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COMMISSION ON NARCOTIC DRUGS

Twenty-second session  
Item 7 of the agenda

CONTROL OF PSYCHOTROPIC SUBSTANCES

Report of the Working Group

The above-mentioned Report is herewith attached.

GE.68-1278

CONTROL OF PSYCHOTROPIC SUBSTANCESReport by the Working Group

1. The Commission invited a Working Group, under the chairmanship of the representative of France, Dr. J. Mabileau, and composed of the representatives of Canada, France, Ghana, India, Japan, Mexico, United Kingdom, United States of America and Union of Soviet Socialist Republics, to review developments in the study given to the question of control of psychotropic substances by the Secretary-General, WHO and the Permanent Central Narcotics Board, and to make suggestions for further action on the part of the Commission. The Group was assisted by the observer for Sweden, and representatives of PCNB and WHO.

Introduction

2. This Report of the Working Group is designed to set out the main questions which, in the opinion of the Working Group, deserve immediate study by the Commission, and offer for the guidance of the Commission, certain proposals for continuing action. The Working Group has carefully avoided taking any decisions or forming any final conclusions. It has been particularly concerned to find ways and means for the Commission to suggest without delay measures for international agreement on controls, having regard to the Commission's unanimous endorsement at its last session of the Special Committee's views

"that the establishment of a measure of international control, with the minimum of delay, was desirable, and .... that the Secretary-General, in consultation particularly with WHO and the PCNB, undertake, as a matter of urgency, a detailed study of the legal, administrative and other questions connected with the adoption of such international control" (E/4294, Annex II, paragraph 25).

Its recommendations are set out in paragraph 15 below.

Background documents

3. The Working Group reviewed the Reports prepared by the Secretary-General (E/CN.7/509), the Permanent Central Narcotics Board (Annex I ibid.), the Resolution on LSD adopted by the Economic and Social Council on 16 May 1967 (Annex II ibid.), the two Resolutions on control measures for LSD and related substances, and for certain dependence-producing drugs adopted by the Twentieth World Health Assembly on 25 May 1967 (Annex III ibid.), and a note of views of the Legal Office (see Annex I to this Report). The Working Group accepted that on a broad view it could be held that in 1961 a number of psychotropic substances having stimulant and/or depressant effects had been considered sufficiently dangerous to warrant international control under the Single Convention; that for convenience these had been described as narcotic drugs; and that by virtue of Article 3

it was provided that any other substance recognised by WHO as being "liable to similar abuse and productive of similar ill effects as the drugs in Schedule I or Schedule II" could be brought under the control of the Convention. The documents under review, however, showed that there were a number of substantial legal, technical, administrative and practical objections to dealing with such substances as amphetamines, barbiturates, tranquillizers and hallucinogens by the available provisions of the Convention. A further difficulty was a general lack of information about the extent of the problem in terms of countries affected, controls already applied, and the identity of substances (except LSD) giving rise to particularly dangerous abuse. The Working Group accordingly gave particular attention to:

- (i) the need for the development of national controls;
- (ii) encouragement of further restrictions on LSD;
- (iii) the development of international agreement about more general control measures;
- (iv) the collection of information from governments;
- (v) the steps required to formulate the substance of new treaty provisions.

#### National controls

4. The Working Group was unanimous in considering that, to discourage the sudden epidemic spread of abuse of some psychotropic drugs in new areas, with consequent risk to neighbouring countries, national governments should be encouraged to establish as soon as possible minimum controls on the lines proposed by WHO and endorsed by the Commission at its last session.

#### L.S.D.

5. The Working Group took note of the resolutions adopted by the Economic and Social Council and the Twentieth World Health Assembly and was encouraged to learn that 22 governments had imposed strict control over L.S.D. within the last six months. The Working Group felt it was desirable that renewed emphasis should be given to the need for restrictive measures over this and analogous substances. A draft resolution which the Commission may feel appropriate to recommend to the Economic and Social Council, is attached at Annex II.

Development of measures for international control

6. The representatives of Ghana, India and USSR held that the Single Convention as a ready and existing instrument was capable of being used for the control of psychotropic substances. Article 3 of the Single Convention, as it stood, offered a means of imposing control on certain substances, e.g. amphetamines and L.S.D., which could be included in Schedule I and perhaps IV, respectively, and made subject to the relevant provisions of the present international control machinery. As for certain other substances, belonging to the generic groups of barbiturates and tranquillizers, it was felt that a different regime of international controls was necessary, and this could be obtained through an amendment as provided under Article 47 adding one or two schedules to Article 3, providing amongst other things for the availability of these substances only on medical prescription and manufacture allowed only to licensed firms. The rationale underlying this approach was the saving of time in bringing control over those substances which most urgently require it as well as the avoidance of multiplicity of international agreements as might happen if a new international treaty was proposed each time new and dangerous substances needing control came into existence through the advance of science.

7. The representatives of Canada, France, Japan, Mexico, U.K. and U.S.A. considered that for legal and practical reasons Article 3 of the Single Convention was not suitable to provide the necessary control for all psychotropic substances and should therefore not be used whether or not any legal basis could be found. The Chairman recalled that during the Plenipotentiary Conference 25 countries voted for and 13 countries against a resolution presented by Brazil, France, Turkey, United Arab Republic and Venezuela recommending that "the competent organs of the United Nations and World Health Organization should examine the necessity and the possibility of adopting adequate measures for the international control of such drugs", i.e. amphetamines, barbiturates, tranquillizers (Plenipotentiary Conference, Summary Proceedings, Vol. II, paragraph 296). The range of individual substances was so much wider than in the case of "narcotics" that the Convention procedures for notification and identification in schedules would be cumbersome and impracticable. It was clear that a more varied range of controls would be needed and this would necessarily

involve a considerable elaboration of the existing provisions of the Convention to allow for the flexibility of control required. If amendment of the Convention by means of Article 47 were pursued, the end result would be a treaty within a treaty. This would make it difficult for some Parties to accept the amended Convention and for other governments to become Parties to it. Moreover, action under Article 47 could be frustrated by objections on the part of a single government, and since unanimity was unlikely about the form of amendment, the most likely result of resorting to Article 47 was to waste time and effort.

8. In representing objections against the use of Article 3, the Canadian representative stressed that he wished the Working Group and the Commission to take immediate positive steps to deal with the problem, and submitted the summary of his proposals, reproduced at Annex III. This summary was fully supported by the representatives of France, Japan, Mexico, U.K. and U.S.A.

9. The WHO representative said that the Director-General of WHO had confirmed to the Secretary-General by note verbale dated 12 April 1967 that WHO was "prepared to evaluate, for the purpose of certain control measures, the risks to public health presented by the abuse of psychotropic drugs". If a party to the Convention were to act under Article 3 and draw the attention of the Organization to the need for control of a particular psychotropic substance under the Convention, the Organization would attempt to make an objective assessment of its dangers and consider the case for a notification to the Commission. From the technical point of view there seemed in any event to be considerable difficulties in using the machinery of Article 3. In view of the legal objections which had been expressed by the United Nations and the known conflict among members of the Commission about the wisdom of using the Convention for controlling such substances, it would take a realistic view of the likely reactions of the Commission to a notification under Article 3 before deciding whether to make such a notification.

#### Collection of information

10. The Working Group was unanimous in concluding that the time had come to invite governments to provide all relevant information, as suggested by the Commission at its twenty-first session and by the PCNB in its recent report. It considered it was highly desirable that any

questionnaire should seek information about the extent of national legislation already in force or contemplated, the extent to which national governments would find international measures a reinforcement for their own, and an indication of the technical and administrative difficulties which might have been experienced in imposing controls over such a varied range of substances. The Working Group observed that a draft questionnaire submitted by the United States at the twenty-first session had been found objectionable mainly on the score of length and some of the details it contained, but felt that something more elaborate than the questionnaire appended to E/CN.7/509 (Annex IV) would be valuable. It felt that governments should be invited to comment upon the specific measures suggested in paragraph 136 of E/CN.7/509 both as regards their practical value for national controls. Governments should also be asked whether they considered a new treaty or protocol was required or whether the 1961 Convention as presently constituted or as might be amended would suffice. It concluded that it would be appropriate to leave to the discretion of the Director of the Division the precise formulation of the questionnaire, assuming that he would consult the PCNB and WHO as necessary to cover their interests.

#### Future action

11. The Working Group was advised that it would be feasible for the questionnaire to be prepared and issued within a few weeks and for replies to be requested not later than .
12. It seemed essential to the Working Group that a summary of the information obtained should be communicated to members of the Commission as soon thereafter as possible so that the Commission may have ample time to consider the implications as regards the possibility of an international treaty and discuss these in full at its next session.
13. The Working Group felt concerned that more general preparations of an international agreement should not be delayed pending the results of the enquiry of governments. It saw no reason why, if the Secretary-General felt this would be useful, the suggested controls formulated in paragraph 136 of E/CN.7/509 should not be examined by him with a view to preparing an outline draft of a treaty for consideration by the Commission at its next meeting. Preparation of this document would not signify any commitment on the part of the Commission that a new treaty would be introduced.

The purpose of the document would be merely to give the Commission at its next meeting an indication of the type of document that might eventually be presented to a conference. At its next meeting the Commission would be in a position, in the light of information obtained from the questionnaire, to comment on the general lines of the document prepared and to identify in particular those aspects of the control machinery which needed further careful study.

14. The Working Group felt unable to devise a timetable for developments after the next session of the Commission. It concluded however that if a new control regime was required in amplification or substitution for the Single Convention, the best course would be to convene a special international conference for the purpose as soon as a sufficient measure of agreement on proposals had been obtained. It saw difficulty in trying to secure a new treaty or amendments to the Single Convention through the General Assembly, and considered that in any case a special conference would be required.

#### Recommendations

15. The Working Group recommends that:

- (1) The Commission should invite the Economic and Social Council to urge governments to enact legislation on the lines proposed by the Commission at its twenty-first session, taking into account the additional provisions suggested in E/CN.7/509, paragraph 136;
- (2) The Commission should submit for adoption by the Council a draft resolution (on the lines of Annex II) urging governments to intensify restrictions over the use, movement, import and export of LSD;
- (3) The Commission should authorise the Secretary-General, after such consultation as he thinks necessary with WHO and PCNB, to write to each national government drawing its attention to the Commission's concern urgently to explore the possibility of international measures to control psychotropic substances; inviting it to comment on the provisions suggested in paragraph 136 of E/CN.7/509 in terms of both its own policy and of any difficulty presented by the provisions; and asking it whether it considers a treaty is required and whether a conference should be convened for the purpose;
- (4) The Secretary-General should be invited to arrange for his technical advisers to begin preparation, without delay, for the formulation of an outline draft of a treaty;
- (5) The Commission should give the highest priority to discussion of the question of control of psychotropic substances at its forthcoming session.

ANNEX I

STATEMENT BY THE DIRECTOR OF THE DIVISION OF NARCOTIC DRUGS  
COMMUNICATING THE LEGAL OPINION BY THE LEGAL OFFICE OF THE  
UNITED NATIONS ON PSYCHOTROPIC SUBSTANCES NOT UNDER INTER-  
NATIONAL CONTROL (LETTER OF 4 DECEMBER 1967)

Mr. President,

I should like to inform you of the opinion of the Legal Office of the United Nations on the juridical aspects of the matter we are considering. This opinion is to the following effect:

As regards the application of article 3 of the Single Convention on Narcotic Drugs, 1961, the question whether the psychotropic substances under consideration are similar in respect of abuse and ill effects to the drugs in the Schedules of that Convention is one for determination by the World Health Organization. There would, however, be legal grounds for doubting the correctness of an affirmative decision by the World Health Organization if certain psychotropic substances were recommended for inclusion in the Schedules, but other substances having the same degree of similarity in regard to abuse and ill effects were not recommended for inclusion. Moreover, it was the general understanding at the 1961 Conference that article 3 of the Single Convention could not be applied to barbiturates, amphetamines or tranquillizers.

The difficulties of applying article 1 of the 1948 Protocol or article 10 of the 1925 Convention are as great or greater than those involved in applying article 3 of the Single Convention. As regards the amendment procedure of article 47 of the Single Convention, time is required for applying this procedure as discussed, for example, in paragraphs 53-58 of the PCNB note found in Annex I to Document E/CN.7/509. The procedure of article 47 is, of course, legally possible but it would not be desirable unless unanimous acceptance of any proposed amendments by all Parties seems reasonably certain. It therefore follows that on purely legal grounds, apart from other considerations, the best method of taking action on psychotropic substances is the conclusion of a special treaty. As stated in the Legal Office cabled opinion dated 15 December 1966 and brought to the attention of the 21st session of the Commission, the Economic and Social Council could submit a draft convention to the General Assembly under Article 62, paragraph 3 of the Charter, or could call an international conference to adopt a convention under paragraph 4 of that Article.

The Legal Office would not wish to express a view as to which of these methods would be preferable, though it may be observed that the Commission on Narcotic Drugs would be the body most naturally qualified to prepare a draft convention for further consideration.

That, Mr. President, is the opinion of the Legal Office as to the best course that the Commission might adopt in the matter of extending control to the psychotropic substances under discussion.

ANNEX II

Draft resolution proposed by the Working Group

URGENT CONTROL MEASURES FOR LSD AND RELATED SUBSTANCES

The Commission on Narcotic Drugs,

Convinced that the abuse of LSD and related hallucinogenic substances presents an increasingly serious problem that could have very dangerous consequences, so that it cannot wait upon agreement as to the control measures to be applied to all the psychotropic substances not yet under international control;

Recalling resolution 1197 (XLII) of the Economic and Social Council and resolution WHA 20.42 of the World Health Assembly urging Governments to apply strict control in the use of LSD and related substances;

Being informed that twenty-two governments have adopted legislation along the lines of these recommendations;

Deeply concerned at reports of physical and mental injury being caused by continuing abuse of LSD and related substances:

1. Recommends to Governments which have already taken control measures to examine them with the view to making them more stringent if required;
2. Urges all Governments to ensure in particular:
  - (a) that all use of LSD and related substances be permitted solely in, or under the direct control of, named medical and scientific institutions in the country which are specifically authorised for the purpose; and
  - (b) that all import and export of LSD and related substances for such purposes be exclusively permitted only on a Government to Government basis or between authorities or organisations specifically authorised or designated by Governments for such export and import.
3. Recommends to Governments also to consider appropriate measures to prevent the use of lysergic acid and other possible intermediate and precursor substances for illicit manufacture of LSD or other hallucinogens.

ANNEX III

PROPOSAL OF CANADA

Psychotropic Substances

(1) Article 3 of the Single Convention for legal and practical reasons is not considered suitable to provide the necessary control for all psychotropic and hallucinogenic substances and should therefore not be used whether or not any legal bases could be found.

(2) Suggest as a positive step that the Commission recommend to the Council that governments, if they have not already done so enact legislation taking into account the provisions suggested for national control in Para 136 of Document E/CN.7/509.

It would be understood that each country would be asked to do so having regard to its particular situation and problem.

(3) That a questionnaire go out to all governments by the Secretary-General requesting answers or comments on the following amongst any other questions considered by the Commission to be necessary.

- (a) Extent of national legislation in force.
- (b) Information respecting proposed or contemplated legislation to the extent that governments would be prepared to give an indication of future policy.
- (c) Degree of international control for the substances in question and the form it should take.
- (d) Whether the parties feel a treaty or protocol is required and whether a conference should be convened for this purpose.
- (e) That the provisions of 136 be attached to the questionnaire with an invitation to governments to comment on each provision in terms of its own policy and any difficulty posed or presented by the provision.

(4) That the Commission may wish to consider in advance of the questionnaire being answered, the Secretary-General be requested, meanwhile, to prepare a draft protocol for consideration by the Commission at its next meeting as an indication of the type of document that might be eventually presented to a conference

The Commission at its next meeting in the light of information obtained from the questionnaire could comment on it, or alternatively, might wish to defer its request to the Secretary-General until the questionnaire has been answered and the draft document be prepared in relation to the information received and views expressed by governments.

It is understood that the purpose of a draft protocol whether immediately or later prepared does not represent any decision by the Commission regarding a treaty or protocol but is only a working document to assist the Commission in carrying out its responsibility to make appropriate recommendations as to the best means of controlling the substances in question both at the national and international levels.