kits containing psychotropic substances.<sup>876</sup>

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<sup>871</sup> Within the meaning of article 8, paragraph 2, subparagraphs (b) and (c).

<sup>872</sup> Those on railway trains or motor coaches being only very minor matters may perhaps be subjected to less strict controls.

<sup>873</sup> The requirement of article 5, paragraph 2 to limit the retail trade, stocks and use of psychotropic substances to medical purposes is also provided for in other words in article 14, paragraph 2 prescribing the taking of appropriate measures to prevent the improper use of the psychotropic substances or their diversion for illicit purposes. The medical purposes under that paragraph are however somewhat narrower than those under article 5, paragraph 2; see paragraphs 2 and 3 of the above comments on article 5, paragraphs 2 and 3. The prescription requirement of article 9, paragraph 1 is excluded by the last sentence of article 14, paragraph 3.

<sup>874</sup> See paragraph 4 of the above comments on article 14, paragraph 2.

<sup>875</sup> See the requirement of seizure and confiscation pursuant to article 22, paragraph 3.

<sup>876</sup> Paragraph 8 of the above comments on article 14, paragraph 2.

4. As regards the phrase “country of registry”, see paragraphs 7 to 11 of the comments on article 14, paragraph 2.

5. It will be noted that paragraph 1 of article 14 refers to the international carriage of psychotropic substances<sup>877</sup> “for first-aid purposes or emergency cases”, while the last sentence of the paragraph under consideration relieves from the requirement of a medical prescription only the administration of such substances “in the case of emergency”. It is submitted that under paragraph 3 “emergency” also includes first aid, and that there is consequently no substantive discrepancy between the provisions. The opinion has also been proffered earlier that emergency cases include also those in which passengers need the psychotropic substances concerned for their regular medical treatment, but do not carry them.<sup>878</sup>

6. It is expressly provided that the continued validity of the official acts involved of the country of registry in other countries does not affect the right of the competent local authorities of those countries “to carry out checks, inspections and other control measures on board” the conveyances engaged in international traffic and carrying first-aid kits containing psychotropic substances; but that provision does not create new rights for those local authorities, but only makes clear what would anyway be the law. The local authorities may e.g. wish to verify whether the required permits and licences have been issued by the country of registry, whether the safeguards prescribed by that country are being taken, and more generally whether its laws and regulations are being observed. In exercising controls the authorities will obviously also take into account the need for avoiding undue delays in the traffic, and in particular that for expediting navigation by air traffic.<sup>879</sup>

7. It has been suggested earlier that among the safeguards which the country of registry should require is the training of a crew member in administering the psychotropic substances as correctly as the circumstances on the conveyance in question permit. The administration of the substances by such a person would be exempted from the prescription requirement not only according to the paragraph under consideration, but also pursuant to article 9, paragraph 1, because it would be an administration made by an “individual” “in the duly authorized exercise of therapeutic... functions”.<sup>880</sup>

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<sup>877</sup> i.e. only of those substances in Schedules II, III and IV.

<sup>878</sup> Paragraph 7 of the above comments on article 14, paragraph 1; see also *1961 Commentary*, paragraphs 7 and 8 of the comments on article 32, paragraph 3 of the Single Convention (p. 400).

<sup>879</sup> Article 22 of the Chicago Convention on International Civil Aviation, United Nations, *Treaty Series*, vol. 15, p. 295; see also articles 15, 19 and 20 of the Convention on the Territorial Sea and Contiguous Zone, foot-note 862 above; see paragraphs 4 and 5 of the comments on provisions of the Single Convention, referred to in the preceding foot-note (pp. 399 and 400).

<sup>880</sup> See also paragraph 9 of the comments on article 32, paragraph 3 of the Single Convention referred to in foot-note 878 (p. 41).

## Article 15

### INSPECTION

The Parties shall maintain a system of inspections of manufacturers, exporters, importers, and wholesale and retail distributors of psychotropic substances and of medical and scientific institutions which use such substances. They shall provide for inspections, which shall be made as frequently as they consider necessary, of the premises and of stocks and records.

#### *Commentary*

1. Contrary to the Single Convention,<sup>881</sup> the Vienna Convention expressly requires Parties to maintain a system of inspection.

2. Article 15 covers the activities relating to the substances in all Schedules; it follows, however, from the provisions of article 7 that those activities which relate to substances in Schedule I should be subjected to a régime of more frequent and more thorough inspections.<sup>882</sup>

3. It may be noted that the manufacture of preparations which are exempted pursuant to article 3, paragraphs 2 and 3, cannot be freed from the application of article 15.<sup>883</sup>

4. Article 15 is not one of the provisions which Parties are bound to apply to those psychotropic substances and their preparations which they may subject to the limited régime in question according to article 2, paragraph 7, subparagraphs (a) to (d). It is nevertheless submitted that Parties are in those cases bound to carry out inspections whenever that is necessary to implement their obligation to carry out a system of licensing.<sup>884</sup>

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881 While not expressly requiring it, the Single Convention refers to "inspection" in the heading of its article 34. It is held that Parties to that treaty must under more general of its provisions maintain a system of inspections; see *1961 Commentary*, paragraph 2 of the general comments on article 34, paragraph 5 of the comments on article 4, paragraph 3 of the comments on article 29, paragraph 2, subparagraph (a), paragraph 2 of the comments on article 30, paragraph 1, subparagraph (b), clause (i) and paragraph 3 of the comments on article 31, paragraph 3, subparagraph (b) of the Single Convention (pp. 405, 109, 320, 330 to 331 and 356).

882 Paragraph 16 of the comments on article 7, paragraphs (a) and (e); paragraph 19 of the comments on article 7, paragraph (b); paragraph 7 of the comments on article 7, paragraph (c) and paragraph 10 of the comments on article 7, paragraph (f).

883 Article 3, paragraph 3, subparagraph (d).

884 Clause (i) of each of those subparagraphs.

5. The obligation to maintain a system of inspection requires Parties to vest their control organs with legal authority to make inspections of all activities referred to in article 15; but this does not mean that Parties have actually to inspect each of those enterprises and institutions in cases in which it is not necessary on grounds of effective control. It is however suggested that inspections, including some previously not announced inspections, of all manufacturers, exporters, importers and wholesale distributors would in all cases appear to be indispensable. Situations might on the other hand exist in which actual inspections of all medical or scientific institutions or of all pharmacists would not be necessary. The possibility of inspection will often discourage violation of the law, even though inspection does not actually take place.

6. Article 15 does not apply to individual medical practitioners nor to individual scientists. Parties have under that provision no obligation to provide for inspections of offices of physicians or of laboratories of individuals. It is however submitted that Parties are required to carry out inspections of the medical and scientific establishments to which article 7, paragraph (a) refers, in which substances in Schedule I are used.<sup>885</sup> The view has been mentioned earlier that even the private office of a physician might be such an establishment.<sup>886</sup>

7. It is also suggested that it cannot be excluded that situations might arise in which Parties would have to inspect offices of physicians or laboratories of individual scientists using other psychotropic substances than those in Schedule I. That might be the case if it became indispensable to make such inspections in order to carry out the provision of article 8, paragraph 2, subparagraph (a) requiring Parties to “control all duly authorized persons . . . carrying on or engaged in . . . distribution” of psychotropic substances in Schedule II, III or IV. The opinion has been proffered above that that subparagraph applies also to physicians and scientists.<sup>887</sup>

8. As regards the meaning of “institutions” and the distinction between offices of physicians and “medical institutions” and between laboratories of individual scientists and scientific institutions, see above, paragraphs 10 to 14 of the comments on article 11, paragraphs 2 to 4. It is held that the phrase “institutions for hospitalization and care” used in article 11, paragraphs 3 and 4 and the phrase “medical institutions” in article 15 were intended by the 1971 Conference to have the same meaning.

9. The view was expressed at the 1971 Conference that under the text of article 15 Parties were not bound to require medical practitioners or scientific researchers in medical or scientific institutions to reveal privileged information protected by their respective laws, such as the names and other

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885 Paragraph 16 of the comments on article 7, paragraphs (a) and (e).

886 Paragraph 7 of the comments referred to in the preceding foot-note.

887 Paragraph 5 of the above comments on article 8, paragraph 2, subparagraph (a).

identifying characteristics of persons who were the subjects of treatment or research.<sup>888</sup>

10. As regards the meaning of the term “premises” see article 1, paragraph (1) and paragraph 1 of the comments on that provision. The Legal Adviser to the 1971 Conference explained that the term “premises” as used in the article under consideration “was not restricted to an enclosed and covered space surrounded by walls but might denote any place in which the activities referred to” in that article “took place” and thus “could apply to an open space”.<sup>889</sup>

11. It has been suggested earlier that the compartments containing the first-aid kits of ships, aircraft and other forms of public transport engaged in international traffic should be considered “premises” for the purposes of the Vienna Convention and should be subject to inspection under article 15.<sup>890</sup>

12. The term “stocks” as used in article 15 covers also psychotropic substances held by retail outlets.<sup>891</sup>

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<sup>888</sup> 1971 *Records*, vol. II, paragraph 17 of the summary records of the eleventh plenary meeting (p. 41).

<sup>889</sup> *Ibid.*, paragraph 16.

<sup>890</sup> Paragraph 1 of the comments on article 14, paragraph 3.

<sup>891</sup> Paragraph 7 of the general comments on article 1 of the Vienna Convention; see however article 1, paragraph 1, subparagraph (x), clause (iv) of the Single Convention excluding from the term “stocks” quantities held by retail outlets.

## Article 16

### REPORTS TO BE FURNISHED BY THE PARTIES

#### General comments

1. Article 16 represents the principal provision regarding the information which Parties have to furnish to the Commission or to the Board. There are other provisions concerning the supply to these organs of information on special situations: article 2, paragraph 1 and paragraph 7, introductory subparagraph; article 3, paragraph 3, penultimate sentence and paragraph 4; article 18, paragraphs 1<sup>892</sup> and 19, paragraph 1, subparagraph (a).<sup>893</sup>

2. Article 16 takes the position under the Vienna Convention which articles 18, 19, 20, 12 and 13 of the Single Convention have under the latter treaty. The 1971 Conference, however, intended to make more limited the information which Parties would have to furnish under the Vienna Convention than that which is required under the Single Convention, particularly in regard to the statistical data to be furnished to the Board.

3. The Vienna Convention does not provide for an "estimate system", and Parties are consequently not bound to furnish to the Board in advance figures on their needs of psychotropic substances in each year;<sup>894</sup> they are not bound to supply to the Board statistics on consumption, seizures<sup>895</sup> and disposal of seized psychotropic substances, on stocks other than stocks of substances in Schedule I or II held by manufacturers of those substances, and on the use of substances in Schedule IV for the manufacture of exempt preparations. The export and import statistics need not be furnished quarterly, but only annually, and have to be subdivided by country of destination or origin—as the case may be—normally only in regard to substances in Schedules I and II, but not in regard to those in Schedules III and IV.<sup>896</sup>

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892 Attention is called to the words: "explanations . . . required of Governments".

893 See also article 2, paragraphs 5, 7 and 8, subparagraphs (a) and (b); article 13, paragraph 1, article 19, paragraphs 2, 3 and 5 and the provisions of the final clauses concerning ratification, accession, denunciation, territorial application, regions, amendments and reservations.

894 See the explanation of Sir Harry Greenfield, the then President of the Board; *1971 Records*, vol. II, paragraph 2 of the minutes of the thirteenth meeting of the Committee on Control Measures (p. 152).

895 Parties may however be required to furnish to the Commission statistical data on seizures, under the conditions of article 16, paragraph 1, introductory subparagraph.

896 See, however, article 16, paragraph 5.

### *Paragraph 1*

1. The Parties shall furnish to the Secretary-General such information as the Commission may request as being necessary for the performance of its functions, and in particular an annual report regarding the working of the Convention in their territories including information on:

(a) Important changes in their laws and regulations concerning psychotropic substances; and

(b) Significant developments in the abuse of and the illicit traffic in psychotropic substances within their territories.

### *Commentary*

1. The paragraph under consideration covers the substance of article 18, paragraph 1, introductory subparagraph and subparagraphs (a) and (b) of the Single Convention. Many of the comments of the 1961 *Commentary* on those provisions of the Single Convention also apply *mutatis mutandis* to the provision of the Vienna Convention.

2. The scope of information which the Commission may request and which the Parties have to furnish is very wide. It covers not only matters relating to the implementation of the Convention, but in addition also those which are related to the aims of that treaty, since under article 17, paragraph 1, it is a function of the Commission to consider all matters pertaining to the aims of the Vienna Convention and to make recommendations relating thereto.

3. The information which Parties have to furnish on the Commission's request may relate not only to substances which are controlled or are considered for control by the Vienna Convention, but also to all other substances actually abused, likely to be abused or liable to the kind of abuse which it is the aim of that treaty to combat. It may include all possible facets of the abuse problem, such as the organization of the process of manufacture of, trade in or other distribution of the substance or substances involved, the organization of the government authority or authorities dealing with the problem, controls applied or considered for application, available technical knowledge about methods of dealing with the problem, the extent and nature of abuse of each substance and the characteristics of the abusers, and in general all relevant economic and social factors and medical aspects.

4. The information which the Commission may request covers also statistical data, including in particular those which relate to the extent of the illicit traffic and of drug abuse. It is however submitted that the Commission may not request Governments to furnish figures which have to be supplied to the Board pursuant to article 16, paragraphs 4 and 5. It is also held that the Commission may normally not request those statistical data, other than information concerning the illicit traffic which Parties are under the Single Convention required to furnish to the Board in respect of narcotic drugs, but for whose supply to the Board concerning psychotropic substances the



Vienna Convention does not provide. The Commission should also not demand explanations of the figures supplied or to be supplied to the Board, including supplementary statistical data for the purpose of explaining those figures. It is suggested that the Commission should call to the attention of the Board the need for such explanations as it may consider to be required. It is also held that the Commission may not request Parties to furnish statistical data which under article 2, paragraph 7, subparagraphs (a) to (e) they are not bound to supply to the Board.

5. The Commission may address a request for information necessary for the performance of its functions also to non-Parties to the Vienna Convention. If Parties to the Single Convention, they would under that treaty often be legally bound to furnish the requested information, since the Commission is under that treaty authorized to require those Parties to furnish virtually all the data which it can request under the general formula of article 16, paragraph 1, introductory subparagraph of the Vienna Convention.<sup>897</sup> A State not a Party to either Convention, but a Member of the United Nations, would be bound to comply with the Commission's request to the extent to which furnishing the information in question is required by its obligation under the Charter of the United Nations to co-operate in the promotion of the solution of the international social problem of drug abuse.<sup>898</sup>

6. Taking into account the interpretation of the corresponding provision of article 18, paragraph 1, subparagraph (a) of the Single Convention in accordance with the practice of Governments in this area, it is submitted that Parties to the Vienna Convention are under the paragraph under consideration bound to furnish to the Commission only such data as they are required to obtain in order to implement specific provisions of that treaty, as are otherwise in their possession, or as they can collect by an effort which can reasonably be expected of them.<sup>899</sup>

7. It is also submitted that it is left to the judgement of the Commission to determine what is "necessary for the performance of its functions." It has been held in connexion with the related provision of the Single Convention that only in the highly improbable case of abuse by the Commission of its right to request information would a Party be entitled to refuse to supply the requested data on the ground that they are not necessary for the performance of the Commission's functions.<sup>900</sup>

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<sup>897</sup> See article 18, paragraph 1, introductory paragraph in connexion with the introductory paragraph of article 8 of the Single Convention.

<sup>898</sup> Article 55, subparagraph (b) and Article 56 of the Charter of the United Nations; see also the Commission's terms of reference under paragraph 2 of Council resolution 9 (I); see in this connexion also Council resolution 246 B (IX) which refers to authority granted to the Secretary-General, and *1961 Commentary*, paragraph 6 of the comments on article 18, paragraph 1, introductory part of the Single Convention (p. 210).

<sup>899</sup> Paragraph 5 of the comments referred to in the preceding foot-note (p. 210).

<sup>900</sup> Paragraph 4 of the comments referred to in foot-note 898 (pp. 209 and 210).

8. The question arises whether the words “and in particular” referring to “an annual report” are intended to indicate a specific case of the information which Parties have to furnish only if requested by the Commission as being necessary for the performance of its functions, or are meant to point out a type of information to be furnished in addition to that requested by the Commission. In view of the interpretation given in the practice of Governments to a similar language of the Single Convention,<sup>901</sup> it is suggested that the second of those interpretations is also valid for the provision of the Vienna Convention under consideration. The words “and in particular” are intended to mean “and also in particular”. Parties would be bound to furnish annual reports regarding the working of the Vienna Convention even though they have not been requested by the Commission to do so, because such reports are in any event necessary for the performance of the Commission’s functions.<sup>902</sup>

9. It may be noted that it was the understanding at least of some Government representatives at the 1971 Conference that the provision for obligatory annual reports did not require the Council to provide for annual sessions of the Commission.<sup>903</sup>

10. The Commission may pursuant to article 16, paragraph 6 require that the annual report on the working of the Vienna Convention be combined with those under the 1931 and 1936 Conventions, under the 1953 Protocol and under the Single Convention.<sup>904</sup>

11. In view of the provision of article 16, paragraph 6, the Commission may request that the annual report not only include data relating to the working of the Vienna Convention, but also any other information which it may demand under its general authority pursuant to the introductory paragraph of paragraph 1, even if that information is not directly related to the working of the Convention, but only to its aims.<sup>905</sup>

12. Information whose inclusion in the annual report the Commission may request may relate to such matters as: participation in international drug

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901 Article 18, paragraph 1, introductory subparagraph.

902 Paragraphs 2 and 3 of the comments referred to in foot-note 898 (p. 209).

903 *1971 Records*, vol. II, paragraphs 30 and 33 of the minutes of the twenty-first meeting of the Committee on Control Measures (pp. 169 and 170); see also the draft resolution, on which the 1971 Conference did not act, regarding annual sessions of the Commission, *1971 Records*, vol. I, pp. 129 and 130.

904 Article 21 of the 1931 Convention; article 16 of the 1936 Convention; article 10, paragraph 1, subparagraph (c) of the 1953 Protocol and article 18, paragraph 1, subparagraph (a) of the Single Convention; in the past the Commission has indeed required a combined report under the earlier drug treaties; see document E/NR.FORM/Rev.2, dated 21 March 1966; the Commission, at its twenty-sixth session, adopted a new single form for annual reports under the Single Convention as amended by the 1972 Protocol and under the above-mentioned earlier drug treaties. This form contains also questions which would have to be considered under the Vienna Convention; see document E/NR.FORM/Rev.3 (17 March 1975).

905 Article 17, paragraph 1.

treaties, including bilateral treaties and extradition treaties relating to drug offences; laws and regulations implementing the Vienna Convention;<sup>906</sup> the organization of the domestic control administration; the details of control of the various phases of the economy dealing with psychotropic substances, including manufacture and trade, including international trade and forms of non-commercial distribution; the carriage of psychotropic substances in first-aid kits of means of public transportation engaged in international traffic; prohibitions and restrictions relating to the international trade pursuant to article 13; legal and social measures concerning illicit traffickers; names and addresses of enterprises manufacturing psychotropic substances, with an indication of the substances concerned; details on the extent and pattern of the abuse of psychotropic substances; details on the prevention of abuse of such substances and on the treatment of their abusers, including measures of rehabilitation; details on the illicit traffic covering such items as illicit cultivation, harvesting, manufacture, diversion from licit channels, smuggling, quantities of psychotropic substances seized, prices in the illicit traffic, prosecution, characteristics describing the kind of persons engaged in that traffic and the organization of the domestic enforcement services.<sup>907</sup>

13. In the light of the meaning of the term “territories” in the related provision of article 18, paragraph 1, subparagraph (a) of the Single Convention, one may assume that “territories” as used in the paragraph under consideration means “regions”;<sup>908</sup> but even if “territories” in that place had the meaning of geographic “areas”, it is submitted that Parties would have to report separately on each of their “regions”, although they may combine those reports in a single document. Under article 16, paragraph 6, the Commission is in any event entitled to demand separate reports on each of the regions of a Party.

14. It has been the custom of the Commission to require the inclusion in the annual reports under earlier drug control treaties of the information referred to in subparagraphs (a) and (b) as it relates to “narcotic” drugs,<sup>904</sup> although the earlier drug treaties do not have an explicit provision to that effect.

15. It may be noted that subparagraph (a) is not limited to information relating to laws and regulations enacted in implementation of the Vienna Convention. It covers all laws and regulations concerning psychotropic substances, including those which are not required for the implementation of obligations under that Convention.

16. Subparagraph (a) is the only explicit provision of the Vienna Convention requiring Parties to furnish legal information concerning psycho-

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<sup>906</sup> The Commission may request that the actual texts be attached to the annual reports.

<sup>907</sup> See document E/CN.7/567; see also *1961 Commentary*, paragraph 4 of the comments on article 18, paragraph 1, subparagraph (a) of the Single Convention (pp. 212 to 213).

<sup>908</sup> Article 1, paragraph (k); see also paragraph 10 of the above general comments on article 1 and foot-note 4 thereto.

tropic substances. That Convention does not contain an express provision corresponding to that of article 18, paragraph 1, subparagraph (b)<sup>909</sup> requiring Parties to furnish the texts of *all* laws and regulations promulgated in order to give effect to the Single Convention. It appears that the authors of the Vienna Convention assumed that the Parties would not necessarily be required to furnish the texts of all laws and regulations promulgated in implementation of that treaty. It is nevertheless held that by virtue of its general authority pursuant to article 16, paragraph 1, introductory subparagraph, the Commission is entitled to ask for all those legal texts, as well as for others necessary for the performance of its functions;<sup>910</sup> but the obligation of Parties under the Vienna Convention to furnish legal texts is not automatic, as it is under the Single Convention.<sup>911</sup> The Parties to the Vienna Convention are required to furnish the legal texts only if they are requested by the Commission as being necessary for the performance of its functions.

17. Knowledge of names and addresses of all manufacturers of basic psychotropic substances is necessary not only for the Commission's performance of its functions, but also to Governments for the effective implementation of the Vienna Convention. The Commission may ask for the inclusion of that information in the annual reports of Governments,<sup>912</sup> or that it be furnished separately. It is necessary that the Secretary-General make that information available to all Parties and other States.<sup>913</sup>

18. The Commission may but is not bound to examine the actual texts of the individual annual reports. It may limit itself to discussing a summary of the reports which it may request the Secretary-General to prepare for that purpose.

### *Paragraph 2*

**2. The Parties shall also notify the Secretary-General of the names and addresses of the governmental authorities referred to in subparagraph (f) of article 7, in article 12 and in paragraph 3 of article 13. Such information shall be made available to all Parties by the Secretary-General.**

<sup>909</sup> See also article 21, paragraph (a) of the 1912 Convention; article 30 of the 1925 Convention; article 21 of the 1931 Convention and article 16 of the 1936 Convention; see, however, article 10, paragraph 1, subparagraph (b) and paragraph 2 of the 1953 Protocol.

<sup>910</sup> Paragraph 12 of the present comments and Part A. Chap. II, note after question 3 (b) of annex II of document E/CN.7/567.

<sup>911</sup> 1961 *Commentary*, paragraphs 2 and 3 of the comments on article 18, paragraph 1, introductory part of the Single Convention (p. 209).

<sup>912</sup> Paragraph 12 of the present comments; see also document E/CN.7/567, annex II, Part A, annex 4.

<sup>913</sup> See also 1961 *Commentary*, foot-note 13 to the comments on article 18, paragraph 1, subparagraph (a) of the Single Convention (p. 212).

*Commentary*

1. The paragraph under consideration corresponds to article 18, paragraph 1, subparagraph (d) of the Single Convention.

2. It would be useful and would prevent errors if the authorities referred to in article 12 and those in article 13, paragraph 3 were identical.

3. It would also be advisable that, if feasible, the “competent authorities or agencies” referred to in article 7, paragraph (f) as engaging in international transactions in substances in Schedule I as well as the “competent authorities” issuing authorizations under that provision, were the Government units empowered to issue import and export authorizations under article 12, paragraph 1.

4. The information to be furnished under paragraph 2 includes the names and addresses of the national as well as of the regional authorities concerned.

5. The Commission may request<sup>914</sup> that that information be included in the annual reports of Parties.<sup>915</sup> It would be useful if in addition new information would be sent to the Secretary-General as soon as changes occur.

6. In order to prevent mistakes and sometimes a delay in the international shipment of useful medicines, it would be advisable that the Secretary-General forward without any undue delay to Parties and non-Parties alike the information which he receives pursuant to the paragraph under consideration. It is moreover suggested that the Secretary-General periodically compile and forward to all Governments lists of the names and addresses of the authorities of all countries responsible for the authorizations to which paragraph 2 refers.

7. It is essential that the Secretary-General should make the information to which paragraph 2 refers available not only to all Parties as that paragraph requires, but also to States which are non-Parties. That information also includes the “competent authorities” to which article 12, paragraph 2 refers.

*Paragraph 3*

**3. The Parties shall furnish, as soon as possible after the event, a report to the Secretary-General in respect of any case of illicit traffic in psychotropic substances or seizure from such illicit traffic which they consider important because of:**

- (a) New trends disclosed;**
- (b) The quantities involved;**

<sup>914</sup> Article 16, paragraph 6 does not apply to paragraph 2; but the Commission may make that request pursuant to the introductory subparagraph of paragraph 1 in connexion with paragraph 6.

<sup>915</sup> 1961 *Commentary*, paragraph 4 of the comments on article 18, paragraph 1, subparagraph (a) of the Single Convention (pp. 212 and 213); see also document E/CN.7/567, Annex II, Part A. Chap. IV D, question 57.

(c) The light thrown on the sources from which the substances are obtained; or

(d) The methods employed by illicit traffickers.

Copies of the report shall be communicated in accordance with subparagraph (b) of article 21.

### Commentary

1. The paragraph under consideration corresponds to article 18, paragraph 1, subparagraph (c) of the Single Convention.<sup>916</sup>

2. The reports must be sent as soon as possible after the “event”, i.e. after the discovery of the case of the illicit traffic or seizure from the illicit traffic. The discovery and seizure will often be simultaneous. Where the discovery precedes the seizure, the report should be made as soon as possible after the discovery, and appropriately supplemented after the seizure. Each seizure from the illicit traffic of course constitutes a “case of illicit traffic”.

3. The phrase “as soon as possible” implies that delays in reporting required by valid considerations of successful police investigation would be justified.

4. The French version does not qualify the words “*dans les plus brefs délais*” by a phrase such as the words in the English text “after the event”, or the words in the Spanish text “*después de acaecidos los hechos*”. In view of that language in those two other versions and in view of the purpose of the provision under consideration, it is nevertheless held that the French text has the same meaning as the two other versions.

5. The phrase “seizure from such illicit traffic” covers also the apprehension of other objects than psychotropic substances, such as laboratory equipment used by illicit traffickers in those substances. The term “seizure” does not refer to the final disposal of the seized objects, but to their provisional apprehension pending a final decision by the authorities, which will often be judicial organs. The English and French text use for the provisional measure the term “seizure” and “*saisie*” in harmony with the language of their respective paragraph 3 of article 22. The Spanish text on the other hand uses for the provisional measure to which the paragraph under consideration refers the word “*decomiso*”, while in its article 22, paragraph 3 it employs that word for the final act of confiscation, and the word “*aprehensión*” for the provisional measure.<sup>917</sup> In view of the purpose of article 16, paragraph 3, preference has been given to the English and French versions.

6. Contrary to the aim during the early period of international co-operation in the field of drug control under the auspices of the League of

<sup>916</sup> and to article 23 of the 1931 Convention.

<sup>917</sup> See also article 21, paragraph (b) of the Vienna Convention.

Nations, the reports to the Secretary-General on individual cases of the illicit traffic under the Vienna Convention like those under the Single Convention are not intended to serve the purpose of international police co-operation in individual cases;<sup>918</sup> but the obligation of Parties under article 21, paragraph (b) to communicate copies of those reports “to the other Parties directly concerned” may serve that purpose. It is suggested that it would also help actual police co-operation if the Commission would recommend that Parties should also send copies of their reports to the International Criminal Police Organization (INTERPOL), as it did in respect of the seizure reports under article 18, paragraph 1, subparagraph (c) of the Single Convention.<sup>919</sup>

7. When preparing the reports on individual cases of the illicit traffic in psychotropic substances, Parties may usefully keep in mind that they serve on the one hand the Commission in reviewing the illicit traffic situation in individual countries and in developing a strategy of the international campaign against the illicit traffic, and on the other hand may serve the purpose of co-operation of national police organizations in particular criminal cases.

8. Reports which Governments consider important for only one or two of the reasons mentioned in subparagraph (a) to (d) should nevertheless also give information on the other topics referred to in those provisions, e.g. if a Party finds a case important only because of the new trends in the illicit traffic which it discloses, the Party should nevertheless, if possible, also report on the quantities of psychotropic substances involved, on the sources from which the substances were obtained and on the methods which were employed by the illicit trafficker.

9. Article 16, paragraph 6 does not apply to paragraph 3 of that article, and consequently does not seem to authorize the Commission to require the use of forms prepared by it for the reports on individual cases of the illicit traffic. It is nevertheless suggested that the view may perhaps be held that under the introductory subparagraph of paragraph 1 to which paragraph 6 applies, the Commission could impose upon Parties an obligation to use such forms for those reports as being information “necessary for the performance of its functions”; but even if it was assumed that in view of the special provision of paragraph 3, reports on individual cases of the illicit traffic are excluded from the scope of paragraph 1, it would be advisable that Governments use such forms as the Commission may recommend. The Commission may recommend that Governments employ for illicit traffic reports under the Vienna Convention the same form whose use it prescribes for the corresponding reports under the Single Convention.<sup>920</sup>

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918 1961 *Commentary*, paragraph 5 of the comments on article 18, paragraph 1, subparagraph (c), (p. 216).

919 Paragraph I of the Notes at the end of annex I of document E/NR.FORM/Rev.2; see also Council resolution 1579 (L).

920 Article 18, paragraph 1, subparagraph (c) and paragraph 2 of the Single Convention, see also article 23 of the 1931 Convention.

10. Some of the data whose inclusion in reports on cases of illicit traffic the Commission may request are as follows: the nature and quantity of the psychotropic substance involved; date and place of the illicit transaction or seizure; packing; labelling and trade mark of the seized substance; means of transportation involved (including name and nationality of the owner and data on the registration of the conveyance in question); means of concealing the contraband; route followed by and destination of the contraband; place and means of acquisition (purchase, theft or otherwise) by the illicit traffickers; place of manufacture or any other process of transformation; laboratory and other equipment (including conveyances) seized; data identifying and characterizing the person or persons involved (name, date of birth, nationality, passport, occupation, residence, photograph, fingerprints); and fate of the trafficker (detention, left free on or without bail, at large, administrative or judicial action).<sup>921</sup>

11. It is suggested that the Commission's form for reports on individual cases of the illicit traffic should also contain a reminder that copies of the reports have to be sent to "the other Parties directly concerned"<sup>922</sup> and, if the Commission recommends that copies be communicated also to the International Criminal Police Organization (INTERPOL), also a reminder of that recommendation.

12. The Commission may also recommend that Parties follow guidelines which it may draft, in determining whether a case of the illicit traffic or a seizure from the illicit traffic is "important" in accordance with the criteria mentioned in subparagraphs (a) to (d).

13. The Commission may, but is not bound to, examine the texts of the reports on individual cases of illicit traffic, or it may choose to discuss such summaries of those reports as it may instruct the Secretary-General to prepare. It may also request the Secretary-General to distribute to all Parties and also to other States copies of the reports or of documents summarizing them.

#### *Paragraphs 4 and 5*

**4. The Parties shall furnish to the Board annual statistical reports in accordance with forms prepared by the Board:**

**(a) In regard to each substance in Schedules I and II, on quantities manufactured, exported to and imported from each country or region as well as on stocks held by manufacturers;**

**(b) In regard to each substance in Schedules III and IV, on quantities manufactured, as well as on total quantities exported and imported;**

<sup>921</sup> See also 1961 *Commentary*, paragraph 7 of the comments on article 18, paragraph 1, subparagraph (c) of the Single Convention (pp. 216 and 217); document E/NR.FORM/Rev.2, annex I and E/NR.FORM/Rev.3, chap. VIII.

<sup>922</sup> Article 21, paragraph (b).



(c) In regard to each substance in Schedules II and III, on quantities used in the manufacture of exempt preparations; and

(d) In regard to each substance other than a substance in Schedule I, on quantities used for industrial purposes in accordance with subparagraph (b) of article 4.

The quantities manufactured which are referred to in subparagraphs (a) and (b) of this paragraph do not include the quantities of preparations manufactured.

5. A Party shall furnish the Board, on its request, with supplementary statistical information relating to future periods on the quantities of any individual substance in Schedules III and IV exported to and imported from each country or region. That Party may request that the Board treat as confidential both its request for information and the information given under this paragraph.

### *Commentary*

1. As regard the statistical data which Parties have to furnish under the Single Convention but not under the Vienna Convention, see above, paragraph 3 of the general comments on article 16.

2. It appears to follow from the legislative history of paragraphs 4 and 5<sup>923</sup> that the Board is normally precluded from requesting Parties to furnish those statistical figures which the Single Convention requires in regard to the drugs which it controls, but for which the Vienna Convention does not expressly make provision in respect of those substances concerned which it governs. It is however submitted that the Board could, under the conditions of article 19, exceptionally ask Parties and non-Parties to supply those figures if necessary for explanations under the procedure of that article. Parties are of course also able to furnish to the Board such statistical information not provided for in the Vienna Convention as they may consider useful for the Board's work, and the Board may in a general way refer to that possibility in the form which it must prepare and whose use it has to require pursuant to article 16, paragraphs 4 and 6 for statistical returns.<sup>924</sup>

3. It may also be concluded from the legislative history of the paragraphs under consideration that the 1971 Conference intended to exclude from the statistical system of the Vienna Convention only some of

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<sup>923</sup> 1972 *Records*, vol. II, paragraphs 1 to 3 of the minutes of the thirteenth meeting, paragraphs 34 to 38 of the minutes of the fourteenth meeting, paragraphs 4 to 26 of the minutes of the fifteenth meeting, paragraph 1 of the minutes of the sixteenth meeting and paragraphs 23 to 54 of the minutes of the twenty-first meeting of the Committee on Control Measures; and paragraphs 53 to 63 of the summary records of the thirteenth meeting, paragraphs 1 to 26 of the summary records of the fourteenth meeting and the last paragraph of the summary records of the twenty-seventh meeting of the plenary conference (pp. 152, 155, 156, 157, 158, 168 to 171, 52 to 54 and 120).

<sup>924</sup> See the space on pp. 5, 7, 8 and 9 of form P (4th edition, October 1974) which the Board has provided for that purpose.

the data for which the Single Convention provides, but assumed in respect of the other figures which it included in the Vienna Convention that the practice of the Board and Governments regarding them would under that treaty be rather similar to their practice regarding the corresponding figures under the Single Convention, account however being taken that the Vienna Convention does not provide for an estimate system.<sup>925</sup>

4. The Board is not precluded from requesting non-Parties to furnish the statistical information pursuant to paragraphs 4 and 5. It is submitted that non-Parties which are Members of the United Nations would appear to be required to co-operate with the Board in this connexion in view of their obligation to co-operate with other Members of the United Nations and with the United Nations (and its organs) in the solution of international social and health problems pursuant to Article 55, subparagraph (b) and Article 56 of the Charter of the United Nations.

5. Paragraph 6 authorizes the Board to prescribe the manner in which the statistical returns under paragraph 4 should be furnished.

6. This gives the Board the right to prescribe the mode of transmission and presentation of the reports and details of the data to be included therein,<sup>926</sup> the latter within the limits set by the text and purpose of paragraph 4. The use of forms prepared by the Board is expressly required by the introductory subparagraph of paragraph 4.

7. The Board should include in the forms instructions for the guidance of Governments, indicating also, where appropriate, its understanding of the language used in paragraph 4.

8. The Board is required to supply copies of the forms to the Parties and—it is suggested—should furnish them also to non-Parties. All Governments should inform the secretariat of the Board in time of their need for supplies of statistical forms.

9. Paragraph 6 does not grant the Board authority to determine the manner in which Parties are bound to furnish the information on the international trade pursuant to paragraph 5. The Board is also not empowered to prescribe the use of forms for that purpose. The Board is however not prevented from recommending the use of a form which it may prepare for that kind of information, and the manner in which it should be furnished.

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<sup>925</sup> Articles 12, 19 and 21 of the Single Convention.

<sup>926</sup> At the time of this writing the Board has already prepared and supplied to Governments a form for the supply of statistics pursuant to paragraph 4; see form P (4th ed., October 1974). The Board did so in view of resolution I of the 1971 Conference and of Council resolution 1976 (L) inviting States, to the extent that they are able to do so, to apply provisionally the controls provided for in the Vienna Convention pending its entry into force; *1971 Records*, vol. I, pp. 128 and 129. See also List of Psychotropic Substances included in the Schedules annexed to the Convention of 21 February 1971, document GE.74-12360, prepared by the Board.

10. While the Single Convention fixes the dates by which the statistical returns for which it provides have to be furnished to the Board,<sup>927</sup> article 16, paragraph 6 leaves it to the Board to determine those dates for the statistical returns pursuant to paragraph 4. The Board may set the same date or different dates for different statistical data. It is suggested that it would be advisable to require that the annual statistical reports under paragraph 4 should be furnished to the Board by the same date as the annual statistical reports under the Single Convention, i.e. “not later than 30 June following the (calendar) year to which they relate”.<sup>928</sup> It may again be noted in this place that the international trade statistics under paragraph 4 have to be furnished only annually, while those under the Single Convention have to be sent quarterly.

11. The Board has under paragraph 6 no authority to determine the date by which Parties are required to furnish information pursuant to paragraph 5.<sup>929</sup> It is however held that Parties should nevertheless supply that information by the time set by the Board for that purpose, to the extent that this is possible by the degree of effort which can reasonably be expected from them. Undue delay in supplying that information would hardly be compatible with the obligation of Parties to carry out in good faith the provisions of the Vienna Convention.

12. Separate statistical data have to be furnished for different “regions”.<sup>930</sup>

13. The Board is authorized to examine the statistical information which it receives. This follows in any event from the provision of article 18, paragraph 1 requiring the Board to include in its annual report “an analysis of the statistical information at its disposal, and, in appropriate cases, an account of the explanations, if any, given by or required of Governments, together with any observations and recommendations which the Board desires to make”. This view is also in accord with the opinion proffered above that the 1971 Conference appears to have assumed that the practice of the Board and Governments regarding the statistical figures furnished under the Vienna Convention would be rather similar to their practice regarding the corresponding figures under the Single Convention, account being taken that the Vienna Convention does not provide for an estimate system.<sup>931</sup>

14. The Board may undertake that examination not only in order to determine whether the statistical reports are complete and accurate, but also more generally to determine whether and to which extent they indicate compliance or lack of compliance with provisions of the Vienna Convention.

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927 Article 20, paragraph 2.

928 This has actually been done by the Board in form P referred to in foot-note 926.

929 1971 *Records*, vol. II, paragraphs 44 and 53 of the minutes of the twenty-first meeting of the Committee on Control Measures (pp. 170 and 171).

930 Article 1, paragraph (k).

931 See above paragraph 3 of the present comments.

The Board may beyond that use those figures in order to evaluate their significance in relation to any problem which may be relevant to the aims of the Vienna Convention. The figures together with figures supplied under the Single Convention may throw some light on the extent of the problem of drug abuse in some countries. They may reveal significant diversions from the legal international trade into illicit channels. Their inaccuracy, incompleteness and even a delay in furnishing them may point to weaknesses of national control, which may or may not be due to a violation of treaty obligations. The weaknesses in reporting statistical data may be explained, e.g. by defects in the system of records which pursuant to article 11 a Party must require enterprises engaged in the different phases of the trade in psychotropic substances to maintain,<sup>932</sup> by an insufficient system of inspection under article 15 or by a failure to apply adequately the controls required by the licensing system.<sup>933</sup> Under article 16, paragraphs 4 and 5 the Board may examine only whether there are weaknesses of national control either relating to the incompleteness or inaccuracy of the statistical figures which it received from a Government, or to the failure of a Government to supply the required returns or to supply them in time, but not defects unrelated thereto. The Board may however examine the latter kind of defects under the conditions of article 19.

15. In the process of examining the statistical returns of a State, the Board may take into account that State's annual reports, its legal information furnished to the Secretary-General, related statistical data furnished by other States, annual reports made by them, other communications made by the State concerned or by other States in writing or orally to the Board, to the Commission or to other intergovernmental organizations or organs, and official data released by Governments to the public. The Board may however not use information from private sources.<sup>934</sup>

16. The Board may ask for explanations of the statistical data furnished by a State, of an inaccuracy or incompleteness which they may reveal, or of a failure to supply the data or to supply them in time. It may address such a request to the State concerned, to other States, including non-Parties, and to intergovernmental organizations and organs, but not to private organizations or persons. The Board may request information on the conditions of controls which a Party applies in implementation of provisions of the Vienna Convention if it holds that that information has a bearing on the quality of the statistical reporting involved. The Board may also seek to obtain information which might be helpful in its evaluation of the statistical figures involved in regard to any problem relevant to the aims of the Vienna Convention. Under paragraphs 4 and 5 of the Board may however not inquire about facts which are unrelated to the statistical figures which it examines. It

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932 See also article 7, paragraph (e).

933 See in particular article 8, paragraph 4; see also paragraphs 6 and 16 of the above comments on article 8, paragraph 1.

934 See also *1961 Commentary*, paragraph 6 of the comments on article 13, paragraphs 2 and 3 of the Single Convention (pp. 172 and 173).

is also held that the Board may in that procedure not request the supply of statistical data required by the Single Convention in respect of narcotic drugs, but excluded from the scope of the Vienna Convention in regard to the psychotropic substances concerned.<sup>923</sup> The Board is however not subject to such limitations of the scope of its inquiries under the conditions of article 19.

17. The right of the Board to ask for explanations and to obtain them under paragraphs 4 and 5 follows quite clearly from the provision of article 18, paragraph 1 requiring the Board to include in its annual report an analysis of the statistical information at its disposal with “an account of the explanations . . . given by or required of Governments”. Reference is also made to the opinion expressed earlier that the authors of the Vienna Convention expected that the practice of the Board and Governments regarding the statistical data supplied under the Vienna Convention would be rather similar to their practice concerning the corresponding figures under the Single Convention.<sup>935</sup> It is on that ground also submitted that it is not within the competence of the Board to question or express an opinion on statistical information in so far as it may relate to psychotropic substances required for what the Single Convention calls “special purposes”, i.e. which again in the language of that treaty means “special Government purposes and to meet exceptional circumstances” or in other words “for military purposes and for the needs in such catastrophic events as large-scale epidemics and major earthquakes”.<sup>936</sup> In view of the Board’s practice and of that of its predecessors, the Permanent Central Narcotics Board and Drug Supervisory Body,<sup>937</sup> in their relations with Governments under the earlier drug treaties, there can be no doubt that the Board in determining the kind and scope of its inquiries under paragraphs 4 and 5 will always pay due respect to the fact that the Governments which furnish the statistical information represent sovereign States.<sup>938</sup>

18. It is held that non-Parties which are Members of the United Nations would be bound to furnish to the Board the requested explanations, to the

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935 See paragraphs 3 and 13 of the present comments; preference is given to the English (and French) texts of article 18, paragraph 1 over its Spanish version. That version uses the word “*pedido*” while the English text employs the word “required” and the French text the word “*requis*”. The Spanish text makes it only clear that the Board may ask for explanations but not that the Parties are bound to furnish them while the other texts indicate such an obligation. It follows from the discussion of that matter at the 1971 Conference and also from the understanding of the same language in article 15, paragraph 1 of the Single Convention that it is the better opinion that an obligation was intended; see the opinion of the Legal Adviser of the 1971 Conference, *1971 Records*, vol. II, paragraph 35 of the summary records of the eleventh plenary meeting; see also paragraphs 36, 43, 45, 48 and 50 of those records (pp. 42 and 43).

936 Article 13, paragraph 4 of the Single Convention; *1961 Commentary*, paragraph 1 of the comments on that provision and paragraphs 5 and 6 of the comments on article 1, paragraph 1, subparagraphs (w) and (x) of that treaty (pp. 175, 32 and 33).

937 *1961 Commentary*, comments on article 1, paragraph 1, subparagraph (a) and paragraph 4 of the comments on article 45 of the Single Convention (pp. 1 and 459).

938 *1961 Commentary*, paragraph 12 of the comments on article 13, paragraphs 2 and 3 of the Single Convention (p. 174).

extent that this appears to be required by their obligation to co-operate with other Members of the United Nations and with the United Nations (and its organs) in the solution of international social and health problems, pursuant to Article 55, subparagraph (b) and Article 56 of the Charter of the United Nations.<sup>939</sup>

19. Like the Single Convention, the Vienna Convention does not explicitly require the Board to publish the statistical figures which it receives. Both provide only that the Board's reports should contain an analysis of the statistical information at its disposal.<sup>940</sup> It is nevertheless submitted that the Board should and even is obligated to publish periodically, and at least annually, the statistical figures which it receives under the Vienna Convention, excepting only those international trade data which the Parties concerned requested the Board to treat as confidential pursuant to paragraph 5. It has been the practice and—it is held—also an obligation of the Board to publish periodically the statistical figures which it receives under the Single Convention.<sup>941</sup> It may again be recalled in this connexion that it appears to have been the intention of the 1971 Conference that the practice of the Board in respect of figures which the Board receives under the Vienna Convention should be rather similar to its practice with regard to the corresponding figures under the Single Convention. It has also been mentioned earlier that differences in the Board's practice under the two treaties may result from the fact that the Single Convention, but not the Vienna Convention, provides for an estimate system.<sup>942</sup> Another difference follows from paragraph 5, enabling a Party to require the Board to treat as confidential information which the Party furnishes under that paragraph.

20. In the document publishing the statistical figures which it receives under the Vienna Convention, the Board may give an account of its inquiries and of explanations given by Governments concerning them. It may add such observations and recommendations as it considers desirable.<sup>943</sup>

21. The Board may publish the statistical figures received under the Vienna Convention in the same document in which it publishes the figures furnished under the Single Convention.

22. It may be noted that while the term "manufacture" includes the making of preparations other than those made on prescription in phar-

<sup>939</sup> See also paragraph 4 of the present comments.

<sup>940</sup> Article 15, paragraph 1 of the Single Convention; article 18, paragraph 1 of the Vienna Convention.

<sup>941</sup> *1961 Commentary*, paragraph 13 of the comments on article 13, paragraphs 2 and 3 of the Single Convention (pp. 174 to 175).

<sup>942</sup> Paragraphs 3, 13 and 17 of the present comments.

<sup>943</sup> *1961 Commentary*, paragraph 14 of the comments on article 13, paragraphs 2 and 3 of the Single Convention (p. 175); see also article 18, paragraph 1 of the Vienna Convention.

macies,<sup>944</sup> the figures on manufacture to be furnished by Governments pursuant to paragraph 4, subparagraphs (a) and (b) should by virtue of the express provision of the last sentence of that paragraph not include the quantities of preparations manufactured.

23. On the other hand attention is drawn to the fact that contrary to the Single Convention,<sup>945</sup> the Vienna Convention does not contain a provision which in the case of preparations would free Parties from furnishing statistics distinct from those dealing with the controlled basic substances which the preparations contain. It follows from article 3, paragraph 1 providing for the application to preparations of the measures of control applicable to the substances which they contain that, except as regards the quantities manufactured, the Board could request that the statistical figures which Governments furnish should contain separate data on preparations. This would therefore apply to the statistical figures on exports, imports, stocks held by manufacturers, use in the manufacture of exempted preparations and in the manufacture of non-psychotropic substances (“for industrial purposes”).

24. It is however submitted that the Board would normally not need such separate statistical data on preparations. In fact, in its provisional application of the Vienna Convention according to resolution I of the 1971 Conference and Council resolution 1576 (L),<sup>946</sup> the Board does not request those separate figures. It requires only that the statistical information on psychotropic substances in any form—and that includes their preparations—should present the weight of the (basic) psychotropic substances concerned, excluding the weight of any non-psychotropic substances which may be combined or mixed with them. As regards preparations containing two or more psychotropic substances, the Board requires that the quantities of each of the component psychotropic substances should be included in the figure on the substance in question.<sup>946</sup>

25. The crude and refined forms of a substance in any of the Schedules of the Vienna Convention do not constitute separate psychotropic substances. Nevertheless since “manufacture” as defined in the Vienna Convention includes “refining”,<sup>947</sup> the Board could require Parties to furnish statistical figures on the quantities of the crude psychotropic substances manufactured, as well as on the quantities of the refined products obtained.

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<sup>944</sup> Article 1, paragraph (i); the compounding of preparations by a medical practitioner whether for use on his patients or on animals which he treats or for retail sale to other persons is also not “manufacture”; see paragraphs 6 and 7 of the above comments on article 1, paragraph (i); compounding of preparations of substances in Schedule I would in all cases be manufacture within the meaning of article 1, paragraph (i), but would be excluded from the manufacturing statistics under article 16, paragraph 4, subparagraph (a).

<sup>945</sup> Article 2, paragraph 3 of the Single Convention.

<sup>946</sup> Form P referred to in foot-note 926, instructions 3 and 5.

<sup>947</sup> Article 1, paragraph (i); see also article 1, paragraph 1, subparagraph (n) of the Single Convention.

It is also held by virtue of its authority under paragraph 6 to determine the “manner” in which the statistical data pursuant to paragraph 4 should be furnished, the Board could require separate information on the crude and refined form of each psychotropic substance concerned for each of the other figures which paragraph 4 requires Parties to furnish. However, it is here again submitted that the Board would normally not need such separate information. In its provisional application of the Vienna Convention the Board does not require it; the figures on both the refined and crude forms of a psychotropic substance are to be combined in a joint total figure giving the weight of the pure substance contained in both forms, excluding the weight of non-psychotropic substances with which they are combined.<sup>948</sup>

26. With the exception of the isomers of the tetrahydrocannabinols, the Schedules of the Vienna Convention as adopted by the 1971 Conference do not cover the possible salts, isomers, esters and ethers, nor the possible salts of the isomers, esters and ethers of the psychotropic substances that they list. If such forms of psychotropic substances are included in the Schedules, the salts are psychotropic substances, distinct from their basic substances, and the esters, ethers and isomers psychotropic substances distinct from those whose chemical variations they are.

27. It appears that the Board normally does not need figures on the salts, distinct from those on their basic substances. The Board is however not prevented from requiring such separate figures on both of those forms of psychotropic substances. It may however be assumed that the Board will rarely if ever request them, and will normally limit itself to requesting global figures on all forms of a psychotropic substance, including the quantities of the pure substance contained in the salt in question.<sup>949</sup>

28. To sum up: in the light of the practice of the Board under the Single Convention, it is held that the statistical information which Governments have to furnish under paragraphs 4 and 5 has to be expressed in terms of the content of pure psychotropic substances found in the crude psychotropic substances, refined psychotropic substances, salts<sup>950</sup> and preparations to be taken into account.<sup>951</sup> The Board calls the attention of Governments to the fact that the actual quantity of a psychotropic substance placed in an ampoule is generally greater than the ampoule’s nominal content, and that consequently that actual amount and not the nominal content should be taken into account in computing the statistical figures.<sup>952</sup>

29. The Board would need separate figures on the isomers, esters and ethers of psychotropic substances distinct from those on the psychotropic substances whose chemical variation they are.

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<sup>948</sup> Form P referred to in foot-note 926, instruction 3; a fraction of a “pure” substance may also consist of a non-psychotropic matter.

<sup>949</sup> Form P referred to in foot-note 926, instruction 3.

<sup>950</sup> If and when included by the Commission in the Schedules pursuant to article 2.

<sup>951</sup> 1961 *Commentary*, paragraph 4 of the comments on article 20, paragraph 1, introductory part of the Single Convention (p. 245).

<sup>952</sup> Form P referred to in foot-note 926, instruction 7.



30. The Parties are required to report all quantities of psychotropic substances which have been manufactured, regardless of the purpose for which they are to be used.<sup>953</sup> Quantities of a psychotropic substance appearing only as intermediary product in a process of making a non-psychotropic substance are therefore to be included in the manufacturing statistics. When a psychotropic substance appears to be an intermediary product in the manufacture of another psychotropic substance, the quantities of both substances involved are to be included in the manufacturing statistics. It is within the discretion of the Board to determine in which cases it does not need figures on the intermediary products. When such a need does not exist, the Board may request Governments to exclude from their figures on manufacture quantities of a psychotropic substance which was only an intermediary stage in a process of manufacturing another psychotropic substance or a non-psychotropic substance. The Board may consider doing so in a case in which the intermediary product appears in a *continuous* process of manufacture. It is suggested that such an exclusion would not be advisable in a case in which the manufacturing process is interrupted, as where, for example, the intermediary product made by one manufacturer is to be delivered to another manufacturer for transformation into the final product. It is within the authority of the Board under paragraph 6 to determine what is in this context to be considered a continuous process of manufacture.<sup>954</sup>

31. It has been pointed out earlier<sup>955</sup> that the term “manufacture” includes also the separation of psychotropic substances from the plants from which they are obtained.

32. The Board may pursuant to paragraph 6 require that Parties should in their reports divide the total quantity of a psychotropic substance obtained by manufacture into subitems, indicating the various quantities of that psychotropic substance obtained from different source materials, no matter whether those materials are themselves psychotropic or uncontrolled substances.<sup>956</sup>

33. Manufacturing statistics have to be furnished for all psychotropic substances, no matter in which Schedule they may be listed.

34. It may be noted that the figures on stocks of substances in Schedules I and II which have to be furnished include only those held by manufacturers of those substances and not the total stocks held in the reporting country or region, i.e. those held by the manufacturers, wholesale traders and other

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<sup>953</sup> *Ibid.*, instruction 9.

<sup>954</sup> See also *1961 Commentary*, paragraphs 4 and 5 of the comments on article 19, paragraph 1, subparagraph (b) and paragraphs 6 and 7 of the comments on article 20, paragraph 1, subparagraph (a) of the Single Convention (pp. 227, 228, 246 and 247); see also paragraph 13 of the comments on article 1, paragraph (i) of the Vienna Convention.

<sup>955</sup> Paragraph 14 of the comments on article 1, paragraph (i).

<sup>956</sup> See also *1961 Commentary*, paragraph 8 of the comments on article 20, paragraph 1, subparagraph (a) of the Single Convention (p. 247).

wholesale distributors,<sup>957</sup> and that stock figures need not be furnished for substances in Schedules III and IV. The Board requires that the figures on stocks pursuant to subparagraph (a) should indicate the quantities held on 31 December of the year to which the statistical return relates.<sup>958</sup>

35. Again, on the basis of the opinion suggested earlier<sup>959</sup> that the authors of the Vienna Convention intended that the practice of Governments and of the Board in respect of statistical figures to be furnished under article 16, paragraph 4 of that treaty should be rather similar to their practice in regard to the corresponding figures to be furnished under the Single Convention, it is submitted that Governments need not include in their stock figures the quantities held by state enterprises which manufactured them, for “special purposes”, i.e. for “special Government purposes and to meet exceptional circumstances” or—to express it less technically—for military purposes and for such emergency needs as for use in large-scale epidemics or major earthquakes.<sup>960</sup>

36. The Board advises that import and export statistics “should be based as far as possible, on actual movements across frontiers”.<sup>961</sup>

37. The Board’s form recalls in respect of substances in Schedule I or II that for statistical purposes the country or region whose authorities have issued the export authorization should be considered as exporting country or region, and that the country or region whose authorities issued the import authorization should be considered as importing country or region.<sup>962</sup> In view of article 1, paragraph (h) together with article 12, paragraph 1,<sup>963</sup> that means that the exporting country or region is that entity in which the international shipment in question physically commences, and that the importing country or region is that entity which is the final destination of that shipment. This is valid not only for statistics regarding substances in Schedules I and II, but also for those regarding substances in Schedules III and IV.

38. In line with that general rule shipments to and from a bonded warehouse, free port or free zone are to be considered exports or imports if

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<sup>957</sup> Article 1, paragraph 1, subparagraph (x) of the Single Convention whose definition of “stocks” limits that term to the quantities held by manufacturers and wholesale channels; see also article 1, paragraph (m) of the Revised Draft Protocol; see also paragraphs 7, 8 and 9 of the general comments on article 1 of the Vienna Convention.

<sup>958</sup> Pursuant to paragraph 6 the Board can require that; see form P referred to in foot-note 926, instruction 12; see also article 20, paragraph 1, subparagraph (f) of the Single Convention.

<sup>959</sup> Paragraphs 3, 13, 17 and 19 of the present comments.

<sup>960</sup> Paragraph 17 of the present comments.

<sup>961</sup> Form P, referred to in foot-note 926, instruction 13; see also paragraphs 5 to 11 of the above comments on article 1, paragraph (h).

<sup>962</sup> Form P, instruction 14.

<sup>963</sup> See also article 7, paragraph (f).

thereby they leave the territory of the State or region where they originate, but not otherwise. A bonded warehouse, free zone or free port is to be considered part of the territory of the State or region in which it is situated.

39. The Board also explicitly instructs that a consignment which passes in transit through a country or region to another country or region should not be considered import and export of the country or region of transit even if it has been placed temporarily in a bonded warehouse, free port or free zone situated in the country or region of transit.

40. The Board also advises that psychotropic substances which for whatever reason are returned by a country or region to the country or region from which they were originally received should be considered as exported by the former and imported by the latter.<sup>964</sup> The original shipment should continue to be considered as having been exported by the latter and imported by the former.

41. In the case of diversion of a shipment of substances in Schedule I or II while in transit, the shipment should for statistical purposes be considered as an export by the country or region where it originated as well as by the country or region of transit where it was diverted, and as import by that country or region of transit and by the country or region of new destination.<sup>965</sup>

42. What has been stated in the preceding paragraph regarding substances in Schedules I and II should—to the extent practicable—also be applied to substances in Schedules III and IV.<sup>966</sup>

43. It will be noted that Parties are normally required to subdivide by country or region of origin and destination only their statistical figures on their international transactions in substances in Schedules I and II. As regards substances in Schedules III and IV, they have that obligation only under the conditions of paragraph 5. Except as may be required under that paragraph, the Parties are bound to report only the total quantity of each substance in Schedules III and IV which they exported and imported in the year to which their statistical returns relate, without an indication of the countries or regions of origin or destination.

44. It has been submitted earlier that a Party which pursuant to article 2, paragraph 7 has not accepted the inclusion of a substance in

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<sup>964</sup> Form P, instruction 14; see also paragraphs 10 and 12 of the above comments on article 1, paragraph (h).

<sup>965</sup> See also paragraph 13 of the above comments on article 12, paragraph 3, subparagraph (f) and *1961 Commentary*, paragraph 8 of the comments on article 31, paragraph 12 of the Single Convention (p. 380).

<sup>966</sup> That may sometimes be less difficult in the case of substances in Schedule III than in the case of substances in Schedule IV; see article 12, paragraph 2, subparagraphs (c), (d) and paragraphs 4 to 8 of the above comments on article 12, paragraph 2, subparagraphs (b), (c) and (d). It appears also that in the case of a diversion of a substance in Schedule III a new export declaration would be required in accordance with article 12, paragraph 2.

Schedule I could in exceptional cases authorize the use of that substance for industrial purposes (i.e. for the manufacture of non-psychotropic products).<sup>967</sup> The view has also been stated that under the minimum régime of article 2, paragraph 7, subparagraph (a)—i.e. if that substance in Schedule I was previously uncontrolled—such a Party would normally not be required to furnish to the Board statistical data on the use of the substance for industrial purposes, although it might be bound to do so under the conditions of article 19 and particularly under its paragraph 7.<sup>968</sup> However, under article 2, paragraph 7, subparagraph (e)—i.e. if the substance placed in Schedule I had already been in one of the less strictly controlled Schedules—a Party not having accepted its transfer to Schedule I and using it for industrial purposes would have to furnish to the Board statistical information on such use.<sup>969</sup>

45. It will be noted that Parties are not required to furnish to the Board information on the quantities of substances in Schedule IV used for the manufacture of exempt preparations.<sup>970</sup>

46. A request for information pursuant to paragraph 5 may, but need not, be addressed to all Parties. It may be addressed only to one or more Parties at the Board's choice.<sup>971</sup> The text of paragraph 5 also does not require that the Board explain to the Parties concerned the reason for its request.<sup>972</sup> Any reason which would facilitate the Board's work under the Vienna Convention would justify the Board to make a request for information under paragraph 5. That would include the Board's need for information which would assist it in understanding any problem relevant to the aims of that Convention.

47. A request of the Board pursuant to paragraph 5 may relate to all substances in Schedules III and IV or, at its choice, only to some of them.

48. Paragraph 5 does not state that the reports to which it refers are to be annual reports. However, in view of the fact that they are referred to as "supplementary statistical information", i.e. supplementary to the global annual international trade figures to be furnished pursuant to paragraph 4, subparagraph (b) regarding substances in Schedules III and IV, it is held that

<sup>967</sup> Paragraphs 16 and 17 of the above comments on article 2, paragraph 7, subparagraphs (a) to (e).

<sup>968</sup> Paragraph 53 of the comments referred to in the preceding foot-note.

<sup>969</sup> Paragraph 54 of the comments referred to in foot-note 967.

<sup>970</sup> See also article 3, paragraph 3, subparagraph (e).

<sup>971</sup> Conference documents E/CONF.58/L.4/Add.3 and E/CONF.58/L.29 and oral amendment thereto; 1971 *Records*, vol. II, paragraph 22 of the summary records of the fourteenth plenary meeting; see also paragraphs 2 and 14 of those summary records (pp. 54, 52 and 53); see however paragraphs 60 and 61 of the summary records of the thirteenth plenary meeting (p. 52).

<sup>972</sup> The then President of the Board stated at the 1971 Conference that "the Board would not necessarily of course request all Parties to furnish" the information pursuant to paragraph 5 and that "it would give the reasons for which it wished to have the information"; 1971 *Records*, vol. II, paragraph 2 of the summary records of the fourteenth plenary meeting (p. 52).

the Board would under paragraph 5 be authorized to request only annual figures. It may however be mentioned in this place that the Board's right to ask for explanations under article 19 would not be subject to such a limitation.

49. The scope of information which the Board may obtain pursuant to paragraph 5 is explicitly restricted to that relating to "future periods". That means in any event that the Board may under that paragraph not ask for information regarding years preceding the date at which the Vienna Convention became effective in regard to the Party concerned under article 26; but it appears also to limit the Board's right to request information to data relating to years following its request.

50. The Board is not precluded from addressing to non-Parties requests for information to which paragraph 5 refers. A non-Party which is a Member of the United Nations would be bound to comply with such a request to the extent required by its obligation under Article 55, paragraph (b) and Article 56 of the Charter of the United Nations to co-operate with other Members of the United Nations and with the United Nations (and its organs) in the solution of international social and health problems.<sup>973</sup>

#### *Paragraph 6*

**6. The Parties shall furnish the information referred to in paragraphs 1 and 4 in such a manner and by such dates as the Commission or the Board may request.**

#### *Commentary*

1. The paragraph under consideration corresponds to article 13, paragraph 1, article 18, paragraph 2 and article 20, paragraph 1, introductory subparagraph of the Single Convention.<sup>974</sup>

2. The Parties are explicitly required under paragraph 4 to furnish to the Board their statistical reports in accordance with forms prepared by that organ; but contrary to the Single Convention, the Vienna Convention does not contain an *express* provision authorizing the Commission to prescribe the use of a form for the information which it may request the Parties to furnish. It is however submitted that the right of the Commission to prescribe the "manner" in which the information pursuant to paragraph 1 should be furnished covers also the right to require Parties to use forms for that purpose. That interpretation corresponds with the traditional understanding of the term "manner" in the area of international drug control. The phrase "in a manner to be indicated by the Board" used in article 22, paragraph 1 of

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<sup>973</sup> See also paragraph 5 of the comments on article 16, paragraph 1 and paragraphs 4 and 18 of the comments on article 16, paragraphs 4 and 5.

<sup>974</sup> See also article 12, paragraph 1 and article 19, paragraph 1, introductory subparagraph of the Single Convention.

the 1925 Convention has for about half a century been understood by the Parties to that treaty to include the right of the international organ concerned, i.e. of the former Permanent Central Narcotics Board<sup>975</sup> and since 1968<sup>976</sup> of the International Narcotics Control Board, to require the use of forms. Most members of the Commission and many representatives at the 1971 Conference who were responsible for the text of the Vienna Convention have been used to employing the traditional language of international drug control.

3. It will be noted that paragraph 6 refers only to paragraphs 1 and 4.<sup>977</sup>

4. It will also be recalled that the Single Convention does not confer upon the Board the right to determine the dates by which the Parties should furnish the required statistical data, but fixes those dates itself.<sup>978</sup> On the other hand it grants the Commission that right in respect of the annual reports and other information which Parties have to furnish under its article 18, paragraph 1.

5. While the Commission has under the Vienna Convention the authority to determine the dates only in respect of the information mentioned in article 16, paragraph 1 of that treaty and not in regard to other information which it may require under that article, it is submitted that the Parties should nevertheless endeavour to supply also such information by the time indicated by the Commission for that purpose. An undue delay could not easily be reconciled with their obligation to carry out in good faith the provisions of the Vienna Convention.<sup>979</sup>

6. The authority of the two organs to determine the manner in which the information should be furnished by Governments includes, in addition to prescribing the use of forms,<sup>980</sup> the right to determine such matters as:

(a) The mode of transmission (e.g. whether by registered air mail or in urgent cases by telegram);

(b) Presentation (organization of the information to be furnished);

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<sup>975</sup> *1961 Commentary*, comments on article 1, paragraph 1, subparagraph (a) of the Single Convention (p. 1).

<sup>976</sup> Article 45, paragraph 2 of the Single Convention and Council resolution 1106 (XL).

<sup>977</sup> See also paragraph 5 of the comments on article 16, paragraph 2 and foot-note 914, paragraph 9 of the comments on article 16, paragraph 3 and paragraphs 9 and 11 of the above comments on article 16, paragraphs 4 and 5.

<sup>978</sup> Article 20, paragraph 2 of the Single Convention. The Board has however authority to determine the dates by which the "estimates" are to be furnished; article 12, paragraph 1 of that treaty.

<sup>979</sup> See also paragraph 11 of the above comments on article 16, paragraphs 4 and 5; there will normally be no reason for determining the dates by which reports on individual cases of the illicit traffic should be supplied since under paragraph 3 of that article they are to be furnished "as soon as possible after the event"; see also article 18, paragraph 2 of the Single Convention.

<sup>980</sup> Paragraph 2 of the present comments.

(c) Various formalities (completion by typewriter, number of copies of the document containing the required information, combination of various types of information in a single document, provision of different types of information in separate documents); and

(d) Details which should be furnished under the general terms of the provisions concerned the information in question.<sup>981</sup>

7. See also paragraphs 10, 11 and 13 of the comments on article 16, paragraph 1, paragraph 5 of the comments on article 16, paragraph 2, paragraph 9 of the comments on article 16, paragraph 3 and paragraphs 2, 6, 9, 10, 11, 25, 30, 32 and 34 of the comments on article 16, paragraphs 4 and 5 of the Vienna Convention.

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<sup>981</sup> See also *1961 Commentary*, paragraph 3 of the comments on article 13, paragraph 1 and paragraph 6 of the comments on article 18, paragraph 1, introductory subparagraph of the Single Convention (pp. 170 and 210).

## Article 17

### FUNCTIONS OF THE COMMISSION

#### *Paragraph 1*

**1. The Commission may consider all matters pertaining to the aims of this Convention and to the implementation of its provisions, and may make recommendations relating thereto.**

#### *Commentary*

1. The paragraph under consideration corresponds to article 8 of the Single Convention. Its text is similar to the general formula of the introductory paragraph of that provision of the Single Convention defining the functions of the Commission under that treaty. It was also clearly the intention of the 1971 Conference to grant by article 17, paragraph 1 of the Vienna Convention the Commission powers under that treaty which would be similar to those which it had under the general formula of the Single Convention.<sup>982</sup> It follows that the views of the *1961 Commentary*<sup>983</sup> on the general scope of the powers of the Commission under that treaty are *mutatis mutandis* also valid for the interpretation of article 17, paragraph 1 of the Vienna Convention.

2. It may be emphasized that under the paragraph under consideration the Commission may consider not only all matters pertaining to the implementation of the provisions of the Vienna Convention but also all those *pertaining to the aims* of that treaty, which—stated in broad terms—are to make contributions to the solution of the public health and social problem of drug abuse. The Commission may also make recommendations not only in respect of the implementation of provisions of the Vienna Convention, but also in regard to all matters relating to its aims. It may thus deal with and make recommendations in regard to all aspects of the problem of drug abuse, whether political, legal, administrative (including police), economic, social, medical or scientific. It must however in the performance of its functions have due regard to the jurisdiction of other intergovernmental organs and organizations such as the World Health Organization. The Commission's authority under article 17, paragraph 1 is not restricted to psychotropic substances, but extends to all substances which are liable to the kind of abuse

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<sup>982</sup> 1971 *Records*, vol. II, paragraphs 24 and 25 of the minutes of the twenty-sixth meeting of the Committee on Control Measures (p. 184).

<sup>983</sup> 1961 *Commentary*, paragraph 6 of the comments on article 8 of the Single Convention (pp. 126 and 127).



which it is the aim of the Vienna Convention to combat and which represent an international problem,<sup>984</sup> and that includes substances not yet under international control as well as “narcotic” drugs controlled by the Single Convention. It may in particular be pointed out that under article 17, paragraph 1 the Commission also has authority to consider questions of international technical co-operation, especially the foreign aid which some countries, and in particular developing countries, may need to enable them to make a full contribution to the international campaign against drug abuse.

3. The problems presented by the abuse of “narcotic” drugs under the Single Convention are normally very similar to and sometimes even the same as those arising from the abuse of psychotropic substances. Moreover, the definitions of the Single Convention<sup>985</sup> and of the Vienna Convention<sup>986</sup> describing the substances which may be placed under their respective régimes are overlapping.<sup>987</sup> It has also been mentioned earlier that all drugs at present under the Single Convention except those which fall under that treaty only because they are convertible into drugs having the dangerous dependence-producing properties in question, i.e. all of the drugs under the Single Convention which themselves have those dangerous properties, are also covered by the definition of the Vienna Convention.<sup>988</sup> Those drugs may not be placed under the Vienna Convention only because that treaty excludes from its scope substances already “under international control”.<sup>989</sup>

4. On the other hand at least many, if not all, of the substances at present in the Schedules of the Vienna Convention are covered by the wording of the definition of the Single Convention indicating the properties warranting its control.<sup>988</sup> Even the amphetamines, barbiturates and tranquilizers controlled under the Vienna Convention are excluded from the Single Convention definition not on account of the literal meaning of its text, but only on the ground of an interpretation of that text based on its legislative history.<sup>990</sup>

5. It follows from the similarity of the basic aims of the two Conventions and also from that of the pharmacological properties of the substances which they respectively control that many questions concerning the manifold and multidisciplinary problems with which the Commission may

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984 See paragraph 8 of the above comments on article 2, paragraph 4 of the Vienna Convention.

985 Article 3, paragraph 3, subparagraph (iii).

986 Article 2, paragraph 4.

987 Paragraph 8 of the general comments on article 2, paragraph 16 of the comments on article 2, paragraph 1 and paragraph 39 of the comments on article 2, paragraph 4.

988 Paragraph 16 of the comments on article 2, paragraph 1.

989 Article 2, paragraph 1; see paragraphs 6 to 12 of the comments on that provision.

990 Paragraphs 10 and 16 of the comments on article 2, paragraph 1; see also *1961 Commentary*; paragraphs 6 and 7 of the comments on article 3, paragraph 3, subparagraph (iii) of the Single Convention (pp. 87 and 88).

deal under the Vienna Convention, as well as recommendations which the Commission may make in regard to those questions, may also be relevant to the aims of the Single Convention, and *vice versa*. The same may apply to the Commission's discussion of the implementation of provisions of the Vienna Convention or those of the Single Convention, and to recommendations which it may make in respect of them. Consequently, recommendations of the Commission made under the Vienna Convention may also have their validity in respect of States which are not Parties to that treaty but only to the Single Convention, and *vice versa*.

6. In addition to the functions which the Commission has as "treaty organ" under the two Conventions ("treaty function"),<sup>991</sup> as the Commission is a "functional Commission" of the Council<sup>992</sup> it has also those functions which have been granted to it by the Council in general terms (terms of reference) or by special decisions ("Charter functions").<sup>991</sup> From the beginning the Commission has with the express or implied consent of the Council adopted a broad conception of its Charter functions, and has even prior to the coming into force of the Single Convention considered and also made recommendations on many questions arising from drugs under international control, as well as from other substances such as those now under the Vienna Convention which give rise to problems of abuse similar to that of drugs already then under international control. In fact, the provisions of the introductory paragraph and paragraph (c) of article 8 of the Single Convention and of article 17, paragraph 1 of the Vienna Convention authorizing the Commission to consider all matters pertaining to the aims of both treaties and to make recommendations relating thereto have only given a treaty basis to the wide range of functions which the Commission formerly performed pursuant to its Charter authority granted by the Council.<sup>993</sup>

7. Consequently recommendations which the Commission may adopt either under article 17, paragraph 1 of the Vienna Convention or under article 8, paragraph (c) of the Single Convention may in many cases also have a valid basis in its Charter functions. They may therefore have such force as "recommendations" may have, not only in respect of Parties to either or both of those treaties, but also in respect of Members of the United Nations which have not yet accepted either Convention.

8. It is held that the Commission is not precluded from addressing to States which are not Parties to the Vienna Convention recommendations which it may adopt pursuant to article 17, paragraph 1. It may do so even in regard to non-Parties which are also neither Parties to the Single Convention nor Members of the United Nations.

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<sup>991</sup> 1961 *Commentary*, paragraph 1 of the comments on article 8 of the Single Convention (p. 125).

<sup>992</sup> Article 68 of the Charter of the United Nations; Council resolution 9 (I), paragraph 2.

<sup>993</sup> 1961 *Commentary*, paragraphs 3 to 6 of the comments on article 8 of the Single Convention (pp. 126 and 127).

9. As regards other provisions of the Vienna Convention which confer functions upon the Commission, see paragraph 5 of the comments on article 1, paragraph (b); as regards functions of the Commission under the Single Convention, under earlier drug treaties and under the 1972 Protocol, see paragraphs 6, 7 and 8 of those comments.

10. Neither the Vienna Convention nor the Single Convention nor any earlier drug treaty has provisions concerning the constitution of the Commission. It is under Article 68 of the Charter left to the discretion of the Council to determine the composition and character of the Commission, which at the time of this writing consists of 30 Governments. Not only Members of the United Nations but also those non-Member States which are members of “specialized agencies” or Parties to the Single Convention<sup>994</sup> may be elected by the Council to membership on the Commission.

11. For a somewhat more detailed discussion of the present constitution of the Commission, see paragraphs 1 to 3 of the above comments on article 1, paragraph (b); for Council resolutions relating to the Charter functions, the composition of the Commission and the establishment of its “Sub-Commission on Illicit Traffic and Related Matters in the Near and Middle East”, see the references in paragraph 9 of those comments.

### *Paragraph 2*

**2. The decisions of the Commission provided for in articles 2 and 3 shall be taken by a two-thirds majority of the members of the Commission.**

### *Commentary*

1. The majority which is required under paragraph 2 is a two-thirds majority of the total membership of the Commission, no matter how many members may be present or participate in the vote. Since the Commission has at present 30 members,<sup>995</sup> the decisions to which that paragraph refers must at present be adopted by a minimum of 20 affirmative votes.<sup>996</sup>

2. It is submitted that only those decisions of the Commission pursuant to articles 2 and 3 are subject to the requirement of a two-thirds majority which bring about a change in any of the Schedules of the Vienna Convention

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<sup>994</sup> That privilege has at the time of this writing not yet been extended to Parties to the Vienna Convention.

<sup>995</sup> Council resolution 1663 (LII).

<sup>996</sup> 1971 *Records*, vol. II, paragraph 23 of the minutes of the twenty-sixth meeting of the Committee on Control Measures (p. 184); as regards the legal problem of such a voting requirement different from that laid down in the Commission's rules of procedure as determined by the Council, see the legal opinion given to the 1971 Conference by its Legal Adviser, 1971 *Records*, vol. II, paragraphs 5 to 9 of the summary records of the twenty-second plenary meeting (p. 90) and document E/CONF.58/L.50 (1971 *Records*, vol. I, p. 92).

or terminate the exemption of a preparation “in whole or in part”.<sup>997</sup> That requirement does not apply to other decisions taken under those articles, whether substantive or procedural, e.g. to a decision of the Commission to reject a proposed change in a Schedule, to refuse a termination of an exemption of a preparation or “to seek further information from the World Health Organization or other appropriate sources.”<sup>998</sup>

3. All other decisions by the Commission under the Vienna Convention, the Single Convention, earlier drug treaties or under its terms of reference as a functional Commission of the Council are subject to a majority requirement determined by the Council in the Commission’s rules of procedure. That requirement is at present normally a majority of the Commission’s “members present and voting”. The phrase “members present and voting” means members casting an affirmative or negative vote. Members who abstain from voting are considered not voting.<sup>999</sup>

4. The requirement of a two-thirds majority applies not only to onerous decisions, i.e. to those which would increase the obligation of Parties, but also to those which would reduce them.<sup>1000</sup>

<sup>997</sup> i.e., some of the decisions pursuant to article 2, paragraphs 5 and 6 and article 3, paragraph 4.

<sup>998</sup> Article 2, paragraph 5; see also paragraph 2 of the comments on article 2, paragraphs 5 and 6, and paragraph 21 of the comments on article 3, paragraph 4; that restrictive interpretation follows from the legislative history of paragraph 2; otherwise the Commission would in many cases be prevented from acting in any way which was not and could not have been the intention of the 1971 Conference; see documents E/CONF.58/C.4/L.55 and E/CONF.58/L.49 and *1971 Records*, vol. II, paragraphs 16 to 42 of the minutes of the twenty-sixth meeting of the Committee on Control Measures (pp. 182 to 185) and paragraphs 10 to 14 and 42 to 52 of the summary records of the twenty-second plenary meeting (pp. 90 to 93); see also article 32, subparagraph (b) of the Vienna Convention on the Law of Treaties (United Nations Conference on the Law of Treaties, First and Second Sessions, Official Records, Documents of the Conference, United Nations publications, Sales No. E.70.V.5, pp. 289 *et seq.*).

<sup>999</sup> Rule 55 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council, document E/4767 (United Nations publication, Sales No. E.70.I.9); see however rules 63 and 64; see also rule 65; as regards the quorum requirement, see rule 42.

<sup>1000</sup> *1971 Records*, vol. II, paragraphs 43, 44, 47 and 48 of the summary records of the twenty-second plenary meeting and the decisions recorded after paragraph 52 of those records (pp. 92 and 93).

Article 18  
REPORTS OF THE BOARD

*Paragraph 1*

1. The Board shall prepare annual reports on its work containing an analysis of the statistical information at its disposal, and, in appropriate cases, an account of the explanations, if any, given by or required of Governments, together with any observations and recommendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission, which may make such comments as it sees fit.

*Commentary*

1. The paragraph under consideration corresponds to article 15, paragraph 1 of the Single Convention. Its text follows closely the wording of the provision of that Convention, the principal minor change being due to the fact that the Single Convention, but not the Vienna Convention, provides for "estimates". It may be recalled again in this place that many of the participants in the 1971 Conference were officers engaged in drug control and were familiar with the language of the Single Convention and with the meaning attached to that treaty's terms in the practice of Governments and in that of the Board. It is therefore submitted that in using the language of the Single Convention for drafting article 18, paragraph 1 of the Vienna Convention the 1971 Conference assumed that the practice of the Board and the obligations of Parties would under that paragraph be rather similar to that under the related provision of the Single Convention.<sup>1001</sup> The comments of the 1961 *Commentary* on article 15, paragraph 1 of the Single Convention therefore are *mutatis mutandis* also valid for article 18, paragraph 1 of the Vienna Convention.

2. The rules governing the constitution of the Board are laid down in articles 9 to 11 of the Single Convention. Its constitution was amended by articles 2, 3 and 4 of the 1972 Protocol, which raised the Board's membership from 11 to 13 and extended the period of office of its members from three to five years.<sup>1002</sup>

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<sup>1001</sup> 1971 *Records*, vol. II, paragraphs 42, 45, 46, 48 and 50 of the summary records of the eleventh plenary meeting (pp. 42 and 43).

<sup>1002</sup> See the above comments on article 1, paragraph (c) of the Vienna Convention.

3. The Board's decisions under the Vienna Convention, excepting those under its article 19,<sup>1003</sup> are taken by the majority required by its own rules of procedure, which the Board adopts itself.<sup>1004</sup> However, if instead of publishing a report pursuant to article 19, paragraph 3 the Board decides to include in one of its reports under article 18 an exposition of a matter with which it has dealt under article 19, that part of its report must be adopted by a two-thirds majority of its whole membership, as is required for all its decisions under that article.<sup>1005</sup> The remainder of the report may be adopted by the majority prescribed by the Board's rules of procedure.

4. The Board's reports must be submitted to the Council "through the Commission". That may delay the Council's consideration of those reports, particularly when the Commission is authorized to meet for a regular session only once every second year, as is the case at the time of this writing.<sup>1006</sup> Such a delay may deprive the Board's reports of much of their value. The Council's consideration of the reports is more likely to be interesting to the public, and thus to the news media, if they deal with recent events rather than with questions which are no longer "newsworthy"; the value of the Board's reports depends largely on the impact which they may make on public opinion.<sup>1007</sup>

5. It is however held, in accord with the Council's practice regarding the same provision of the Single Convention, that the requirement to submit the reports made under article 18, paragraph 1 to the Council through the Commission does not prevent the Council from considering such a report prior to its examination by the Commission.<sup>1008</sup>

6. The Board may combine in a single document its reports under article 18, paragraph 1 of the Vienna Convention and those pursuant to article 15, paragraph 1 of the Single Convention.<sup>1009</sup> The Board may also publish in that document the statistical data which it has received under article 16, excluding of course those which it is required to treat as confidential pursuant to paragraph 5 of that article.<sup>1010</sup>

7. The annual report of the Board is mandatory. The rendering of additional reports is within the discretion of the Board. The Board may however only make such additional reports "as it considers necessary". The

<sup>1003</sup> See paragraph 6 of that provision.

<sup>1004</sup> Article 11, paragraph 1 of the Single Convention.

<sup>1005</sup> For the requirement of a qualified majority under the Single Convention, see its article 10, paragraph 4 and its article 14, paragraph 6; see also article 3 of the 1972 Protocol amending article 10, paragraph 4 of the Single Convention.

<sup>1006</sup> Council resolutions 1156 (XLI) II and 1848 (LVI).

<sup>1007</sup> *1961 Commentary*, paragraphs 1 and 2 of the comments on article 15, paragraph 1 of the Single Convention (p. 198)

<sup>1008</sup> Paragraph 4 of the comments referred to in the preceding foot-note (p. 199).

<sup>1009</sup> Its report under article 27 of the 1925 Convention in connexion with article 45, paragraph 2 of the Single Convention may also be included in the same document.

<sup>1010</sup> See also paragraph 19 of the above comments on article 16, paragraphs 4 and 5.

Board enjoying full technical independence under article 9, paragraph 2 of the Single Convention is alone competent to decide whether such a report is necessary. It cannot be prevented by any Party or by any organ of the United Nations from issuing an additional report which it considers necessary.<sup>1011</sup>

8. It follows from the view proffered in paragraph 1 of the present comments that the Board has very wide discretion concerning the matters in respect of which it may make observations and recommendations. In accordance with its practice under article 15, paragraph 1 of the Single Convention, the Board may in its reports deal with any question related to the aims of the Vienna Convention, and that covers any aspect of the problem of drug abuse. In principle no discipline involved is excluded.<sup>1012</sup> The Board may refer in its reports to any factual information relevant to the aims of the Vienna Convention which it has received from Governments or intergovernmental organizations. Information from private sources may not be included.

9. In view of its practice under the Single Convention, it is to be expected that the Board would avoid making proposals that would be prejudicial to actions to be taken by other intergovernmental organizations within their special jurisdiction. The Board has in such cases limited itself to indicating in its report problems requiring consideration and action by other organizations, without making definite proposals regarding the kind of solution which should be adopted.<sup>1013</sup>

10. The Board must not include in its reports under article 18 information or recommendations in violation of restrictions imposed upon its freedom of action by other provisions of the Vienna Convention.<sup>1014</sup> It may not reveal information which it is required to treat as confidential under article 19, paragraph 1, subparagraph (a) or under article 16, paragraph 5.<sup>1015</sup>

11. The Board may address its recommendations to all States, to particular categories of States<sup>1016</sup> or to individual States; but it may not recommend an import or export embargo except under the conditions of

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1011 It is clear from General Assembly resolutions 3013 (XXVII) and 3147 (XXVIII) and from Council resolutions 1576 (L) and 1658 (LII) that the United Nations has agreed to carry out the functions imposed upon it or its particular organs by the Vienna Convention. The Parties to the Vienna Convention, as well as the United Nations, have for the purposes of that treaty accepted the Board as constituted by the Single Convention and that includes the Board's technical independence; see also *1961 Commentary*, paragraph 5 of the comments on article 15, paragraph 1 of the Single Convention and foot-note 3 thereto (p. 199).

1012 Paragraphs 6 and 7 of the comments referred to in the preceding foot-note (pp. 199 and 200).

1013 Paragraph 8 of the comments referred to in foot-note 1011 (p. 200).

1014 Or of the Single Convention.

1015 Or under article 14, paragraph 1, subparagraph (a) of the Single Convention.

1016 e.g., to the wealthy countries to render aid to developing countries in their efforts to deal with problems of psychotropic substances.

article 19, paragraph 2; as regards recommendations of remedial measures to individual States, see below, paragraph 4 of the comments on article 19, paragraph 1, subparagraph (b).

12. The Board is not required to publish all requests for explanations or all explanations which it has received; but if it publishes such a request, it must also publish an account of the related explanations.<sup>1017</sup>

13. It appears that the “explanations” to which the paragraph under consideration refers are explanations relating to the statistical data requested by the Board. Such a request may cover any point which is relevant to the Board’s evaluation of the quality of the statistical data involved, and that may include questions of the implementation of many provisions of the Vienna Convention.<sup>1018</sup>

14. The Parties are bound to give the requested explanations to the extent as they may be relevant to the Board’s evaluation of the statistical data which they have furnished.<sup>1018</sup> That conclusion is drawn from the use of the word “required” in the English text and of the word “*requis*” in the French text. Both of these words imply an obligation. It is held that those two versions are on that point to be preferred to the Spanish text which employs the word “*pedido*”, a word which does not indicate an obligation. The view presented in this place relies on the opinion given by the Legal Adviser to the 1971 Conference on the meaning of the word “required” as used in the provision under consideration<sup>1019</sup> and on the understanding of the same language used in article 15, paragraph 1 of the Single Convention.<sup>1020</sup> As regards the obligation of non-Parties, Members of the United Nations, to furnish to the Board the explanations in question, see paragraph 18 of the comments on article 16, paragraphs 4 and 5.

15. The Board is required to include in its annual report an analysis of the statistical data at its disposal. It is left to its discretion whether to include such analytical comments in “additional” reports which it may issue. The analysis must not relate to statistical figures which the Board had to treat as confidential pursuant to article 16, paragraph 5.

16. There is no restriction on the comments which the Commission may make on the Board’s reports.<sup>1021</sup>

<sup>1017</sup> Paragraph 10 of the comments referred to in foot-note 1011 (p. 200).

<sup>1018</sup> See above, paragraphs 16 and 17 of the comments on article 16, paragraphs 4 and 5.

<sup>1019</sup> 1971 *Records*, vol. II, paragraph 35 of the summary records of the eleventh plenary meeting (p. 42).

<sup>1020</sup> In connexion with article 13, paragraph 3 of that treaty; the assumption of an obligation accords also with the views of several delegates expressed at the 1971 Conference: see paragraphs 36, 43, 45 and 50 of the summary records referred to in the preceding foot-note (pp. 42 and 43). See also foot-note 935 above.

<sup>1021</sup> 1961 *Commentary*, paragraph 21 of the comments on article 15, paragraph 1 of the Single Convention (p. 202).



**Paragraph 2**

**2. The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.**

*Commentary*

1. The text of the paragraph under consideration follows very closely the text of article 15, paragraph 2 of the Single Convention. The minor differences which can be found are of a drafting nature, and do not make any difference in the meaning of the two provisions. The comments of the *1961 Commentary* on the provision of the Single Convention therefore apply also to the provision of the Vienna Convention.

2. The reports should be transmitted to the Parties as soon as they are reproduced, and in any event not later than their transmission to the Commission. Governments are to be given sufficient time to brief adequately their representatives or observers on the Commission for participation in that organ's consideration of the reports.

3. Paragraph 2 expressly requires that the Board's reports should be published, i.e. that copies of the reports should be made available to the general public throughout the world; but that publication may take place only after the reports have been communicated to the Parties. A reasonable interval should be allowed between that communication and publication to permit Governments to publish their own views on questions with which a report of the Board may deal, simultaneously with the publication of that report.

4. The obligation of the Parties to permit the unrestricted distribution of the Board's reports does not require them actively to engage in their distribution. They must however refrain from any action, whether legal, judicial or administrative, which would render it impossible or difficult for a member of the general public to acquire or read a copy of a report by the Board.

5. It is also in accord with the purpose of the provision regarding publication of the Board's reports that the conditions of their distribution should make it easy to acquire and study copies of them. The reports should therefore be reproduced by such processes as printing or lithography, which facilitate the issue of large numbers of clearly legible copies. They should also be offered for sale at such low prices as would encourage their wide distribution.

## Article 19

### MEASURES BY THE BOARD TO ENSURE THE EXECUTION OF PROVISIONS OF THE CONVENTION

#### General comments

1. Except in respect of two questions, the substance of article 19 of the Vienna Convention is the same as that of article 14 of the unamended Single Convention. The text of the provisions of the former treaty follows also very closely that of the latter treaty.<sup>1022</sup> The comments of the *1961 Commentary* on article 14 of the Single Convention therefore apply to a large extent also to article 19 of the Vienna Convention.

2. The two differences are: first, the information on the basis of which the Board may initiate the procedure under article 19 of the Vienna Convention is defined in broader terms than the information which would justify a procedure pursuant to article 14 of the unamended Single Convention;<sup>1023</sup> and secondly, while under both treaties, the Board in order to be able to initiate the procedure in question, must have reason to believe that the aims of the treaty involved<sup>1024</sup> are seriously endangered by reason of a failure of a country or region to carry out the provisions of the convention concerned, the Vienna Convention adds a specific case of such failure, namely that of a Party not implementing some treaty provisions in accordance with its right under article 2, paragraph 7 partially not to accept a decision of the Commission changing a Schedule of that treaty.

3. The Board may in appropriate cases combine a procedure under article 19 of the Vienna Convention with one under article 14 of the Single Convention against the same State or region.

4. The Board is not prevented by the restrictions of article 19 from factual reporting under article 18 on the lack of implementation of treaty provisions by particular States or on other situations in particular countries

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<sup>1022</sup> Apart from changes required by the two differences referred to and from very minor drafting changes, the English and French texts of article 19 of the Vienna Convention are the same as the corresponding language texts of the unamended Single Convention. The Spanish text of article 19 shows somewhat more extensive drafting changes, which however do not affect the identity of its substance with that of the greater part of the provision of the unamended Single Convention.

<sup>1023</sup> See below the comments on article 19, paragraph 1, subparagraph (a) and paragraph 7.

<sup>1024</sup> The aims of both treaties are substantially the same; see paragraphs 2, 3 and 5 of the above comments on article 16, paragraph 1 and paragraphs 2, 3 and 5 of the comments on article 17, paragraph 1.

which appear to be dangerous from the viewpoint of international control, to the extent that such conditions have not been made the object of a procedure under article 19 and are not subject to the restrictions imposed by that provision on publication.

*Paragraph 1, subparagraph (a) and paragraph 7*

1. (a) If, on the basis of its examination of information submitted by governments to the Board or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention are being seriously endangered by reason of the failure of a country or region to carry out the provisions of this Convention, the Board shall have the right to ask for explanations from the Government of the country or region in question. Subject to the right of the Board to call the attention of the Parties, the Council and the Commission to the matter referred to in subparagraph (c) below, it shall treat as confidential a request for information or an explanation by a government under this subparagraph.

...

7. The provisions of the above paragraphs shall also apply if the Board has reason to believe that the aims of this Convention are being seriously endangered as a result of a decision taken by a Party under paragraph 7 of article 2.

*Commentary*

1. The initiation of a procedure under article 19 is a very grave matter, since it may lead to the recommendation of an international embargo on the export or import or both of medical supplies against the country or "region"<sup>1025</sup> in question. Article 19 therefore not only provides for procedural guarantees, but also imposes several restrictions on the right of the Board to apply the measures which it authorizes. In any case, the text of article 19 as well as the nature of the procedure for which it provides require the Board to apply its provisions with particular prudence, in accordance with its practice and that of its predecessor, the Permanent Central Narcotics Board,<sup>1026</sup> under similar provisions of earlier drug treaties.<sup>1027</sup>

2. The Board can initiate the procedure only if it has reason to believe that the aims of the Vienna Convention are *seriously* endangered, and that such a danger is due to the specific causes mentioned in paragraph 1, subparagraph (a) and paragraph 7. The conclusion that such a danger exists will normally be justified only if defective control in one country or region

<sup>1025</sup> Article 1, paragraph (k).

<sup>1026</sup> *1961 Commentary*, comments on article 1, paragraph 1, introductory subparagraph and subparagraph (a) of the Single Convention (p. 1 of the English text).

<sup>1027</sup> Articles 24 and 26 of the 1925 Convention, articles 11 to 13 of the 1953 Protocol and article 14 of the Single Convention; see also article 14, paragraph 3, second subparagraph of the 1931 Convention.

appears to endanger in a grave manner the effectiveness of Government administration concerning the abuse of psychotropic substances in another country or region. If the failure to implement provisions of the Vienna Convention, whether in violation of a treaty obligation or without reference to such an obligation or in pursuance of a decision of a Government pursuant to article 2, paragraph 7 not to give full effect to a decision of the Commission regarding control of a psychotropic substance, has only a domestic impact, even a serious one, it will generally hardly justify the commencement of a procedure pursuant to article 19.<sup>1028</sup>

3. As under article 14 of the unamended Single Convention, the Board may initiate the procedure under article 19 of the Vienna Convention if it has reason to believe that the aims of that treaty are being seriously endangered by a failure of any State to carry out its provisions. Article 19 of the Vienna Convention adds a particular case of lack of implementation of the provisions of the Vienna Convention, peculiar to that treaty, namely the case of a Party causing a serious danger to the aims of the Convention by its failure to implement certain provisions in accordance with its right to do so under article 2, paragraph 7.<sup>1029</sup> One will recall that the limited control which a Party may apply under that paragraph is expressly referred to as “a minimum”.<sup>1030</sup> A Party which under that paragraph does not apply some treaty provisions has in respect of them for the purposes of article 19 the same position as a non-Party has in respect of the Vienna Convention as a whole.<sup>1031</sup>

4. Not all failures to implement provisions of the Vienna Convention will justify commencing the procedure under article 19; e.g., a failure to use a form prescribed under article 16, paragraphs 4 or 6 or to furnish information by the date determined by the Commission or the Board pursuant to that paragraph 6 will generally not cause a serious danger to the aims of the Convention, and consequently not justify initiating the procedure under article 19. But the Board need not be inactive in the case of such minor treaty violations. It may critically refer to them in its reports pursuant to paragraph 18. However, a Government's failure to supply required information may seriously endanger the aims of the Vienna Convention not only if it impedes the campaign against the illicit traffic, but more generally if it renders more difficult other measures which foreign Governments take to prevent the abuse of psychotropic substances or reduce its incidence. It is suggested that in extreme cases even a persistent failure to furnish in annual reports under article 16, paragraph 1 requested information on effective methods of dealing

<sup>1028</sup> 1961 *Commentary*, paragraphs 1 and 3 of the comments on article 14, paragraph 1, subparagraph (a) of the Single Convention (pp. 178 and 179).

<sup>1029</sup> Article 19, paragraph 7.

<sup>1030</sup> Article 2, paragraph 7, introductory subparagraph, last sentence and subparagraph (e).

<sup>1031</sup> See also paragraphs 20 and 28 of the above comments on article 2, paragraph 7, introductory subparagraph and paragraphs 16, 17 and 38 of the comments on subparagraphs (a) to (e) of that paragraph.

with the problem of the abuse of psychotropic substances may be considered seriously to endanger the aims of the Vienna Convention. The fight against the illicit traffic presents after all only one aspect of the campaign against drug abuse, and therefore only a part, although an important one, of the aims of the Vienna Convention.<sup>1032</sup> Persistent failure to send to “the other Parties directly concerned” copies of reports on cases of illicit traffic, as required by article 16, paragraph 3 and article 21, paragraph (b) may in some cases be considered seriously to endanger international co-operation in the fight against the illicit traffic and consequently to justify the commencement of a procedure under article 19.

5. The Board may base its decision to commence a procedure pursuant to article 19 on any information which it receives from Governments or United Nations organs regarding failures to implement provisions of the Vienna Convention and regarding the effect which such failures may have on the achievement of the aims of that treaty. It does not matter whether the information was furnished by a Party or a non-Party to the Vienna Convention. The information may also relate to the implementation of the provisions of the Vienna Convention by a Party or non-Party.

6. The information on which the Board may base its action is not restricted to that which it receives from Governments under specific provisions requiring them to furnish information to the Board and that which it receives from United Nations organs and has a “bearing on questions arising under those provisions.”<sup>1033</sup> The Vienna Convention did not take over that restriction from the Single Convention. However, since in the information which Parties have to furnish to the Board under provisions of the unamended Single Convention or in the additional information or explanations which they may be required to supply in the course of the Board’s examination of their communications, non-compliance with almost any of the provisions of that treaty may be revealed, one may conclude that the scope of information on which the Board may base its action under article 14 of the unamended Single Convention would in practice not be significantly smaller than that which would justify a procedure under article 19 of the Vienna Convention.<sup>1034</sup>

7. The term “United Nations organs” not only covers organs of the United Nations itself such as the Commission, the Council or the Secretary-General, but also organs of other intergovernmental organizations which are members of the United Nations family.<sup>1035</sup>

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1032 In paragraph 2 of the above comments on article 17, paragraph 1 of the aims of the Vienna Convention have been defined as those of making “a contribution to the solution of the public health and social problem of drug abuse”.

1033 See article 14, paragraph 1, subparagraph (a) of the unamended Single Convention.

1034 1961 *Commentary*, paragraphs 4, 5, 6, 7, 8 and 9 of the comments on article 14, paragraph 1, subparagraph (a) of the Single Convention (pp. 179 and 180).

1035 Paragraph 10 of the comments referred to in the preceding foot-note (pp. 180 to 181).

8. The Board cannot base its action on information from private sources or even from intergovernmental organizations which are not specialized agencies of the United Nations.<sup>1036</sup>

9. The explanations which the Board may demand and which Parties are bound to furnish may cover anything concerning implementation of provisions of the Vienna Convention, or indicating a relationship between a failure to carry out such a provision and its effect on the achievement of the aims of the Convention.<sup>1037</sup>

10. The procedure under article 19 may be initiated not only in respect of a “country”, that is, a State as a whole, but also in respect of a “region”, that is, a part of a State which is treated as a separate entity for the purposes of the Vienna Convention.<sup>1038</sup> It is thus theoretically possible that a Party may be requested, by a recommendation of the Board pursuant to article 19, paragraph 2, to discontinue the trade in some or all psychotropic substances (export, import or both) which its other “regions” may have with that of its regions against which the embargo would be directed.

11. The Board may resort to article 19 not only in respect of Parties and those of their regions which form part of their territories to which the Vienna Convention applies according to article 27, but also in respect of non-Parties and their regions and of those regions of Parties which form part of those of their territories to which the Convention does not apply in accordance with article 27.

12. It is suggested that either a non-Party which is a Member of the United Nations, or a Member of the United Nations which is a Party but in accordance with article 27 does not apply the Convention to the territory in question, would be bound to co-operate with the Board in a procedure under article 19, to the extent required by the obligation of Members of the United Nations to co-operate with each other and with the United Nations and its organs in the solution of international social and health questions pursuant to Articles 55 and 56 of the United Nations Charter.

13. The Board must treat as confidential its request for information or explanations and a reply given by a Government under the subparagraph under consideration only as long as it is not entitled to decide, and has not actually decided, to call the attention of the Parties, the Council and the Commission to the matter pursuant to subparagraph (c). The Board has also no right to report under paragraph 3 on any procedure in which a request for information pursuant to paragraph 1, subparagraph (a) was made as long as it

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<sup>1036</sup> Article 6 of the 1972 Protocol amends article 14, paragraph 1, subparagraph (a) of the Single Convention to the effect that the Board could under that provision also use information supplied by some non-governmental organizations or by some intergovernmental organizations other than “specialized agencies”, as defined in the amendment.

<sup>1037</sup> See also paragraphs 13 to 18 of the above comments on article 16, paragraphs 4 and 5.

<sup>1038</sup> Article 1, paragraph (k) and article 28.

does not decide to take action under subparagraph (c). It appears however that the Board is not required to keep confidential its decision not to ask for explanations under paragraph 1, subparagraph (a) or the reasons for its negative action, nor is it prevented from reporting such non-action and the reasons therefor, either under article 19, paragraph 3 or under article 18.<sup>1039</sup> The Board is not precluded from publishing material which is contained in an explanation given under paragraph 1, subparagraph (a), but was also included in communications which it received outside the procedure under article 19, provided always that in so doing it does not expressly or by implication refer to the procedure pursuant to that article in which the explanation was given.<sup>1040</sup>

14. As regards representation of States directly interested in matters considered by the Board pursuant to subparagraph (a), at the meetings in question, see article 19, paragraph 5 and the comments below on that provision.

#### *Paragraph 1, subparagraph (b)*

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

#### *Commentary*

1. The subparagraph under consideration requires only that the Board must have acted under subparagraph (a), i.e., must have asked for the explanations to which the latter provision refers, before it is authorized to call upon the Government concerned to adopt the remedial measures which it finds necessary. The Government's failure to furnish satisfactory explanations is not explicitly made a condition for the Board's action. It is however suggested that this would indeed have to be the case before the Board could act under subparagraph (b). Otherwise, the Board could pursuant to subparagraph (c) and paragraph 2 take action against a State which had given satisfactory explanations. It cannot be assumed that the 1971 Conference intended to authorize the Board to resort in such a case to such a measure as the recommendation of an embargo.

2. The Board's request may consist of a general appeal to remedy the unsatisfactory situation, or may specify in more or less detail the remedial measures whose adoption the Board finds necessary.

3. The Board may request only the adoption of such measures as it finds necessary for the implementation of specific provisions of the Vienna

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<sup>1039</sup> 1961 Commentary, paragraphs 1 and 2 of the comments on article 14, paragraph 3 of the Single Convention (p. 194).

<sup>1040</sup> Paragraph 17 of the comments referred to in foot-note 1034 (p. 183).

Convention. It can ask for particular ways of carrying them out, although other methods might be authorized under the text of the treaty. The Board is under subparagraph *(b)* not entitled to demand the adoption of measures which are not needed for the execution of particular provisions of the Vienna Convention, however useful it may find them for the achievement of the aims of that treaty, i.e. in the campaign against the abuse of psychotropic substances and the illicit traffic.<sup>1041</sup> The Board may demand only such measures as it finds “necessary”. It is not sufficient that it considers them advisable or useful. The requested measures need not be in conformity with the domestic law of the State concerned.

4. The restrictions imposed pursuant to subparagraph *(b)* on the Board’s right to request the adoption of remedial measures do not preclude the Board from recommending corrective steps outside the procedure of article 19 in cases in which that would be done with the express or implied consent of the Government concerned and in particular at its request. The Board is also not prevented from recommending in its reports under article 18 reforms of the control of psychotropic substances in general, or of specific aspects of that control, or from suggesting any other measures it may find useful for the reduction or prevention of the abuse of such substances, provided that this is done without reference to a specific country. The Board is also authorized, within its sphere of technical competence and within the terms of its treaty functions, to render to a country requesting it technical assistance in the improvement of its administration of the control of psychotropic substances.<sup>1042</sup>

5. The subparagraph under consideration does not explicitly require the Board to treat as confidential its requests for remedial measures, or those measures themselves. It is however submitted that such an obligation of the Board seems to be implied as long as the Board is not entitled to take, and actually has not taken action under subparagraph *(c)*. By publishing its request or the proposed remedial measures, the Board would expressly or by implication reveal its action under subparagraph *(a)*, which it is bound to treat as confidential. The Board is however not precluded from publishing its request and the proposed remedial measures with the consent of the Government concerned. The Board’s obligation to respect the confidentiality is owed to the Government concerned, which may waive its right.<sup>1043</sup>

6. The Board is in all cases required to ask for explanations pursuant to subparagraph *(a)* and normally to wait a reasonable time for a response to its request, before it can act under subparagraph *(c)* and paragraph 2. It may however omit action under subparagraph *(b)* before proceeding to the application of subparagraph *(c)* and paragraph 2.<sup>1044</sup>

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1041 1961 *Commentary*, paragraph 5 of the comments on article 14, paragraph 1, subparagraph *(b)* of the Single Convention (pp. 184 to 185).

1042 Paragraphs 8 and 9 of the comments referred to in the preceding foot-note (pp. 185 and 186).

1043 Paragraph 11 of the comments referred to in foot-note 1041 (p. 186).

1044 Paragraph 7 of those comments (p. 185).



7. For representation of a State directly interested in the matter in the Board's considerations under subparagraph (b), see below, paragraph 5 and the comments thereon; for provisions in earlier treaties corresponding to subparagraph (b), see article 11, paragraph 1, subparagraph (c) of the 1953 Protocol and article 14, paragraph 1, subparagraph (b) of the Single Convention.

**Paragraph 1, subparagraph (c)**

**(c) If the Board finds that the Government concerned has failed to give satisfactory explanations when called upon to do so under subparagraph (a), or has failed to adopt any remedial measures which it has been called upon to take under subparagraph (b), it may call the attention of the Parties, the Council and the Commission to the matter.**

*Commentary*

1. Before being able to act under subparagraph (c), the Board is normally bound to wait a reasonable time for a response to its request for explanations under subparagraph (a). It does not have to wait for explanations if the Government concerned has indicated that it is unwilling to furnish them. The Board is however not required to suggest remedial measures under subparagraph (b) before applying the subparagraph under consideration.<sup>1045</sup>

2. Subparagraph (c) appears to set two alternative conditions for the Board's right to call the attention of the Parties, the Council and the Commission to the matter: a finding that the Government concerned has failed to give satisfactory explanations under subparagraph (a), or has failed to adopt remedial measures requested pursuant to subparagraph (b). However, since—as has been suggested earlier<sup>1046</sup>—the Board may under that subparagraph make such a request only if the Government involved has failed to give satisfactory explanations under subparagraph (a), such a failure will in all cases precede the Board's action under subparagraph (c).

3. The Board may include in a report under article 18, or in one under paragraph 3, or in both an exposition of its action pursuant to subparagraph (c), but this would not be sufficient. The Board has to communicate in a separate document its action to the Parties and the two organs involved. That view has been based on the consideration that the Vienna Convention requires different modes of communication for those three kinds of documents.<sup>1047</sup>

4. When acting under subparagraph (c), the Board is no longer required to treat as confidential its request for explanations under subparagraph (a), the response to that request and the remedial measures suggested pursuant to

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<sup>1045</sup> Paragraph 6 of the comments on subparagraph (b).

<sup>1046</sup> Paragraph 1 of the comments on subparagraph (b).

<sup>1047</sup> 1961 *Commentary*, paragraph 4 of the comments on article 14, paragraph 1, subparagraph (c) of the Single Convention (p. 187).

subparagraph (b). The Board therefore may, and if the Government concerned so requests should, include in its document calling attention to the matter the explanations which it has received and indicate the remedial measures which it was proposed and which have not been adopted. The Board should comply with such a request even though it is not expressly required to do so by subparagraph (c). This follows from paragraph 3 requiring the Board to include in a report on a matter with which it has dealt under article 19 also the views of the Government concerned, if the latter so requests. If the Board did not include the explanations of the Government in question in its communication under subparagraph (c) although requested to do so, it would circumvent that requirement of paragraph 3, particularly if it failed to publish a report on the matter under that paragraph. A communication under subparagraph (c) would in fact render the matter as public as a publication under paragraph 3.<sup>1048</sup>

5. If the Board decides to discontinue for any reason whatsoever a procedure under article 19 without taking action under subparagraph (c), it continues to be bound not to reveal its request for explanations, the response of the Government in question or the remedial measures which it has suggested, unless that Government consents to the publication.<sup>1049</sup>

6. For representation of a directly interested State in the Board's discussion under subparagraph (c), see paragraph 5 below and the comments thereon; for corresponding provisions in earlier treaties, see article 24, paragraph 2 of the 1925 Convention, article 14, paragraph 3, second subparagraph of the 1931 Convention, article 12, paragraph 1, subparagraph (a) of the 1953 Protocol and article 14, paragraph 1, subparagraph (c) of the Single Convention.

### *Paragraph 2*

**2. The Board, when calling the attention of the Parties, the Council and the Commission to a matter in accordance with paragraph 1 (c), may, if it is satisfied that such a course is necessary, recommend to the Parties that they stop the export, import, or both, of particular psychotropic substances, from or to the country or region concerned, either for a designated period or until the Board shall be satisfied as to the situation in that country or region. The State concerned may bring the matter before the Council.**

### *Commentary*

1. The Board may recommend any kind of embargo for which paragraph 2 provides only "when calling the attention of the Parties, the Council and the Commission" to the matter in question in accordance with paragraph 1, subparagraph (c). Consequently before making such a recommendation the Board must also have asked the Government concerned for explanations pursuant to paragraph 1, subparagraph (a), but need not have

<sup>1048</sup> Paragraph 2 of the comments referred to in the preceding foot-note (p. 187).

<sup>1049</sup> Paragraph 3 of those comments (p. 187).

requested the adoption of remedial measures pursuant to subparagraph (b) of that paragraph.<sup>1050</sup>

2. The question arises whether the Board may recommend an embargo only *simultaneously* with taking action under paragraph 1, subparagraph (c) or may make the recommendation also *after* having taken that action, leaving an interval between those two decisions. The word “when” may have the meaning of the words “at the time that”, or of the phrase “in the event that” (“in the event of”). It may have a temporal or a conditional sense.<sup>1051</sup> While the temporal meaning of “when” may be more common, the conditional meaning would be more in harmony with the purpose of article 19. The recommendation of an embargo is an extreme measure which the Board would only very reluctantly adopt. Action under article 1, paragraph (c) would indicate to the Government concerned that all the conditions for the recommendation of an embargo exist, and might be more effective than the recommendation of the embargo itself if the Board retains its right to make the recommendation later. Action under article 1, subparagraph (c) would generally be less effective if not accompanied by a recommendation of an embargo or at least by a continuing right of the Board to make such a recommendation later.<sup>1052</sup>

3. The French text of paragraph 2 uses the words “*lorsqu’il appelle*” for the English “when calling”. “*Lorsque*” also having a temporal and conditional meaning,<sup>1053</sup> that version lends itself to the same interpretation as the English text. The Spanish text however uses the words “*al señalar . . . a la atención*” and does not appear to permit the conclusion that the Board is authorized to leave an interval between its action under article 1, paragraph (c) and a recommendation of an embargo. It is however submitted that preference should be given to the English and French texts, which allow an interpretation more in accord with the purpose of article 19. That would also be in agreement with the interpretation suggested in the *1961 Commentary* for the corresponding provision of article 14, paragraph 2 of the Single Convention.<sup>1054</sup>

1050 See paragraph 6 of the above comments on paragraph 1, subparagraph (b) and paragraph 1 of the above comments on paragraph 1, subparagraph (c).

1051 Webster’s New International Dictionary of the English Language, Second Edition, G. & C. Merriam Company, Springfield, Massachusetts, 1954, p. 2910, number 1 and 2 of the entry “when” (conj.); The Oxford English Dictionary, Oxford, Clarendon Press, vol. XII (1933), p. 24 of the section dealing with “WH”, number 4 (a) and 8 of the entry “when”.

1052 *1961 Commentary*, paragraph 2 of the comments on article 14, paragraph 2 of the Single Convention (pp. 188 and 189).

1053 Sachs-Villatte, *Enzyklopädisches Französisch–Deutsches und Deutsch–Französisches Wörterbuch*, Berlin, Langenscheidt, 1964, first part, p. 548.

1054 Paragraph 2 of the comments on that provision (pp. 188 and 189). The English and French texts of the provision of the Single Convention are nearly literally the same as those of the provision of the Vienna Convention. The Spanish texts differ particularly also in that the Single Convention uses the words “*cuando señale*” where the Vienna Convention employs the words “*al señalar*”. The Spanish word *cuando* also appears to have a temporal and conditional meaning; Fernandez Cuesta, *Dictionnaire des langues espagnole et française*, Buenos Aires, Anaconda, vol. III, p. 429.

4. While the related and in substance nearly identical text of article 14, paragraph 2 of the Single Convention places the reference to “import” before that to “export”, article 19, paragraph 2 of the Vienna Convention mentioned “export” first. It is obviously due to an oversight that a corresponding exchange of the position of the prepositions “from” and “to” was not made in the English text. The phrase “from or to” should correctly read “to or from”. A similar oversight appears to have been made in regard to the Spanish version.

5. The Board may recommend an embargo only if it finds such a measure to be *necessary*. Its opinion that an embargo would only be advisable would not be sufficient. In practice it may of course be difficult to draw a line between what is necessary and what is only advisable. The requirement that the recommendation of an embargo be found “necessary” by the Board points however to the opinion of the authors of the Vienna Convention that an embargo is an extreme measure and should be recommended only in particularly grave situations. It is held that the Board may consider the recommendation of an embargo “necessary” if it finds that such a measure is the best action which it could take under the circumstances to bring about an improvement in the implementation of the Vienna Convention by the country or region involved.

6. An embargo may be recommended against Parties and non-Parties alike. It may be recommended only against a “region”,<sup>1055</sup> i.e. a part of a State, if it is the implementation of the Vienna Convention by that region and not by the remainder of the State which is the cause of the serious situation that is the object of the procedure under article 19. Such a recommendation against a part of a State will probably very rarely if ever be found necessary by the Board. It can however theoretically not be excluded that the implementation of the Vienna Convention in a region forming a part of a territory enjoying a high degree of autonomy is highly unsatisfactory, while in the remainder of the State it does not give cause for serious complaints. It can also theoretically not be excluded that the metropolitan country would be the responsible “region”, while the situation in the regions belonging to non-metropolitan territories for whose international relations that country is responsible would be found satisfactory. A recommendation of an embargo directed only against a region would imply a recommendation of the cessation of the trade in psychotropic substances between that region and the remainder of the State to which the region belongs, in accordance with the terms of the embargo.

7. The embargo may be recommended for a definite period to be designated by the Board, or for an indefinite period until the Board is satisfied as to the situation in the country or region affected by the embargo. An embargo which has been recommended for a designated period of time can be prolonged only after the Board has again followed the procedure and made the findings which must precede the recommendation of an embargo.

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<sup>1055</sup> Article 1, paragraph (k).

Such a prolongation has to be dealt with as if it were a recommendation of a new embargo; but the new procedure may be commenced and completed before the expiration of the time limit of the first embargo.<sup>1056</sup> It may be more practical to recommend in all cases the embargo for an indefinite period, which can be terminated at any time when the Board is “satisfied as to the situation” in the country or region concerned.

8. Not only an embargo which has been recommended for an indefinite time, but also one recommended for a “designated period”, may be terminated by the Board at any time when the Board is “satisfied as to the situation” in the country or region in question, although article 19 may not be clear on that point. It can obviously not have been the intention of the authors of the Vienna Convention to prevent the Board from terminating a recommended embargo in such a case.

9. The Board is not bound to recommend an embargo, although it may find that the conditions for such a step exist. The recommendation of an embargo is in no case mandatory.

10. The phrase “shall be satisfied as to the situation in that country or region” does not mean that the Board must find that the situation has become satisfactory. The Board may terminate a recommended embargo whenever it may find that a continuation of the embargo no longer serves any useful purpose. Among the possible reasons for a termination of an embargo the following may be mentioned: a finding that the country or region concerned is no longer failing to carry out provisions of the Vienna Convention in the serious manner which moved the Board to initiate the procedure pursuant to article 19, or that it has at least taken steps likely to bring about an improvement in the situation, or has done everything within its means which can reasonably be expected, particularly if in that case it has requested the foreign aid it needs in order to be able to make a better contribution to the international campaign against the abuse of psychotropic substances. In regard to psychotropic substances which are used for therapeutic purposes, the Board might also end its recommendation of an embargo on the export of such substances to a country or region if a continuation of the embargo would endanger the treatment of the sick. The discontinuation of a recommended embargo is fully within the discretion of the Board, which may take such action even though the unsatisfactory situation which originally motivated the recommendation does not improve and is not expected to improve.<sup>1057</sup>

11. The embargo may be recommended in respect of the export to, or of the import from, the country or region in question or both. It may relate to one, several or all psychotropic substances, including substances in respect of

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<sup>1056</sup> 1961 *Commentary*, paragraph 9 of the comments on article 14, paragraph 2 of the Single Convention (p. 191).

<sup>1057</sup> Paragraph 8 of the comments referred to in the preceding foot-note (pp. 190 and 191).

which the country or region concerned has not failed to carry out provisions of the Vienna Convention.<sup>1058</sup>

12. Paragraph 2 provides only that the Board may recommend the embargo to Parties. It is however submitted that the Board would not be prevented from addressing its recommendation also to non-Parties. That recommendation may however never be made only to some of the Parties. It must in all cases be addressed to all Parties, including those which might be expected not to be able to make a contribution to the effect of the embargo.<sup>1059</sup>

13. Only the State against which an embargo has been recommended—whether against the State as a whole or against one of its regions—is the “State concerned”, which may “bring the matter before the Council” even though it is not a Member of the United Nations. Another State which has an important interest in the continuation of the trade to be discontinued under the Board’s recommendation would not be a “State concerned” in the sense of paragraph 2, but would be a State which the question would “directly” interest under paragraph 5.<sup>1060</sup> The important interest need not be of an economic nature. A State depending to an important degree on the supply of medicines affected by an embargo on the export of a State under paragraph 2 would also be “directly” interested in the question.<sup>1061</sup>

14. Since the Board performs “judicial”<sup>1062</sup> functions when applying article 19 and in particular when recommending an embargo, it is submitted that the Council may not formally confirm, rescind or revise the Board’s recommendation of an embargo brought before it by the “State concerned”. The Council may however consider the merits of the Board’s action, may make suggestions to the Board concerning the way in which the matter

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1058 The English text qualifies the term “psychotropic substances” by the word “particular” and the Spanish text the term “*sustancias sicotrópicas*” by the word “*ciertas*”. The French text does not have a corresponding qualification of the term “*substances psychotropes*”. Those three language texts of the corresponding article 14, paragraph 2 of the Single Convention do not contain such a qualification of the words “drugs”, “*stupéfiantes*” and “*drogas*”. (The Spanish text uses in that place inconsistently “*drogas*” instead of “*estupefacientes*”.) It may be assumed that the addition of the words “particular” and “*ciertas*” in the English and Spanish texts of article 19, paragraph 2 are due to the expectation of their drafters that the embargoes recommended under that provision would not cover all psychotropic substances; see also paragraphs 7 and 19 of the comments referred to in foot-note 1056 (pp. 190 and 193).

1059 See however article 21, paragraph 4, paragraph (a) of the Single Convention.

1060 Under Rule 72 of the recently amended Rules of Procedure of the Council a State not a Member of the United Nations must be invited to participate in the Council’s deliberations on any matter of particular concern to that State; document E/5715 (United Nations publication, Sales No. E.75.I.15); Council resolution 1949 (LVIII).

1061 Paragraphs 13 and 14 of the comments referred to in foot-note 1056 (p. 192).

1062 Commission on Narcotic Drugs, report on its twenty-first session. *Official Records of the Economic and Social Council, Forty-second Session, Supplement No. 2 (E/4292)* paragraph 108; see also League of Nations document O.C. 669.

should be handled, and adopt its own recommendation on the subject, which may differ from that of the Board.<sup>1063</sup>

15. For corresponding provisions of earlier drug treaties, see article 24, paragraphs 2 and 3 (and article 26) of the 1925 Convention, article 14, paragraph 3, second subparagraph of the 1931 Convention, article 12, paragraph 2 and paragraph 3, subparagraph (a), clause (ii) and subparagraph (b) of the 1953 Protocol; and article 14, paragraph 2 of the Single Convention; see also article 13 of the 1953 Protocol; as regards the participation of States “directly” interested in the matter in the Board’s deliberations under paragraph 2, see below, the comments on paragraph 5.

### *Paragraph 3*

**3. The Board shall have the right to publish a report on any matter dealt with under the provisions of this article, and communicate it to the Council, which shall forward it to all Parties. If the Board publishes in this report a decision taken under this article or any information relating thereto, it shall also publish therein the views of the Government concerned if the latter so requests.**

### *Commentary*

1. The English and French texts of paragraph 3 are literally identical with those two language versions of the corresponding article 14, paragraph 3 of the Single Convention. The Spanish texts of those two provisions show some insignificant drafting differences which, however, do not affect their substantive identity. The comments of the *1961 Commentary* on article 14, paragraph 3 of the Single Convention therefore are also valid for the interpretation of article 19, paragraph 3 of the Vienna Convention.

2. The Board’s right to publish a report under paragraph 3 is limited by its obligation pursuant to paragraph 1, subparagraph (a) to treat as confidential a request for information and explanations given in response to the request. As long as the Board does not take action under paragraph 1, subparagraph (c), the Board therefore may not reveal that request and those explanations without the consent of the Government concerned, and thus may not without such an agreement report under paragraph 3 on any procedure in which the request has been made. The Board may therefore not report on a procedure in the course of which it has made a request for explanations under paragraph 1, subparagraph (a) and which it has discontinued, without calling under subparagraph (c) of that paragraph the attention of the Parties, the Council and the Commission to the matter. The Board appears however to be always free to report its decision not to request explanations under paragraph 1, subparagraph (a) and the reasons for its negative action.<sup>1064</sup>

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<sup>1063</sup> Paragraph 16 of the comments mentioned in foot-note 1056 (pp. 192 and 193).

<sup>1064</sup> *1961 Commentary*, paragraphs 1 and 2 of the comments on article 14, paragraph 3 of the Single Convention (p. 194); see also paragraph 13 of the above comments on article 19, paragraph 1, subparagraph (a) and paragraph 7.

3. When the Board has taken action under paragraph 1, subparagraph (c), it may under paragraph 3 report those details of the case concerned which it may find useful to publish. It may also mention that under paragraph 1, subparagraph (c) it is calling the attention of the Parties, the Council and the Commission to the matter; but that would not take the place of the separate communication which the Board must issue on its action pursuant to that subparagraph.<sup>1065</sup>

4. The issuance of a report under paragraph 3 is within the discretion of the Board. It is not mandatory. The Board may instead include in one of its reports under article 18 an exposition of a matter with which it has dealt under article 19. The inclusion of such an exposition would strictly speaking not be a report under article 19, paragraph 3. That view has been based on the consideration that the rules governing the communication of the two types of reports are different. The report under article 18 is submitted to the Council through the Commission and communicated to the Parties by the Secretary-General, while the report under article 19, paragraph 3 is submitted directly to the Council and transmitted by the latter—i.e. under the Council's responsibility—to the Parties. But the distinction between an inclusion of an account of a matter with which the Board has dealt pursuant to article 19 in a report under article 18 and a report on the matter under article 19, paragraph 3 is hardly of any practical importance.<sup>1066</sup>

5. The Board may choose to report on a matter with which it has dealt under article 19 twice: by inclusion of a narrative of that matter in one of its reports under article 18 and, in addition, by issuing a separate report under article 19, paragraph 3. The Board may choose to do so in order to emphasize the seriousness of the situation.<sup>1067</sup>

6. The Board must include in a report pursuant to paragraph 3 also the views of the "Government concerned" if the latter so requests, i.e. the views of the Government whose behaviour has been the subject of the procedure to which the report relates. The same applies also to the inclusion of a narrative of a matter with which the Board has dealt under article 19, in a report issued under article 18.

7. For earlier related treaty provisions see article 24, paragraph 5 of the 1925 Convention, article 14, paragraph 3, second subparagraph of the 1931 Convention; article 12, paragraph 4, subparagraph (c) of the 1953 Protocol and article 14, paragraph 3 of the Single Convention; see also article 12,

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<sup>1065</sup> Paragraphs 3 and 4 of the comments of the *1961 Commentary* referred to in the preceding foot-note (pp. 194 to 195); paragraph 13 of the above comments on article 19, paragraph 1, subparagraph (a) and paragraph 7; and paragraphs 3 to 5 of the comments on article 19, paragraph 1, subparagraph (c) of the Vienna Convention.

<sup>1066</sup> Paragraphs 3 to 5 of the comments of the *1961 Commentary* referred to in foot-note 1064 (pp. 194 to 195); paragraph 3 of the above comments on article 18, paragraph 1 of the Vienna Convention and paragraph 13 of the comments on article 19, paragraph 1, subparagraph (a) and paragraph 7 of that Convention.

<sup>1067</sup> Paragraph 6 of the comments of the *1961 Commentary* referred to in foot-note 1064 (p. 195).



paragraph 1, subparagraph (b) of the 1953 Protocol; as regards the participation of the Party directly interested in the matter in the Board's deliberations under paragraph 3, see the comments below on paragraph 5.

***Paragraph 4***

**4. If in any case a decision of the Board which is published under this article is not unanimous, the views of the minority shall be stated.**

*Commentary*

1. The English and French texts of paragraph 4 are literally the same as those texts of article 14, paragraph 4 of the Single Convention. The Spanish texts of those two provisions show drafting differences which however do not affect their substantive identity.

2. Paragraph 4 also applies to the narrative of a matter with which the Board has dealt under article 19, included in one of the Board's reports issued pursuant to article 18.

3. The "minority" may consist of a single member of the Board who participated in the consideration of, or in the vote on, the decision in question.

4. For related provisions in earlier drug treaties, see article 24, paragraph 6 of the 1925 Convention, article 14, paragraph 3, second subparagraph of the 1931 Convention, article 12, paragraph 4, subparagraph (c) of the 1953 Protocol and article 14, paragraph 4 of the Single Convention.

***Paragraph 5***

**5. Any State shall be invited to be represented at a meeting of the Board at which a question directly interesting it is considered under this article.**

*Commentary*

1. The English and French texts of paragraph 5 are literally the same as those of article 14, paragraph 5 of the Single Convention. The Spanish texts differ, but their differences do not affect their substantive identity. The comments of the *1961 Commentary* on the provision of the Single Convention therefore also apply to the provision of the Vienna Convention.

2. Any State in respect of which the Board takes action under paragraphs 1, 2 or 3 is a "directly" interested State to which paragraph 5 applies. It does not matter whether the Board's action relates to the State as a whole or only to one or several of its "regions". In regard to the Board's deliberations under paragraph 2, States which have an important interest in a

continuation of the trade which would be affected by a recommendation of an embargo would also be “directly” interested States in the sense of paragraph 5.

3. States have a right to be represented at meetings of the Board dealing with questions under paragraphs 1, 2 or 3 directly interesting them. It is suggested that procedural questions which may arise under paragraphs 4, 5 or 6 are not to be considered as *directly* interesting States in the sense of paragraph 5 so as to give them a right to representation, although they may sometimes be of interest and even of considerable interest to them.

4. A State in respect of which the Board considers taking action under article 19 has thus a right to be represented at the Board’s deliberation of the following questions:

(a) Whether it should be asked for explanations pursuant to paragraph 1, subparagraph (a);

(b) Whether its explanations furnished under the same subparagraph are satisfactory;

(c) Whether under paragraph 1, subparagraph (b) it should be asked to adopt remedial measures, and if so, what those measures should be;

(d) Whether under paragraph 1, subparagraph (c) the Board should call the attention of the Parties, the Council and the Commission to the matter;

(e) Whether under paragraph 2 the Board should recommend an embargo, and if so, what kind of an embargo should be recommended; and

(f) Whether the Board should under paragraph 3 make a report on the matter, and if so, what should be included in that report.

5. In addition, such a State has a right to be represented at a meeting of the Board at which that part of a report pursuant to article 18 is considered which is to give a narrative of a procedure under article 19 undertaken by the Board in respect of that State; and a State having an important interest in the continuation of a trade in psychotropic substances which may be affected by the recommendation of an embargo has a right to be represented at the Board’s consideration of such an embargo.

6. That right of representation does not mean that the Board cannot—at least in a preliminary way—discuss any of the actions for which paragraphs 1 to 3 provide, without inviting the State entitled to be heard. Only if the Board finds that circumstances are such as to require an examination whether conditions for taking any of those actions really exist, must it give that State an opportunity to take part in the debate. Any other practice would not only unduly encumber the Board’s work, but also cause the State concerned unnecessary costs of representation.<sup>1068</sup>

7. For related earlier treaty provisions, see article 24, paragraph 7 of the 1925 Convention, article 14, paragraph 3, second subparagraph of the 1931

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<sup>1068</sup> 1961 *Commentary*, paragraph 2 of the comments on article 14, paragraph 5 of the Single Convention (pp. 196 to 197).

Convention, article 12, paragraph 4, subparagraph *(b)* of the 1953 Protocol and article 14, paragraph 5 of the Single Convention.

**Paragraph 6**

**6. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.**

*Commentary*

1. The English and French versions of paragraph 6 are literally the same as those versions of article 14, paragraph 6 of the Single Convention. The Spanish texts show drafting differences without however affecting the identity of their substance. The comments of the *1961 Commentary* on the provision of the Single Convention therefore are also valid for the provision of the Vienna Convention.

2. The term “decisions” as used in paragraph 6, covers requests for explanations pursuant to paragraph 1, subparagraph *(a)*, findings that such explanations are not “satisfactory”, requests for the adoption of remedial measures under paragraph 1, subparagraph *(b)*, decisions to call under article 1, subparagraph *(c)* the attention of the Parties, the Council and the Commission to a matter with which the Board has dealt under article 19, recommendations of embargoes under paragraph 2, the adoption of reports under paragraph 3 and the adoption of parts of reports under article 18 giving an account of a matter which the Board has considered under the terms of article 19. Refusals to take any of those actions, and in particular also a decision to find explanations furnished under paragraph 1, subparagraph *(a)* satisfactory, are not “decisions” in the sense of paragraph 6 and do not require the qualified majority prescribed therein. The same applies to all procedural decisions.

3. An affirmative vote of a two-thirds majority of the total membership of the Board is required no matter how many members may be present or participate in the vote. That means the affirmative vote of eight members under the unamended text of the Single Convention and of nine members under its text as amended by the 1972 Protocol.<sup>1069</sup> An affirmative vote cast by an absent member, whether by mail or by proxy, may not be counted.

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<sup>1069</sup> Article 9, paragraph 1 of the Single Convention and article 2 of the 1972 Protocol amending that provision.

## Article 20

### MEASURES AGAINST THE ABUSE OF PSYCHOTROPIC SUBSTANCES

#### General comments

1. The drug treaties preceding the Single Convention did not contain provisions concerning the treatment of the victims of drug abuse other than penal sanctions.<sup>1070</sup> They provided for a system of administrative controls and penal sanctions intended to keep drugs from actual and potential victims of the evil of drug abuse.<sup>1071</sup>

2. Article 38 of the Single Convention, in its unamended version, was the first treaty provision in the field of international drug control dealing with the problem of treatment of abusers of drugs. The 1972 Protocol replaces the original wording of that article by a text which follows very closely that of article 20 of the Vienna Convention.<sup>1072</sup>

3. A system of administrative controls and penal sanctions established for the purpose of keeping narcotic drugs from actual and potential victims however continues to be the essence of the Single Convention. The extension of such a system to psychotropic substances presents the basic aim and content of the Vienna Convention.

4. Article 20 of the Vienna Convention reflects the general acceptance of the view that that system alone, and consequently also the implementation of the international drug treaties alone, is not sufficient, and should not form the sole subject of international co-operation in the campaign against drug abuse. It expresses the view of the 1971 Conference that a multidisciplinary approach is required.<sup>1073</sup>

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1070 As regards the opinion that the possession of drugs for the purpose of abusing them and thus also their abuse is not covered by the treaty provisions requiring penal sanctions; see *1961 Commentary*, paragraphs 17 to 20 of the comments on article 4 of the Single Convention (pp. 112 to 113). Those comments also apply to the term "possession" as used in article 2 of the 1936 Convention.

1071 See however recommendations IV, VIII, IX and X incorporated in the Final Act of the Conference of 1931 on the Suppression of Opium Smoking, League of Nations document C.70.M.36.1932.XI, pp. 12 to 14.

1072 Article 15 of the 1972 Protocol amending article 38 of the Single Convention.

1073 *1971 Records*, vol. II, paragraphs 3 to 53 of the summary records of the sixth plenary meeting; see in particular paragraphs 17 and 19 of those records (pp. 19 to 22).

5. The provisions of article 20 are kept 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. That seems to have been the prevailing view of the 1971 Conference.<sup>1074</sup>

6. The article under consideration deals with measures to be applied to the individuals abusing psychotropic substances,<sup>1075</sup> with the training, i.e. with the development of the required professional skills, of the personnel dealing with the problems of those individuals,<sup>1076</sup> 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.<sup>1077</sup>

7. It is suggested that Governments may often find it advisable to apply joint programmes under article 20 of the Vienna Convention and under article 38 of the Single Convention as amended by the 1972 Protocol.

### *Paragraph 1*

**1. The Parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved, and shall co-ordinate their efforts to these ends.**

### *Commentary*

1. Only such measures need to be taken as the Government concerned considers to be “practicable”. What is “practicable” in some countries may not be “practicable” in other countries. Measures which are within the competence and means of a country are not necessarily “practicable” in the sense of paragraph 1. A Government may consider them not to be “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 have higher priority in the light of its special economic and social conditions. That may in particular be the case of developing countries.<sup>1078</sup> What is “practicable” is what can reasonably be expected of a Government in the light of its resources and the degree of seriousness of its problem of abuse of psychotropic substances.

2. Treatment, after-care, rehabilitation and social reintegration present four stages which are widely held to be necessary to restore the well-being and social usefulness of abusers of narcotic drugs or psychotropic substances.

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<sup>1074</sup> See the summary records referred to in the preceding foot-note; see in particular paragraphs 20, 34, 36, 39, 43 and 44 of those records.

<sup>1075</sup> The principal content of paragraph 1.

<sup>1076</sup> Paragraph 2.

<sup>1077</sup> Paragraph 3.

<sup>1078</sup> Paragraphs 34 and 47 of the summary records referred to in foot-note 1073.

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 may be considered to be only tentative.

3. The term “treatment” is in a broad sense sometimes applied to the entire process consisting of the four phases to which the paragraph under consideration refers.<sup>1079</sup> 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 substances, or where necessary of inducing the abuser to restrict his intake of substances liable to be abused to such minimum quantities as are medically justified in the light of his personal condition.<sup>1080</sup>

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 or psychotropic substances which consists mainly of such psychiatric, psychoanalytical or psychological measures as may be necessary after he has been withdrawn from the substances which he abused or, in the case of a “maintenance programme”, after he has been induced to restrict the intake of such substances as required by 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 or psychotropic substances 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.).<sup>1081</sup> Such measures of “rehabilitation” may however also have to be taken 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 article 20, 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 phrase “social reintegration” may thus cover such measures as provision of a suitable job, appropriate housing and perhaps also an opportunity for the person to leave his former environment and to move to a social atmosphere less likely to produce such

<sup>1079</sup> 1961 *Commentary*, paragraph 4 of the comments on article 38 of the Single Convention (p. 446).

<sup>1080</sup> In the case of medically justified “maintenance systems”.

<sup>1081</sup> Paragraph 5 of the comments referred to in foot-note 1079 (p. 447).

social evils as alcoholism or the abuse of narcotic drugs or psychotropic substances. 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 article 20, paragraph 1 cannot easily be separated in time and content. It is also admitted that other views may be held on the exact dividing lines between the four stages. It is however submitted that it is not necessary to agree on those dividing 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 a broad sense) of abusers of narcotic drugs or psychotropic substances in order to indicate that the Parties should apply all “practicable” measures—no matter to which discipline they may belong—which may be useful 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 psychotropic substances, but also to that of particular groups whose members are specially prone to abuse them.<sup>1082</sup> Inspection under article 15 of the prescriptions retained by retail distributors of psychotropic substances (pharmacists) and where possible a reporting system patterned on that of reporting communicable diseases may be mentioned, by way of example, as a means of identification.

9. The term “education” seems to apply in that place only to education regarding the harmful consequences of the abuse of psychotropic substances. Such education may also be part of the promotion of an understanding of the problem of that 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 the information of actual abusers, to classes in schools and to special courses intended for groups found to be particularly prone to abuse narcotic drugs or psychotropic substances. It would be desirable that in developing programmes of education Governments should not overlook the possibility that spreading of knowledge about narcotic drugs and psychotropic substances may in some situations lead to the spread of their abuse. That risk may have to be kept in mind, especially where such abuse does not exist or is only rare.<sup>1083</sup>

10. All the administrative control measures and penal sanctions for which the Vienna Convention provides are intended to prevent the abuse of psychotropic substances, and therefore constitute “prevention”. When using the very broad term “prevention” in paragraph 1, the authors of that

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1082 Paragraph 25 of the summary records referred to in foot-note 1073.

1083 Paragraph 51 of the summary records referred to in foot-note 1073.

provision however thought of other additional measures suitable to keep people from abusing psychotropic substances. These measures 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 or psychotropic substances. Early identification of groups prone to abuse psychotropic substances and education would also be measures of prevention.

11. Paragraph 1 requires Parties to co-ordinate their efforts in the various disciplines concerned on the national as well as on the international level; but that co-ordination—on the national level—need not necessarily be a “special administration” as recommended by article 6, or as concrete as the arrangements for co-ordination which pursuant to article 21 are mandatory in the field of the illicit traffic.

### *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 psychotropic substances.**

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

### *Commentary*

1. Paragraph 2 applies only to persons engaged in any phase of the treatment (in a broad sense)<sup>1084</sup> of abusers of psychotropic substances; it does not cover persons engaged only in preventive measures, including the application of the administrative controls and penal sanctions for which the Vienna Convention provides. It is however held 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 psychotropic substances or of the implementation of the Vienna Convention. Judges, police officers, prison wardens, doctors, social workers and followers of religious vocations who in their professional work deal with abusers of psychotropic substances are also such persons. They fall in that category although their work may only partially be concerned with those abusers. The authors of paragraph 3 considered that persons engaged in any phase of the treatment of abusers of

<sup>1084</sup> See paragraph 3 of the comments on article 20, paragraph 1.



psychotropic substances should not only have the required professional skills, but also an understanding of the multidisciplinary and often complex problems involved. They held that all other persons whose work deals with persons abusing psychotropic substances also require 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 such substances will become widespread”. It is held that such a promotion is also required if that abuse has actually already become widespread. The limitation of that requirement to situations in which there is a risk of widespread abuse or widespread abuse already exists is motivated by the assumption on the part of some Government officials that the promotion of knowledge about narcotic drugs and psychotropic substances in countries where their abuse is only rare may actually lead to the spread of their abuse, particularly by arousing the morbid curiosity of psychologically weak persons and thereby inducing them to abuse those dangerous substances.<sup>1085</sup>

4. Understanding of the multidisciplinary and complex problems of the abuse of narcotic drugs or psychotropic substances 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 required by that provision. The nature of that “promotion” will differ in different countries in accordance with the differences in their problems of abuse of psychotropic substances, and also in view of their different educational systems. The term “promote” as used in that provision means “help forward”, “encourage” or “support”.

6. The requirement of promotion under 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 a country can reasonably be expected to use for the purpose of implementing that paragraph. That depends to some extent on the degree of seriousness of the abuse problem of the country concerned. A country is not bound to divert scarce skilled personnel or financial means to that purpose from tasks which it considers to have 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.<sup>1086</sup>

7. Paragraph 3 requires Parties to “assist” persons whose work so requires to gain an understanding of the problems of the abuse of psychotropic substances and to “promote” such an understanding among the general public where required under that provision. It is suggested that the

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<sup>1085</sup> See also paragraph 9 of the comments on article 20, paragraph 1 and foot-note 1083 above.

<sup>1086</sup> Paragraph 1 of the comments on that provision.

terms “assist” and “promote” have in that paragraph the same meaning, and both are used in the same sense as “promote” in paragraph 2.<sup>1087</sup> It is held that the employment of two different terms is due to reasons of style only. The Governments are not bound to engage themselves in such a publicity programme, although they may of course do so in implementation of paragraph 3. They may limit themselves to “promoting” such programmes undertaken by private persons or non-governmental organizations.

8. Paragraph 3 does not expressly limit the obligation of Parties to those measures which they may consider “practicable” or “possible”. It appears however that it was the understanding of the 1971 Conference that Parties would be required under that provision to take only such measures as can reasonably be expected of them in the light of their particular circumstances, and especially in view of the seriousness of their abuse problem and of the means available to them for that purpose.<sup>1088</sup>

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<sup>1087</sup> Paragraph 5 of the present comments.

<sup>1088</sup> Paragraphs 20, 34, 39 and 47 of the summary records referred to in foot-note 1073 (pp. 21 and 22), paragraph 5 of the general comments on article 20, paragraph 1 of the comments on paragraph 1 of that article and paragraph 6 of the comments on paragraphs 2 and 3 of that article.

## Article 21

### ACTION AGAINST THE ILLICIT TRAFFIC

#### General comments

1. Apart from very minor drafting changes not affecting the substance, the text of the introductory paragraph and paragraphs *(a)*, *(c)*, *(d)* and *(e)* of article 21 of the Vienna Convention is the same as the text of those paragraphs of article 35 of the Single Convention in its unamended as well as in its amended version. The first part of paragraph *(b)* of article 21 of the Vienna Convention establishing the general obligation of Parties to assist each other in the campaign against the illicit traffic is also the same as the whole paragraph *(b)* of article 35 of the Single Convention in its unamended and amended version, except that it explicitly states its application to psychotropic substances and not—like the provision of the Single Convention—to narcotic drugs. That provision of the Vienna Convention however differs from the corresponding provision of the Single Convention in that it provides in addition for a specific case of that assistance, namely an obligation to inform “other Parties directly concerned” of certain cases of the illicit traffic. It may also be mentioned in this connexion that article 13 of the 1972 Protocol amends article 35 of the Single Convention by adding paragraphs *(f)* and *(g)*, which contain provisions not found in the Vienna Convention.

2. The comments of the *1961 Commentary* on article 35 of the Single Convention therefore are also valid for the corresponding provisions of article 21 of the Vienna Convention.<sup>1089</sup>

#### *Introductory paragraph*

**Having due regard to their constitutional, legal and administrative systems, the Parties shall:**

#### *Commentary*

It will be noted that the paragraph commences with the phrase “having due regard to”, while corresponding limitative phrases introducing paragraph 1, subparagraph *(a)* and paragraph 2 of article 22 begin with the words

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<sup>1089</sup> 1971 *Records*, vol. II, paragraphs 55, 68, 76 and 79 of the summary records of the sixth plenary meeting (pp. 23 and 24) and paragraphs 2 and 5 of the summary records of the seventh plenary meeting (pp. 24 and 25).

“subject to”. A Party is freed from its obligation to implement a rule of those provisions of article 22 if it is prevented from doing so by its constitution, and is moreover not bound to implement paragraph 2 to the extent that doing so would be incompatible “with its legal system and domestic law”. It is however submitted that no Party could find the implementation of any of the obligations under paragraphs (a) to (e) of article 21, defined as they are in very broad terms, to be incompatible with its constitutional, legal and administrative systems. The authors of article 21 of the Vienna Convention, following the text of article 35 of the Single Convention, appear to have indicated by the phrase “having due regard to” their expectation that Parties would implement article 21 in different ways corresponding to the characteristics of their respective “constitutional, legal and administrative systems”. It is suggested that Parties would have that discretion even if the provisions of paragraphs (a) to (e) had not been preceded by the introductory paragraph.<sup>1090</sup>

### *Paragraph (a)*

**(a) Make arrangements at the national level for the co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination;**

### *Commentary*

1. Paragraph (a) provides for an obligation to make arrangements at the national level for co-ordination of the various national or local governmental activities only in one of the several fields of the campaign against the abuse of psychotropic substances, namely in the area of preventive and repressive action against the illicit traffic, while article 6 declares such a co-ordination of all governmental measures required by the Vienna Convention only to be “desirable”. The “special administration”, as that term is traditionally understood in the language of international drug control, and which article 6 only recommends, need involve only such arrangements as those which are made mandatory by paragraph (a) in respect of the illicit traffic.<sup>1091</sup>

2. In many countries police functions are generally within the competence of subordinate governmental units (constituent states of a federal union, provinces, counties, towns, etc.). Even where a national police has a unit charged with functions of repression of the illicit traffic, local police forces which often are not subject to the authority of the national police have to deal with cases of illicit traffickers. Some arrangements for co-ordination of the police work in the fight against the illicit traffic therefore are necessary

<sup>1090</sup> 1961 *Commentary* on article 35, introductory paragraph of the Single Convention (pp. 416 and 417).

<sup>1091</sup> Paragraph 3 of the above comments on article 6; see also article 11 of the 1936 Convention regarding a “central office”.

in countries where a central national police unit is charged with functions of suppression of the illicit traffic, as well as in other countries where this is not the case. It appears to be advisable that in the fight against the illicit traffic, a particular agency should be charged with the function of co-ordinating the work of different police units not forming part of one hierarchical system. The paragraph under consideration therefore provides that Parties may usefully designate an appropriate agency for that purpose; but such a measure is not made mandatory because it may not be in accordance with the constitutional, legal or administrative systems of some Parties.

3. The arrangements required under paragraph (a) may be implemented by a particular administrative agency established for that purpose or by organizational arrangements ensuring co-operation, or may be only of a regulatory nature; but in all cases they must ensure continuous co-operation and exchange of information among the police units involved in order to make possible the effective handling of individual criminal cases.

4. Where Parties have entrusted an agency with the functions of a “special administration” pursuant to article 6, they may entrust that agency with the co-ordination required under article 21, paragraph (a).

5. Co-ordination on the national level pursuant to paragraph (a) is indispensable for the international mutual assistance and co-operation required by paragraphs (b) to (d). Without co-ordination on the national level, communications of international organizations entrusted with functions in the campaign against the illicit traffic or communications of national departments of foreign Governments may not, or may only with great delay, reach the proper Government unit whose assistance is needed, or from which information is required.

6. All provisions of the Vienna Convention providing for administrative controls of the various phases of trade in psychotropic substances serve the purpose of preventing the diversion of psychotropic substances into the illicit traffic. Prevention of the abuse of psychotropic substances is also the aim of those controls, and in a different sense required by article 20;<sup>1092</sup> but the phrase “preventive action” as used in paragraph (a) has a narrower meaning, and appears to be limited to those measures which are directly related to the illicit traffic, e.g. the maintenance of lists of illicit traffickers, establishment of specialized police units, training of police officers concerned with cases of the illicit traffic, communication to all police units concerned of information on the methods used by traffickers to conceal and to transport their contraband, and purchase of equipment which may be necessary for the special needs of the fight against the illicit traffic.<sup>1093</sup>

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<sup>1092</sup> Paragraph 10 of the above comments on article 20, paragraph 1.

<sup>1093</sup> *1961 Commentary*, paragraph 6 of the comments on article 35, paragraph (a) of the Single Convention (pp. 418 and 419).

*Paragraphs (b), (c) and (d)*

(b) Assist each other in the campaign against the illicit traffic in psychotropic substances, and in particular immediately transmit, through the diplomatic channel or the competent authorities designated by the Parties for this purpose, to the other Parties directly concerned, a copy of any report addressed to the Secretary-General under article 16 in connexion with the discovery of a case of illicit traffic or a seizure;

(c) Co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;

(d) Ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner; and

*Commentary*

1. Parties on whose territory the contraband involved originated or whose nationals (or residents) the traffickers are<sup>1094</sup> are “Parties directly concerned”, to which copies of the reports furnished to the Secretary-General pursuant to article 16, paragraph 3 must be sent.<sup>1095</sup> It is suggested that it would be in the spirit of the Vienna Convention to send such copies also to States “directly concerned” which are not Parties to that treaty.<sup>1096</sup>

2. Those copies must be sent “through diplomatic channels” to Parties which have not designated authorities other than their diplomatic service for this purpose. Only “competent” authorities should be so designated, i.e. authorities entrusted with functions in the field of the campaign against the illicit traffic. Channelling the copies of the reports through diplomatic channels will normally be rather time-consuming, and thus deprive them of much of their value for the co-operation of police units of different countries in regard to individual criminal cases. It is therefore suggested that Parties should designate a government unit, for the purpose of transmitting or receiving the copies of the reports, which is not only concerned with problems of the illicit traffic, but also is able to convey expeditiously relevant information to those police units that have jurisdiction in the cases involved. It appears to be advisable that a Party which, pursuant to paragraph (a), has designated “an appropriate agency” should entrust that agency with the task of transmitting and receiving the copies of the reports under paragraph (b).

3. Exchange of information between the Parties directly concerned on important current cases of the illicit traffic presents an important part of the obligation of Parties to assist each other and co-operate pursuant to paragraphs (b), (c) and (d). That this exchange be done in an expeditious manner appears to be required by paragraph (d).

<sup>1094</sup> 1974 *Records*, vol. II, paragraph 3 of the summary records of the seventh plenary meeting (pp. 24 and 25).

<sup>1095</sup> See the above comments on that provision.

<sup>1096</sup> Sixth considerandum of the Preamble.

4. It is held that the phrases “assist each other” and “co-operate . . . with each other” as used in paragraphs (b) and (c) are synonymous. While paragraph (b) establishes the general obligation of international co-operation in the fight against the illicit traffic, paragraph (c) specifies that the co-operation should be close, should include co-operation with the “competent” international organizations of which the Parties concerned are members, and should be carried out “with a view to maintaining a co-ordinated campaign against the illicit traffic”.

5. Such a co-ordinated campaign requires a structure of permanent international organization.<sup>1097</sup> Parties are therefore explicitly required to co-operate with the “competent” international organization of which they are respectively members. It is however submitted that they are also bound to *maintain* such a structure as may be required in the light of changing conditions.

6. Intergovernmental as well as non-governmental bodies may be “international organizations” in the sense of subparagraph (c). The United Nations and the International Criminal Police Organization are such international organizations. Other international organizations would also be in that category, if and to the extent that they engage in preventive or repressive action against the illicit traffic in psychotropic substances, such as the International Civil Aviation Organization, the Inter-Governmental Maritime Consultative Organization, the International Union of Railways, the Central Office for International Railway Transport and the Customs Co-operation Council.

7. Under the ordinary meaning of the language of paragraph (c), Parties to the Vienna Convention which are not Members of the United Nations would not be required to “co-operate closely” with that Organization, which is the principal competent international body in this area. It was however clearly the intention of the authors of the Single Convention, whose article 35, paragraph (c) the paragraph under consideration copies, that Parties to that Convention which are not Members of the United Nations should nevertheless be bound to co-operate with that Organization.<sup>1098</sup> It may be assumed that the 1971 Conference, many of whose members were familiar with the language of the Single Convention and its purposes, also held that Parties to the treaty of 1971 which are not Members of the United Nations should so co-operate. It may also be noted in this connexion that the Parties to the Vienna Convention acknowledge in its Preamble<sup>1099</sup> the competence of the United Nations in the field of control of psychotropic substances. It is therefore at least within the spirit of the Vienna Convention that Parties to that treaty which are not Members of the United Nations should take part in

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<sup>1097</sup> 1961 *Commentary*, paragraph 2 of the comments on article 35, paragraphs (b), (c) and (d) of the Single Convention (pp. 420 and 421).

<sup>1098</sup> 1961 *Commentary*, paragraph 4 and 5 of the comments on article 35, paragraphs (b) (c) and (d) (p. 420).

<sup>1099</sup> Penultimate considerandum.

that Organization's efforts with a view to maintaining a co-ordinated campaign against the illicit traffic.

8. It is held that in view of the 1972 Protocol, particularly of its amendments to articles 9 and 35 of the Single Convention, the Board should also be considered to be a "competent" international organization in the sense of article 21, paragraph (c) of the Vienna Convention. Parties which have accepted the Single Convention in its unamended or amended form are to be considered "members"<sup>1100</sup> in respect of the Board for the purpose of that provision.

9. It is certainly within the spirit of the Vienna Convention that Parties should offer the mutual assistance and co-operation, for which paragraphs (b) to (d) provide, also to non-Parties.<sup>1101</sup>

10. There may be a difference of opinion as to whether granting technical aid to Parties requesting it as being needed for their effective participation in the international campaign against the illicit traffic constitutes a legal obligation under paragraphs (b), (c) and (d), and in particular under paragraph (b). It is however suggested that giving such assistance would in any event be consonant with the purpose of those provisions.<sup>1102</sup>

11. Taking all practicable measures to prevent their territory from becoming a base of operation of the illicit traffic in other countries or a place of refuge of traffickers undoubtedly constitutes a legal obligation of Parties under paragraphs (b) and (c).<sup>1103</sup>

12. The term "appropriate agencies" in paragraph (d) obviously does not have the same meaning as the same term used in the singular in paragraph (a). That expression in paragraph (d) covers any Government service which deals with the particular question or case of the illicit traffic which constitutes the object of the required international co-operation.<sup>1104</sup>

13. The French text of paragraph (d) renders the English phrase "in an expeditious manner" by the words "*par des voies rapides*". The Spanish text agreeing with the English version employs the words "*en forma expedita*". In view of the purpose of that paragraph it is held that preference must on that point be given to the English and Spanish versions. It would not be sufficient to employ quick means of communication for the purpose of the required co-operation; but the question involved must also in all its other aspects be given urgent attention by the Government services concerned. The method of communication which a Government may choose under paragraph (d) as

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<sup>1100</sup> i.e., "members" of the Board as an intergovernmental organization as distinguished from the individuals which are members of the Board as a deliberative Committee.

<sup>1101</sup> Sixth considerandum of the Preamble.

<sup>1102</sup> Paragraph 7 of the comments referred to in foot-note 1098 (pp. 420 and 421).

<sup>1103</sup> Paragraph 8 of the comments referred to in foot-note 1098 (p. 421).

<sup>1104</sup> Paragraph 9 of the comments referred to in foot-note 1098 (p. 421).



“expeditious” may, under the introductory paragraph, be selected with due regard to its constitutional, legal and administrative systems. A Party should choose the most expeditious method consonant with those systems. It is suggested that where such a course of action would be in accordance with those systems, direct correspondence between the competent national enforcement services of the co-operating countries would very often be a very desirable “expeditious manner” of co-operation. In a country which has under paragraph (a) designated an “appropriate agency”, that Government unit would often usefully be the channel of expeditious co-operation. Personal contacts between officers of the co-operating States could in appropriate cases also serve the purpose of expeditious action. Direct correspondence between the national enforcement services concerned and such personal contacts would also be factors in making the co-operation close as required by paragraph (c).<sup>1105</sup>

#### *Paragraph (e)*

**(e) Ensure that, where legal papers are transmitted internationally for the purpose of judicial proceedings, the transmittal be effected in an expeditious manner to the bodies designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that legal papers be sent to it through the diplomatic channel.**

#### *Commentary*

1. The paragraph under consideration does not by itself establish a legal obligation of a Party to render international legal assistance requested by another Party in respect of a legal paper. It provides only that where legal papers concerning cases of illicit traffic are transmitted from one country to another country in accordance with the rules governing their relations in matters of legal assistance, the transmission should be carried out in an expeditious manner. Those rules may be laid down in treaties or in the law of the countries giving each other legal assistance. It is held that it would be a part of the co-operation required pursuant to paragraphs (b), (c) and (d) that the Parties make provision for international judicial assistance in cases of the illicit traffic. They could do that either by concluding treaties, by revising existing treaties on the subject or by enacting appropriate legislation for that purpose.

2. The term “legal papers” covers requests for judicial assistance, reports on the results of assistance which has been rendered, including in particular copies of the records of requested evidence which has been taken, requests for extradition and replies thereto. It includes not only papers relating to the actual or possible prosecution of illicit traffickers, but all papers concerning any judicial proceeding in matters of the illicit traffic, e.g. the seizure or

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<sup>1105</sup> Paragraphs 10 and 11 of the comments referred to in foot-note 1098 (pp. 421 and 422); see also paragraph 2 of the present comments.

confiscation of psychotropic substances or of other substances or equipment used in or intended for offences of the illicit traffic.<sup>1106</sup>

3. The obligation to transmit legal papers in an expeditious manner not only covers an obligation to choose an expeditious method of transmission, but also more generally to act promptly. Parties are therefore required to take promptly the steps which are needed for preparing the legal papers that are to be transmitted, such as hearing witnesses or taking any other evidence, arresting traffickers, carrying out the procedures necessary for deciding on cases of requested extraditions, or seizing psychotropic substances, other substances or equipment used in or intended for offences of the illicit traffic.

4. In choosing the method of transmission Parties may, pursuant to the introductory paragraph of article 21, have due regard to their constitutional, legal or administrative systems. That method may be prescribed in treaties between the Parties concerned regarding international legal assistance. It is held that Parties would act pursuant to paragraph (e) if in regard to legal papers concerning cases of the illicit traffic they provide in such treaties or in revisions of them for the most expeditious mode of transmission consistent with their constitutional, legal or administrative systems.

5. The papers must be addressed to the bodies designated for the receipt of the foreign legal papers in question. Parties should notify each other about such designations. They may do so directly. It may in some cases be advantageous to channel the notifications through the Secretary-General who—it is suggested—would not refuse to act as intermediary in such cases.

6. It would be in the interest of an expeditious transmission if prosecutors or courts are authorized to communicate directly with the competent prosecutors or courts of other countries on questions of international legal assistance in cases of the illicit traffic. It would also serve the same purpose to permit the court or prosecutor to correspond directly with the Ministry of Justice of the country whose assistance is requested, or to provide for direct correspondence between the Ministries of Justice of the countries concerned. Such modes of transmission are quite frequently provided for in treaty provisions or domestic laws governing international legal assistance. The Ministry of Justice may in many cases be an appropriate body to be designated for the receipt of legal papers pursuant to paragraph (e). Channelling the legal papers through “appropriate agencies” designated pursuant to paragraph (a) may also be an expeditious way of transmitting legal papers.

7. The right of Parties to require the transmission of legal papers through diplomatic channels is expressly reserved. It is however submitted that direct correspondence with the competent court or prosecutor of the foreign country, or at least with its Ministry of Justice, would normally ensure a more expeditious transmission.

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<sup>1106</sup> Article 22, paragraph 3.

8. The text of paragraph (*e*) applies only to relations between Parties. It would however be in accordance with the spirit and purpose of the Vienna Convention if Parties would apply that provision also to their relations with non-Parties.

9. As in paragraph (*d*), the English phrase “in an expeditious manner” in paragraph (*e*) is rendered in the Spanish by the words “*en forma expedita*” and in French by the words “*par des voies rapides*”. The preceding comments in paragraph (*e*) have been based on the English and Spanish texts which appear to be more in correspondence with the purpose of that provision.<sup>1107</sup>

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<sup>1107</sup> See also paragraph 13 of the comments on article 21, paragraphs (*b*), (*c*) and (*d*).

## Article 22

### PENAL PROVISIONS

#### General comments

1. The principal purpose of article 22 of the Vienna Convention, like that of the 1936 Convention and of article 36 of the Single Convention, is to ensure that—as far as possible under the differing conditions of different countries—

(a) Provision is made in national legislation for penalties representing an effective deterrent against offences of the illicit traffic;

(b) All forms of participation in such offences are covered by national penal law, no matter how different may be their definition in different countries; and

(c) Illicit traffickers do not escape prosecution and punishment solely on the technical ground of lack of local jurisdiction in the country in which they may be found.

2. Paragraphs 1 (subparagraph (a)), 2, 4 and 5 of article 22 follow the pattern and in part copy the text of article 36 of the unamended Single Convention. Paragraph 3 of that article of the Vienna Convention copies *mutatis muntandis* the wording of article 37 of the Single Convention.<sup>1108</sup>

3. There are two basic differences between article 22 of the Vienna Convention and article 36 of the Single Convention. First article 22 uses a general formula for defining actions to be subjected to penal law, while article 36 employs for that purpose in the first instance the enumerative method and only in a supplementary way a general formula; secondly, under the Vienna Convention Parties may substitute for the conviction or punishment of offenders who are abusers of psychotropic substances, measures of treatment in the broad sense of that term<sup>1109</sup>, while the unamended text of the Single Convention does not grant such discretion to Parties. As amended by article 14 of the 1972 Protocol, the Single Convention in its paragraph 1, subparagraph (b) of article 36, following closely the text of paragraph 1, subparagraph (b) of article 22 of the Vienna Convention, offers Parties the

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<sup>1108</sup> Those provisions of both treaties are essentially based on the provisions of the 1936 Convention; article 22, paragraph 2, subparagraph (b) copies the text of the unamended article 36, paragraph 2, subparagraph (b) of the Single Convention, the 1972 Protocol amending the Single Convention having not yet been adopted at the time of conclusion of the Vienna Convention; see also *1961 Commentary*, paragraph 5 of the general comments on article 36 of the Single Convention (p. 426).

<sup>1109</sup> See paragraph 3 of the above comments on article 20, paragraph 1.

same choice; but as long as the Protocol is not accepted by all Parties to the unamended text of the Single Convention, Parties to its amended text which are simultaneously Parties to its unamended text are not able to make use of the choice because of their continued obligation under the unamended text to those Parties thereto that have not accepted the Protocol.

4. It has been submitted elsewhere<sup>1110</sup> that theoretically, substances controlled by narcotics treaties preceding the Single Convention could be placed under control by the Vienna Convention by operation of its article 2 if they are not under the Single Convention or are removed from the control thereof.<sup>1111</sup> If such substances are covered by the 1936 Convention, a Party to the Vienna Convention which is also a Party to the 1936 Convention could not make use of the discretion referred to in the preceding paragraph of the present comments in regard to offences of the illicit traffic in such substances even though they are transferred to control by the Vienna Convention.

5. A similar situation would arise if—as may not be very probable, but is nevertheless theoretically not impossible<sup>1112</sup>—a psychotropic substance is placed under control by the Single Convention without being removed from the Schedules of the Vienna Convention. A Party to the Vienna Convention which is bound to apply the unamended text of the Single Convention would not be authorized to substitute, pursuant to article 22, paragraph 1, subparagraph (b), measures of treatment for the conviction or punishment of a trafficker in such a substance. It will on the other hand be recalled that pursuant to article 2, paragraph 1 of the Vienna Convention a drug controlled by the Single Convention could not be placed in a Schedule of the Vienna Convention as long as it remains under that control.<sup>1113</sup>

#### *Paragraph 1, subparagraph (a)*

1. (a) Subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty.

#### *Commentary*

1. Subparagraph (a) corresponds to the whole paragraph 1 of article 36 of the unamended text of the Single Convention, or to article 36,

<sup>1110</sup> Paragraphs 6 to 12 of the above comments on article 2, paragraph 1.

<sup>1111</sup> At the time of this writing all substances controlled by multilateral drug control treaties preceding the Single Convention are also controlled by that Convention; see paragraph 7 of the comments on article 2, paragraph 1.

<sup>1112</sup> Paragraph 15 of the comments on article 2, paragraph 1.

<sup>1113</sup> Paragraph 12 of those comments.

paragraph 1, subparagraph (a) of its text as amended by article 14 of the 1972 Protocol.

2. That provision of the Single Convention, in both of its definitions of punishable offences, in that by enumeration as well as in that by general formula,<sup>1114</sup> refers to the offences as being “contrary to the provisions of this Convention” (i.e. the Single Convention). The subparagraph under consideration of the Vienna Convention on the other hand defines the offences which it requires a Party to punish as being “contrary to a law or regulation adopted in pursuance of its obligations under this Convention”. The Legal Adviser to the 1971 Conference explained this difference in drafting by the consideration that in the case of non-self-executing treaties, such as the Single Convention and the Vienna Convention, the offences whose punishment they require have to be contrary to national legislation. He referred in this connexion also to paragraph 5 of article 22, which expressly states that the offences with which that article deals shall be defined in conformity with domestic law.<sup>1115</sup>

3. Domestic law normally provides for two or three categories of violations of penal law, giving each category a different designation. Although article 22 contains some different provisions which differ respecting violations which are serious and those which are not<sup>1116</sup>, it uses for both of them the same term “offences”, which is broader than the word “crime”, a word that in many legal systems applies only to the more serious breaches of criminal law. The term “offences” as used in article 22 includes all violations of penal law, no matter whether they are serious or minor, or what their degree of seriousness may be. Only in paragraph 2, subparagraph (b) the phrase “extradition crimes” is used, where it is stated to be desirable that the offences with which article 22 deals should be treated as “extradition crimes”, i.e. as reasons for extradition. That use of the word “crimes” is obviously due to the consideration that extradition is normally granted only for serious breaches of penal law.<sup>1117</sup>

4. Whether an offence is serious under the terms of article 22 should be decided principally in the light of its potential of causing, directly or indirectly, damage to the health of people other than the offender, particularly of people residing in other countries than that in which the offence is committed. Whether the offence is, in the domestic law involved, included in the category of serious crimes or not may sometimes not be relevant. National considerations which determine whether a violation of

<sup>1114</sup> See paragraph 3 of the general comments on article 22.

<sup>1115</sup> *1971 Records*, vol. II, paragraph 10 of the summary records of the twelfth plenary meeting (p. 44). A Party which did not adopt laws or regulations required to implement its obligations under the Vienna Convention may literally not violate article 22, paragraph 1, subparagraph (a), but would violate those obligations.

<sup>1116</sup> Paragraph 1, subparagraph (a), paragraph 2, subparagraph (a), clause (iv) and paragraph (b).

<sup>1117</sup> See the statement of the Legal Adviser to the 1971 Conference, paragraphs 26 and 27 of the summary records mentioned in foot-note 1115 (p. 45).

penal law is in the class of serious or of less serious offences may sometimes not be equally pertinent from the viewpoint of the purposes of article 22.

5. The application of subparagraph (a) to the use, in the sense of personal consumption, of psychotropic substances and to their possession and acquisition for that purpose appears to require some consideration.

6. The provisions of article 22 of the Vienna Convention, like those of article 36 of the Single Convention, are obviously intended to fight the illicit traffic, and not to require the punishment of abusers of the controlled substances. The opinion has been proffered on that ground that possession of narcotic drugs for personal consumption is not a punishable offence under article 36 of the Single Convention, although paragraph 1 of that article expressly enumerates “possession” among the punishable offences.<sup>1118</sup>

7. However, the ordinary meaning of the words of subparagraph (a) defining punishable offences does not justify the exclusion of actions not forming part of the illicit traffic.

8. The Vienna Convention requires Parties to limit the consumption of substances in Schedule I to “scientific and very limited medical purposes”, and that of other psychotropic substances to “medical and scientific purposes”.<sup>1119</sup> It is however submitted that, apart from the obligation of Parties to require for the possession of substances in Schedule I for any purpose<sup>1120</sup> “a special licence or prior authorization”,<sup>1121</sup> the controls which it requires for the purpose of that limitation relate to the supplier and not to the consumer.<sup>1122</sup>

9. Acquisition of psychotropic substances for personal consumption as well as such consumption are “actions” in the sense in which that term is used in subparagraph (a); but although unauthorized as such, they cannot be actions “contrary to a law or regulation adopted in pursuance of” a Party’s “obligation” under the Vienna Convention. However, acquisition as well as consumption imply “possession” of the substances in question. Whether persons who acquire without authorization psychotropic substances for personal consumption or consume them without authorization are to be treated as offenders will depend on the answer to the question whether their

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<sup>1118</sup> 1961 *Commentary*, paragraph 18 of the comments on article 4 of the Single Convention (p. 112).

<sup>1119</sup> Article 5, paragraphs 1 and 2 and article 7, paragraph (a).

<sup>1120</sup> Paragraph 10 of the comments on article 7, paragraph (b).

<sup>1121</sup> Article 7, paragraph (b).

<sup>1122</sup> As regards substances in Schedules II, III and IV it will be noted that the text of article 9, paragraph 1 refers to their supply or dispensation for use by individuals pursuant to medical prescription. It does not refer to the *purchase of those substances by individuals*. *Buyers of medicines may often be presumed not to be aware of prescription requirements.*

possession of the substances involved is an offence in the sense of subparagraph (a).<sup>1123</sup>

10. Since article 5, paragraph 3 does not impose upon Parties an *obligation* to prohibit the possession for personal consumption of substances in Schedules II, III and IV without legal authority but only declares that prohibition to be desirable, possession of those substances for personal consumption without such authority is in no event a punishable offence in the sense of article 22, paragraph 1, subparagraph (a). Consequently persons acquiring such substances for personal consumption or consuming them without legal authority need not be punished as offenders under that subparagraph or made to undergo measures of treatment pursuant to subparagraph (b).<sup>1124</sup>

11. To other cases of unauthorized possession of psychotropic substances the question may be relevant whether possession is an “action” within the meaning of subparagraph (a). It is admitted that the ordinary meaning of “action” may perhaps lend itself to a negative answer to that question.

12. If “possession” is not “action” in the sense of that subparagraph, possession of substances in Schedule I for personal consumption without the required authorization<sup>1125</sup> would not be a punishable offence in the meaning of that provision.

13. That view would however not require the conclusion that persons possessing substances in Schedule I or other psychotropic substances<sup>1126</sup> for the purpose of carrying on any phase of the trade in them, including their non-commercial distribution, without legal authority would not be offenders for the purposes of article 22. Such a possession would in all cases involve an acquisition of the substances concerned, which would be an act of the trade in question and thus an “action” pursuant to subparagraph (a), or at least under paragraph 2, subparagraph (a), clause (ii) an act preparatory to that trade or an attempt thereat. It follows that even though “possession” is held not to be an “action” in the sense of paragraph 1, subparagraph (a), persons possessing any psychotropic substances for the purpose of trade or distribution without legal authority would have to be punished or subjected to measures of treatment under the terms of the two subparagraphs of paragraph 1.

14. But some consideration may have to be given to the question whether possession is not in fact an “action” in the sense of subparagraph (a).

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<sup>1123</sup> It will be noted that article 36, paragraph 1 of the Single Convention does not include “use” in its enumeration of offences, nor does it include “acquisition without consideration” but only “purchase”; *1961 Commentary*, paragraph 7 of the comments on article 36, paragraph 1 of the Single Convention (p. 428).

<sup>1124</sup> Paragraphs 6 to 12 of the above comments on article 5, paragraphs 2 and 3.

<sup>1125</sup> Article 7, paragraph (b) and paragraph 10 of the comments on that paragraph.

<sup>1126</sup> Holding “stocks”, article 5, paragraph 2 and paragraphs 6 and 7 of the comments on article 5, paragraphs 2 and 3.



“Possession” in the sense in which that term is used in the Vienna Convention means actual control or power over the substance involved, whether or not it is “possession” within the definition of the domestic civil law in question.<sup>1127</sup> It is submitted that “possession” not only involves the “action of acquisition, which if done for personal consumption could not be a punishable offence within the terms of subparagraph (a) as has been suggested earlier;<sup>1128</sup> but “possession” not only refers to a *situation* of actual control over the substance concerned but also to the whole process of *holding* the substance, involving preserving, hiding or moving it from one place to another i.e. a “doing” or “acting”. It is therefore submitted that it appears to be the better opinion that “possession” in the meaning of the Vienna Convention is an “action” in the sense of subparagraph (a).

15. If that view is accepted, unauthorized possession of substances in Schedule I for personal consumption would be a punishable offence under that subparagraph, and that seems to be consonant with the views of many participants in the 1971 Conference;<sup>1129</sup> but a Party need not treat such possession as a “serious” offence which must be punished by “imprisonment or other penalty of deprivation of liberty” as the only alternative to imposing upon the offender measures of treatment pursuant to subparagraph (b). It may in such cases limit itself to fining the offender, or even to only censuring or admonishing him without subjecting him to those measures.

16. It is however admitted that there may be a legitimate difference of opinion regarding the question whether “possession” is an “action” within the meaning of subparagraph (a). Parties holding different views on that problem may wish to submit that problem to the International Court of Justice under article 31, paragraph 2. The Commission or the Board may invite the Council to obtain pursuant to General Assembly resolution 89 (I) an advisory opinion of the Court on that matter, if it considers that doing so is necessary for the purposes of its administration of the Vienna Convention.

17. At the time of this writing the Vienna Convention has not yet come into force. It cannot be foreseen what the practice of Parties will be in this context. If, without objection of other Parties, a number of Parties should not treat as a punishable offence the possession of psychotropic substances in

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<sup>1127</sup> The term “possession” may include not only what is called “possession” in some national law but also what is referred to in a broader sense as “detention”. Accordingly the French text of article 5, paragraphs 2 and 3 and article 7, paragraph (b) renders the English “possession” and the Spanish “*posesión*” by the word “*détention*”; see article 2228 of the French Code Civil for a definition of “*possession*”. The word “*détention*” is defined as “precarious possession, tenure, etc.” (*corpus sed non animus possidendi*); Quemner, Thomas A., *Dictionnaire juridique*, Paris, Editions de Navarre, 1955, p. 80. The term “*détention*” as used in the French version of the Vienna Convention covers “possession” as well as “*détention*” in their more narrow technical meanings.

<sup>1128</sup> Paragraph 9 of the present comments.

<sup>1129</sup> 1971 *Records*, vol. II, paragraphs 1, 2, 5, 6, 9, 13, 16, 18, 28, 30 and 34 of the minutes of the twentieth meeting of the Committee on Control Measures (pp. 164 to 166).

Schedule I for personal consumption, the question of interpretation with which the preceding paragraphs 11 to 16 deal could be resolved by such a “subsequent practice in the application of the treaty”.<sup>1130</sup>

18. It is held that a Party is not required to consider as a “serious” offender an abuser of psychotropic substances who possesses a small quantity of such a substance for sale in order to be able to support his own dependence on psychotropic substances. One other case to which the same might apply would be a person who possesses a small quantity of psychotropic substances for supplying a friend without consideration.

19. The only actions to which subparagraph (*a*) refers which need to be treated as punishable offences are those which are “committed intentionally”. Actions which are taken neither wilfully nor knowingly, but only as a consequence of negligence, are not subject to article 22.<sup>1131</sup>

20. “Adequate” penalties are required only for serious offences. They have to be adequate for achieving their social purposes, i.e. for producing the desired deterrent effect. Different degrees of severity may be required in different countries. A penalty which may not be sufficiently severe in one country may be considered to be adequate or even too severe in another country; but a penalty is “adequate” in the sense of subparagraph (*a*) only if it includes imprisonment or another form of deprivation of liberty.

21. The term “imprisonment” in a broad sense covers all penalties of deprivation of liberty. Following the corresponding provision of the Single Convention, the paragraph under consideration adds another phrase, namely “or other penalty of deprivation of liberty” in order to make it clear that the confinement which is required need not be in an institution which is technically a prison, but that detention in other places such as labour or “re-education” camps might also be an “adequate punishment” for the purpose of subparagraph (*a*).<sup>1132</sup>

22. It will be noted that a Party is freed from carrying out its obligations under subparagraph (*a*) only to the extent it is prevented from doing so by its constitution. Contrary to paragraph 2, a Party would not be excused if it did not take a measure required by subparagraph (*a*) because it would be incompatible with “its legal system and domestic law”.

23. The subjection of a Party’s obligations pursuant to subparagraph (*a*) to its “constitutional limitations” does not relieve a federal State on account of its inability to enact the required penal legislation under its federal constitution. The federal State is in such a case bound to obtain the required action by the legislative bodies of its component States or provinces having

<sup>1130</sup> Article 31, paragraph 3, subparagraph (*b*) of the Vienna Convention on the Law of Treaties, document A/CONF.39/27.

<sup>1131</sup> 1961 *Commentary*, paragraph 2 of the comments on article 36, paragraph 1 of the Single Convention (p. 428).

<sup>1132</sup> Paragraph 10 of the comments referred to in the preceding foot-note (p. 429).

jurisdiction in the matter. The Secretariat of the United Nations has no knowledge of any constitutional limitations which would prevent a Party from carrying out subparagraph (a).<sup>1133</sup>

*Paragraph 1, subparagraph (b)*

(b) Notwithstanding the preceding subparagraph, when abusers of psychotropic substances have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to punishment, that such abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 20.

*Commentary*

1. Under the text of subparagraph (b), Parties may substitute measures of treatment for conviction or punishment of all abusers of psychotropic substances who have committed intentionally an offence covered by subparagraph (a), no matter how serious that offence may be. It may however be expected that in accordance with the purpose of article 22 Parties will normally do so only in the case of relatively minor offences, such as unauthorized possession of substances in Schedule I for personal consumption,<sup>1134</sup> unauthorized sale of comparatively minor quantities of psychotropic substances for the purpose of obtaining the financial means required to support the seller's dependence on such substances, or unauthorized supply of small amounts of a psychotropic substance to a friend abusing it, with or without consideration.

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

3. 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 to omit prosecution. It is suggested that it would be the better opinion that Parties are bound to prosecute, although under subparagraph (b) not required to convict or punish, all offences covered by subparagraph (a). In the process of prosecution Parties could determine whether substitution of measures of treatment for conviction or punishment would be appropriate. As regards ways of solving such a possible difference of interpretation, see above, paragraphs 16 and 17 of the comments on article 22, paragraph 1, subparagraph (a).

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<sup>1133</sup> Paragraphs 11 to 13 of the comments mentioned in foot-note 1131 (p. 429).

<sup>1134</sup> If they consider such possession as an offence under subparagraph (a); see paragraphs 14 and 15 of the comments on that provision; see also paragraph 12 of those comments.

4. Parties may substitute measures of treatment for conviction or punishment only in the case of abusers of psychotropic substances, and not in that of abusers of drugs controlled by the Single Convention. It may be noted in this place that similarly, under article 36, paragraph 1, subparagraph (*b*) of the Single Convention as amended by article 14 of the 1972 Protocol, Parties to that amended Convention could substitute measures of treatment for conviction or punishment only in the case of abusers of narcotic drugs, i.e. of drugs controlled by the Single Convention, and not in the case of abusers of psychotropic substances.<sup>1135</sup> Some Governments may find that restriction inconvenient since abusers of narcotic drugs may commit offences with psychotropic substances, and *vice versa*; but Parties will of course not be subject to such a restraint in cases in which the offenders are abusers of psychotropic substances as well as of narcotic drugs, and this may quite frequently be the case.

5. It is submitted that substitution of measures of treatment for conviction or punishment would under subparagraph (*b*) be justified only if it can reasonably be hoped that the abuser will not only be cured of his dependence, but also will not commit a serious penal offence again.

6. As regards the meaning of the terms “treatment”, “education”, “after-care”, “rehabilitation” and “social reintegration”, see paragraphs 2, 3, 4, 5, 6, 7 and 9 of the above comments on article 20, paragraph 1.

7. The measures of treatment substituted for conviction or punishment may also include civil commitment to an institution of treatment.

8. The provision according to which Parties may require the offender to undergo measures of treatment in addition to punishment only states what they may do anyway. It does not establish any obligation or freedom from obligation for them. Its inclusion in subparagraph (*b*) may be explained by the view of the authors of that subparagraph that measures of treatment in addition to punishment may often be advisable in the case of offenders abusing psychotropic substances.

9. Article 14 of the 1972 Protocol inserts in article 36 of the Single Convention paragraph 1, subparagraph (*b*), which is substantively the same and nearly the same in wording as the subparagraph under consideration.

10. As regards cases in which a Party to the Vienna Convention might in the future be prevented from applying subparagraph (*b*) by its obligations under the 1936 Convention or under the unamended text of the Single Convention, see paragraphs 4 and 5 of the general comments on article 22.

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<sup>1135</sup> As regards the inability of Parties to the unamended and amended Single Convention to apply article 36, paragraph 1, subparagraph (*b*) of its amended text because of obligations to Parties to that Convention in its unamended form which have not accepted its amended text, see paragraph 3 of the general comments on article 22.

**Paragraph 2, introductory subparagraph**

2. Subject to the constitutional limitations of a Party, its legal system and domestic law,

*Commentary*

1. The English text of the subparagraph under consideration is identical with the English text of the subparagraph introducing paragraph 2 of article 36 of the Single Convention, i.e. the paragraph corresponding to paragraph 2 of article 22 of the Vienna Convention. The French and Spanish texts of that subparagraph of the Vienna Convention follow very closely the texts of the subparagraph of the Single Convention, containing only minor drafting changes not affecting the substance. The comments of the 1961 Commentary on article 36, paragraph 2, introductory subparagraph of the Single Convention<sup>1136</sup> are therefore also valid for article 22, paragraph 2, introductory subparagraph of the Vienna Convention.

2. The introductory subparagraph under consideration is on its face applicable to subparagraph (a) as well as to subparagraph (b). It is however suggested that its application to subparagraph (b) seems hardly to have been intended by the authors of the Vienna Convention. The implementation of the rules laid down in subparagraph (b) appears to be in any event only “desirable”. That desirability cannot reasonably be subject “to the constitutional limitations of a Party, its legal system and domestic law”. As in the case of the corresponding provision of the Single Convention, that anomaly is apparently due to an oversight explained by the drafting history of article 36, paragraph 2 and particularly of subparagraph (b) of that paragraph of the Single Convention, which provisions were taken over by the Vienna Convention in its article 22, paragraph 2.<sup>1137</sup>

3. Lack of constitutional authority of the national legislature of a federal State would not free a Party from the obligation to adopt measures required by paragraph 2, subparagraph (a) as long as the legislatures of the constituent states or provinces of the federal State in question have the necessary powers.<sup>1138</sup>

4. It is held that the subjection of the obligations of a Party under subparagraph (a) to its domestic law does not mean that a Party does not need to make changes in its domestic law required to implement its

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<sup>1136</sup> Pages 430 and 431.

<sup>1137</sup> 1961 *Commentary*, paragraph 1 of the comments on article 36, paragraph 2, introductory subparagraph of the Single Convention (p. 430).

<sup>1138</sup> See also paragraph 23 of the above comments on article 22, paragraph 1, subparagraph (a).

obligations. Such an interpretation of the phrase “subject to . . . its . . . domestic law” might frustrate the purpose of subparagraph (a), which cannot have been the intention of the 1971 Conference.<sup>1139</sup>

5. It is submitted that the subjection of a Party’s obligations to its domestic law means only that a Party need not change its general concepts of criminal law, such as “intentional participation”, “conspiracy”, “attempts” or “preparatory act”, or introduce notions such as “conspiracy” or “preparatory act” which may not be part of its penal law in order to comply with the requirements of subparagraph (a). A Party also need not prosecute criminal acts committed abroad, particularly those which are not very serious, if its domestic law normally restricts its criminal jurisdiction to offences committed on its national territory, even if it provides for some exceptions in that regard. It need not treat each of a series of related actions, if committed in different countries, as a distinct offence to the extent that doing so would be incompatible with the prohibition of double jeopardy as understood in its domestic law.<sup>1140</sup> Moreover, a Party would not be required to consider foreign convictions for the purpose of determining recidivism if its domestic penal law does not permit doing so in respect of other offences than those with which article 22 deals.

6. If the phrase “domestic law” is interpreted as suggested in the preceding paragraphs of the present comments, its meaning would obviously overlap with that of the phrase “legal system”, which is a broader term.<sup>1141</sup> The phrase “legal system” of a Party appears to refer to the basic principles governing its domestic law. It seems that the Vienna Convention, by subjecting the obligations of a Party under subparagraph (a) to its “legal system” as well as its “domestic law”, has conceded to Parties a somewhat greater freedom of action than would be the case if those obligations were subjected only to the Party’s “legal system”. A Party is therefore required to implement the rules of subparagraph (a) only to the extent and in the manner that the implementation is compatible not only with its basic legal principles, but also with widely applied concepts of its domestic law.

7. The subjection of a Party’s obligations under subparagraph (a) to its domestic law means also that they are subject to the principles of its domestic law concerning questions of jurisdiction, and that the offences involved have to be defined, prosecuted and punished in conformity with that law, as is explicitly provided for in paragraphs 4 and 5 of article 22.<sup>1142</sup>

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<sup>1139</sup> See also article 32, paragraph (b) of the Vienna Convention on the Law of Treaties, document A/CONF.39/27.

<sup>1140</sup> 1961 *Records*, vol. II, p. 241.

<sup>1141</sup> 1961 *Records*, vol. I, p. 146 (statement of the Legal Adviser).

<sup>1142</sup> 1961 *Commentary*, paragraphs 3, 4 and 5 of the comments on article 36, paragraph 2, introductory subparagraph (pp. 430 to 431).

*Paragraph 2, subparagraph (a) clause (i)*

- (a) (i) If a series of related actions constituting offences under paragraph 1 has been committed in different countries, each of them shall be treated as a distinct offence;

*Commentary*

1. The clause under consideration is substantively the same as article 36, paragraph 2, subparagraph (a), clause (i) of the Single Convention. The difference in the drafting of those provisions does not affect their identity of substance. The comments of the *1961 Commentary*<sup>1143</sup> on the provision of the Single Convention therefore are also valid for the provision of the Vienna Convention.

2. Two or more related actions which pursuant to paragraph 1, subparagraph (a) may constitute punishable offences may under the domestic law of a Party form a single offence, one of those actions being the principal act and the other action or actions being various kinds of intentional participation in (or accessory act to) that single offence. Under some national laws the jurisdiction in respect of accessory acts may belong only to the court which is competent in respect to the principal act. For instance, a middleman may assist in concluding an illicit sale of psychotropic substances in another country. It cannot be excluded that under the law of the country in which he resides no court would be competent to try his brokerage since it might be considered to be only an act accessory to a principal act of the offence of illicit traffic in psychotropic substances, committed by the sale done in another country and since the law of the country of residence of the middleman might grant jurisdiction over accessory acts only to the courts which are authorized to try the related principal acts. If the brokerage and the sale carried out in different countries would in such a case be considered as distinct offences, each of the two countries would have jurisdiction over the act committed on its territory on the basis of the universally recognized principle of territorial jurisdiction in matters of criminal law.

3. It appears to be the purpose of subparagraph (i) to give the courts of a country in which an offender may dwell the necessary territorial jurisdiction in some cases in which they might otherwise not have it, and in particular to ensure that such a country shall have territorial jurisdiction over every act of intentional participation in principal acts of offences committed abroad, even though in principle it assigns jurisdiction over accessory acts to the courts in whose districts the related principal acts were committed. It is not the purpose of that subparagraph to violate the principle of prohibition of double jeopardy or to prescribe to Parties a particular method of dealing with the question of “ideal” or “real” cumulation or concurrence of offences. Such an interpretation would in any event be incompatible with the introductory subparagraph of paragraph (a).

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<sup>1143</sup> Pages 431 and 432.

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

- (ii) **Intentional participation in, conspiracy to commit and attempts to commit, any of such offences, and preparatory acts and financial operations in connexion with the offences referred to in this article, shall be punishable offences as provided in paragraph 1;**

*Commentary*

1. The English text of this clause is identical with the English text of article 36, paragraph 2, subparagraph (a), clause (ii) of the Single Convention. Its Spanish text and even more so its French text follow rather closely the wording of the corresponding language versions of the provision of the Single Convention, the differences not affecting the identity of the substance. The comments of the *1961 Commentary*<sup>1144</sup> on the provision of the Single Convention therefore also apply to the provision of the Vienna Convention.

2. The phrase “international participation” includes all forms of complicity and accessory acts. Their division into categories and their definitions in different national penal laws will often vary. “Intentional participation” as the term is used in clause (ii) covers also “participation” (“complicity”) after the fact.

3. “Preparatory acts” and “attempts” are two forms of acts done in the process of committing a crime which was not completed, attempt presenting a more advanced stage in that process. The borderline between what is considered an attempt and what is held to be only a preparatory act may differ in different penal laws and may in some cases be difficult to draw even under a particular national law.

4. The term “preparatory act” does not cover the actual commencement of the execution of an offence, but only the devising or arranging of means or measures necessary for its commission, the actual beginning of the execution of the offence normally being an “attempt”.<sup>1145</sup>

5. Preparatory acts are generally not subject to penal sanctions, but some countries punish such acts undertaken for the purpose of committing a few of the most serious crimes. It is suggested that serious offences punishable under article 22, paragraph 1, subparagraph (a) should be considered to be among the gravest crimes.

6. In some legal systems not all attempts at offences are punishable, but only attempts at the more serious ones. Punishment of attempts at serious offences seems to be a universal feature of national penal systems. The provision of the introductory subparagraph of paragraph 2, subjecting a Party’s obligations to “its legal system and domestic law”, will therefore

<sup>1144</sup> Pages 432 to 434.

<sup>1145</sup> Black’s Law Dictionary, Revised Fourth Edition, St. Paul, Minnesota, West Publishing Co., 1968, pp. 1344 and 162.



hardly ever free a Party from its obligation to punish at least attempts at those of the offences covered by article 22, paragraph 1, subparagraph (a) which are serious, unless it substitutes measures of treatment for punishment pursuant to subparagraph (b) of that paragraph.<sup>1146</sup>

7. The term “conspiracy” as used in the clause under consideration means a “combination or confederacy (or agreement) between two or more persons formed for the purpose of committing by their joint efforts” any of the offences covered by article 22, paragraph 1, subparagraph (a).<sup>1147</sup> “Conspiracy” is in many countries not a separate general form of punishable behaviour, but considered to be a “preparatory act” and as such—as other preparatory acts—is subject to penal sanctions only in the case of those few grave crimes of which preparatory acts are punishable. Some of these countries, while normally considering conspiracy to be a preparatory act, also provide for the punishment of conspiracy as a special form of a punishable action if entered into in order to commit a few expressly indicated very grave crimes. It is held that a Party which penalizes conspiracy either as a general form of criminal behaviour or only if entered to commit certain grave crimes would normally not be able to take the position that pursuant to the introductory subparagraph of paragraph 2 it would be incompatible with its legal system and domestic law to punish a conspiracy to commit any of the offences covered by paragraph 1, subparagraph (a) if serious.<sup>1148</sup>

8. The phrase “financial operations in connexion with the offences referred to in this article” covers intentional participation, including participation after the fact, conspiracy or preparatory acts. They would, subject to the limitations of the introductory subparagraph of paragraph 2, be punishable offences even if they would not be explicitly referred to in the clause under consideration. Some representatives at the 1961 Conference which adopted the provision of the Single Convention taken over by clause (ii) seems to have held that such operations had occasionally not been punished in the past<sup>1149</sup> and that it would be useful to refer to them expressly in the Convention in order to call the attention of the Parties to the fact that they should be considered punishable behaviour.<sup>1150</sup>

9. Cultivation of plants from which psychotropic substances may be obtained, although as such not subject to the administrative controls of the Vienna Convention, may be conspiracy to commit a punishable offence under article 22, paragraph 1, subparagraph (a), or a preparatory act of or an

<sup>1146</sup> 1961 Commentary, paragraphs 2, 3, 4 and 7 of the comments on article 36, paragraph 2, subparagraph (a), clause (ii) of the Single Convention (pp. 432 and 433).

<sup>1147</sup> Black’s Law Dictionary, referred to in foot-note 1145, p. 382; “conspiracy” as a concept of penal law may also be a *principal* criminal act if it is entered to commit an act which is innocent in itself, but which to conspire to do is unlawful, but that is not the case under clause (ii).

<sup>1148</sup> Paragraphs 5, 6 and 7 of the comments referred to in foot-note 1146 (p. 433).

<sup>1149</sup> Contrary to article 2, paragraphs (b) and (c) of the 1936 Convention.

<sup>1150</sup> Paragraph 8 of the comments referred to in foot-note 1146 (pp. 433 and 434).

attempt at such an offence if undertaken for the purpose of the illicit manufacture of such substances.

10. The requirement of adequate punishment by imprisonment or other penalty of deprivation of liberty pursuant to paragraph 1, subparagraph (a) applies also to actions punishable under paragraph 2, subparagraph (a), clause (ii) if serious. A Party may also pursuant to paragraph 1, subparagraph (b) substitute measures of treatment for the punishment of those actions.

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

- (iii) Foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism; and**

*Commentary*

1. The English and French texts of clause (iii) are identical with those language versions of article 36, subparagraph (a), clause (iii) of the Single Convention. The very minor difference in the Spanish text of these two provisions does not affect the identity of their substance. Consequently the comments in the *1961 Commentary* on the provision of the Single Convention<sup>1151</sup> apply also to the provision of the Vienna Convention.

2. Recidivism is probably in all penal systems an aggravating circumstance to be taken into account in determining the severity of the penal sanctions. In some countries it is also a condition for applying measures of social defence provided for habitual criminals, such as internment for indefinite or long periods. In a country in which the consideration of foreign convictions would be incompatible with its “legal system and domestic law”, its provisions governing aggravating circumstances in penal law would normally be broad enough to cover such convictions.

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

- (iv) Serious offences heretofore referred to committed either by nationals or by foreigners shall be prosecuted by the Party in whose territory the offence was committed, or by the Party in whose territory the offender is found if extradition is not acceptable in conformity with the law of the Party to which application is made, and if such offender has not already been prosecuted and judgement given.**

*Commentary*

1. The English text of clause (iv) is identical with the English text of article 36, paragraph 2, subparagraph (a), clause (iv) of the Single Convention.

<sup>1151</sup> Page 434.

The French version of the provision of the Vienna Convention also follows the wording of the provision of the Single Convention, their minor differences not affecting the identity of their substance. The Spanish text in question of the Vienna Convention is nearly identical with the corresponding clause of the Single Convention, the only difference being that the provision of the Vienna Convention omits the words “*en el extranjero*” which can be found in the provision of the Single Convention after the word “*cometidos*”. That change removes a difference of meaning which exists between the Spanish and the two other language texts in the Single Convention, the meaning of these three language versions of the clause of the Vienna Convention thus becoming identical. The comments of the *1961 Commentary* on the provision of the Single Convention therefore apply also to the provision of the Vienna Convention.<sup>1152</sup>

2. All countries claim the right to prosecute offences committed in their own territory, whether by their own nationals or by foreigners.<sup>1153</sup> A number of countries limit, as a matter of general principle, the criminal jurisdiction of their courts to such offences; however, all of those make an exception in the case of “piracy”, which they prosecute regardless of where the crime was committed.<sup>1154</sup> As far as the Secretariat is aware all of these countries also make an exception from their strict adherence to the principle of territorial jurisdiction in the case of a few crimes which they consider to be particularly damaging to their national interests, such as the forgery of their currency or public bonds abroad.<sup>1155</sup> It is held that such a Party could normally not free itself from its obligation under clause (iv) to prosecute serious offences of the illicit traffic committed abroad, by claiming pursuant to the introductory subparagraph of paragraph 2 that this would be incompatible with its “legal system and domestic law” if the offence concerned is very serious and if the Party excepts from its general policy of exclusion of prosecution of offences committed abroad other crimes of equal gravity.<sup>1156</sup>

3. Many countries have a policy of prosecuting not only offences committed within their territories, but also those or at least the more serious ones committed by their nationals abroad.<sup>1157</sup> Clause (iv) would still be relevant in such cases in regard to offences committed abroad by foreigners.

4. A few of those countries also prosecute foreigners who have committed abroad offences punishable under their laws if they cannot

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1152 Pages 435 and 436.

1153 “Principle of territoriality.”

1154 “Principle of universality.”

1155 “Principle of protection.”

1156 *1961 Commentary*, paragraphs 1 to 3 of the comments on article 36, paragraph 2, subparagraph (a), clause (iv) of the Single Convention (p. 435); a Party which excepts only “piracy” from its principle of territorial jurisdiction would not be bound to prosecute serious offences of the illicit traffic committed abroad.

1157 “Principle of nationality”.

extradite them to countries in which they would be prosecuted.<sup>1158</sup> Their legislation would be in compliance with the requirements of clause (iv) if their policy of prosecuting their nationals and those foreigners who cannot be extradited covers also serious offences of the illicit traffic in psychotropic substances committed abroad.

5. In accordance with the laws of probably all countries, the clause under consideration gives preference to the jurisdiction of the country in which the offence was committed. That presupposes of course that this country can get hold of the offender either because he can be found on its territory or because the country can obtain his extradition from another country in which he dwells. The obligation of a Party to prosecute a serious offence committed on its territory by a person who can be found within its territory or whose extradition has been obtained appears to be unconditional.<sup>1159</sup>

6. The question arises whether a Party on whose territory a serious offence covered by paragraph 1 (or paragraph 2, subparagraph (a), clause (ii)) was committed has the obligation to attempt to obtain the extradition of the offender who dwells outside of its territory. Clause (iv) does not explicitly provide for that. It appears however to be within the spirit of that provision that such a country should seek extradition in all cases in which it is aware that the offender has not yet been prosecuted and sentenced or subjected to measures of treatment pursuant to paragraph 1, subparagraph (b), and can also not be expected to be prosecuted abroad.

7. The obligation of a Party other than a Party on whose territory the serious offence was committed to prosecute the offender found within its borders is under clause (iv) subject to two conditions.

8. First, the obligation to prosecute is stated to exist only “if extradition is not acceptable in conformity with the law of the Party to which application is made”. What is obviously meant is that the extradition must be so acceptable and actually have been carried out, in order to free the Party from its obligation to prosecute the offender found on its territory. It may be assumed that it would be incompatible with the purpose of clause (iv) if that Party were freed from its obligation even if it has not actually carried out the extradition, or if the Party to which application was made does not accept it.<sup>1160</sup>

9. It can also be assumed that a Party on whose territory the offence in question was not committed would be freed from the obligation to prosecute

<sup>1158</sup> Subsidiary principle of universality.

<sup>1159</sup> As regards the question whether pursuant to article 22, paragraph 1, subparagraph (b) measures of treatment can be substituted also for prosecution or only for conviction or punishment, see paragraph 3 of the above comments on that subparagraph.

<sup>1160</sup> In the light of the purpose of clause (iv) that view appears to be the correct one although the French text renders “acceptable” by “compatible”; see also *1961 Commentary*, paragraph 4 of the comments on article 36, paragraph 2, subparagraph (b), clause (iv) of the Single Convention (pp. 435 and 436).

the offender found on its territory if it offers his extradition to a State not a Party to the Vienna Convention, and if that extradition, acceptable in conformity with the law of that State, is actually carried out. Any other view would appear to be “manifestly unreasonable”.<sup>1161</sup>

10. The offer of extradition would normally have to be made to that State on whose territory the offence concerned was committed or whose national the offender is, since it would be that State under whose law the extradition might be acceptable.

11. It is submitted that a Party is under clause (iv) freed from its obligation to prosecute an offender found on its territory only if it offers his extradition and actually extradites him to a State which under its law has the required jurisdiction. A Party would not comply with clause (iv) if it did not prosecute an offender found within its borders, but instead extradited him to a State under whose law that extradition would not be acceptable.

12. The second condition of the obligation of a Party under clause (iv) to prosecute an offender found on its territory is that “such offender has not already been prosecuted and judgement given”. That judgement may have been a conviction or acquittal. In view of article 22, paragraph 1, subparagraph (b) it is also held that a Party would not be bound to prosecute an offender dwelling within its borders who has already been prosecuted and instead of being convicted has been subjected to measures of treatment in accordance with that subparagraph. It would however hardly be in accordance with the spirit of clause (iv) if a Party gave refuge to a trafficker who has been convicted abroad and subjected to a prison term,<sup>1162</sup> but had not served his sentence. It is suggested that a Party should in such a case either extradite or try such an offender found in its territory.

13. The comments in the preceding paragraphs are in agreement with those of the *1961 Commentary* on the corresponding article 36, paragraph 2, subparagraph (a), clause (iv) of the Single Convention,<sup>1152</sup> whose text was taken over by the Vienna Convention. The views presented by that Commentary are based on the Secretary-General’s interpretation of the English, French, Spanish and Russian texts. The Chinese text of clause (iv) under consideration as well as that of the corresponding article 36, paragraph 2, subparagraph (a), clause (iv) of the Single Convention, however, differs from the other language versions. It appears to free a Party in whose territory the offender is found, not if his extradition is acceptable in accordance with the law of the Party to which it offers his extradition, but on the contrary if that extradition is acceptable in accordance with its own law. It cannot be excluded that the Chinese text presents in this respect the real intention of the 1971 Conference.

14. It appears also to be incompatible with the spirit of clause (iv) if a Party permits a trafficker whom it can neither prosecute nor extradite to take

<sup>1161</sup> Article 32, paragraph (b) of the Vienna Convention on the Law of Treaties, document A/CONF.39/26.

<sup>1162</sup> Which has not been replaced by measures of treatment.

refuge in its territory. Expulsion or deportation of an alien trafficker may in such a case often be appropriate.<sup>1163</sup>

15. It should be kept in mind that clause (iv) covers only serious offences.

16. Parties may in the case of all offences which they prosecute under that clause substitute pursuant to paragraph 1, subparagraph (b) measures of treatment for conviction or punishment.

*Paragraph 2, subparagraph (b)*

**(b) It is desirable that the offences referred to in paragraph 1 and paragraph 2 (a) (ii) be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the Parties, and, as between any of the Parties which do not make extradition conditional on the existence of a treaty or on reciprocity, be recognized as extradition crimes; provided that extradition shall be granted in conformity with the law of the Party to which application is made, and that the Party shall have the right to refuse to effect the arrest or grant the extradition in cases where the competent authorities consider that the offence is not sufficiently serious.**

*Commentary*

1. The English and French texts of the subparagraph under consideration are identical with the corresponding language versions of article 36, paragraph 2, subparagraph (b) of the Single Convention.

2. The Spanish text of the provision of the Vienna Convention differs only in minor details from the Spanish version of the provision of the Single Convention, not affecting their substantive identity. It continues however to render inexactly the English words "the Parties which do not make extradition conditional . . . on reciprocity" by "*las Partes que no subordinen la extradición a la existencia de un . . . acuerdo de reciprocidad*". As in the case of the Single Convention, it is held that in the case of the same text of the Vienna Convention which was also originally drafted in English, preference should be given to the English version with which the French text agrees. The reciprocity to which the subparagraph of the Vienna Convention under consideration refers need not be the result of an international agreement, but may be provided for unilaterally in the law of a State, as is the case in a number of countries.<sup>1164</sup>

3. The comments of the *1961 Commentary* on article 36, paragraph 2, subparagraph (b) of the Single Convention<sup>1165</sup> therefore are also valid for

<sup>1163</sup> Paragraphs 5 and 6 of the comments referred to in foot-note 1160 (p. 436).

<sup>1164</sup> *1961 Commentary*, paragraph 7 of the comments on article 36, paragraph 2, subparagraph (b) of the Single Convention (p. 438).

<sup>1165</sup> Pages 437 and 438.

the substantively identical provision of article 22, paragraph 2, subparagraph (b) of the Vienna Convention.

4. As regards the application of the introductory subparagraph of paragraph 2 to subparagraph (b), see paragraph 2 of the above comments on that introductory subparagraph.

5. The implementation of subparagraph (b) is obviously not a legal obligation. The provisions of that subparagraph are only recommendations.

6. There are some situations other than those covered by subparagraph (b) in which the extradition of illicit traffickers would also be desirable. That provision does not cover the case of Parties which, although not requiring a treaty, make extradition conditional on the existence of reciprocity, nor does it appear to refer to the possible (and desirable) unilateral willingness of a Party which does not make extradition conditional on the existence of a treaty or reciprocity, to extradite illicit traffickers to other Parties which although having the same general policy in matter of extradition nevertheless do not extradite illicit traffickers.<sup>1166</sup> Subparagraph (b) also does not deal with relations of Parties with non-Parties. It is however desirable that all Parties (and non-Parties) should grant extradition to Parties and non-Parties alike in all cases in which that is required in order to make possible the prosecution or punishment<sup>1167</sup> of major illicit traffickers.<sup>1168</sup> The recommended inclusion of offences of the illicit traffic as extradition crimes in existing extradition treaties not covering them would require their amendment, which could often be accomplished by the simple method of exchanging notes.

7. The recommendations of subparagraph (b) are not limited only to serious offences of the illicit traffic. A Party would however not be considered as not complying with them if it refused to effect a request arrest or to grant a requested extradition in the case of an offence which it considered as not sufficiently serious.

### *Paragraph 3*

**3. Any psychotropic substance or other substance, as well as any equipment, used in or intended for the commission of any of the offences referred to in paragraphs 1 and 2 shall be liable to seizure and confiscation.**

### *Commentary*

1. The text of paragraph 3 follows rather closely the wording of article 37 of the Single Convention, applying the rules of that article to psychotropic

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<sup>1166</sup> The second lacuna is due to the fact that subparagraph (b) recommends that offences of the illicit traffic be recognized as extradition crimes as “between any of the Parties.”

<sup>1167</sup> That is, of fugitives who were convicted but did not serve the prison terms imposed upon them.

<sup>1168</sup> Paragraph 4 of the comments referred to in foot-note 1164.

substances. The comments of the *1961 Commentary* on that article<sup>1169</sup> therefore are also valid for that provision of the Vienna Convention.

2. The words “shall be liable to seizure and confiscation” are somewhat ambiguous. They can be understood either in the sense of “shall be legally bound to be seized and confiscated” (“shall be subject to seizure and confiscation”) or in that of “shall be open to seizure and confiscation”.<sup>1170</sup>

3. It is submitted that the first of those two meanings corresponds with the intention of the authors of the Vienna Convention, and is also in accord with the purpose of the paragraph under consideration. The second of the possible understandings of those words would give that paragraph a sense which would hardly be meaningful. The 1971 Conference intended to impose on Parties an obligation to seize and confiscate the substances and equipment concerned and not merely to require them to give their courts or other competent authorities discretionary power to take such actions.

4. The interpretation offered in the preceding paragraph is also based on the consideration that many members of the 1971 Conference were national officials charged with the implementation of international treaties in the field of drug control and must be assumed to have been aware of the meaning given to the language of those treaties. The words “shall be liable to seizure and confiscation” were taken from article 37 of the Single Convention, whose substance was introduced into article 22, paragraph 3 of the Vienna Convention. The Legal Adviser to the 1961 Conference which adopted the Single Convention declared that the purpose of those words was to establish a legal obligation of Governments to seize and confiscate the substances and equipment concerned. His opinion was not contested.<sup>1171</sup>

5. It follows also from the proceedings of the 1971 Conference that its members held that the language taken over by the Vienna Convention from the Single Convention would normally be understood in the same sense as under that earlier treaty.<sup>1172</sup>

6. It is admitted that the Spanish text, which renders the English words under consideration by “*podrán ser objeto de aprehensión y decomiso*”, and the French text, which translates them by “*pourront être saisis et confisqués*”, would not lend themselves to the suggested interpretation of paragraph 3. It is however submitted that in the light of the object and purpose of that paragraph the English text should be given preference.<sup>1173</sup>

<sup>1169</sup> Pages 442 to 445.

<sup>1170</sup> The Concise Oxford Dictionary of Current English, Fifth Edition, Oxford, Clarendon Press, 1964, p. 697.

<sup>1171</sup> *1961 Records*, vol. II, pp. 246 and 247.

<sup>1172</sup> See *1971 Records*, vol. II, paragraphs 28 to 38, 43 to 46, 49 and 52 of the summary records of the ninth plenary meeting (pp. 33 and 34); see also e.g. paragraphs 36, 38, 44, 45, 46, 48 and 50 of the summary records of the eleventh plenary meeting (pp. 42 and 43).

<sup>1173</sup> Vienna Convention on the Law of Treaties, article 31, paragraph 1 and article 33, paragraph 4, document A/CONF.39/27.



That view is also in accord with the legislative history of the language under consideration. The plenary session of the 1961 Conference, which considered the same words in those three language versions of the corresponding provision of the Single Convention, decided to request its Drafting Committee to bring the French and Spanish texts into line with the English text; but that Committee and later the plenary session itself of the 1961 Conference overlooked the carrying out of that decision.<sup>1174</sup> The 1971 Conference also overlooked removing that inconsistency of the Spanish and French texts with the English version, which was obviously due to an error in the translation of the original English text.<sup>1175</sup>

7. The Russian text of article 22, paragraph 3 unequivocally provides for an obligation of the Parties to seize and confiscate the substances and equipment involved, as was certainly the intention of the 1971 Conference and the purpose of that provision.

8. Paragraph 3 must also be applied to preparations of psychotropic substances. It forms also a part of the limited régimes pursuant to article 2, paragraph 7 and is one of the provisions from which preparations can never be exempted under article 3, paragraphs 2 and 3.<sup>1176</sup>

9. The word “equipment” does not appear to cover “vehicles”, and in any event not large vehicles such as railroad cars, large boats or airplanes. That view is also consonant with the French text which uses the word “*matériel*” and with the Spanish text which uses the word “*utensilio*” for the English “equipment”.<sup>1177</sup>

10. Equipment used or intended for the commission of the offences concerned without the consent of its owner need not be “confiscated”. It should however be seized pending a final determination of its innocent owner, unless it is immediately clear that the offender used or intended to use it without that consent.

11. The term “seizure” is used for the provisional act of taking possession of the psychotropic substances, other substances or equipment concerned pending the procedure on their final disposal, that is, on their “confiscation”.<sup>1178</sup>

12. It has been suggested earlier that it would be the better opinion to hold that the unauthorized possession of substances in Schedule I for

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<sup>1174</sup> 1961 *Records*, vol. II, pp. 247, 245 and 248.

<sup>1175</sup> 1961 *Commentary*, paragraphs 1 to 5 of the comments on article 37 of the Single Convention (pp. 442 and 443).

<sup>1176</sup> Article 2, paragraph 7, subparagraph (a), clause (vi), subparagraph (b), clause (vi), subparagraph (c), clause (v), subparagraph (d), clause (iii) and subparagraph (e), and article 3, paragraph 3, subparagraph (f).

<sup>1177</sup> See however 1971 *Records*, vol. II, paragraph 37 of the summary records of the ninth plenary meeting (p. 33).

<sup>1178</sup> See also article 16, paragraph 3 and article 21, paragraph (b) and paragraph 5 of the comments on article 16, paragraph 3.

personal consumption is an “offence” in the sense of article 22, paragraph 1 subparagraph (a).<sup>1179</sup> It is however submitted that Parties which do not share that opinion<sup>1180</sup> are nevertheless in view of article 7, subparagraph (b) bound to seize and confiscate substances in Schedule I found in the unauthorized possession of an abuser for his own consumption. In view of article 5, paragraph 3, Parties are not bound to take such measures in respect of other psychotropic substances held for personal consumption without the authorization which is required under national law.<sup>1181</sup>

13. It will be noted that contrary to drug treaties preceding the Single Convention,<sup>1182</sup> but in agreement with that Convention in respect of narcotic drugs, the Vienna Convention does not provide for restrictions as regards the way in which Parties may dispose of confiscated psychotropic substances, and in particular does not create an obligation to destroy them.

#### *Paragraph 4*

**4. The provisions of this article shall be subject to the provisions of the domestic law of the Party concerned on questions of jurisdiction.**

#### *Commentary*

1. The English and French texts of paragraph 4 follow closely the corresponding texts of article 36, paragraph 3 of the Single Convention, their minor differences not affecting the identity of their substance. The Spanish text of the paragraph under consideration is also patterned after the Spanish text of that provision of the Single Convention, their slightly greater differences also not affecting the substantive identity. The comments of the *1961 Commentary* on article 36, paragraph 3 of the Single Convention<sup>1183</sup> therefore also apply to article 22, paragraph 4 of the Vienna Convention.

2. It is held that the paragraph under consideration does not mean that Parties are in no case required to change their law in order to carry out their obligations under article 22, paragraph 2, subparagraph (a), clause (iv) regarding jurisdiction in criminal matters. That interpretation would render that clause ineffective, which cannot be assumed to have been the intention of the 1971 Conference.<sup>1184</sup>

3. Paragraph 4 frees Parties from their obligation to carry out the jurisdictional rules of paragraph 2, subparagraph (a), clause (iv) only to the

<sup>1179</sup> Paragraphs 14 and 15 of the above comments on that provision.

<sup>1180</sup> Paragraph 12 of those comments.

<sup>1181</sup> Paragraphs 6 to 12 of the comments on article 5, paragraphs 2 and 3.

<sup>1182</sup> Article 18 of the 1931 Convention and article 7 of the 1953 Protocol.

<sup>1183</sup> Pages 438 to 439.

<sup>1184</sup> “Rule of effectiveness”, H. Lauterpacht, *The Development of International Law by the International Court*, London, Stevens and Sons, 1958, pp. 227 to 230 and McNair, *The Law of Treaties*, Oxford, Clarendon Press, 1961, pp. 384 and 385.

extent that those rules are incompatible with their general concepts in the field of criminal jurisdiction. It only emphasizes a freedom which is already granted to Parties by the introductory subparagraph of paragraph 2.<sup>1185</sup>

4. Paragraph 4 also does not affect the views which a Party may have on the question of the limits of national criminal jurisdiction under international law.<sup>1186</sup>

#### *Paragraph 5*

**5. Nothing contained in this article shall affect the principle that the offences to which it refers shall be defined, prosecuted and punished in conformity with the domestic law of a Party.**

#### *Commentary*

1. The English text of paragraph 5 is identical with the English text of article 36, paragraph 4 of the Single Convention. The Spanish texts of those two provisions are nearly the same, the only minor difference not affecting their substantive identity. The French text of article 36, paragraph 4 of the Single Convention is entirely different from its other language versions, repeating in fact the substance of article 36, paragraph 3 of that treaty. The 1971 Conference was aware of that error of the 1961 Conference,<sup>1187</sup> and produced a French text of article 22, paragraph 5 which is fully consonant with its English and Spanish versions.

2. Paragraph 5 makes it clear that the provisions of article 22 are not to be considered self-executing in a country whose constitution provides for the self-executing effect of international treaties. The provisions of article 22 must be transformed into domestic law by appropriate legislative action of the Parties in order to become effective in their territories.<sup>1188</sup>

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<sup>1185</sup> Paragraphs 4 to 7 of the above comments on article 22, paragraph 2, introductory subparagraph.

<sup>1186</sup> *1961 Commentary*, paragraphs 2 and 3 of the comments on article 36, paragraph 3 of the Single Convention (p. 439).

<sup>1187</sup> *1971 Records*, vol. II, paragraph 60 of the summary records of the ninth plenary meeting (p. 34); see also *1961 Commentary*, paragraphs 1 and 2 of the comments on article 36, paragraph 4 of the Single Convention (pp. 439 and 440).

<sup>1188</sup> See also paragraph 2 of the above comments on article 22, paragraph 1, subparagraph (a) and paragraph 3 of the comments referred to in foot-note 1187 (p. 440).

## Article 23

### APPLICATION OF STRICTER CONTROL MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

A Party may adopt more strict or severe measures of control than those provided by this Convention, if, in its opinion, such measures are desirable or necessary for the protection of the public health and welfare.

#### *Commentary*

1. Article 23 corresponds to article 39 of the Single Convention. The comments of the *1961 Commentary* on that article of the Single Convention apply *mutatis mutandis* also to the article of the Vienna Convention.

2. A Party may in two ways apply “more strict or severe measures of control” than those required by the Vienna Convention. It may impose controls *in addition* to those prescribed by the Convention, or it may *substitute* more strict or severe controls for those provided for in that treaty.

3. The imposition of additional controls will normally not give rise to legal problems under article 23; but the substitution of allegedly more strict or severe controls for those required by the Convention may occasionally lead to doubts whether the substitute controls are in fact “more strict or severe”.

4. Permissible substitute controls would be, e.g., the prohibition of particular activities of trade in some psychotropic substances instead of requiring licences for them, or—to give an extreme example—the application of the death penalty instead of punishment by “imprisonment or other penalty of deprivation of liberty” pursuant to article 22, paragraph 1, subparagraph (a).<sup>1189</sup>

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<sup>1189</sup> That reference to the death penalty should not imply any position as to the admissibility of that penalty on legal or moral grounds; the death penalty is mentioned only in the light of article 23, as an example given to explain the meaning of that provision; see also *1961 Commentary*, paragraph 2 of the comments on article 39 of the Single Convention (pp. 449 to 450).

## Article 24

### EXPENSES OF INTERNATIONAL ORGANS INCURRED IN ADMINISTERING THE PROVISIONS OF THE CONVENTION

The expenses of the Commission and the Board in carrying out their respective functions under this Convention shall be borne by the United Nations in such manner as shall be decided by the General Assembly. The Parties which are not Members of the United Nations shall contribute to these expenses such amounts as the General Assembly finds equitable and assesses from time to time after consultation with the Governments of these Parties.

#### *Commentary*

1. Article 24 corresponds to article 6 of the Single Convention, whose rules it makes applicable to the expenses of the Commission and the Board incurred in administering their respective functions under the Vienna Convention and to be borne by the United Nations. The comments of the *1961 Commentary* on article 6 of the Single Convention therefore apply *mutatis mutandis* also to article 24 of the Vienna Convention.<sup>1190</sup>

2. It is the practice of the General Assembly of the United Nations to require States which are not Members of the United Nations but which become Parties to the Statute of the International Court of Justice<sup>1191</sup> or treaty bodies financed from United Nations appropriations, to contribute to the expenses of the organs concerned at rates which it determines.<sup>1192</sup> The General Assembly assesses such non-Member States for their share in the expenses involved after consultation with them, in cases in which it has a multilateral treaty or bilateral contractual authority for doing that as well as in other cases in which it has no such specific authority.

3. The General Assembly began that practice in the field of international drug control already prior to the existence of treaty provisions authorizing such an assessment, following in that the example of the League of

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1190 Pages 117 to 119.

1191 See articles 33 and 35 of the Statute and General Assembly resolutions 91 (I), 363 (IV) and 806 (VIII); see also General Assembly resolution 3371 (XXX).

1192 Regulation 5.9 of the Financial Regulations and Rule 105.8 of the Financial Rules of the United Nations, document ST/SGB/Financial Rules.1/Rev.1 (1 May 1970); see also General Assembly resolution 3371 B (XXX) amending Regulation 5.9.

Nations.<sup>1193</sup> Article 6 of the Single Convention and article 24 of the Vienna Convention offer such formal treaty authority.

4. It may be noted that the obligation imposed upon Parties by article 24 of the Vienna Convention is more limited than that for which article 6 of the Single Convention provides. The latter provision requires that Parties which are not Members of the United Nations bear an equitable share of *all* expenses of the Commission and the Board, and this comprises the expenses incurred in carrying out their functions not only under the Single Convention, but also under other treaties (including of course the Vienna Convention) and, in the case of the Commission, under the Charter. Parties to the Vienna Convention which are neither Members of the United Nations nor parties to the Single Convention would however under article 24 of the Vienna Convention be obligated to pay only their equitable share of those expenses of the Commission and the Board which are due to the work of those organs under the Vienna Convention. But the far greater part of the work of the two organs under the Single Convention or under the Charter would also be work under the terms of the Vienna Convention, since the aims of the Conventions, although not fully identical, are in any event largely overlapping, and are also a part of the task of the United Nations to promote solutions of social, health and related problems pursuant to article 55 of the Charter. Moreover, the Commission is under both Conventions explicitly authorized to consider all matters pertaining to their aims.<sup>1194</sup> The portion of the expenses of the Commission and the Board which is exclusively due to their work under the Single Convention or under the Charter and not also to their functions under the Vienna Convention will therefore be only a minor part of their total costs.

5. The procedure under article 24 requires that the Parties in question be consulted, but not that they consent. Their obligation to pay the amount determined under that article flows therefore from the decision of the General Assembly and not from their consent.<sup>1195</sup>

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<sup>1193</sup> For a short historical survey of that practice, see *1961 Commentary*, paragraphs 1 and 2 of the comments on article 6 of the Single Convention (pp. 117 and 118); see General Assembly resolutions 455 (V) and 353 (IV), and Council resolution 201 (VIII).

<sup>1194</sup> Article 8, introductory paragraph of the Single Convention and article 17, paragraph 1 of the Vienna Convention; see also Fifth report of the Drafting Committee II/3 of the San Francisco Conference, document WD 40 II/3/A/5, 25 May 1945.

<sup>1195</sup> *1961 Commentary*, paragraph 5 of the comments on article 6 of the Single Convention (pp. 118 and 119).

## Article 25

### PROCEDURE FOR ADMISSION, SIGNATURE, RATIFICATION AND ACCESSION

1. Members of the United Nations, States not Members of the United Nations which are members of a specialized agency of the United Nations or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice, and any other State invited by the Council, may become Parties to this Convention:

- (a) By signing it;
- (b) By ratifying it after signing it subject to ratification; or
- (c) By acceding to it.

2. The Convention shall be open for signature until 1 January 1972 inclusive. Thereafter it shall be open for accession.

3. Instruments of ratification or accession shall be deposited with the Secretary-General.

## Article 26

### ENTRY INTO FORCE

1. The Convention shall come into force on the ninetieth day after forty of the States referred to in paragraph 1 of article 25 have signed it without reservation of ratification or have deposited their instruments of ratification or accession.

2. For any other State signing without reservation of ratification, or depositing an instrument of ratification or accession after the last signature or deposit referred to in the preceding paragraph, the Convention shall enter into force on the ninetieth day following the date of its signature or deposit of its instrument of ratification or accession.

#### *Commentary*

1. The two articles under consideration follow provisions adopted in the final clauses of a number of other treaties. Article 25 enables States to become Parties by signature without reservation as to ratification if their

Governments under their constitutions do not need an authorization by legislative bodies for acceptance of treaties, or have already obtained the required prior parliamentary action for that purpose. That possibility is intended to speed up the entry into force of the Convention.<sup>1196</sup>

2. The phrases “on the ninetieth day after” in paragraph 1 and “on the ninetieth day following” in paragraph 2 of article 26 have the same meaning as the corresponding Spanish phrase “*el nonagésimo día siguiente*”, but are slightly different in meaning from the corresponding French phrase “*quatre-vingt-dix jours après*” in those two paragraphs. If the French text is understood in the sense of ninety full days, the exact hour of the entry into force of the Convention in regard to the Parties concerned would under that text normally be somewhat different from that under the other two language versions mentioned;<sup>1197</sup> but that difference of a few hours is hardly of any practical importance.

3. The Council may name the States which it invites to become Parties, or may identify them by defining the group of States to whom the invitation is addressed.

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<sup>1196</sup> See for the same kind of provision article 12 of the Geneva Customs Convention of 1956 on Containers, United Nations, *Treaty Series*, vol. 338, p. 103; article 33 of the Geneva Customs Convention of 1956 on the Temporary Importation of Commercial Road Vehicles, United Nations, *Treaty Series*, vol. 327, p. 123 and article 4 of the Geneva Convention of 1956 on the Taxation of Road Vehicles Engaged in International Goods Transport, United Nations, *Treaty Series*, vol. 436, p. 115. For a similar although differently worded provision, see article VI of the 1946 Protocol and article 5 of the 1948 Protocol.

<sup>1197</sup> The Chinese and Russian texts agree with the English and Spanish versions.



## Article 27

### TERRITORIAL APPLICATION

The Convention shall apply to all non-metropolitan territories for the international relations of which any Party is responsible except where the previous consent of such a territory is required by the Constitution of the Party or of the territory concerned, or required by custom. In such a case the Party shall endeavour to secure the needed consent of the territory within the shortest period possible, and when the consent is obtained the Party shall notify the Secretary-General. The Convention shall apply to the territory or territories named in such a notification from the date of its receipt by the Secretary-General. In those cases where the previous consent of the non-metropolitan territory is not required, the Party concerned shall, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which this Convention applies.

#### *Commentary*

1. The English, French and Spanish texts of article 27 are nearly identical with the corresponding language versions of article 42 of the Single Convention, and the very minor differences do not affect the identity of their substance. The comments in the *1961 Commentary* on article 42 of the Single Convention<sup>1198</sup> therefore also apply to article 27 of the Vienna Convention.

2. Contrary to the “territorial” or “colonial” clauses of early drug control treaties,<sup>1199</sup> but in accordance with the territorial clauses of the 1953 Protocol<sup>1200</sup> and of the Single Convention, article 27 of the Vienna Convention does not grant the Parties discretion to *refuse* the application of the Convention to their non-metropolitan territories. Only such territories themselves can reject the application of the Convention to them if their consent is required.

3. A non-metropolitan territory may give its consent also spontaneously without having been requested to do that by the Party which is responsible

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<sup>1198</sup> Pages 453 and 454.

<sup>1199</sup> Article 23 of the 1912 Convention, article 39 of the 1925 Convention, article 26 of the 1931 Convention, article 18 of the 1936 Convention and article 8 of the 1948 Protocol; see also article XIII of the 1925 Agreement and article V of the 1931 Agreement.

<sup>1200</sup> Article 20 of the 1953 Protocol.

for its international relations. It may give its consent even prior to the signature, ratification or accession by that Party which—it is suggested—should in such a case send, if possible, to the Secretary-General its notice of that consent so as to reach him at the time of its signature without reservation<sup>1201</sup> as to ratification or at the time of the deposit of its instrument of ratification or accession, as the case may be.

4. The article under consideration provides that the Convention shall apply to a non-metropolitan territory whose consent is required from the date of receipt by the Secretary-General of the notification of its consent. However, the Convention need not be applied to such a territory prior to the date of its entry into force in respect of the Party concerned under article 26.

5. Those provisions of the Vienna Convention which apply to non-Parties also apply to non-metropolitan territories of Parties to which that Convention does not apply pursuant to article 27 or 29.

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<sup>1201</sup> However, at the time of this writing signature of the Convention is no longer possible. The Convention was under article 25 open for signature only until 1 January 1972 inclusive.

## Article 28

### REGIONS FOR THE PURPOSES OF THIS CONVENTION

1. Any Party may notify the Secretary-General that, for the purposes of this Convention, its territory is divided into two or more regions, or that two or more of its regions are consolidated into a single region.
2. Two or more Parties may notify the Secretary-General that, as the result of the establishment of a customs union between them, those Parties constitute a region for the purposes of this Convention.
3. Any notification under paragraphs 1 or 2 shall take effect on 1 January of the year following the year in which the notification was made.

#### *Commentary*

1. Paragraphs 1 and 2 of article 28 state that Parties “may” make the notification for which they provide. It appears however that Parties “may” adopt the administrative arrangements involved in respect of which they have full discretion, but *must* make those notifications if they wish to ensure the validity of such arrangements under the terms of the Vienna Convention in accordance with paragraph 3 of the article under consideration.

2. Article 28 differs from the corresponding article 43 of the Single Convention as interpreted by the *1961 Commentary*<sup>1202</sup> in that it requires Parties to notify the Secretary-General all their “regional” arrangements, those already existing at the time at which the Convention enters into force in respect of them under article 26 of the Vienna Convention, as well as those which they may adopt later, while Parties to the Single Convention are not required to notify the Secretary-General of those of their “territorial” arrangements which exist already at the time at which that Convention becomes effective in respect of them under its article 41, but only those which they may introduce after that time.

3. It is however submitted that a State may continue the “regional” organization of its control régime as it exists at the time of its becoming a Party although under paragraph 3 the notification relating to that organization would take effect only on 1 January of the year following the year in which it was made. It is suggested that a Party should in a case of that kind make without undue delay the required notification. It would obviously not

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<sup>1202</sup> *1961 Commentary*, paragraphs 11 to 13 of the comments on article 1, paragraph 1, subparagraph (y) of the Single Convention (p. 41).

serve any useful purpose to require such a State to discontinue its “regional” organization upon becoming a Party to the Vienna Convention, and to authorize it to apply that organization again only as of 1 January on which the notification involved would become effective. It must be assumed that a Party acting in good faith will be allowed a reasonable time for harmonizing its control régime with the requirements of the Convention.

4. See paragraphs 3 to 6 of the above comments on article 1, paragraph (*k*).

## Article 29

### DENUNCIATION

1. After the expiry of two years from the date of the coming into force of this Convention any Party may, on its own behalf or on the behalf of a territory for which it has international responsibility, and which has withdrawn its consent given in accordance with article 27, denounce this Convention by an instrument in writing deposited with the Secretary-General.

2. The denunciation, if received by the Secretary-General on or before the first day of July of any year, shall take effect on the first day of January of the succeeding year, and if received after the first day of July it shall take effect as if it had been received on or before the first day of July in the succeeding year.

3. The Convention shall be terminated if, as a result of denunciations made in accordance with paragraphs 1 and 2, the conditions for its coming into force as laid down in paragraph 1 of article 26 cease to exist.

#### *Commentary*

1. Article 29 follows closely the text of the corresponding article 46 of the Single Convention, and very minor variations and references to differently numbered but corresponding articles of the treaties in question do not affect the identity of their substance. The comments of the *1961 Commentary* on article 46 of the Single Convention<sup>1203</sup> apply *mutatis mutandis* also to article 29 of the Vienna Convention.

2. The timing of the effectiveness of denunciations pursuant to paragraph 2 is the same as that under article 46, paragraph 2 of the Single Convention. The technical considerations which motivated the authors of the Single Convention in providing for that timing do not apply to the same extent to the Vienna Convention.<sup>1204</sup> The obligation of a denouncing Party to continue its participation in the Convention until the end of a calendar year is however consonant with the annual reporting system of that treaty,<sup>1205</sup> as it is with that of the Single Convention.

3. It is held that in accordance with the spirit of article 27, a Party is bound to denounce the Vienna Convention on behalf of a territory which has withdrawn its consent given in accordance with that article.

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<sup>1203</sup> Pages 460 and 461.

<sup>1204</sup> Paragraph 3 of the comments of the *1961 Commentary* on article 46 of the Single Convention (pp. 460 to 461).

<sup>1205</sup> Article 16, paragraphs 1, 4 and 5.

## Article 30

### AMENDMENTS

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated to the Secretary-General, who shall communicate them to the Parties and to the Council. The Council may decide either:

(a) That a conference shall be called in accordance with paragraph 4 of Article 62 of the Charter of the United Nations to consider the proposed amendment; or

(b) That the Parties shall be asked whether they accept the proposed amendment and also asked to submit to the Council any comments on the proposal.

2. If a proposed amendment circulated under paragraph 1 (b) has not been rejected by any Party within eighteen months after it has been circulated, it shall thereupon enter into force. If however a proposed amendment is rejected by any Party, the Council may decide, in the light of comments received from Parties, whether a conference shall be called to consider such amendment.

#### *Commentary*

1. Article 30 takes over the provisions and follows closely the text of article 47 of the Single Convention. The English and French texts of these two articles show only very minor irrelevant differences. Their Spanish texts diverge slightly more, but are also identical in substance. The comments of the *1961 Commentary* on article 47 of the Single Convention<sup>1206</sup> therefore are also valid for article 30 of the Vienna Convention.

2. The amendment procedure of article 30 is not exclusive. The Vienna Convention can also be revised by any other procedure by which multilateral treaties can be amended under international law. The Council could submit draft amendments to the General Assembly for action.<sup>1207</sup> The General Assembly could act on such an initiative of the Council or consider an amendment on its own initiative. It can adopt an amendment itself or call a plenipotentiary conference for that purpose.<sup>1208</sup> Article 30 also does not

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1206 Pages 462 to 464.

1207 Article 62, paragraph 3 of the Charter of the United Nations.

1208 Goodrich, Leland M. Edvard Hambro and Anne Patricia Simons, the Charter of the United Nations, Third and Revised Edition, New York, Columbia University Press, 1969, p. 416.

exclude the theoretical possibility that a plenipotentiary conference called outside the procedure of the United Nations will amend the Vienna Convention.<sup>1209</sup>

3. The Council is not prevented from taking, in accordance with its powers under the United Nations Charter, different actions on an amendment proposed pursuant to article 30 from those provided for in that article. It can in particular also refuse to take any action on such a proposal.<sup>1210</sup>

4. It can be expected that the Council would normally consult the Commission on a proposed amendment;<sup>1211</sup> but a legal obligation to do that exists neither under the United Nations Charter nor under the Vienna Convention.

5. The Schedules can be amended by the procedure provided for in article 2. They may however also be amended by any of the methods permitted pursuant to article 30, and in any other way by which multilateral treaties can be revised under international law. The procedure of article 2 has however the advantage of possible greater speed, and in the case of onerous amendments, also that of binding Parties which do not agree.<sup>1212</sup> It is suggested that the Secretary-General should indicate in the communication circulating a proposed amendment pursuant to paragraph 1, subparagraph (b) the date of its dispatch. That communication should also be sent to all Parties on the same day. It would also be desirable that Parties transmit to the Secretary-General any rejection of a proposed amendment pursuant to paragraph 2 through a member of their permanent mission to the United Nations. Otherwise the fate of the amendment may be uncertain for a rather long time since it could not be excluded that a rejection had been delayed or even lost in the mail.<sup>1213</sup>

6. See General Assembly resolution 366 (IV) of 3 December 1949 for the rules prescribed by the General Assembly for the Council's convocation of international conferences under article 62, paragraph 4 of the United Nations Charter.

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1209 Paragraph 1 of the comments of the *1961 Commentary* on article 47 of the Single Convention (pp. 462 to 463).

1210 Paragraph 2 of the comments referred to in the preceding foot-note (p. 463).

1211 See however Council resolution 1577 (L).

1212 Paragraph 5 of the comments mentioned in foot-note 1209 (p. 463).

1213 Paragraph 6 of those comments (pp. 463 and 464).

## Article 31

### DISPUTES

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the said Parties shall consult together with a view to the settlement of the dispute by negotiation, investigation, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed shall be referred, at the request of any one of the parties to the dispute, to the International Court of Justice for decision.

#### *Commentary*

1. Paragraph 1 follows article 33, paragraph 1 of the United Nations Charter in its enumeration of the various methods of settlement of disputes.

2. The dividing line between “mediation” and “conciliation” has often not been very clear in the discussions of the organs of the United Nations. Both “mediation” and “conciliation” refer to procedures by which third parties endeavour to assist in a settlement of international disputes. “Mediation” is normally understood to mean the friendly interference of a State in a dispute of other States, negotiating between them with a view to adjusting or settling their difference.<sup>1214</sup> “Conciliation” is a term generally used for a procedure, accepted by parties to a dispute, submitting their difference to a specially constituted organ for investigation and efforts to obtain a settlement, but without provision for a legally binding decision.<sup>1215</sup>

3. The term “investigation” is held to have the same meaning as “enquiry” in article 33, paragraph 1 of the United Nations Charter.<sup>1216</sup> It refers to a procedure by which the facts of a dispute are to be established by an impartial body.<sup>1217</sup>

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<sup>1214</sup> Black’s Law Dictionary, Revised Fourth Edition, St. Paul, Minnesota, West Publishing House, 1968, p. 1133; Goodrich and others, *op. cit.*, p. 262.

<sup>1215</sup> Goodrich and others, *op. cit.*, *ibid.*; Oppenheim, L., International Law, 6th edition, vol. II, London, Longmans, Green and Co., 1944, pp. 12 and 13.

<sup>1216</sup> The Spanish version of article 31 uses “*investigación*” and its French text “*enquête*” for the English “investigation”, both in conformity with Spanish and French texts of Article 33, paragraph 1 of the Charter.

<sup>1217</sup> Goodrich and others, *op. cit.*, pp. 261 and 262; Oppenheim, *op. cit.*, vol. II, pp. 13 to 16.



4. The term “arbitration” refers to a method of settlement in which the Parties to a dispute bind themselves in advance to accept the decision of one or more umpires.<sup>1218</sup> It appears to be overlapping with the phrase “judicial process”. It seems that in the context of article 31, paragraph 1 that phrase, as distinguished from the term “arbitration”, preferentially refers to settlement by a permanent judicial organ, including settlement by the International Court of Justice if the dispute is placed before it by a special “*compris*” and not on the basis of its compulsory jurisdiction under paragraph 2.

5. Paragraph 2 establishes the jurisdiction of the International Court of Justice under article 36, paragraph 1 of its Statute, making the Vienna Convention, when in force, one of the “treaties and conventions in force”, to which that provision of the Statute refers.<sup>1219</sup>

6. Article 31 is one of the provisions on which a Party may under article 32, paragraph 2 unilaterally make a reservation, i.e. without the express or implied consent of any other Party.

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<sup>1218</sup> Goodrich and others, *op. cit.*, p. 262.

<sup>1219</sup> For compulsory jurisdiction of the International Court of Justice under earlier drug control treaties see article 32 of the 1925 Convention, article 25 of the 1931 Convention, article 17 of the 1936 Convention (these three provisions amended by the 1946 Protocol), and article 15 of the 1953 Protocol; for the role of the International Court of Justice in the settlement of disputes under the Single Convention see the comments of the *1961 Commentary* on article 48 of the Single Convention (pp. 465 and 466).

## Article 32 RESERVATIONS

1. No reservation other than those made in accordance with paragraphs 2, 3 and 4 of the present article shall be permitted.

2. Any State may at the time of signature, ratification or accession make reservations in respect of the following provisions of the present Convention:

(a) Article 19, paragraphs 1 and 2;

(b) Article 27; and

(c) Article 31.

3. A State which desires to become a Party but wishes to be authorized to make reservations other than those made in accordance with paragraphs 2 and 4 may inform the Secretary-General of such intention. Unless by the end of twelve months after the date of the Secretary-General's communication of the reservation concerned, this reservation has been objected to by one third of the States that have signed without reservation of ratification, ratified or acceded to this Convention before the end of that period, it shall be deemed to be permitted, it being understood however that States which have objected to the reservation need not assume towards the reserving State any legal obligation under this Convention which is affected by the reservation.

4. A State on whose territory there are plants growing wild which contain psychotropic substances from among those in Schedule I and which are traditionally used by certain small, clearly determined groups in magical or religious rites, may, at the time of signature, ratification or accession, make reservations concerning these plants, in respect of the provisions of article 7, except for the provisions relating to international trade.

5. A State which has made reservations may at any time by notification in writing to the Secretary-General withdraw all or part of its reservations.

### *Commentary*

1. Paragraph 1 corresponds to paragraph 1 of article 50 of the Single Convention. It prohibits all reservations except the unilateral ones expressly authorized by paragraphs 2 and 4, and those allowed under paragraph 3 if not objected to by one third of the Parties referred to in that paragraph.

2. Parties may subject to time-limits or other restrictions reservations which they make under article 32.

3. All reservations can be made only at the time of signature, ratification or accession, although this is expressly stated only in respect of reservations pursuant to paragraphs 2 and 4, but not in respect of those under paragraph 3.<sup>1220</sup> A Party may however at any time subject its reservation to a time-limit or other restriction since this amounts to withdrawing a part of its reservation, which under paragraph 5 it may do at any time.

4. In conformity with the corresponding paragraph 2 of article 50 of the Single Convention, paragraph 2 of article 32 of the Vienna Convention permits unilateral reservations in respect of provisions<sup>1221</sup> requiring the Convention's application to non-Parties by the Board or by Parties, and in respect of the article concerning the settlement of disputes. Contrary to the paragraph of the Single Convention, the paragraph of the Vienna Convention also authorizes a unilateral reservation on the article dealing with "territorial application".

5. Paragraph 4 gives rise to some questions. Plants as such are not, and—it is submitted—are also not likely to be, listed in Schedule I, but only some products obtained from plants. Article 7 therefore does not apply to plants as such from which substances in Schedule I may be obtained, nor does any other provision of the Vienna Convention. Moreover, the cultivation of plants from which psychotropic substances are obtained is not controlled by the Vienna Convention.<sup>1222</sup> It appears to be clear from the proceedings of the 1971 Conference that what is meant by the word "plants" when it occurs in paragraph 4 for a second time is not the whole plants, but only those parts or products of the plants concerned which may be listed in Schedule I.

6. It appears also to be obvious from the proceedings of the 1971 Conference and from the purpose of paragraph 2<sup>1223</sup> that a Party can by a unilateral reservation free itself from its obligation to apply provisions of article 7 to the plant parts or products in question only to the extent that would be required for making possible legal use in the magical or religious rites to which paragraph 4 refers.

7. The Mexican Indian Tribes Mazatecas, Huicholes and Tarahumaras were mentioned at the 1971 Conference as examples of the groups to which

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1220 Article 19, introductory paragraph of the Convention on the Law of Treaties, document A/CONF.39/27; see also *1961 Commentary*, paragraph 4 of the comments on article 50 of the Single Convention (p. 476); the time for making reservations at the time of signature expired under article 25, paragraph 2 on 1 January 1972.

1221 Article 19, paragraphs 1 and 2 of the Vienna Convention which is applicable also to non-Parties corresponds to article 14, paragraphs 1 and 2 of the Single Convention in respect of which unilateral reservations are permitted under article 50, paragraph 2 of the latter Convention.

1222 Paragraph 4 of the general comments on article 1 and paragraph 15 of the comments on article 1, paragraph (i).

1223 *1971 Records*, vol. II, paragraphs 12 to 14 of the summary records of the twenty-fifth plenary meeting (pp. 106 to 107).

paragraph 4 refers. The Kariri and Pankararu of eastern Brazil would be other examples.<sup>1224</sup>

8. The use in the magical or religious rites mentioned in the paragraph under consideration must be “traditional”, that is, it must have been practised for a considerable period of time. It must also actually exist at the time at which the reservation is made, although it may at that time be formally illegal under domestic law.

9. In accordance with the view proffered in paragraph 6 of the present comments, only the following exemptions from the application of article 7, paragraphs (a) to (e)<sup>1225</sup> can be obtained by a Party making a reservation according to the paragraph under consideration:

(a) Only the use by members of the “clearly determined groups” in the magical or religious rites in question, and no other use even by those members, may be freed from the requirement to limit the use of substances in Schedule I to scientific and very limited medical purposes under the conditions of article 7, paragraph (a);

(b) Only the “manufacture”, trade, distribution and possession of the substance in question by members of the “clearly determined groups” and only such activities and possession for use in the magic or religious rites concerned could be exempted from the obligation to require a “special licence or prior authorization”, to exercise close supervision, to restrict supplies and to require the keeping of records pursuant to article 7, paragraphs (b) to (e); and

(c) Freedom from the obligation to apply the controls of article 7, paragraphs (a) to (e) can by a reservation under paragraph 4 be gained only in regard to substances obtained from plants growing wild. It is however submitted that Parties may for practical reasons and in accordance with the spirit and purpose of paragraph 4 wish to include in the exemption from those controls also substances obtained from plants cultivated by members of the “clearly determined groups” on their own land or on that of their tribes for use in the magical or religious rites concerned.

10. Paragraph 4 does not refer to article 11, paragraph 1 nor to article 16, paragraph 4, subparagraph (a). It is however submitted that a Party would also be freed from the obligation to require under article 11, paragraph 1 the keeping of records in respect of activities covered by its reservation made under article 32, paragraph 4. It appears also to be obvious that the reserving Party would be unable to include in its statistical reports pursuant to article 16, paragraph 4, subparagraph (a) the amounts of substances “manufactured” by members of the “clearly determined groups” for use in the magical or religious rites concerned or the amounts held in stock by such “manufacturers” for that purpose.

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<sup>1224</sup> Brecher, Edward and the Editors of Consumer Reports, *Licit and Illicit Drugs*, Mount Vernon, New York, Consumers Union, 1972, p. 344.

<sup>1225</sup> Paragraph (f) deals with the international trade.

11. It is suggested that a reservation under article 32, paragraph 4 should clearly indicate the substance in Schedule I, the groups of users, the magical or religious rite and the method of consumption which it is intended to cover.

12. It may be pointed out that at the time of this writing the continued toleration of the use of hallucinogenic substances which the 1971 Conference had in mind would not require a reservation under paragraph 4. Schedule I does not list any of the natural hallucinogenic materials in question, but only chemical substances which constitute the active principles contained in them.<sup>1226</sup> The inclusion in Schedule I of the active principle of a substance does not mean that the substance itself is also included therein if it is a substance clearly distinct from the substance constituting its active principle. This view is in accordance with the traditional understanding of that question in the field of international drug control. Neither the crown (fruit, mescal button) of the Peyote cactus nor the roots of the plant *Mimosa hostilis*<sup>1227</sup> nor *Psilocybe* mushrooms<sup>1228</sup> themselves are included in Schedule I, but only their respective active principles, mescaline, DMT and psilocybin (psilocine, psilotsin).

13. It can however not be excluded that the fruit of the Peyote cactus, the roots of *Mimosa hostilis*, *Psilocybe* mushrooms or other hallucinogenic plant parts used in traditional magical or religious rites will in the future be placed in Schedule I by the operation of article 2, at a time at which the State concerned, having already deposited its instrument of ratification or accession, could no longer make the required reservation. It is submitted that Parties may under paragraph 4 make a reservation assuring them the right to permit the continuation of the traditional use in question in the case of such future actions by the Commission.

14. Parties which wish to obtain the same assurance in cases in which the substance concerned is in the future placed in another Schedule than Schedule I would have to make an appropriate reservation under paragraph 3.

15. A State which desires to become a Party with a reservation which requires authorization by the procedure pursuant to paragraph 3 must inform the Secretary-General in writing of that desire, with the text of the intended reservation.

16. If during the twelve-month period mentioned in that paragraph the intended reservation has not been objected to by one third or more of the States that have accepted the Convention,<sup>1229</sup> the State concerned could then at the time of its ratification of, or accession<sup>1230</sup> to, the treaty validly make the authorized reservation.

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<sup>1226</sup> 1971 *Records*, vol. II, paragraph 45 of the summary records of the twenty-fifth plenary meeting (p. 108).

<sup>1227</sup> An infusion of the roots is used.

<sup>1228</sup> Beverages made from such mushrooms are used.

<sup>1229</sup> Article 25.

<sup>1230</sup> The period for signing has expired at the time of this writing; article 25, paragraph 2.

17. It is suggested that there would be no objection to a State unconditionally ratifying or acceding to the Convention prior to the expiration or even to the commencement of the twelve-month period, with a reservation conditional on its authorization pursuant to paragraph 3. Such a reservation would be invalid *ab initio* if it does not obtain the required authorization; but the ratification or accession itself would remain in effect. It is however submitted that Governments might hesitate to make such a conditional reservation because of the legal or administrative problems which might arise in regard to the implementation of the treaty provisions covered by the conditional reservation in the case of its failure to gain the required authorization.

18. If a State accepts the Convention on the condition that its reservation is authorized according to paragraph 3, its ratification or accession would in accordance with the practice of the Secretary-General as depositary be considered as having taken place only on the day after the expiration of the twelve-month period during which the reservation would have been authorized. If the reservation fails to obtain authorization, the ratification or accession would be without any effect, unless the Government concerned withdraws the reservation and thus makes its acceptance of the Convention unconditional. In that case the ratification or accession would have to be considered to have been made on the day on which the reservation was withdrawn.

19. A State is not bound actually to make a reservation authorized under paragraph 3.

20. Like the same language of the Single Convention, the words “the date of the Secretary-General’s communication of the reservation concerned” are somewhat ambiguous. That date may be understood to be either the date of dispatch of the communication or the date indicated on the communication as the date on which it was drawn up or signed. As in respect of the language of the Single Convention, it is suggested that in order to avoid any difficulties which may result from that ambiguity the Secretary-General should indicate as the date of the communication the day of its actual dispatch and should mail all communications referring to the same reservation on the same day.<sup>1231</sup>

21. Objections to the reservation may be made by any State whose act of acceptance<sup>1230</sup> of the Convention has taken place before the end of the twelve-month period and which has not denounced the treaty on its own pursuant to article 29.<sup>1232</sup>

22. Objections must be made in writing and addressed to the Secretary-General. An objection is made in time if the communication containing it is

<sup>1231</sup> Paragraph 6 of the comments of 1961 *Commentary* on article 50 of the Single Convention (p. 476).

<sup>1232</sup> It is suggested that it would be the better view that a Party which has denounced the Convention but whose denunciation has not yet become effective under article 29, paragraph 2 cannot make an objection pursuant to article 32, paragraph 3.

sent by mail or transmitted by messenger to the Secretary-General not later than the last day of the twelve-month period. If the communication is sent by mail it should be registered and a return receipt requested.

23. Article 21, paragraph 3 of the Vienna Convention on the Law of Treaties<sup>1233</sup> stipulates that to the extent of a reservation, the provisions of a treaty which are affected by the reservation do not apply as between the State which has made the reservation and the State which has objected to the reservation but has not opposed the entry into force of the treaty as between itself and the reserving State. Article 32, paragraph 3 appears to be in accord with that provision of that Vienna Convention; but it does not state whether the objecting State has the option of precluding the entry into force of the Convention between itself and the reserving State.<sup>1234</sup>

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<sup>1233</sup> Document E/CONF.39/27.

<sup>1234</sup> Article 20, paragraph 4, subparagraph (b) of the Vienna Convention on the Law of Treaties; see also *1961 Commentary*, paragraph 9 of the comments on article 50 of the Single Convention (p. 477).

## Article 33

### NOTIFICATIONS

The Secretary-General shall notify to all the States referred to in paragraph 1 of article 25:

*(a)* Signatures, ratifications and accessions in accordance with article 25;

*(b)* The date upon which this Convention enters into force in accordance with article 26;

*(c)* Denunciations in accordance with article 29; and

*(d)* Declarations and notifications under articles 27, 28, 30 and 32.

#### *Commentary*

Article 33 refers only to those notifications which the Secretary-General is required to make under the final clauses (articles 25 to 32). It does not refer to the numerous communications which he is bound to make under the main body of the Convention, either on the basis of an express provision or by implication or on behalf of the Board through the Secretariat which he furnishes to the Board.<sup>1235</sup> The Secretary-General is, moreover, required under the concluding paragraph of the Convention to transmit certified true copies of the Convention to all States referred to in article 25, paragraph 1.

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<sup>1235</sup> Article 16 of the Single Convention in its unamended form as well as amended by article 8 of the 1972 Protocol.



*Attestation clause and concluding paragraph*

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

**DONE AT VIENNA**, this twenty-first day of February one thousand nine hundred and seventy-one, in a single copy in the Chinese, English, French, Russian and Spanish languages, each being equally authentic. The Convention shall be deposited with the Secretary-General of the United Nations, who shall transmit certified true copies thereof to all the Members of the United Nations and to the other States referred to in paragraph 1 of article 25.

*Commentary*

1. In accordance with the general practice in regard to treaty instruments prepared under the auspices of the United Nations, the attestation clause refers to Governments and not to States.<sup>1 2 3 6</sup>

2. A provision that the Chinese, English, French, Russian and Spanish texts are "equally authentic" has been rather common in treaties concluded under the auspices of the United Nations.

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<sup>1236</sup> See the statement of the Legal Adviser to the 1961 Conference; *1961 Records*, vol. I, p. 186.

## SCHEDULES

### *Lists of substances in the Schedules\**

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#### LIST OF SUBSTANCES IN SCHEDULE I

<i>INN</i>	<i>Other non-proprietary or trivial names</i>	<i>Chemical name</i>
1.	DET	<i>N,N</i> -diethyltryptamine
2.	DMHP	3-(1,2-dimethylheptyl)-1-hydroxy-7,8,9,10 tetrahydro-6,6,9-trimethyl-6 <i>H</i> -dibenzo[b,d] pyran
3.	DMT	<i>N,N</i> -dimethyltryptamine
4. (+)-LYSERGIDE	LSD, LSD-25	(+)- <i>N,N</i> -diethyllysergamide ( <i>d</i> -lysergic acid diethylamide)
5.	mescaline	3,4,5-trimethoxyphenethylamine
6.	parahexyl	3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6 <i>H</i> -dibenzo[b,d] pyran
7.	psilocine, psilotsin	3-(1-dimethylaminoethyl)-4-hydroxyindole
8. PSILOCYBINE		3-(2-dimethylaminoethyl)indol-4-yl dihydrogen phosphate
9.	STP, DOM	2-amino-1-(2,5-dimethoxy-4-methyl)phenyl-propane
10.	tetrahydrocannabinols, all isomers	1-hydroxy-3-pentyl-6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6 <i>H</i> -dibenzo[b,d] pyran

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\* The names printed in capitals in the left-hand column are the International Non-Proprietary Names (INN). With one exception ((+)-LYSERGIDE), other non-proprietary or trivial names are given only where no INN has yet been proposed.

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#### LIST OF SUBSTANCES IN SCHEDULE II

<i>INN</i>	<i>Other non-proprietary or trivial names</i>	<i>Chemical name</i>
1. AMPHETAMINE		(+)-2-amino-1-phenylpropane
2. DEXAMPHETAMINE		(+)-2-amino-1-phenylpropane
3. METHAMPHETAMINE		(+)-2-methylamino-1-phenylpropane
4. METHYLPHENIDATE		2-phenyl-2-(2-piperidyl)acetic acid, methyl ester

LIST OF SUBSTANCES IN SCHEDULE II (*continued*)

<i>INN</i>	<i>Other non-proprietary or trivial names</i>	<i>Chemical name</i>
5. PHENCYCLIDINE		1-(1-phenylcyclohexyl) piperidine
6. PHENMETRAZINE		3-methyl-2-phenylmorpholine

## LIST OF SUBSTANCES IN SCHEDULE III

<i>INN</i>	<i>Other non-proprietary or trivial names</i>	<i>Chemical names</i>
1. AMOBARBITAL		5-ethyl-5-(3-methylbutyl) barbituric acid
2. CYCLOBARBITAL		5-(1-cyclohexen-1-yl)-5- ethylbarbituric acid
3. GLUTETHIMIDE		2-ethyl-2-phenylglutarimide
4. PENTOBARBITAL		5-ethyl-5-(1-methylbutyl) barbituric acid
5. SECOBARBITAL		5-allyl-5-(1-methylbutyl) barbituric acid

## LIST OF SUBSTANCES IN SCHEDULE IV

<i>INN</i>	<i>Other non-proprietary or trivial names</i>	<i>Chemical names</i>
1. AMFEPRAMONE		2-(diethylamino)propiophenone
2. BARBITAL		5,5-diethylbarbituric acid
3.	ethchlorvynol	ethyl-2-chlorovinylethynyl- carbinol
4. ETHINAMATE		1-ethynylcyclohexanolcarbamate
5. MEPROBAMATE		2-methyl-2-propyl-1,3- propanediol dicarbamate
6. METHAQUALONE		2-methyl-3- <i>o</i> -tolyl-4(3 <i>H</i> )- quinazolinone
7. METHYLPHENOBARBITAL		5-ethyl-1-methyl-5-phenyl- barbituric acid
8. METHYPRYLON		3,3-diethyl-5-methyl-2,4- piperidine-dione
9. PHENOBARBITAL		5-ethyl-5-phenylbarbituric acid
10. PIPRADROL		1,1-diphenyl-1-(2-piperidyl) methanol
11.	SPA	(-)-1-dimethylamino-1,2- diphenylethane

*Commentary*

1. Contrary to Schedules I and II of the Single Convention, the Schedules of the Vienna Convention do not contain general formulas by which the salts, isomers, esters and ethers of those psychotropic substances of which the existence of salts or of such chemical variations is possible are included in the Schedule in question.

2. Only the isomers of the tetrahydrocannabinols in Schedule I were placed by the 1971 Conference under international control by the Vienna Convention.

3. See also paragraphs 11 and 12 of the comments on article 1, paragraph (i) and the comments on paragraph (g) of that article.<sup>1 2 3 7</sup>

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<sup>1 2 3 7</sup> 1237 1971 Records, vol. II, paragraph 9 of the summary records of the twenty-sixth plenary meeting (p. 110) (as regards the desirability of including the salts in the Schedules).





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Printed in U.S.A.

35913—August 1976—3,200

Reprinted in Austria

V.85-30525—September 1985—500

V.99-89616—November 1999—150

V.04-54591—June 2004—150

V.05-90995—December 2005—100

United Nations publication  
Sales No. E.76.X1.5