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COMMISSION ON NARCOTIC DRUGS

SECOND SESSION

MEASURES TO BE TAKEN WITH A VIEW TO BRINGING UNDER INTERNATIONAL CONTROL NARCOTIC DRUGS NOT COVERED BY CONVENTIONS AT PRESENT IN FORCE

Memorandum Prepared by the Secretariat
Incorporating Decisions Taken by the Commission at a Meeting Held on 25 July 1947

I. Certain synthetic drugs discovered since the conclusion of the 1931 Convention* are being used** or may be used*** for medical purposes as substitutes for certain drugs covered by this Convention.****

Although authoritative opinions have been expressed that these synthetic drugs are capable of producing addiction, there is no machinery at present for bringing them under the full international control established by the 1931 Convention. In other words, the manufacture of and trade in these synthetic drugs cannot be limited and controlled in accordance with the provisions of the 1931 Convention and the enforcement measures of Article 14 of this Convention (embargo provisions) do not apply to them. This is due to the fact that the application of Article 11 of the 1931 Convention, containing provisions for bringing new drugs under this Convention, is limited to the phenanthrene alkaloids of opium and the ecgonine alkaloids of the coca leaf.

It should be pointed out, however, that in virtue of Article 10 of the 1925 Convention, synthetic drugs can be brought under the system of national and international control instituted under that Convention. But this Convention, aiming mainly at controlling the trade in drugs to which it applies, does not directly limit their manufacture and trade. In addition, and this is another serious weakness of this system, the findings and recommendations made under

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* For the purposes of this memorandum the "1931 Convention" shall denote the Convention for Limiting the Manufacture and Regulating the Disrtibution of Narcotic Drugs of 13 July 1931 and the "1925 Convention" shall denote the Geneva Convention of 11 February 1925.

** e.g. Hydrochloride of 1-methyl-4phenyl piperidine-4 carboxylic acid ethyl ester (known in various countries under the names of dolantine, demerol, pethidine, isonipecaine, dolosal).

*** e.g. 4-Diphenyl-6-dimethyl-amino-heptanone-3 (amidone).

**** e.g. morphine.

/Article 10

Article 10 of the 1925 Convention by the international technical organs mentioned therein concerning the dangerous character of a new drug, are binding only on those parties to this Convention which agree to accept them. Thus, the application of the control system of the 1925 Convention to new drugs depends on the consent of the parties thereto.

II. Taking into account the experience gained with regard to the international control of new drugs under Articles 10 and 11 of the 1925 and 1931 Conventions respectively, the Commission, at its first session requested the Secretariat to examine the possibility of combining the advantages of the procedure under Article 10 of the 1925 Convention (wider scope of application) with those of the procedure under Article 11 of the 1931 Convention (the immediate effect and binding character of the decisions of the international technical organs).

The study of this problem by the Secretariat leads to the conclusion that in order to overcome the difficulties of bringing under full international control new drugs liable to produce addiction, it would be necessary:

1. To apply to these drugs the system of control instituted under the 1931 Convention, and
2. To make the findings of the international technical organ entrusted with the task of making a decision as to the dangerous nature of the new drugs immediately binding upon the Contracting Parties.

To achieve this aim two different methods could be followed:

1. Amendment of the existing Conventions (i.e. of Article 10 of the 1925 Convention and Article 11 of the 1931 Convention) or
2. Conclusion of a separate international instrument.

1. Amendment of Conventions

(a) Amendment of Article 10 of the 1925 Convention

The 1925 Convention does not contain provisions for its amendment.

It is known from experience that the revision of a multilateral treaty to which a great number of governments are parties*, is fraught with many difficulties and touches upon controversial problems of a legal nature.

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* Fifty-six governments are parties to the 1925 Convention.

/This is

This is particularly true in the absence of explicit provisions concerning its revision.*

The decisive question to be considered in this connection, however, is whether, by amending Article 10 of the 1925 Convention so as to make the decisions of the technical organs mentioned therein immediately binding on the parties to the amended Convention, the new drugs would be placed under full control as provided for by the 1931 Convention. This could not be achieved by amending Article 10 of the 1925 Convention. The only result of such a course would be to place new drugs under the control system of the 1925 Convention.

(b) Amendment of Article 11 of the 1931 Convention

In addition to the difficulties of a general character referred to above under 1 (a) in connection with the amendment of a multilateral treaty, the following difficulty should be mentioned concerning the amendment of the 1931 Convention:

This Convention contains, in Article 33, provisions for its amendment. Under the provisions laid down in this article:

(i) A request for revision by a Member of the United Nations or a non-Member State Party to the 1931 Convention has to be addressed to the Secretary-General of the United Nations;

(ii) The Secretary-General transmits this request to all Members of the United Nations and to all non-Member States Parties to the 1931 Convention;

(iii) If not less than one-third of the States mentioned under (ii) above endorse this request;

(iv) an international conference has to be called for the purpose of revising the Convention.

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* The dominant legal opinion has held for a long time that in the case of a multilateral treaty, unless it contains provisions to the contrary, total or partial supersession by a later agreement calls for consent of all States Parties to the original treaty. It should be pointed out, however, that the practical needs of international life have led to a partial modification of the requirement of unanimity inasmuch as Parties to a multilateral treaty may, in certain circumstances, adopt an amendment without affecting those Contracting Parties which do not consent to it provided that such an amendment is not excluded by the treaty itself and is not inconsistent with its general purposes.

It should be mentioned that in the field of international control of narcotics for one amendment to the 1931 Convention unanimity was required:

The Proces-verbal signed in Geneva on 26 June 1936 for the purpose of changing the latest date of issue of the Supervisory Body's annual statement could not be put into force without the unanimous consent of all Contracting Parties.

/Another question

Another question to be considered in this connection is whether and to what extent an amendment of Article 11 would necessitate amendment of other Articles of the 1931 Convention.

The scope of this Convention is confined to the phenanthrene alkaloids of opium and the ecgonine alkaloids of the coca leaf, as specified in Article 1, and to such products obtained from these alkaloids as may subsequently be added under the procedure set out in Article 11.

Any amendment of Article 11 enlarging the scope of the Convention so as to include all new drugs liable to produce addiction whatever their origin, would consequently affect Article 1 in its present form. In addition, all other Articles of the Convention where the term "drugs" is used as defined in Article 1 and also articles which refer to drugs in Group I or Group II would have to be carefully examined with a view to ascertaining whether and to what extent their present text might be affected by the amendment of Article 11.

It is questionable whether this difficulty could be overcome by inserting in the 1931 Convention a new article enlarging the scope of the Convention so as to cover new drugs to which it does not refer.

2. Adoption of a New International Instrument

The adoption of a new international instrument to cover new drugs which do not fall under the 1931 Convention, would have certain advantages over the procedure of amending existing Conventions provided that the new instrument:

(i) Covers new drugs liable to produce addiction which do not fall under the 1931 Convention;

(ii) Applies to those drugs the system of control instituted under the 1931 Convention (i.e. limitation and control of the manufacture of and trade in these drugs on the basis of the estimates system created under the 1931 Convention and including the enforcement measures under its Article 14);

(iii) Contains provisions concerning its coming into force analagous to those adopted in respect of the 1931 Convention (Article 30).

It is considered that the following provisions should be included in the new instrument to achieve the aims set out under (i) to (iii) above:

1. Any party to the new instrument which considers that a drug which is or may be used for medical and scientific purposes and to which the 1931 Convention does not apply, is liable to similar abuse as the drugs specified in Article 1, paragraph 2 of the 1931 Convention (i.e. that it is capable of producing addiction or convertible into a drug capable of producing addiction), shall send a notification

/to that effect

to that effect to the Secretary-General of the United Nations who shall transmit it to other parties to the new instrument and to the Commission on Narcotic Drugs.

2. The Commission on Narcotic Drugs shall decide whether this notification, with such observations as the Commission may desire to make, should be submitted to the World Health Organization.

3. In the event of the World Health Organization finding that the drug in question is liable to similar abuse as the drugs specified in Article 1, paragraph 2 of the 1931 Convention, this Organization shall decide whether this drug shall fall:

(a) Under the regime laid down in the 1931 Convention for drugs specified in Article 1, paragraph 2, Group I, of this Convention, or

(b) Under the regime laid down in this Convention for the drugs specified in Article 1, paragraph 2, Group II, of this Convention.

4. The Secretary-General of the United Nations shall notify this decision to all States Members of the United Nations and non-Member States parties to the new instrument.

5. Upon receipt of this notification the parties to the new instrument shall apply to the drug in question the appropriate regime of the 1931 Convention in accordance with the decision of the World Health Organization, referred to in paragraph 3 above.

6. The Commission on Narcotic Drugs may recommend that pending such procedure the regime applicable to drugs in Group I of Article 1, paragraph 2 of the 1931 Convention should be applied to the drug in question.

A recommendation to this effect shall be communicated without delay to the Parties to this instrument and the regime referred to above shall apply as between parties which have accepted this recommendation.

In view of the fact that the 1931 Convention does not cover Raw Opium, Medicinal Opium, Coca Leaf, Indian Hemp and Prepared Opium, it may be necessary to insert in the new instrument a clause stipulating that

7. The provisions of this instrument shall not apply to Raw Opium, Medicinal Opium, Coca Leaf or Indian Hemp as defined in Article 1 of the 1925 Convention or Prepared Opium as defined in Chapter II of the 1912 Convention.

/8. Any findings

8. Any findings and decisions referred to in paragraph 3 above may be revised in the light of further experience in accordance with the procedure outlined in paragraphs 1 to 5 above.

9. The new instrument shall come into force sixty days after the Secretary-General of the United Nations has received the ratifications or accessions of twenty-five States including any five of the following: China, Czechoslovakia, France, Netherlands, Poland, Switzerland, Turkey, United Kingdom, United States of America, Union of Soviet Socialist Republics, Yugoslavia.

Dihydrocodeine (Paracodine)

Should a new instrument be adopted containing provisions outlined in paragraphs 1 and 3 above, i.e., should the new instrument (i) apply to any "narcotic drug which is or may be used for medical and scientific needs and to which the 1931 Convention does not apply" and (ii) stipulate that a narcotic drug brought under the new instrument may fall under the regime laid down in the 1931 Convention for Drugs specified in Group I or in Group II (Article 1, paragraph 2) of this Convention, a separate Protocol for dihydrocodeine (Paracodine) would not be necessary.

In the event of the new instrument not containing the provisions mentione above, the necessity for a separate Protocol could be obviated by the inclusio in the new instrument of a separate clause placing dihydrocodeine under the regime laid down in the 1931 Convention for drugs specified in Group II (Article 1, paragraph 2) of this Convention.
