

COMMISSION ON NARCOTIC DRUGS

THIRD SESSION

RENEWAL OF THE MEMBERSHIP OF THE COMMISSION - MEASURES
TO BE TAKEN TO ENSURE THE CONTINUITY OF ITS FUNCTIONS

(Item 4 of the Agenda)

The Assistant Secretary-General in charge of the Department of Social Affairs has the honour to communicate to the members of the Commission on Narcotic Drugs the following memorandum which has been prepared by the Narcotics Division in consultation with the Legal Department of the Secretariat.

1. On 16 February 1946 the Economic and Social Council adopted a resolution setting up the Commission on Narcotic Drugs. Paragraph 4 of that resolution reads as follows:

"The Commission shall be composed of fifteen members of the United Nations, which are important producing or manufacturing countries or countries in which illicit traffic in narcotic drugs constitutes a serious social problem. The term of office of members is three years. They are eligible for re-appointment."

On 18 February 1946 the Economic and Social Council adopted paragraph 6 of the same resolution, which reads as follows:

"The Council requests the following Governments to designate one representative each to constitute the Commission:

Canada	Peru
China	Poland
Egypt	Turkey
France	United Kingdom
India	United States of America
Iran	Union of Soviet Socialist Republics
Mexico	Yugoslavia."
Netherlands	

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2. Again, Rule 10 of the Rules of Procedure of functional Commissions of the Economic and Social Council states:

"Unless otherwise decided by the Council, the term of office of members of the Commission as determined in accordance with the decision made by the Economic and Social Council at the time of establishment of the Commission, shall begin on 1 January following their election, and shall end on 31 December following the election of their successors."

3. The Legal Department observes that Rule 10 of the Rules of Procedure of the functional Commissions of the Economic and Social Council was not adopted until the Council's fifth session, which met from 19 July to 15 August 1947, that is, after the resolution by virtue of which the Council, on 18 February 1946, appointed the members of the Narcotics Commission. Consequently, it is the view of the Legal Department that this rule cannot in any way alter the date on which the terms of office of the members of that Commission began nor affect the nature of its first session, which met during the last two months of 1946.

The Legal Department also points out that:

(a) Rule 10 of the Rules of Procedure was based on the wording of Rule 87 of the Rules of Procedure of the General Assembly, concerning the terms of office of members of Councils.

(b) In adopting this rule on 9 November 1946 it was not the intention of the General Assembly to fix retroactively the date of the commencement of the terms of office of members of Councils elected before that date but merely to "lay down a general rule, in simple terms, which will govern all future cases" (cf. document A/182).

(c) As regards the terms of office of members of Councils elected before 9 November 1946, the General Assembly deemed it necessary also to specify the date of expiry in a Supplementary Rule J of its Rules of Procedure, which provided that members of Councils elected during the first part of the First Session of the General Assembly should hold office until 31 December 1946, 1947 and 1948 respectively. Some action was necessary to adapt the former situation to the new procedure, since the first terms of office had not begun on 1 January 1946, and their duration, if strictly adhered to, will not have coincided with the date, 31 December, adopted as a general rule in the Rules of Procedure.

4. The Legal Department therefore considers that by analogy with paragraph 3, sub-paragraph (c) above, it will be for the Economic and Social Council to specify the date of expiry of the terms of office of members of commissions elected before August 1947, and, in particular, of members of the Narcotics Commission.

It may do so either expressly, by adopting a resolution drafted on the basis of Supplementary Rule J of the Rules of Procedure of the General Assembly, or implicitly, by proceeding with elections for the renewal of the membership of the Commission.

5. In the particular case of the Narcotics Commission, the Legal Department considers that the Council should decide whether these elections should be held in 1948 or 1949.

In neither case can the Commission's term of office correspond exactly to the three-year period prescribed, but it is clear that the Council, which itself specified the term of office by its resolution of 13 February 1946, has full power to limit or prolong that term of office to bring it into line with Rule 10 of the Rules of Procedure of its Commissions.

6. The international conventions on narcotic drugs give certain specific tasks to the Commission on Narcotic Drugs. Further responsibilities may be placed on that Commission if the draft Protocol which is to bring under international control certain drugs not covered by the Conventions now in force is adopted and signed by Governments. Since the Commission on Narcotic Drugs meets only in principle once a year it is considered very important that, in the interval between sessions of the Commission, the Narcotics Division of the Secretariat should maintain close contact with the officers of the Commission in order to obtain their views on matters concerning the application of the Conventions on narcotic drugs.

It would seem equally important that the officers of the Commission elected at the session preceding the end of the Commission's first term of office should continue to function in the period which will intervene between the expiry of the terms of office of the members elected by the Council on 13 February 1946 and the first meeting of the newly elected Commission.

7. With regard to the problems raised in paragraph 6 of the present memorandum the Legal Department believes that the difficulties mentioned in that paragraph could be overcome if the Commission were scheduled to meet at a date as close as possible to the date of expiry of the terms of office of the members elected on 13 February 1946. If the Commission

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could not meet in January, the Council would still be free, under Rule 10 of the Rules of Procedure which gives it discretionary powers in that respect, to fix the dates of expiry and commencement of the terms of office of members of the Narcotics Commission so as to make them coincide more exactly with the time of the Commission's annual session.

The Legal Department also points out that under Rule 15 of the Rules of Procedure officers of Commissions hold office until their successors are elected. While it is clear that an officer's term of office expires as soon as he ceases to be a member of the Commission, Rule 15 of the Rules of Procedure might be interpreted as authorizing officers re-elected by the Council as members of the Commission to remain in office until the Commission had elected their successors.

8. Finally, the Legal Department considers that the questions raised in the present memorandum would in any case have to be submitted to the Economic and Social Council with whom the final decisions would rest.
