
COMMISSION ON NARCOTIC DRUGS

THIRD SESSION

DRAFT PROTOCOL TO BRING UNDER INTERNATIONAL CONTROL
CERTAIN DRUGS NOT COVERED BY THE 1931 CONVENTION
(Item 17 of the Provisional Agenda)

Note by the Assistant Secretary-General in charge of
the Department of Social Affairs

The Assistant Secretary-General of the Department of Social Affairs has the honour to communicate to the members of the Commission on Narcotic Drugs the observations made by Governments on the draft Protocol mentioned above. These observations are preceded by an explanatory note by the Secretariat.

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CONVENTION

I. Explanatory Note by the Secretariat

1. At its second session, held at Lake Success (24 July to 8 August 1947), the Commission on Narcotic Drugs considered the problem which has arisen in connection with the International campaign against the abuse of narcotic drugs as a result of the appearance of new drugs which are capable of producing addiction, but do not come under the provisions of the 1931 Convention. Having examined the memorandum prepared by the Secretariat on that subject (documents E/CN.7/80; E/CN.7/80/Rev.1 and E/CN.7/80/Rev.2) and having heard the views of the experts on the effects of the new drugs, in particular amideone (document E/CN.7/W.21), and in view of the necessity for taking steps to limit the manufacture and regulate the distribution of these drugs (documents E/575 and E/CN.7/106), the Commission unanimously and after thorough discussion adopted a resolution recommending the Economic and Social Council to instruct the Secretariat to prepare a draft Protocol in accordance with the Memorandum E/CN.7/80/Rev.2 and to circulate the draft to all the Governments concerned for their early observations (document E/CN.7/94). In a letter of 6 August 1947 (document E/529) the Chairman of the Commission on Narcotic Drugs submitted the above resolution and memorandum to the Secretary-General of the United Nations. In his note communicating the Chairman's letter to the Economic and Social Council the Secretary-General pointed out that the new Protocol would invest the World Health Organization with an important role, and the draft instrument should therefore be sent also to the Interim Commission of the World Health Organization so that it could furnish its comments.

2. At its fifth session (19 July - 16 August 1947) the Economic and Social Council approved the recommendation made by the Commission on Narcotic Drugs (document E/CN.7/94), and adopted the following resolution:*

"The Economic and Social Council,

"Having noted the opinion of the Commission on Narcotic Drugs, expressed in a resolution adopted during its second session on 1 August 1947, that it is urgent to take steps to limit the manufacture and regulate the distribution of new synthetic drugs

* Resolution No. 86 (V) of 13 August 1947, document E/573.

capable of producing addiction, which cannot at present be brought under effective international control, and that this can best be effected by a new protocol,

"Instructs the Secretary-General to prepare a draft protocol in accordance with the memorandum E/CN.7/80/Rev.2, approved by the Commission on Narcotic Drugs, and to circulate the draft to all Governments concerned, and to the Interim Commission of the World Health Organization, for their early observations, these observations to be considered by the Commission at its next session and submitted to the seventh session of the Council, with a view to the said protocol being brought into force at the earliest possible moment."

In compliance with this resolution the Secretariat drew up the draft Protocol in question. The Protocol was submitted in a circular letter of 16 December 1947 to Members of the United Nations and in a circular letter of 9 January 1948 to the following non-Member States: Albania, Austria, Bulgaria, Hungary, Italy, Ireland, Monaco, Portugal, Roumania, the Republic of San Marino and Switzerland (document CN.33.1947.NARCOTICS). The draft Protocol was also communicated to the Interim Commission of the World Health Organization, to the Allied High Command in Japan and to the President of the Control Council for Germany (CN.33.1947 - 9 January 1948).

In his letter the Secretary-General of the United Nations asked the Governments and authorities, to whom the letter was addressed, to submit their observations on the draft Protocol by 15 March at the latest.

3. During the second General Assembly (16 September - 29 November 1947), at the fifty-fourth meeting of the Third Committee, the representative of Chile drew the Committee's attention to the need for ensuring international control of synthetic drugs (document A/C.3/SR.54). At the fifty-fifth meeting of the same Committee the representative of China also drew the Committee's attention to the problem of synthetic drugs. The problem was, he said, urgent and he stressed the need for limiting and strictly controlling their manufacture and use (document A/C.3/SR.55). At the sixty-second meeting of the same Committee the representative of France pointed to the new danger created by synthetic drugs and asked that the draft Protocol dealing with this question should be given priority. The representative of the United Kingdom supported the representative of France (document A/C.3/SR.62).

4. To date the Secretary-General has received replies from the following Governments:

/(i) Governments

- (i) Governments which have merely acknowledged receipt:
Argentina (29 December 1947)*, Australia (12 January 1948),
Bolivia (27 January 1948), Ecuador (5 January 1948), Guatemala
(8 January 1948) New Zealand (13 January 1948) Nicaragua
(30 January 1948), Uruguay (19 January 1948), Venezuela
(19 January 1948).
- (ii) Governments which have informed the Secretariat that they
have no observations to make on the draft Protocol:
Belgium (19 March 1948), Canada (9 March), China (23 March),
Czechoslovakia (10 March), Dominican Republic (11 March),
Finland (27 February), France (19 February), Germany (French
Zone) (24 February), Greece (23 February), Honduras (31 January),
Iraq (23 February), Mexico (9 April), Norway (19 February),
Siam (18 March), Syria (15 March), Turkey (5 March), Union
of South Africa (9 April).
- (iii) Governments whose replies contain observations on the draft
Protocol: Colombia (17 February), Netherlands (24 March),
Philippines (18 February), United Kingdom (22 March), United
States of America (19 March), Sweden (31 March), Switzerland
(5 March).
- (iv) To date 24 replies have been received. Under Article 6 of the
draft Protocol the Protocol will enter into force following
the receipt of accessions from 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
and Yugoslavia.

II. Observations from Governments

In order to simplify the examination of observations on the draft
Protocol submitted by Governments, the Articles of the Protocol are
reproduced below, each Article being followed by the observations on it:
made by Governments.

* The date between brackets is the date of the reply.

** The countries marked with an asterisk have replied. See above.

Draft Protocol to bring under international
Control Drugs not covered by the 1931 Convention

Preamble

.....
CONSIDERING that the progress of modern chemistry has resulted in the discovery of drugs, particularly synthetic drugs, capable of producing addiction, but not covered by the Convention of 13 July 1931 for limiting the manufacture and regulating the distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success on 11 December 1946,

DESIRING to supplement the provisions of this same Convention and to place these drugs under control in order to limit by international agreement their manufacture to the world's legitimate requirements for medical and scientific purposes and to regulate their distribution,

HAVE RESOLVED to conclude a Protocol for that purpose

.....
No observations.

Chapter I, Control

Article 1.

1. Any State Party to the present Protocol which considers that a drug which is or may be used for medical or scientific purposes and to which the Convention of 13 July 1931 does not apply, is liable to similar abuse and productive of similar harmful effects as the drugs specified in Article 1, paragraph 2, of the said Convention, shall send a notification to that effect to the Secretary-General of the United Nations who shall transmit it immediately to the other States Parties to this Protocol, to the Commission on Narcotic Drugs and to the World Health Organization.

2. If the World Health Organization finds that the drug in question is capable of producing addiction or of conversion into a product capable of producing addiction, this Organization shall decide whether the 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.

3. Any decision or finding in accordance with the preceding paragraph shall be notified without delay to the Secretary-General of the United Nations who shall transmit it immediately to all States Members of the United Nations, to non-Member States Parties to this Protocol and to the Commission on Narcotic Drugs.

/4. Upon

4. Upon receipt of the communication from the Secretary-General of the United Nations notifying a decision under paragraph 2 (a) or (b) above the States Parties to this Protocol shall apply to the drug in question the appropriate regime laid down by the 1931 Convention.

Colombia

(Extract from the letter from the Ministry of Foreign Affairs,
dated 17 February 1948)

".....to draw the attention of the Commission on Narcotic Drugs to the following suggestions:

"FIRST - An article couched more or less in the following terms might be added to the Protocol: Medicinal products considered as narcotics by the Commission, and not subjected by the governments of manufacturing countries to the restrictions established by the conventions on narcotic drugs, shall not be imported into countries signatories to the Protocol.

"SECOND - It would be desirable if the Protocol made provision for the periodic publication of a list of drugs, preparations and patent medicines subject to restrictions on the grounds that they are regarded as capable of producing addiction."

Republic of the Philippines

(Extract from the letter from the Ministry of Foreign Affairs
dated 18 February 1948)

"With respect to Article 1, paragraph 1, of the Draft Protocol, it is suggested that the notification by any State Party to the Secretary-General of the addiction liability of a drug to which the Convention of 13 July 1931 does not apply, shall include the exact chemistry, degree of its addiction liability and other pertinent data which can be of utility in the effective control of the new drug. In bringing the new synthetic drugs under international control, it is felt that traffic in these drugs will be limited to the legitimate trade and thereby an effective control preventing their abuse secured."

Sweden

(Extract from the letter from the Ministry of Foreign Affairs
dated 31 March 1948)

"With regard to Article 1 of the draft the Swedish Government do not object to the procedure suggested in said article, provided, however, that the number of products subject to the regime laid down in article 2 (a) and (b) shall be kept within as narrow limits as possible. Furthermore, when agreeing to said procedure, the Swedish Government presume that a sufficient length of time will be granted for making /the necessary

the necessary changes in Swedish law. Such changes require an amount of legislative and administrative work evidently far exceeding the practical advantages, which Sweden, a country where the abuse of drugs for natural reasons is very small, can derive from such legislation. In this connection the Swedish Government wish to emphasize the risk of legislating too much in detail thereby making the control too complex and the observance of the law less efficient."

United Kingdom

(Extract from the Memorandum presented by the United Kingdom Delegation to the United Nations, 13 March 1948)

"1. In the opinion of H.M. Government in the United Kingdom when one State party to the Protocol notifies a drug under paragraph 1 of Article 1 there ought to be at that stage an opportunity for other States parties who may have knowledge or experience of the drug in question, to make such knowledge or experience available to the authority which is to consider the matter under paragraph 2. H.M. Government therefore suggests the addition of the following sentence to paragraph 1:

'Any State party to the present Protocol may on receipt of such notification communicate any material information in its possession regarding the drug to the Secretary-General of the United Nations, who shall transmit it to the Commission on Narcotic Drugs and to the World Health Organization.'

"2. Since the essence of effective control is speed as soon as a new drug comes to the fore, H.M. Government consider that it would be preferable to substitute the Commission on Narcotic Drugs for the World Health Organization as the authority to make the necessary decisions under paragraph 2 of Article 1. The matter is a highly technical one and if the Organization is to consider it seriously there will be a delay until the Executive Board or the World Health Assembly meets. If this view is accepted Article 2 can be deleted, which would considerably simplify the procedure contemplated."

United States

(Extract from the Note from the United States Mission to the United Nations, 19 March 1948)

"As an alternative to the procedure established by Article 2 for provisional application of the 1931 Convention to a potentially dangerous new drug, it is suggested that consideration might be given to a temporary but general limitation of the manufacture and distribution of the new drug, pending the definitive decision of the World Health Organization as to the status of such new drug. Thus, a sentence could be added to the first paragraph of Article 1, that:

/ 'Pending

'Pending a finding by the World Health Organization as hereinafter described, no State Party shall authorize or permit the production or distribution of the new drug except in such limited quantities as are necessary for study, by competent clinicians, of the pharmacologic effects of the drug.'

"The purpose of this alternative procedure would be, of course, to prohibit production and distribution of a potentially dangerous new drug for general medical purposes, until the World Health Organization made its finding as to addiction liability of the drug. Production and distribution of quantities necessary for scientific clinical study during the interim period would be permitted. The fact that a State Party had sent a notification with respect to a new drug to the Secretary-General would appear to give rise to a presumption that the new drug was at least potentially dangerous, and there would be justification for the immediate application of a temporary plan which limited the quantities available to those for scientific clinical study only, until the definitive finding as to addiction liability could be made by the World Health Organization. This plan would also facilitate the application, by each State Party, of an appropriate permanent system of limiting production and distribution to quantities necessary for medical and scientific purposes, should the World Health Organization make an affirmative finding, because the permanent system would be applied before large quantities of the new drug would have been produced in anticipation of distribution for medical purposes.

"Paragraphs 2 and 3 of Article 1 do not specifically provide for communication to the States Parties of a possible negative finding with respect to the new drug by the World Health Organization. It is suggested, therefore, that paragraph 3 of Article 1 might be redrafted as follows:

'Any decision or finding in accordance with the preceding paragraph (including, if such be the case, any negative finding) shall be notified without delay to the Secretary-General of the United Nations who shall transmit it immediately to all States Parties to this Protocol and to the Commission on Narcotic Drugs.'

Article 2

The Commission on Narcotic Drugs, upon receipt of the notification from the Secretary-General of the United Nations in accordance with paragraph 1 of the Article 1 of this Protocol, shall consider as soon as possible whether the measures applicable to drugs in Group I, paragraph 2 of Article 1 of the 1931 Convention should provisionally apply to the drug in question, pending receipt of the findings of the World Health Organization on the said drug.

If the Commission on Narcotic Drugs decides that such measures should provisionally apply, the recommendation of the Commission on Narcotic Drugs shall be communicated without delay by the Secretary-General of the United Nations to the States Parties to this Protocol and the said measures shall apply provisionally as between States Parties which have accepted this recommendation.

Colombia

(Extract from the letter mentioned above)

The Colombian Government states that:

"Article 2 of Chapter 1, which authorizes the Commission to decide provisionally whether the measures applicable under Article 1, paragraph 2 of the 1931 Convention, are to be applied to any drug pending receipt of the findings of the WHO, is particularly effective."

Sweden

(Extract from the letter mentioned above)

"The Swedish Government do not raise any objections either against the procedure provided for in Article 2. They note with satisfaction that the decisions of the Commission on Narcotic Drugs as suggested in said Article are merely meant to be recommendations, thus leaving to the individual countries the possibility to act as circumstances require."

United Kingdom

(Extract from the above-mentioned Memorandum)

"3. If Article 2 is retained, it is suggested that the words 'the recommendation of to this Protocol' in paragraph 2 of Article 2 should be deleted and replaced by 'it shall communicate a recommendation to that effect without delay to the Secretary-General of the United Nations who shall transmit it immediately to the States parties to this Protocol'.

"4. It is not clear what is meant by the words at the end of Article 2 'the said measures shall apply provisionally as between States parties which have accepted this recommendation'. If this means that States can exercise their own discretion as to whether or not apply the measures, the words would seem to be superfluous and could be omitted. If, however,

/they

they mean that States which have voted in favour of the recommendation in the Commission shall be bound to apply the measures provisionally or have any other such meaning then the clause should be amended with a view to greater clarity."

United States

(Extract from the Note mentioned above)

"With reference to the second paragraph of Article 2 of the draft Protocol, the Government of the United States urges that means should be provided for recognition of mutuality of obligation to apply provisionally the measures of the 1931 Convention to a new drug, as between those States Parties which have accepted the recommendation of the Commission on Narcotic Drugs. For this purpose, a third paragraph is recommended to be added to Article 2, as follows:

"Each State Party which has accepted the recommendation of the Commission on Narcotic Drugs shall without delay communicate the fact of its acceptance to the Secretary-General of the United Nations, who shall immediately notify all other States Parties accordingly."

Article 3

Any findings, decisions and recommendations taken under Article 1 or Article 2 of this Protocol may be revised in the light of further experience in accordance with the procedure provided in this Chapter.

No observations.

Chapter II. General Provisions

Article 4

The present Protocol does not apply to Raw Opium, Medical Opium, Coca Leaf or Indian Hemp as defined in Article 1 of the Convention signed at Geneva on 19 February 1925, or Prepared Opium as defined in Chapter II of the International Opium Convention signed at The Hague, 23 January 1912.

United Kingdom

(Extract from the Memorandum mentioned above)

"5. In Article 4, the words "medicinal opium" should be substituted for "medical opium"."

Article 5

1. The present Protocol of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be open until . . . 1948 for signature on behalf of any Member of the United Nations and of any non-Member State to which an invitation has been addressed by the Economic and Social Council.

The present Protocol shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

2. After . . . 1948 the present Protocol may be acceded to on behalf of any Member of the United Nations and of any non Member State that has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Netherlands

(Extract from the letter from the Netherlands Delegation to the United Nations, dated 24 March 1948)

"..... the Netherlands Government deems it desirable to supplement paragraphs 1 and 2 of Article 5 of the "Draft Protocol to bring under international control Drugs not covered by the 1931 Convention", annexed to your letter, to the effect that accession to the Protocol be restricted to those States which are parties to the 1931 Convention for limiting the manufacture and regulating the distribution of narcotic drugs. With this proviso the Netherlands Government would have no objection against acceptance of the Draft Protocol."

Switzerland

(Extract from a Note from the Federal Political Department, dated 23 February 1948)

"The Swiss Government, aware of the necessity of taking steps to limit the manufacture and regulate the distribution of new synthetic drugs capable of inducing the drug habit, fully approves of putting the drugs in question under international control. Switzerland's accession to the above-mentioned protocol cannot, however, be contemplated for the time being. While special regulations at the cantonal level have been drawn up regarding synthetic preparations similar to narcotics and liable to cause addiction, the Federal Law on Narcotics of 2 October 1924, at present under revision, only covers opium, coca leaf and natural alkaloids derived therefrom. In order to remedy this deficiency, it is proposed to include in the new law provisions for the legal control of synthetic drugs. Consequently, until this law comes into force, Switzerland will not be able to make a decision as to her accession to the protocol supplementing the 1931 Convention."

Article 6

1. The present Protocol shall come into force on the sixtieth day following the receipt by the Secretary-General of the United Nations of 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.

/2. Each

2. Each ratification of accession received after the Protocol has come into force shall become effective as from the sixtieth day following the date of receipt by the Secretary-General of the United Nations.

United Kingdom

(Extract from the Memorandum mentioned above)

"6. In Article 6 as at present drafted it is not clear when ratifications or accessions received after the deposit of the 25th ratification or accession but before the Protocol comes into force, take effect. To put this right it is suggested that the second paragraph of the Article should be amended to read as follows:

(2) "Each ratification or accession received after the deposit of the ratifications and accessions necessary to bring the Protocol into force shall become effective as from the sixtieth day following the date of receipt by the Secretary-General of the United Nations."

8. Although from the preamble it would appear that the intention is that the Protocol shall be supplementary to the Convention of 1931, it is nevertheless drafted as an independent instrument, and it is therefore desirable that the Protocol should contain an article defining its colonial application and a termination clause as does the Convention.

As regards the colonial application Article the matter with which the Protocol is concerned is within the self-governing powers of colonial governments and consequently these governments have to be consulted before being committed to new obligations. It may take a considerable time to obtain the necessary consent of all the colonial governments concerned, and if the United Kingdom Government could not ratify the Protocol until the consent of all of them had been received its ratification might be held up. To enable the United Kingdom Government to accept the Protocol on behalf of the United Kingdom and its overseas territories at the very earliest possible moment a clause enabling the United Kingdom to accede separately on behalf of those territories immediately this consent has been obtained is necessary. The following text is suggested:

"Article

(1) "Any state may at the time of signature or the deposit of its instrument of ratification or accession, declare that its acceptance of the present Protocol does not apply to all or any of the territories or groups of territories for the foreign relations of which such State is responsible.

(2) With the exception of territories in respect of which a declaration has been made in accordance with paragraph (1) of this

/Article,

Article, the present Protocol shall apply to all territories for the foreign relations of which a State party to the Protocol is responsible.

(3) Any State may accede to the present Protocol separately on behalf of all or any of the territories regarding which it has made a declaration in accordance with paragraph (1) of this Article.

(4) Any State may denounce the present Protocol, in accordance with the procedure specified in Article, separately for all or any of the territories or groups of territories for the foreign relations of which such State is responsible."

9. As regards termination, it is suggested that a new article should be inserted after Article 6 of the draft as follows:

Article

"After the expiration of years from the date of the coming into force of the present Protocol, the Protocol may be denounced by an instrument in writing, deposited with the Secretary-General of the United Nations. The denunciation, if received by the Secretary-General on or before the first day of July in any year, shall take effect on the first day of January in the succeeding year, and, if received after the first day of July, shall take effect as if it had been received on or before the first day of July in the succeeding year."

This follows the form of the corresponding Article in the 1931 Convention."

Article 7

The Secretary-General of the United Nations shall notify all Members of the United Nations and non-Member States referred to in Article 6 of all signatures, ratifications and accessions received in accordance with Articles 5 and 6.

United Kingdom

(Extract from the Memorandum mentioned above)

"7. The references in Article 7 to other Articles do not appear to be correct. In line 3 "Article 6" should read "Articles 5 and 6". In line 4 "Articles 5 and 6" should read "Article 5"."

Article 8

In accordance with Article 102 of the Charter of the United Nations the present Protocol shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

No observations.

/IN FAITH WHEREOF

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

Done at this day of
one thousand nine hundred and forty eight, in a single copy, which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all the Members of the United Nations and to the non-Member States referred to in Articles 5 and 6.

No observations.
