

Geneva, June 5th, 1936.

LEAGUE OF NATIONS

TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS

**CONFERENCE CALLED TO CONCLUDE A CONVENTION
FOR THE SUPPRESSION OF THE ILLICIT TRAFFIC
IN DANGEROUS DRUGS**

Article 1, Paragraph 2 (b), of the Draft Convention

**REPLIES BY GOVERNMENTS TO THE SECRETARY-GENERAL'S
LETTER OF JANUARY 31ST, 1936 (C.L.18.1936.XI).**

NOTE BY THE SECRETARY-GENERAL.

With reference to document Conf.S.T.D.3, the Secretary-General has the honour to communicate herewith, for the information of the Conference, observations made on Article 1, paragraph 2 (b), of the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs by Governments whose replies to the Circular Letter of January 31st, 1936 (C.L.18.1936.XI), were received after May 8th, 1936.

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FURTHER LIST OF GOVERNMENTS WHICH HAVE FORWARDED OBSERVATIONS
ON ARTICLE 1, PARAGRAPH 2 (b), OF THE DRAFT CONVENTION.

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| 1. Bulgaria. | 3. Hungary. | 5. Poland. | 7. Czechoslovakia. |
| 2. Egypt. | 4. India. | 6. Sudan. | 8. Turkey. |

In addition to these countries, the Governments of Australia (May 16th, 1936) and Iceland (May 29th, 1936) state that they have no observations to offer with regard to the new clause.

FURTHER OBSERVATIONS MADE BY GOVERNMENTS ON ARTICLE 1, PARAGRAPH 2 (b),
OF THE DRAFT CONVENTION.

1. **Bulgaria**

(May 27th, 1936).

The Permanent Delegation of Bulgaria has the honour to inform the Secretary-General . . . that the competent Royal Department has just communicated to the Delegation its opinion on the said clause. The Department reads Article 1, paragraph 2 (b), of the draft Convention together with Article 12 of the same Convention, and interprets it in the sense that the contracting parties, by undertaking to introduce provisions of a penal character for imposing imprisonment on any person producing narcotic drugs, are to apply these measures only to such offences as in their opinion should, by reason of the seriousness of the offence, be punishable with imprisonment or other form of deprivation of liberty, consistently with the fundamental rules of the country's domestic laws. However, for offences of a minor character, the opinion of the Royal Department is that the signatory States preserve their liberty, in conformity with the definition adopted for the offences concerned, of laying down lighter penalties, which, in particular, would exclude deprivation of liberty.

If this is the interpretation of the clause in Article 1, paragraph 2 (b), of the draft Convention, the competent Royal Department would have no objection to raise. However, if it should be that the said clause is to be interpreted in the sense that all offences, without

exception, committed by reason of cultivating, gathering and producing narcotic drugs shall invariably be punished with deprivation of liberty, the Royal Department would find itself unable to accept the clause.

2. Egypt

(May 21st, 1936).

The Egyptian Government has no observations to present on this subject. It sees no objection to the possibility of including the question of illicit cultivation, gathering and production in the subject-matter of the Conference on June 8th.

3. Hungary

(May 26th, 1936).

The Hungarian Government has no observation to make as regards Article 1, paragraph 2 (*b*), of the revised text of the draft Convention, as that text refers to the internal laws of individual States ; consequently, it depends entirely on those laws whether and within what limits the cultivation, gathering and production of narcotic substances are allowed. Since the rules in each State as to criminal offences are co-extensive with the prohibitions laid down by its laws, there is no question in the Convention of an obligatory measure as to penal law which is to be valid independently of the laws of participating States.

4. India

(May 7th, 1936).

I am directed by the Secretary of State for India to state that he regrets his inability, within the time prescribed, to furnish his considered views on the paragraph in question. He endorses, however, the objections which were taken by the British and Indian members of the Committee of Experts which met in December 1935 to the attempted insertion in the draft Convention of this paragraph, which deals with a subject that falls outside the scope of the original draft Convention ; and he considers that the force of this objection is well illustrated by the difficulty which the Government of India have found in dealing with the matter at short notice.

2. It is to be supposed that the inclusion of the words " in contravention of national law " is not intended to leave it open to a party to the Convention to abstain from imposing by its national law any restriction on the processes referred to in the paragraph, since that would make the paragraph practically meaningless ; but if it is to be understood that acceptance of the paragraph will, if only by implication, bind the participating country to introduce such control into its national law, it will mean the acceptance of restrictions which (except in the case of opium) have not been imposed by any international Convention. This is true even of coca-leaf (see Article 2 of the Geneva Convention of 1925), though the point is not of practical importance in India, where the tree does not grow wild and where cultivation has been voluntarily subjected to an absolute prohibition (with an academic exception in favour of cultivation by the Government). What is more important is the fact that the Convention of 1925 (Article 11) leaves the details of internal control of Indian hemp entirely to the country in which it grows or is produced ; and the Government of India could not accept any new obligation in respect of this plant, even in respect of British India, without consulting the local Governments, both because the subject is constitutionally the concern of those Governments and because it is necessary to take into account the practical considerations that arise out of the fact that the plant grows wild in many parts of India. If this is true of British India, it is even more important that the Government of India should have ample time to consider what reservations, if any, would have to be made in respect of the Indian States.

3. The need for caution is reinforced by a consideration of the fact that the proposed paragraph is not in terms restricted to the opium poppy, coca-leaf and Indian hemp, but also covers other raw materials of " narcotic drugs " — a term so defined that it would apparently cover even the articles mentioned in items (*d*) and (*g*) of Article 4 of the Convention of 1925. This is merely mentioned as one illustration of the dangers of dealing with the proposal hastily.

4. On receipt of your C.L.9.1936.XI, of January 13th, 1936, the Government of India took steps to consult the local Governments regarding the revised draft Convention ; but there has not been sufficient time for them to formulate and submit their views. Should enough material have been received in time, an attempt will be made to supply the representative of India with further material before the meeting of the Conference on June 8th.

5. The Secretary of State would like to make it clear that the difficulties which the Government of India feel with regard to the paragraph in question relate rather to procedure than to substance and do not prevent them from sympathising with the general objects underlying the proposal. He would further point out that its adoption would be entirely consistent with the present legal position in British India as regards the opium poppy and coca-leaf, which are dealt with by the Dangerous Drugs Act, and almost, if not entirely so, as regards Indian hemp, which is dealt with in the Excise or Abkari Acts of the various provinces.

The following additional observations were received from India in a communication dated May 30th, 1936 :

I am to inform you that the Government of India have now received replies from all but one of the local Governments and Administrations and have also considered the position of the Indian States, though they have been unable to consult them. The statement of the Government of India's difficulties which was contained in paragraphs 2 and 3 of this Office letter under reference (May 7th, 1936) receives support from the observations made by several of the local Governments ; in particular, it has now been ascertained that in one province, at least, where hemp grows wild, the local Excise Law — *i.e.*, the " national law " — permits a licensee to collect it without restriction, though, of course, subsequent possession, transport and sale are controlled. A new point has also been brought out — namely, that the preparation of " prepared opium ", from opium lawfully possessed, for the possessor's own consumption would fall within the meaning of the phrase " production with a view to obtaining narcotic drugs " ; such preparation is allowed by Section 4 of the Dangerous Drugs Act, 1930.

It is therefore still considered that it is most important to have it made clear whether or not acceptance of the sub-paragraph in question would imply the undertaking of an obligation to amend the " national law ", if necessary, so as to bring all processes covered by the sub-paragraph, without exception, under restrictive control. If not, there is, as has already been said, no reason why the sub-paragraph should not be accepted on behalf of British India, where the law does in fact impose such restrictive control on all operations of substantial importance and provides for the punishment of offences by imprisonment. If, however, there is any implied obligation of the nature mentioned, it will be necessary for India to reserve the power to make reasonable exceptions in favour of (1) the gathering of Indian hemp, which grows wild in India ; (2) the cultivation, gathering and production of things from which narcotic drugs can be obtained *other* than the opium poppy, the coca-leaf plant and the Indian-hemp plant ; and (3) the production of " prepared opium " within the conditions in which it is permitted by Section 4 of the Dangerous Drugs Act, 1930.

5. Poland

(May 19th, 1936).

In view of the fact that Poland is a country which does not cultivate opium and does not produce opium for smoking, its agreement to the clause presented at the Council session of January 20th, 1936, for the inclusion in the Convention of the question of illicit cultivation, gathering and production would only be possible subject to the reservation that it should be stipulated in express terms that the said provision is based on the resolutions in the Hague Convention.

6. Sudan

(May 17th, 1936).

The question of illicit cultivation, gathering and production of narcotic drugs, in contravention of the national law, appears to the Sudan Government to be a proper subject for discussion at the forthcoming Conference on illicit traffic.

The Civil Secretary is to add that the Sudan Government would be willing to comply with an article obliging the contracting parties to any Convention which may be agreed upon at the Conference to make the necessary legislative provisions for severely punishing illicit cultivation and the like.

7. Czechoslovakia

(May 26th, 1936).

The Czechoslovak Government has no objections to the provision in Article 1, paragraph 2 (*b*), of the draft Convention for the Suppression of the Illicit Traffic in Dangerous Drugs.

The Czechoslovak Government considers, however, that this new provision might possibly be put in the form of a simple recommendation, if the direct regulation of the question in the Convention were to delay the conclusion of the Convention or its coming into force. If necessary, it might also be desirable to take into account the possibility of giving some consideration to those contracting States which, for various reasons, would not feel it desirable to assume such obligations under the Convention.

8. Turkey

(May 14th, 1936).

Laws Nos. 2253 and 2313 already contain the necessary provisions for punishing any cultivation in contravention of national law with a view to obtaining narcotic drugs.

The clause added by the Committee of Experts alters the subject-matter and scope of the draft Convention and, further, as none of the countries producing raw materials were represented in the said Committee, the question cannot properly be discussed at the forthcoming Conference for the Suppression of Illicit Traffic. The question of cultivation, gathering and production could be made the subject of another Conference.