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PROTOCOL FOR LIMITING AND REGULATING THE CULTIVATION
OF THE POPPY PLANT, THE PRODUCTION OF, INTERNATIONAL
AND WHOLESALE TRADE IN, AND USE OF OPIUM

Draft of a Model Code and Commentary for the Application of the Protocol

Definitions

The following terms have been used throughout this document:

"1953 Protocol" or "Protocol" denotes the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, signed at United Nations Headquarters, New York, on 23 June 1953.

"1948 Protocol" denotes the Protocol, signed at Paris on 19 November 1948, bringing under international control drugs outside the scope of 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.

"1946 Protocol" denotes the Protocol of 1946 amending the Agreements, Conventions and Protocols on Narcotic Drugs, concluded at The Hague on 23 January 1912; at Geneva on 11 February 1925 and 19 February 1925 and 13 July 1931 at Bangkok on 27 November 1931, and at Geneva on 26 June 1936.

"1936 Convention" denotes the Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs, as amended by the 1946 Protocol.

"1931 Agreement" denotes the Agreement for the Control of Opium-Smoking in the Far East, signed at Bangkok on 27 November 1931, as amended by the 1946 Protocol.

"1931 Convention" denotes the International Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed at Geneva, 13 July 1931, as amended by the 1946 Protocol.

"1925 Convention" denotes the International Opium Convention, signed at Geneva, 19 February 1925, as amended by the 1946 Protocol.

"1925 Agreement" denotes the Agreement concerning the Manufacture of, International Trade in, and Use of Prepared Opium, signed at Geneva, 11 February 1925, as amended by the 1946 Protocol.

"1912 Convention" denotes the International Opium Convention, signed at The Hague, 23 January 1912.

"Board" denotes the Permanent Central Board established under article 19 of the 1925 Convention.

"Conference" denotes the United Nations Opium Conference, held at Headquarters, New York, 11 May to 18 June 1953.

"Main Committee" denotes the Main Committee of the United Nations Opium Conference.

"General Assembly" denotes the General Assembly of the United Nations.

"Council" denotes the Economic and Social Council of the United Nations.

"Commission" denotes the Commission on Narcotic Drugs of the Economic and Social Council.

"Secretary-General" denotes the Secretary-General of the United Nations.

"Opium Advisory Committee" denotes the Advisory Committee (of the League of Nations) on the Traffic in Opium and Other Dangerous Drugs.

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

DRAFT OF THE CODE AND COMMENTARY

Article 1

Definition of "Poppy"

The 1953 Protocol is the first narcotics treaty which gives a direct definition of the term "(Opium) Poppy". Definitions of raw opium in earlier treaties,^{1/} however, refer only to the *Papaver somniferum* L. and not to any other species of the genus *Papaver*. When drafting the principles on which the 1953 Protocol is based, the Commission defined at its sixth session opium as the "coagulated juice obtained by cutting capsules of several varieties of *Papaver somniferum* L.". It did not refer to any other species.^{2/}

The original draft of the Protocol also defined the (opium) poppy as the plant *Papaver somniferum* L. without reference to any other species.^{3/} After a discussion of the practicability of collecting opium from any species of the *Papaver* other than the *Papaver somniferum* L., the Main Committee decided on the substance of the definition^{4/} which was finally included in the Protocol.^{5/}

It is not known that opium may be collected from any *Papaver* other than the *Papaver somniferum*. It has, however, been established that traces of morphine may be found in the pod, bud and leafy parts of the *Papaver setigerum* D.C. The *Papaver setigerum* is closely related to the *Papaver somniferum*. It is often considered to be a distinct species, but sometimes described as a variety or

^{1/} Chapter I, introductory paragraph of the 1912 Convention; article 1 of the 1925 Convention; article 1, paragraph 3 of the 1931 Convention.

^{2/} E/1998, p. 30.

^{3/} E/2186, p. 85.

^{4/} E/CONF.14/AC.1/SR.2, pp. 9 and 10; E/CONF.14/L.35, p.2, E/CONF.14/L.44, p. 2.

^{5/} E/CONF.14/SR.9.

sub-species of the *Papaver somniferum*.^{1/} It cannot be assumed that either legitimate manufacturers or even illicit traffickers would consider it practicable to extract morphine from the *Papaver setigerum*.

The word "production" as used in the definition of "poppy" does not have the meaning given in the definition of this term further below.

If a government wishes to include a definition of "poppy" in the legislation to be enacted to implement the Protocol, and wishes to avoid the verbal difficulty which arises when the latter part of the definition of "poppy" in the Protocol and the definition of "opium" are read together, it could

- (a) frame the definition so as to refer "to all varieties of the *Papaver somniferum* L. including in particular the *Papaver setigerum* D.C." (This could be done in view of the opinion mentioned above that the *Papaver setigerum* does not constitute a distinct species, but merely a variety of the species *Papaver somniferum*.); or
- (b) omit the reference to "any other species of *Papaver* which may be used for the production of opium" (This could be done in view of the fact that it is highly improbable that there exists any other species of the genus *Papaver* which might be used for the production of opium as a profitable enterprise); or
- (c) substitute the words "for the extraction of morphine" for the words "for the production of opium"; or
- (d) omit in their legislation such a definition of opium as is given further below in article 1 of the Protocol. In this case it must, however, be clear that the provisions implementing the Protocol and applying to opium refer to opium "in whatever form including raw opium, medicinal opium, and prepared opium". In several languages the common meaning of the word "opium" or its equivalent is unambiguous and comprises all kinds of the substance which the Protocol is intended to cover.

^{1/} C.G. Farmilo, H.L.J. Rhodes, H.R.L. Hart and H. Taylor, "Detection of Morphine in *Papaver setigerum* D.C.", U.N. Bulletin on Narcotics, V, 1; C.C. Fulton, The Opium Poppy and other Poppies, U.S. Government Printing Office, Washington, D.C., 1944, p. 55.

Definition of "Poppy Straw"

The Protocol is the first narcotics treaty which defines the term "poppy straw". Earlier narcotics treaties do not contain any provisions specifically referring to the straw. The Opium Advisory Committee, however, held ^{1/} that the term "raw material" or "raw materials" as used in the 1925 ^{2/} and 1931 Conventions ^{3/} includes "poppy straw". The definition covers the heads (capsules) and stems of the plant. As far as the Commission is aware only the head and upper parts of the stem contain sufficient morphine to facilitate an economical extraction. The lower parts of the stem are often removed before the extraction process. Although it cannot be excluded that poppy seeds may occasionally contain slight traces of morphine, they were excluded from the definition of poppy straw. It may be considered to be impracticable for the seeds to be used for the extraction of morphine for practical purposes other than scientific research.

As regards the term "narcotics" it may be recalled that the Conference stated that the terms "narcotic substances", "narcotic drugs", "narcotic alkaloids" and other similar expressions used in the Protocol refer to the drugs derived from opium which come within the provisions of the 1931 Convention. ^{4/}

Definition of "Opium"

Opium as such has not been defined in the narcotics treaties preceding the Protocol, but only particular forms of this substance: raw opium, medicinal opium and prepared opium, each of which has been subject to different control regimes. ^{5/}

^{1/} Report to the Council on the Work of the Twentieth Session; League of Nations document C.253.M.125.1935.XI, p. 13.

^{2/} Article 22.

^{3/} Articles 16 and 17.

^{4/} Resolution II. For a different meaning of the term "narcotic substances" see article 7, paragraph 2.

^{5/} See the discussion in the Main Committee, E/CONF.14/AC.1/SR.2, pp. 7 to 9; see also E/CONF.14/L.44, p. 2 and E/CONF.14/SR.9, p. 9.

Apart from temporary exceptions permitted for a transitional period in article 19, the use of raw opium and prepared opium for purposes which are neither medical nor scientific has been prohibited by the Protocol (article 2) ^{1/} as had been the case in respect of medicinal opium since the 1925 Convention. ^{2/} The reason for having a separate regime and consequently separate definitions for raw opium and prepared opium thus fell away ^{3/} and it has become necessary to make it clear that the provisions of the Protocol governing opium apply to this substance in whatever form.

It was moreover decided to include in the definition of "opium" an express reference to "raw opium" and "prepared opium" in order to avoid any possible misunderstanding as to the position of these kinds of opium under the terms of the Protocol. ^{4/} A reference to "medicinal opium" was added to avoid ambiguities which might result from its omission while references to other types of opium are included.

The terms "raw opium", "medicinal opium" and "prepared opium" do not appear elsewhere in the Protocol. ^{5/} They are also not defined. It may be assumed that they have the meaning given to them by earlier narcotics treaties.

Raw opium is defined in article 1 of the 1925 Convention and article 1, paragraph 3 of the 1931 Convention as denoting "the spontaneously coagulated juice obtained from the capsules of the *Papaver somniferum* L. which has only been submitted to the necessary manipulations for packing and transport, whatever its content of morphine". ^{6/}

^{1/} See also article 6, paragraph 2.

^{2/} Articles 5 and 4; see also article 9 of the 1912 Convention.

^{3/} See also E/1998, pp. 18 and 30.

^{4/} See for discussion in the Main Committee E/CONF.14/AC.1/SR.2, pp. 8 and 9.

^{5/} See, in particular, article 19.

^{6/} The introductory paragraph of Chapter I of the 1912 Convention contains the same definition. It omits, however, the words "whatever its content of morphine". It may be mentioned that the so-called "monopoly" or "export" opium which is treated by governments as "raw opium" within the meaning of the narcotics treaties is often submitted by the national opium agencies (monopolies) to manipulations in addition to those necessary for packing and transport.

"Medicinal opium" is defined in the same treaty provisions as denoting "raw opium which has undergone the processes necessary to adapt it for medicinal use in accordance with the requirements of the national pharmacopoeia, whether in powder form or granulated or otherwise or mixed with neutral materials". ^{1/}

"Prepared opium" is defined in the introductory paragraphs of chapter II of the 1912 Convention as denoting: "the product of raw opium obtained by a series of special operations, especially by dissolving, boiling, roasting, and fermentation, designed to transform it into an extract suitable for consumption"; and as including "dross and all other residues remaining when opium has been smoked".

There can be no doubt that preparations of opium derivatives obtained by more elaborate chemical processes do not constitute "opium...in whatever form" and do not therefore fall within the scope of the Protocol, e.g. morphine preparations that fall under international control ^{2/} or papaverine preparations, which are not controlled.

The Protocol excludes "galenical preparations" from the definition of "opium". The interpretation of the term "galenical preparations" which is not defined in any narcotics treaty causes some difficulties.

The narcotics treaties do not use the term "galenical" in connexion with opium preparations but only in connexion with extracts and tincture of Indian hemp (Cannabis) which are called "galenical preparations" (article 4 (f) of the 1925 Convention).

The term "galenical" in connexion with preparations is sometimes used in different meanings. While it is occasionally used as a synonym for "official" ^{3/} it is more commonly employed in the pharmaceutical literature as "pertaining to vegetable preparations, as distinguished from chemical remedies". ^{4/} More specifically the term "galenical" is used to indicate preparations of crude drugs such as opium which are obtained by mixing, decoction, solution, etc. i.e. mainly

^{1/} See for a different though obsolete definition of "medicinal opium" the introductory paragraph of chapter III of the 1912 Convention.

^{2/} Subject to certain exemptions; see articles 4 (d) and 8 of the 1925 Convention and article 13, paragraph 1, of the 1931 Convention.

^{3/} Black's Medical Dictionary, Adam and Charles Black, London, 1951.

^{4/} The Shorter Oxford English Dictionary.

by physical processes as distinguished from preparations obtained by more elaborate chemical procedures. Another way of distinguishing galenical preparations from other preparations would be to consider as galenical preparations those in which the basic drug is not changed chemically by the process of compounding. The following medicinals therefore are referred to as galenical preparations: tinctures, extracts, fluidextracts, decoctions and infusions (etc.). ^{1/}

That the Conference shared this idea of "galenical preparations" may be concluded from resolution VI. In this resolution the following examples of such preparations are given: tincture of opium, laudanum (a tincture of opium), Dover powder (powdered opium (10 per cent), powdered Ipecacuanha and either lactose or potassium sulphate) and paregoric (camphorated tincture of opium).

When excluding "galenical preparations" from the definition of opium, the Conference was guided by the consideration that too heavy a burden should not be laid on medical practitioners and patients using galenical opium preparations. ^{2/} Although under the earlier narcotics treaties, provisions which govern a drug apply to its preparation only if this is expressly stated, ^{3/} the Conference seems to have feared that the very comprehensive definition of opium given in the Protocol may be differently interpreted. If as a result all the provisions of the Protocol applying to opium would have governed such preparations as tincture of opium, Sydenham laudanum, Dover powder, the privileged position which these opium medicines enjoy under article 9 of the 1925 Convention might have become doubtful. ^{4/} It may be assumed that the Conference considered that such preparations should continue to be controlled by the relevant provisions of the 1925 ^{5/} Convention and

^{1/} Louis Goodman and Alfred Gilman, The Pharmacological Basis of Therapeutics, New York, Macmillan, 1941, p. 17; International Pharmacopoeia, First Edition, World Health Organization, Geneva, 1951, Vol. 1, p.2.

^{2/} See for discussion in Main Committee: E/CONF.14/AC.1/SR.2, pp. 8 and 9.

^{3/} Article 4 (d) and (e) of the 1925 Convention; articles 13 and 19 of the 1931 Convention.

^{4/} It will be recalled that under this article chemists may be permitted to supply to the public at their own discretion (i.e. without medical prescription) as medicines (i.e. for medical purposes) for immediate use in urgent cases the following opiate officinal preparations: tincture of opium, Sydenham laudanum, Dover powder.

^{5/} See articles 4 (d), 5-10, 12-18, 21, 22 (1) (c) (d) (e) (2-4), 24, 26 and 27; see also article 19 of the 1931 Convention.

should not be subjected to more burdensome rules. For the same reasons it may be assumed that the term "galenical preparations" which is excluded from the term "opium" as used in the Protocol comprises also such opium preparations as are exempted from the 1925 Convention either because of their small morphine contents ^{1/} or by decision of the World Health Organization. ^{2/} Otherwise it might be inferred that such opium preparations which are exempted from the control of the 1925 Convention would be subject to the control provisions of the 1953 Protocol which in some respects go even further than the provisions of the 1925 Convention, e.g. they would not enjoy the privileged position which "galenical" opium preparations have under article 9 of the 1925 Convention and which under certain conditions permits - as has been mentioned above - their dispensation without medical prescription; their use being restricted to medical and scientific purposes, a medical prescription would be required for dispensation to patients. ^{3/} This follows from interpretation of the term "medical use" under the provisions of the 1925 Convention as well as from the definition of "quasi-medical purposes" in the second paragraph of resolution XI adopted by the Conference. It cannot be assumed that the Conference intended to place opium preparations exempted from the control of the 1925 Convention under more severe rules than other "galenical" opium preparations. It follows also from article 6, paragraph 4, of the 1953 Protocol which subjects opium unconditionally to the import certificate and export authorization system, that opium preparations exempted from the control of the 1925 Convention are included among "galenical" preparations, i.e. among the only preparations excluded from the term "opium". Otherwise such exempted preparations would be subject to the system of import certificates and export authorizations. Article 9, paragraph 1, sub-paragraph (a), clause (iii) recognizes, however, that no export authorizations are required for these preparations. ^{4/}

^{1/} Article 4 (d) of the 1925 Convention.

^{2/} Article 8 of the 1925 Convention.

^{3/} See also article 6, paragraph 4 of the Protocol.

^{4/} See also article 8, paragraph 1, sub-paragraph (a) of the Protocol and resolution XI of the Conference.

On the other hand the definition of opium was intended to be inclusive enough to comprise opium "preparations" which under the 1925 Convention would not be subject to rules ensuring their exclusive use for medical or scientific purposes, i.e. "preparations" made, e.g. for opium-smoking or eating. Such preparations should be subjected to the provisions of the Protocol applying to opium, which would include the requirement of exclusive use, import or export for medical or scientific purposes.

Consequently the term "opium" as used in the Protocol should be regarded as excluding:

(a) preparations of opium derivatives obtained by more elaborate chemical processes such as morphine, diacetylmorphine, codeine. These preparations are not "opium" preparations in the proper or narrow meaning of the word.

As has been pointed out above, in so far as they fall under international control, their exclusive use for medical or scientific purposes is ensured by the relevant provisions of the 1925 and 1931 Conventions;

(b) preparations made from opium by physical means, i.e. by other than elaborate chemical means: the opium preparations in the proper or narrow meaning of the word which are made for medical or scientific use. These are the preparations referred to in the Protocol as "galenical" preparations.

As has been pointed out above, their exclusive use for medical or scientific purposes is ensured by the relevant provisions of the 1925 Convention. ^{1/}

Opium "preparations" which would fall under the definition of "medicinal opium" as outlined above cannot be considered to be "galenical preparations" which are excluded from the definition of "opium" while "medicinal opium" is expressly included therein.

The term "opium", however, does not exclude opium in the form of preparations manipulated for use for non-medical purposes, i.e. substances which are not subject to the provisions of the 1925 Convention requiring exclusive use for medical and scientific purposes.

^{1/} See articles 4 (d), 5-10, 12-18, 21, 22 (1) (c) (d) (e) (2-4), 24, 26 and 27; see also article 19 of the 1931 Convention.

should include the quantities of narcotic drugs supplied to pharmacists and to doctors, dentists, veterinarians, hospitals and similar health institutions, both public and private, that have authority to supply narcotic drugs to patients.^{1/} Amounts of opium "consumed" cannot be considered to be part of the "stocks".

(b) excludes opium held by, or under the control of, a government for military purposes [including stocks which the government holds for the military requirements of allied states]. This exception was introduced in order to enable governments to omit certain information which they consider confidential from stock estimates and statistics (article 8, paragraph 1, sub-paragraph (c) and article 9, paragraph 1, sub-paragraph (b) of the Protocol and from the maximum limits of opium stocks which they are permitted to hold (article 5 of the Protocol).

(c) includes opium harvested by farmers prior to the delivery to the government agency (national opium monopoly) (article 3, paragraph 5 of the Protocol).

The 1931 Convention (article 1, paragraph 4) defines "reserve stocks" as "the stocks required (i) for the normal domestic consumption of the country or territory in which they are maintained, (ii) for conversion in that country or territory, and (iii) for export;" the term "Government stocks" is defined as "Stocks kept under Government control for the use of the Government and to meet exceptional circumstances".

Definition of "Territory"^{2/}

It follows from various provisions of the Protocol, e.g. from the inter-relationship between import maximum and estimates (article 8, paragraph 11),^{3/}

^{1/} Statistical Form C (1) (GL) of the Board.

^{2/} For discussion in the Conference see: E/CONF.14/AC.1/SR.2, p. 6; E/CONF.14/AC.1/SR.3, pp. 2 and 3; E/CONF.14/L.13; E/CONF.14/AC.1/SR.13, p. 4; E/CONF.14/L.44; E/CONF.14/L.74; E/CONF.14/SR.9, pp. 7 and 8.

^{3/} See also article 12, paragraph 2 and article 14, paragraphs 1 and 2 of the 1931 Convention.

between estimates and statistics (article 12, paragraph 2, sub-paragraph (a)),^{1/} from the requirement that separate estimates and statistics be furnished for each territory (article 8, paragraph 1 and article 9, paragraph 1)^{2/} that a territory does not only constitute a separate entity for the application of the system of import certificates and export authorizations under Chapter V of the 1925 Convention, but more generally also for other purposes of international narcotics control.

The term "territory" as defined in article 1 of the Protocol is not necessarily identical with the term (non-self-governing, trust, colonial and other non-metropolitan) "territory" as used in article 20.^{3/}

If under the terms of this article a party does not apply the Protocol to such a territory, it must separate this territory from a territory or territories to which it applies the Protocol, not only in respect of application of the import certificate and export authorization system, but also in respect of estimates and statistical returns; but such a territory to which the Protocol does not apply, need not necessarily form a single separate entity for purposes of narcotics control, it may form two or more such entities, i.e. "territories" within the meaning of article 1 of the Protocol^{7/}.

A "territory" within the meaning of article 20^{4/} may theoretically also form a part of a "territory" as defined in article 1, provided that the notification and extension of application of the Protocol provided for in article 20 is made for all parts at the same time.^{7/}

It seems, however, that the term "territory" as used in article 19 should be regarded as identical with this term as defined in article 1. This may be inferred from the fact that it would be very difficult indeed to apply the

^{1/} See also article 14, paragraph 3 of the 1931 Convention.

^{2/} See also article 2, paragraph 1 and article 14, paragraph 3 of the 1931 Convention.

^{3/} See comments on this article.

^{4/} And article 26, sub-paragraph (b).

existing system of international narcotics control if estimates and statistical returns concerning opium used for quasi-medical purposes or smoking would not cover the same territorial ground as estimates and statistical returns concerning medical and scientific requirements.

While it is within the discretion of each party to treat the whole of its national possessions or any parts of it as "territory" or "territories", it would, from the viewpoint of effective control, be desirable that any part of a country which does not have contiguous land borders with the other part or parts, should be a separate territory within the meaning of article 1. Coastal islands which apart from tunnel or bridge communications are connected with the coast or with each other exclusively by national flag ships or national airlines would not need be separate territories.

The 1931 Convention employs but does not define the term "territory". It uses the term in the same meaning as this is done in the Protocol.

Definition of "Export" and "Import"^{1/}

This definition makes it clear that it is the physical transfer of the opium and not the legal transactions involved which is the subject of the provisions of the Protocol concerning import and export, such as article 6 (paragraphs 2 to 4) (exclusive right of certain countries to export opium, produced within their borders to other states; import and export of domestic opium from one territory to another territory of the same state; import certificate and export authorization system); article 8, paragraph 11 (import maximum based on estimates of the importing country or territory); article 9, paragraph 1, sub-paragraph (c) (statistical returns); article 12, paragraphs 2 and 3; article 13 (embargo provisions).

^{1/} For discussion at the Conference see: E/CONF.14/AC.1/SR.2, pp. 3 to 6; E/CONF.14/AC.1/SR.3, pp. 2 to 3; E/CONF.14/L.13; E/CONF.14/AC.1/SR.13, p. 4; E/CONF.14/L.44; E/CONF.14/L.74; E/CONF.14/SR.9, pp. 8 and 9.

While it is also the physical transfer which is the subject of corresponding provisions of the 1925 and 1931 Conventions concerning the import and export of narcotic drugs, the terms "import" and "export" are in those conventions sometimes used in a broader sense^{1/} so as to include the legal contracts involved. In particular, such contracts involved in the import and export (i.e. physical transfer from one country or territory to another country or territory) may in appropriate cases have to be punished under the provisions of the 1936 Convention.^{2/}

Similarly the legal transactions involved in the physical transfer of opium from one territory to another are not always irrelevant under the terms of the Protocol. Since parties are bound (article 14) to adopt all legislative and administrative measures necessary for making fully effective the provisions of the Protocol, it may be assumed that they should take steps to prevent such transactions of a contractual nature as would constitute attempts of, or acts preparatory to, such physical transfer of opium as would not be permissible under the terms of the Protocol, e.g. the transfer of opium produced within the boundaries of a party other than the states enumerated in article 6, paragraph 2, sub-paragraph (a) to another state.

"Import" and "export" within the meaning of the Protocol do not necessarily constitute "import" and "export" in the economic sense. They are conceived from an administrative viewpoint, i.e. for purposes of narcotics control.

^{1/} Article 6 of the 1925 Convention, article 13, paragraph 2, sub-paragraph (a) of the 1931 Convention; see also articles 5, 8(e) and 10 of the 1912 Convention.

^{2/} Article 2(d).

They do not only apply to the physical transfer of opium from one state to another state, but also from one territory (as defined above in the Protocol) to another territory of the same state no matter whether the territories involved are separated by customs lines. The Protocol follows in this respect the 1925 Convention^{1/} as applied in practice and the 1931 Convention.^{2/} These conventions, however, do not define "export"^{3/} and "import".

1/ If interpreted literally by itself (i.e. without relation to corresponding provisions of the 1931 Convention) the 1925 Convention may be interpreted so as to permit the conclusion that the terms "import" and "export" as used in its provisions apply only to such transactions between states and not between territories of the same state. The different interpretation in practice can be justified by reference to corresponding provisions of the 1931 Convention and to the colonial (territorial) clause of the 1925 Convention itself (article 39).

2/ See e.g. article 2, paragraph 1; article 12, paragraph 2; article 14.

3/ See, however, article 1, paragraph 4 of the 1931 Convention.

Article 2 and Article 6, paragraph 1^{1/}

The 1925 Convention does not limit the import, export and use of raw and prepared opium to medical and scientific needs.^{2/} Only medicinal opium and medical opium preparations, i.e. galenical opium preparations within the meaning of the Protocol^{3/} with the exception of preparations which are exempted from international control because of their small contents of morphine^{4/} or by decision of the World Health Organization,^{5/} are subject to such a limitation under the terms of the 1925 Convention.^{6/}

Article 2 and article 6, paragraph 1, of the Protocol are not intended to replace article 5 of the 1925 Convention in respect of opium, but rather to extend the limitation to all kinds of opium (and opium preparations) not covered by article 5 of the 1925 Convention with the exception of the exempted preparations referred to above. This extension has been one of the principal aims of the Protocol.^{7/}

As a result, the import, export and use of opium in whatever form and of all opium preparations with the exception of opium preparations exempted from international control by virtue of the relevant provisions of the 1925 Convention^{8/} must be limited to medical and scientific purposes either by operation of the 1925 Convention or of the Protocol or of both treaties (in the case of medicinal opium).

^{1/} For discussion at the Conference see E/2186, Annex, Section 4, paragraph 1, and Section 5; E/CONF.14/AC.1/SR.12, p. 13; E/CONF.14/AC.1/SR.13, pp. 4 and 5; E/CONF.14/L.33; E/CONF.14/AC.1/SR.22, p. 5; E/CONF.14/L.45; E/CONF.14/SR.9, p. 21; E/CONF.14/SR.10, p. 2.

^{2/} Article 5; see also Chapters I and II and article 9 of the 1912 Convention.

^{3/} Referred to in article 4 (d) of the 1925 Convention as "officinal" and "non-officinal" and including tincture of opium, Sydenham laudanum and Dover powder (article 9 of this convention).

^{4/} Article 4 (d) of the 1925 Convention.

^{5/} Article 8 of the 1925 Convention.

^{6/} Article 5 of the 1925 Convention together with article 4 (a) and (d).

^{7/} E/1998, pp. 18 and 30.

^{8/} Articles 4 (a) and (d), 5, and 8.

The Protocol does not contain an express provision limiting the (domestic) trade in opium to medical and scientific needs as does the 1925 Convention^{1/} in respect of medicinal opium and "galenical" opium preparations with the exception of exempted preparations. This may be explained by the fact that the Protocol is intended to regulate mainly the production of, and international trade in, opium, and consequently deals only incidentally with the domestic trade in opium, in order to render effective the regulation of the production of opium. For this reason, the wholesale trade in opium is made a government monopoly only in countries which permit the production of opium, but not in other countries. As a result, the existing narcotics treaties do not stipulate expressly the limitation of the domestic trade in raw opium and in opium which has been manipulated for smoking purposes (prepared opium). In view of the fact, however, that either under the terms of the 1925 Convention or under the terms of the Protocol or under both treaties^{2/} countries must limit the import, export and use of opium (including raw opium and prepared opium) and of opium preparations (other than exempted preparations) as well as the manufacture of opium derivatives^{3/} to medical and scientific needs it may be concluded that countries must also so would also have so to limit domestic trade in such kinds of opium as are not covered by the relevant provisions of the 1925 Convention, i.e. in raw opium and prepared opium since such trade^{4/} would otherwise be preparatory to actions which are prohibited by the narcotics treaties.

As regards the limitation of the production of opium to medical and scientific needs see below under article 3, introductory paragraph and paragraph 1, and article 5, introductory paragraph. As regards the temporary continuation of the import and export of opium for quasi-medical purpose and the use of opium for quasi-medical purposes and for smoking, see below under article 19.

^{1/} Articles 4 (a) and (d), 5, and 8.

^{2/} In respect of medicinal opium.

^{3/} Articles 4 and 5 of the 1925 Convention; article 13 of the 1931 Convention.

^{4/} This, however, does not affect the temporary continuation of trade for "quasi-medical" and smoking purposes under article 19 of the Protocol.

In so far as they have not yet done so governments [must] [should] extend to all kinds of opium and opium preparations falling under international control the provisions of their legislation applying to narcotic drugs in general and intended to ensure their exclusive use for medical or scientific purposes such as provisions concerning the control of establishments and premises; licensing persons engaged in the narcotics trade; keeping records; documents accompanying transactions; requirement of medical prescriptions.

It is proposed that governments other than those making use of the temporary [exceptions] [reservations] under article 19 of the Protocol may discontinue treating raw opium, opium manipulated for smoking (prepared opium) and medicinal opium as separate drugs. It is suggested in this connexion that the prohibition of the import and export of "prepared" opium under article 7 of the 1912 Convention applies only to such transactions if carried on for purposes other than medical and scientific. The import and export of all kinds of opium and not only of opium manipulated for smoking purposes (prepared opium) are in this case prohibited under the terms of the Protocol except under the temporary conditions of article 19. The import and export of "prepared" opium for the manufacture of opium alkaloids are not barred unless such transactions in any opium are prohibited as is the case under certain circumstances described by the Protocol.^{1/} This prohibition can in many countries be implemented by an appropriate administration of the import certificate and export authorization system and of penal law [without any need for additional legislation].

The Model Form of Import Certificate annexed to the 1925 Convention may be modified so as to omit under (d) (1) the words "raw opium and". The words in brackets under (d) (2) would then have to be replaced by the words "in all other cases".

^{1/} Articles 6, 7, and 12, paragraph 3.

Article 3^{1/}

General

It has been recognized for a considerable time^{2/} that the best method of carrying out a limitation of the production of opium is the creation in each opium-producing country of a state monopoly which comprises

- (a) licensing farmers authorized to cultivate the poppy for the production of opium;
- (b) the collection of the opium crops;
- (c) international and wholesale trade in opium;
- (d) holding opium stocks.

National legislation of opium-producing countries^{3/} as well as earlier draft treaties^{4/} for the limitation of the production of opium contain all or most of these features. The Protocol incorporates this basic idea in article 3. It was stated in the Conference that the provisions of this article rest largely on Indian legislation and experience^{5/}.

^{1/} For the discussion at the Conference see: E/CONF.14/AC.1/SR.5; E/CONF.14/L.7 to 12; E/CONF.14/AC.1/SR.6; E/CONF.14/AC.1/SR.7, pp. 2 to 7; E/CONF.14/L.15; E/CONF.14/L.33; E/CONF.14/L.39; E/CONF.14/AC.1/SR.21, pp. 8, 9; E/CONF.14/L.44; E/CONF.14/L.51; E/CONF.14/L.58; E/CONF.14/L.59; E/CONF.14/L.74; E/CONF.14/L.78; E/CONF.14/SR.9, pp. 9 to 13.

^{2/} League of Nations Document C.221.M.123.1938.XI, p. 40 and C.175.M.104.1939.XI, p. 5.

^{3/} E/CONF.14/8.

^{4/} League of Nations Document C.175.M.104.1939.XI, Annex 1, articles 22 and 23; E/CN.7/221, Section 4; E/1998, pp. 20 and 31; E/2186, Annex, Section 2.

^{5/} E/CONF.14/AC.1/SR.5, pp. 4 and 9.

Article 3, ^{1/} Introductory paragraph and paragraph 1

The measures which article 3 requires governments to undertake should aim not only at controlling the production and use of, and trade in opium (article 3, introductory paragraph) but also in the Commission's view ^{2/} at limiting production to medical and scientific needs.

The obligations established under article 3 fall upon "every producing State". Although some participants in the Conference seem to have held the opinion that by using this expression they would impose obligations on States parties and not parties to the Protocol alike, ^{3/} it cannot be assumed that States which neither ratify the Protocol nor accede thereto would be legally bound by the provisions of article 3. By operation of other provisions of the Protocol such States would, however, have certain reasons for complying with the provisions of article 3 as well as with other stipulations of the Protocol. ^{4/}

The term "producing" is not directly defined in the Protocol. It may, however, be concluded from the definition of "production" in article 1 that "producing" means "cultivating the poppy with a view to harvesting opium". It may also be assumed that the drafters of the Protocol did not wish to refer to a de facto situation of cultivation. Countries in which opium production is illegal are not required to establish the monopoly machinery of article 3, which would be without value in such a case. They would be obliged to adopt the necessary repressive measures of a penal and police nature in accordance with article 14 of the Protocol. ^{5/} On the other hand, the establishment of the

^{1/} E/CONF.14/L.12; E/CONF.14/AC.1/SR.5, pp. 2, 4; E/CONF.14/L.33; E/CONF.14/L.39; E/CONF.14/AC.1/SR.21, pp. 8, 9; E/CONF.14/L.44; E/CONF.14/L.51; E/CONF.14/L.59; E/CONF.14/L.78; E/CONF.14/SR.9, pp. 9 to 13.

^{2/} See in this connexion the Preamble, third paragraph, and article 5, introductory paragraph.

^{3/} E/CONF.14/SR.9, pp. 9, 10.

^{4/} Article 13 together with articles 11 and 12, see also article 6, paragraph 2.

^{5/} See also article 5 of the 1936 Convention.

monopoly machinery must precede the actual legal production of opium. As a result, one may say that the provisions of article 3 apply to parties to the Protocol which permit the cultivation of the poppy with a view to harvesting opium no matter whether for domestic purposes only or also for export. Countries which do not permit the production of opium except on licence, but which as a matter of policy do not issue such licences, are not required to establish the machinery provided for in article 3 as long as they do not issue the licences. Any other interpretation would impose unnecessary burdens on such countries and their legislative bodies.

The functions referred to in article 3 and relating to the production of and trade in opium must be discharged by a single agency if the constitution of the State concerned permits it.

[Other states must establish a system of co-ordinating the work of the different government agencies charged with functions under article 3. It is stated in paragraph 1 of article 3 that the "one or more government agencies" charged with functions under this article are "hereafter", i.e. in the following paragraphs referred to as "Agency". This is done in paragraph 5; but not in paragraphs 2, 3 and 6, where the apparently superabundant words "and other competent government authorities" were retained from an earlier draft which did not contain the last sentence of paragraph 1.]

[States, where the constitution does not permit a single agency to be charged with the functions mentioned under article 3, are required to entrust these functions to two or more government agencies or authorities (as mentioned in paragraphs 2, 3 and 6).]

The question might be raised whether a party which permits the production of opium in one of its territories which is separated from its other territories by import and export control must make the functions referred to in article 3 a government monopoly in the whole state including the territories in which opium production is not permitted. This literal interpretation seems, however, to be somewhat inconsistent with basic institutions of narcotics control in general as well as with other provisions of the Protocol itself. "Territories" as defined in article 1 are treated for purposes of international narcotics control as separate entities. In fact, the system of international narcotics administration is generally based on territories and not on states, the states being only the legal persons representing the various units (territories) into which the world is divided for purposes of narcotics control. A government

monopoly of the wholesale trade in opium is required only to render effective the limitation of the production of opium and it would have no particular meaning to require a governmental monopoly of the wholesale trade in a territory which is isolated from the opium-producing territory by the import certificate and export authorization system. It is also provided for elsewhere (article 6, paragraph 3) that a shipment of opium from an opium-producing territory to another territory of the same state constitutes export and import respectively. It would not be convenient from an administrative point of view to treat parts of a state for purposes of estimate and statistical returns as separate entities while applying the system of an opium monopoly to the whole state. As long as a state isolates effectively, by application of the import certificate and export authorization system, an opium-producing territory from its other territories in which the production of opium is not permitted, there seems to be no objection, from the viewpoint of an effective international control of narcotics, to limiting the application of article 3 to the territory actually producing opium.

Article 3, paragraph 2^{1/}

As to the words "or other competent government authorities", see comments under article 3, paragraph 1.

The term "areas" refers to geographic location as well as to the acreage to be cultivated with the poppy for harvesting opium. The Agency must, therefore, adopt the following measures:

- (a) It must determine annually the districts in which it permits the production of opium. In the interest of effective supervision the fields of poppy cultivation should be concentrated as much as possible. No production should be permitted in remote districts or in districts which are not under administrative control which is effective for this purpose. As far as possible, production should also be limited to regions in which a

^{1/} For discussion at the Conference see: E/CONF.14/L.7; E/CONF.14/L.10; E/CONF.14/L.12; E/CONF.14/AC.1/SR.15, pp. 2 to 4, 6 to 10; E/CONF.14/AC.1/SR.7, pp. 2, 3; E/CONF.14/L.33; E/CONF.14/AC.1/SR.21; E/CONF.14/L.44; E/CONF.14/SR.9, p. 13.

modern cadastral survey has been made and in which public records exist, giving the measures of and describing each unit of land. /If it is absolutely necessary to permit opium production in districts in which a modern cadastral survey does not exist, each plot of land in respect of which poppy cultivation for harvesting opium is permitted [shall] [should],^{1/} prior to the issuance of the licence permitting cultivation, be measured by an Agency official and recorded in a field book to be kept by the Agency.

/If opium-producing countries permit the cultivation of the poppy for other purposes than harvesting opium, it is recommended that they shall limit such cultivation to the region in which production of opium is permitted or if this is not feasible, concentrate the cultivation as closely and in as few districts as possible. If plots are found to be cultivated with poppy outside districts in which such cultivation is permitted or if it is proven that a plot not licensed to this end is cultivated with the poppy with a view to harvesting opium, the plots concerned shall be ploughed up in the presence of an Agency official.

(b) It must determine annually the acreage on which the production of opium is permitted and divide this acreage among licensed cultivators as indicated in the individual licences. This acreage shall not be larger /or smaller than that which can be expected to yield the amount of opium which the Agency would be authorized to produce under the terms of the Protocol, /i.e. the amount required by the general purpose of the Protocol aiming at the limitation of the production of opium to medical and scientific purposes.^{2/}

^{1/} The language preferred by the Commission would also apply in a number of subsequent instances.

^{2/} Article 5; see also article 8, paragraph 3; see, in particular, comments on article 5, introductory paragraph.

Article 3, paragraphs 3 and 4^{1/}

As to the words "or other competent government authorities", see comments under article 3, paragraph 1.

The Agency must have wide discretion in the administration of the licensing system. It shall, in particular, be authorized to reject an application for a licence in order to be able to limit the acreage on which the poppy is cultivated for harvesting opium, to a size which is compatible with the obligation of the party concerned to co-operate in the limitation of the production of opium to the world's medical and scientific needs. The Agency shall also be authorized to reject an application for a licence for reasons personal to the applicant; e.g. if the applicant has been convicted of offences against the opium laws or of other offences which indicate that the applicant is not reliable. The Agency shall administer the licensing system so as to ensure the selection of cultivators who can be trusted to comply with the law and with the conditions of their licences.

Each licence shall give all the particulars necessary to leave no doubt as to the identity of the licensee such as: full name in accordance with the national (local) usage; residence; sex; marital status; age if possible; a personal description if necessary. The licence must not be transferable and shall be revocable.

The licence shall also contain all the particulars necessary to identify the plot on which the cultivation of the poppy by the licensee is permitted with a view to harvesting opium and, in particular, give the acreage. This can be done by reference to the appropriate entry in the public records in districts where a modern cadastral survey exists. In other cases the licence shall describe the plot, its location and size and give other data necessary for identification of the plot or refer to the entry in the field book^{2/} of the Agency, which contains these data.

^{1/} For discussion at the Conference see: E/CONF.14/L.7; E/CONF.14/L.10; E/CONF.14/L.12; E/CONF.14/AC.1/SR.5, pp. 2 to 4, 6 to 10; E/CONF.14/AC.1/SR.7, pp. 2, 7; E/CONF.14/L.33; E/CONF.14/AC.1/SR.21, p. 9; E/CONF.14/L.44; E/CONF.14/SR.9, p. 13.

^{2/} See above under article 3, paragraph 2.

The land cultivated for harvesting opium shall be inspected by Agency officials: early in the season and a few days before the incision of the poppy heads. On the latter occasion the officials shall estimate the crop of each individual cultivator and report to the Agency. If a disaster occurs on a considerable scale through hail, blight, etc., Agency officials shall be sent to the villages affected and estimate and report to the Agency the extent of the damage caused to each cultivator. Appropriate administrative measures shall be taken to ensure the competence [efficiency] and honesty of the inspection personnel.

Article 3, paragraph 5^{1/}

Cultivators must deliver their total opium crops into the physical possession of the Agency as soon as possible. This is necessary to prevent diversion into the illicit traffic on the farm level. No specific date is prescribed by which the Agency must be in the possession of the total crops. In the light of the provisions of the introductory sub-paragraph of paragraph 1 of article 5 it may, however, be concluded that the 31 December of each year constitutes a final deadline^{2/} for the collection by the Agency of the opium crop of that year. It may be recalled that under the definition of article 1 of the Protocol "stocks" for which each country has to render account as of 31 December of each year^{3/} do not exclude opium held by cultivators on this date.

^{1/} For discussion at the Conference see: E/CONF.14/L.12; E/CONF.14/AC.1/SR.5, pp. 3 to 6, 10; E/CONF.14/AC.1/SR.21, p. 9; E/CONF.14/L.58; E/CONF.14/L.59; E/CONF.14/SR.9, pp. 11 to 13.

^{2/} At least for opium-producing countries located north of the equator, i.e. for all such countries listed in article 6, paragraph 2, sub-paragraph (a).

^{3/} Article 9, paragraph 1 (b); article 5, paragraph 1, introductory sub-paragraph.

Opium possessed by cultivators on that date would be unlawful under the terms of the Protocol,^{1/} but this does not mean that a party fulfills its obligations if it has collected the total opium crop on 31 December. It must do so earlier if possible and anyway as quickly as can reasonably be expected taking into consideration the practical difficulties involved. If possible the Agency should take physical possession immediately upon harvesting.

If the amount of opium delivered by a cultivator is appreciably below the crop estimate made by an Agency official prior to the incision of the poppy heads,^{2/} the matter shall be thoroughly investigated. If the cultivator cannot satisfactorily explain the discrepancy, he shall not be granted further licences to cultivate the poppy (for harvesting opium). The burden of proof shall lie upon the cultivator.⁷ If it is proven that he has retained a part of the opium crop he shall also be effectively punished.

The opium crop must be delivered by the cultivators directly to warehouses or responsible officials of the Agency. The use of middlemen for the collection of the crop is not permitted.

Wages to farm hands must not be paid in opium, nor rents by tenants to landlords. Where it is usual that tenant farmers give a part of their crops to their landlords, arrangements should be made that landlords obtain instead the equivalent in cash of their share of the crop directly from the Agency.^{3/}

The Agency must "purchase" and "take physical possession" of the opium crop. It seems necessary to offer cultivators sufficient incentives to deliver their opium crops to the Agency rather than to illicit traffickers. It appears therefore desirable that cultivators obtain satisfactory prices^{4/} determined in advance.

^{1/} E/CONF.14/AC.1/SR.5, pp. 3 to 6; E/CONF.14/AC.1/SR.8, pp. 2 to 8.

^{2/} See above under article 3, paragraphs 3 and 4.

^{3/} This may in practice be very difficult.

^{4/} E/CONF.14/L.44; E/CONF.14/SR.9, pp. 12 and 13.

Although the Conference rejected a proposal to include in the Protocol an express provision to the effect that the Agency should purchase the opium "at a price predetermined" by the Agency, it nevertheless wished to ensure that the cultivator obtained a consideration for the opium delivered to the Agency. The Protocol requires therefore "purchase" as well as taking physical possession. The term "purchase" need, however, not be interpreted in too narrow a sense. It may perhaps be considered to include taking the opium crop or part of it as "tax in kind".

The opium taken over from each cultivator shall be weighed and its consistence, i.e. percentage of dry matter, shall be established or at least estimated. Weight and consistence shall be recorded in a special ledger and on the cultivator's licence. The opium shall also be examined in order to ascertain that it is not adulterated.

Article 3, paragraph 6^{1/}

This paragraph provides that the Agency has a monopoly of

- (a) foreign trade in opium, wholesale as well as retail;
- (b) domestic wholesale trade in opium;
- (c) holding opium stocks.

Excluded from this obligatory monopoly are:

- (a) the domestic retail trade by pharmacists;
- (b) sale, administration or dispensation to patients by hospitals, dispensaries, physicians, and other medical practitioners.

Sale of opium by retail pharmacists to doctors for sale, administration or dispensation to patients may perhaps technically be considered to be "wholesale"; it may, however, be assumed that the term "wholesale trading" as used by the Protocol is not intended to cover such sale by retail pharmacists.

^{1/} For discussion at the Conference see: E/CONF.14/L.12; E/CONF.14/SR.7, pp. 2, 3, 7; E/CONF.14/L.33; E/CONF.14/AC.1/SR.21, p. 9; E/CONF.14/L.44; E/CONF.14/SR.9, p. 13.

In view of the fact that "opium" includes by definition "medicinal opium" (article 1) it appears that the manufacture (preparation) of medicinal opium must be a monopoly of the Agency, unless the "medicinal opium" is made by retail pharmacists, hospitals, dispensaries or doctors for retail trade, administration or dispensation to patients. If private drug manufacturers were permitted to make "medicinal opium", they would not be authorized to sell it, such sale being "wholesale trading" within the meaning of article 3, paragraph 6.

Private drug manufacturers are, however, permitted to make medicinal opium preparations, i.e. "galenical preparations", within the meaning of the Protocol.^{1/} Since "galenical preparations" are excluded from the term "opium" their wholesale does not constitute "wholesale trading in opium".

The Protocol excludes from the Agency's monopoly of holding opium stocks only stocks held by "manufacturers licensed to manufacture alkaloids from opium". One may, however, recall in this connexion that the term "stocks" is not used in its ordinary meaning but as defined in article 1 of the Protocol. Therefore, the following are exempted from the monopoly provisions:

- (a) opium held by, or under the control of, the government for military purposes;
- (b) opium held by retail pharmacists, medical practitioners of all kinds, hospitals, scientific institutions or scientists in the duly authorized exercise of their professional or scientific functions.

Opium held by farmers prior to delivery to the Agency constitutes part of a country's "stocks" as defined in article 1.^{2/} Such holdings, however, do not violate the provisions of article 3, paragraph 6 as long as the delivery is not unduly delayed.

^{1/} See above under "opium" (article 1).

^{2/} E.g. for computation of maximum stocks under article 5.

As to the words "or other competent government authorities", see comments under article 3, paragraph 1.

Opium delivered to the Agency shall be kept in a secure building and be guarded effectively. If and when it is transferred to another warehouse, it shall be securely guarded during transportation. In so far as practicable and as soon as possible opium in the possession of the Agency shall be kept in a central warehouse.

Article 3, paragraph 7^{1/}

This saving clause relates to

- (a) earlier treaty obligations concerning the control of the cultivation of the poppy. The Protocol is not intended to repeal obligations of parties resulting from earlier narcotics treaties, but to supplement them. Paragraph 7 of article 3 is in this respect only an express application to article 3 of this general principle.
- (b) national legislation enacted to implement these treaty obligations.

^{1/} For discussion at the Conference see: E/CONF.14/L.8; E/CONF.14/AC.1/SR.6, pp. 8 to 10; E/CONF.14/L.12; E/CONF.14/L.15; E/CONF.14/L.33; E/CONF.14/AC.1/SR.21, p. 9; E/CONF.14/L.74; E/CONF.14/SR.9, p. 13; E/CONF.14/L.83.

Article 4^{1/}

Article 4, Introductory Paragraph

The introductory paragraph limits the application of article 4 to parties which permit the cultivation and "use" of the poppy "for purposes other than the production (collection) of opium". It does not matter in this connexion whether they permit or prohibit the collection of opium.

The phrase "purposes other than the production of opium" refers to seeds used as food or for the extraction of oil and to poppy straw used for the extraction of opium alkaloids. It may be assumed that the use of the seeds for sowing and of the straw by the cultivating farmer for cattle spread (litter) or fodder is not included among these "purposes".

The interpretation of the word "use" in the first line of the introductory paragraph gives also rise to some difficulties. Does the term "use" "for purposes other than the production of opium" refer only to "use" in the narrow meaning of this word, or does it also include export for such purposes? In the former case countries permitting the export of the seeds and the straw, but not their domestic "use" would not fall under article 4; in the latter case the words "and use" at the end of the first line of the introductory paragraph would be superabundant because it would obviously not be understandable how a country could permit the cultivation of the poppy for the seeds and the straw and at the same time prohibit the domestic use as well as the export of these substances.

^{1/} For discussion at the Conference see: E/CONF.14/AC.1/SR.3, pp. 8 to 15; E/CONF.14/L.11; E/CONF.14/AC.1/SR.6, pp. 2 to 8; E/CONF.14/L.16; E/CONF.14/AC.1/SR.14, pp. 2 to 4; E/CONF.14/AC.1/SR.16, pp. 2 to 9; E/CONF.14/L.33; E/CONF.14/AC.1/SR.21, pp. 10 to 11; E/CONF.14/L.57; E/CONF.14/L.75; E/CONF.14/SR.9, pp. 13 to 18.

It seems, however, somewhat difficult to assume that the Conference intended to exempt from article 4 a party which e.g. does not use poppy straw for the manufacture of opium alkaloids, but exports it for this purpose. The Conference indicated particular interest in the international trade in poppy straw.^{1/} It appears, furthermore, improbable that a party would permit the export of poppy seeds, but not their domestic consumption and consequently that the Conference had such a contingency in mind.

As a result of these considerations it may be concluded that the words "and use" constitute a pleonasm.

Alternatively the question may also be raised whether the Conference did not intend to apply article 4 to parties which permit the cultivation of the poppy for "purposes other than the production of opium", as well as to parties which permit the use of the poppy for such purposes. In this case the word "or" before the word "use" in the first line of the introductory paragraph should have been used rather than the word "and" actually employed. The reference to "use" in the first line would then not be superfluous, but assume real meaning since some of the measures of article 4 would very well apply to countries which do not cultivate the poppy. There is e.g. no particular reason for requiring parties which cultivate the poppy to control adequately the manufacture of "narcotic substances" from poppy straw, but for not imposing the same obligation on other parties.

The Conference declared^{2/} that the provisions of article 4 do not apply to poppy grown exclusively for ornamental purposes. The number of poppies grown for such purposes either commercially by gardeners for sale or in private gardens is very small and it would be highly impracticable and hardly profitable to misuse such poppies for the collection of opium or extraction of opium alkaloids from straw.

^{1/} See article 4, sub-paragraph (c).

^{2/} Resolution IV.

If this view of the Conference is accepted, parties which do not permit^{1/} the cultivation of the poppy but for the collection of opium and exclusively ornamental purposes, are exempted from the application of the provisions of article 4. Other parties need not apply these provisions to poppies grown exclusively for ornamental purposes.

[It may also be assumed that article 4 does not apply to parties which do not permit^{1/} the cultivation of the poppy for other purposes^{2/} than the collection of opium, but which [nevertheless] permit the harvesting of poppy seeds for food or extraction of oil from poppies grown for the opium.]

A party need not apply article 4 to such of its territories as do not fulfil the conditions of the introductory paragraph as long as such territories are effectively isolated from others by the application of the import certificate and export authorization system. This conclusion is based on similar consideration as those given for the territorial application of article 3 under that article's introductory paragraph and paragraph 1 above.

Article 4, sub-paragraph (a)

Parties as defined in the introductory paragraph must

(a) prevent the collection of opium from poppies not grown for this purpose (clause (i)). It is clear that the provision of clause (i) does not apply to poppies which are grown for the opium as well as for any of the other purposes indicated in the introductory paragraph of article 4.

(b) control adequately the manufacture of "narcotic substances" from poppy straw (clause (ii)). The term "narcotic substances" refers to all opium derivatives which come within the provisions of the 1931 Convention.^{3/} Poppy straw, i.e. the poppy heads and the uppermost part

^{1/} This includes countries which provide for permission on licence, but as a matter of policy do not grant such licences.

^{2/} The term "other purposes" does not include "exclusively ornamental purposes".

^{3/} See resolution II of the Conference.

of the stem, is principally used for the extraction of morphine. Thebaine and codeine may also be extracted.

Parties must enact such laws and regulations as may be necessary to ensure the achievement of these aims. What may be considered necessary, varies from territory to territory. As regards the diversion of opium into the illicit traffic, the measures to be taken in a densely populated territory which is effectively policed, where the production of opium is prohibited^{1/} and where it is hardly possible, that any attempt to collect opium would remain undiscovered and unpunished, will be different from the measures necessary in remote territories with a sparse population and scattered police forces. Whether a country may limit itself to prohibiting the collection of opium and to providing effective penal sanctions^{2/} in case of transgressions or must take more far-reaching steps depends largely on the effectiveness of the measures taken under the particular conditions of the territory concerned. In some cases it may be necessary to provide for licensing farmers cultivating the poppy for other purposes than the collection of opium or even for establishing^{3/} a governmental agency having all or some of the monopoly functions stipulated in article 3 of the Protocol.

Similar considerations apply to the control of the manufacture of "narcotic substances" from poppy straw. In some territories it may be sufficient to supervise the use by drug manufacturers of poppy straw and to require them to give a periodic account of poppy straw used in the manufacture of opium alkaloids;^{4/} in other territories it may be found necessary to introduce different degrees of control of the foreign and/or domestic trade in poppy straw;

^{1/} This includes territories where the production of opium requires a licence, but no licence is issued as a matter of policy.

^{2/} See also article 5 of the 1936 Convention.

^{3/} Or for extending the jurisdiction of an existing national opium monopoly to the cultivation of the poppy for purposes other than the production of opium.

^{4/} Article 22, paragraph 1 (b) of the 1925 Convention; articles 16, 17 and 22 of the 1931 Convention.

e.g. application of the import certificate and export authorization system;^{1/} licensing the foreign and domestic trade; application of some or all other measures used to control narcotic drugs; requiring the delivery of the total poppy straw crop to a government agency or licensed drug manufacturers; charging a government agency in respect of poppy straw with some or all of the monopoly functions provided for in article 3 of the Protocol in respect of opium.

Article 4, sub-paragraph (b)

The provision of this sub-paragraph constitutes merely an application of the more general idea embodied elsewhere in the Protocol^{2/} where parties undertake to furnish to the Secretary-General a report on the legislative and administrative measures and on important changes therein adopted in order to implement the Protocol.^{3/}

Article 4, sub-paragraph (c)

Governments must take all the measures necessary to enable them to furnish to the Board annual statistics concerning the import and export of poppy straw. These statistics must be furnished at a date fixed by the Board for the previous "year". It may be noted that the Board has not such a discretion in respect of the dates by which parties must furnish other statistical returns. These dates are established in the text of the Protocol itself.^{4/}

The term "year" refers to "calendar year".^{5/}

^{1/} Chapter V of the 1925 Convention.

^{2/} Article 10, paragraph 1, sub-paragraph (b) and paragraph 2.

^{3/} See comments on article 10, paragraph 1, sub-paragraph (b).

^{4/} Article 9, paragraph 1 of the Protocol; see also article 22, paragraphs 1 and 2 of the 1925 Convention.

^{5/} As elsewhere in the Protocol; see resolution VII of the Conference.

Article 5^{1/}

Article 5, Introductory paragraph

The Protocol requires parties to observe the rules provided for in article 5 regarding the limitation of opium stocks "with a view to limiting to medical and scientific needs the quantity of opium produced in the world". Progress towards the ultimate aim of limiting production of opium to medical and scientific needs constitutes a principal object of the Protocol. This is also indicated in the preamble where^{2/} it is stated to be "essential to limit to medical and scientific needs ... the production of the raw materials from which natural narcotic drugs are obtained ...".

The Protocol, however, does not contain an express provision^{3/} stipulating the actual limitation of the production of opium to medical and scientific needs.

The Conference seems to have been guided by the consideration that the Protocol would be instrumental in reducing substantially the world's opium production, but would not succeed in achieving the ideal, i.e. to limit the production of opium to the amount actually required for medical and scientific needs.^{4/} In view of the fact, however, that parties to the Protocol are bound

^{1/} For the discussion of the Conference see: E/CONF.14/AC.1/SR.7, pp. 8-12; E/CONF.14/AC.1/SR.8; E/CONF.14/AC.1/SR.9, pp. 2-12; E/CONF.14/L.33; E/CONF.14/AC.1/SR.22, p.2; E/CONF.14/L.45; E/CONF.14/L.74; E/CONF.14/SR.9, pp. 18, 19.

^{2/} Third paragraph.

^{3/} See, however, article 19, paragraph 1, sub-paragraph (b), clause (iii).

^{4/} E/CONF.14/SR.9, p. 3. Reference is made in this connexion to the statement of Mr. Charles Vaille (France) at the sixth session of the Commission that "the Commission's task was to try to reach agreement with a view to limiting the production of opium. Obviously, the French draft would not lead to an immediate limitation of production. ... It (the proposed Protocol) was simply a collection of provisional measures intended to make it possible eventually to limit production to medical and scientific needs" (E/CN.7/SR.135, p. 3).

to limit the use, import and export of opium, and under article 5^{1/} of the 1925 Convention, the manufacture of opium derivatives and preparations to medical and scientific needs, it follows that they are bound to limit production of opium to medical and scientific needs^{2/} in so far as this is possible by measures taken on the national level and by international co-operation in accordance with the terms of the Protocol.

Article 5, paragraph 1, introductory paragraph

The Protocol seeks to obtain limitation of the production of opium by the indirect way of limiting the size of opium stocks which a country may hold.

Not only the stocks of countries which produce opium but also of those which do not are limited. The size of opium stocks in opium-importing countries constitutes one of the factors which determine production of opium in exporting countries. Furthermore, the Conference seems to have proceeded from the assumption that overlarge opium stocks in importing countries might unduly strengthen their position vis-à-vis the opium-producing countries.

In view of the definitions of the terms "opium" and "stocks" in article 1 of the Protocol the maxima provided for in article 5 include:

- (a) all stocks held on the wholesale level, i.e.
 - (i) stocks held by the government excluding "military" stocks referred to below;
 - (ii) stocks held by manufacturers and wholesalers (including stocks held by government agencies in accordance with article 3 of the Protocol) i.e. all "commercial" stocks (except "opium held by retail pharmacists and by institutions or qualified persons in the duly authorized exercise of therapeutic or scientific functions");

^{1/} In connexion with article 4 (c) and (d); see also article 13 of the 1931 Convention.

^{2/} And temporarily to such legitimate needs for "quasi-medical" and smoking purposes as would be permitted under the restrictions of article 19.

(b) opium held by cultivating farmers; i.e. the "current harvest",^{1/} which must be delivered to the government agency "as soon as possible" (article 3, paragraph 5) i.e. anyway prior to the relevant date of 31 December of the crop year in question.

The maxima thus do not include

- (a) opium preparations;^{2/}
- (b) retail stocks referred to immediately above under (a) (ii), i.e. stocks held for professional purposes by all kinds of medical practitioners, retail pharmacists, scientists, hospitals and scientific institutions;^{3/}
- (c) "military stocks" referred to immediately above under (a) (i), i.e. "opium held by, or under the control of, the government ... for military purposes".

The relevant date is 31 December, i.e. a date by which - it is assumed - the current opium crop must be in the possession of the government agency, provided for in article 3. If it were difficult to observe this date because of long distances governments would have to establish a sufficient number of field warehouses in the proximity of the cultivators of the poppy. In this way it could be made sure that the current crop is stored in the field warehouses by 31 December although not yet in the central warehouses.

If the opium stocks of a party exceeded the limits set in article 5 on any other date than 31 December, it would not constitute a violation of the provisions of this article. The need for a party to dispose of excess stocks in a relatively short period in order to reduce its opium holdings to the required level by 31 December should work as an inducement to limit opium production so as to avoid in future such a situation.

^{1/} E/CONF.14/AC.1/SR.8, pp. 2-8.

^{2/} As well as all opium derivatives; "medicinal opium" is, however, included.

^{3/} See also resolution XIII of the Conference.

Although the Protocol prescribes only upper limits, but not lower limits of opium stocks, opium-producing countries which have the export privilege provided for in article 6, paragraph 2, must not, on the other hand, reduce their opium stocks and production to such a low level as to endanger a sufficient supply for the world's medical and scientific needs at equitable prices.^{1/}

In addition to the provisions of article 5 there are other restrictions concerning opium stocks in the Protocol as well as in the 1925 and 1931 Conventions:

- (a) Under article 8, paragraph 1, sub-paragraphs (c) and (d) each party must furnish annual estimates of:
 - (i) the opium stocks which it proposes to maintain and of the amounts of opium necessary to add or deduct from its existing stocks in order to bring those stocks to the desired level; and
 - (ii) the amounts of opium it proposes to add to its stocks, if any, held for military purposes, or to transfer therefrom to lawful trade.

These estimates must not be exceeded unless and until they have been modified by supplementary estimates (article 8, paragraph 10).

The question may be raised how the maximum limits on stocks under the estimate system relate to the limits established under article 5 of the Protocol. The conclusion is warranted that the estimates under article 8, sub-paragraph (c) must be within the limits of the figures established under article 5, i.e. must not exceed them.^{2/}

- (b) Under the provisions of article 12, paragraphs 2 and 3, sub-paragraph (a)^{3/} of the Protocol the Board may recommend an opium embargo, announce its intention of imposing an embargo and

^{1/} See resolution XV of the Conference.

^{2/} Except under the conditions of article 5, paragraph 5.

^{3/} In respect of non-parties: article 13.

impose an embargo if excessive quantities of opium are accumulating in any country or territory. The Board's discretion in deciding what are excessive quantities does not seem to be necessarily limited by the provisions of article 5, and it would thus appear that the Board could take an embargo action under this title even though the stock maxima of article 5 are not exceeded. It may be noted that article 12 does not refer to stocks but to "excessive quantities of opium ... accumulating in any country or territory" which seems to be a wider term than "stocks". If e.g. the Board finds that a party's retail traders have excessive amounts of opium it may take embargo action. The fact that the party's wholesale stocks which are alone counted under article 5, do not exceed the maxima of that article, would not prevent the embargo decision. The fixed maxima of article 5 and the permissible amounts of article 12, paragraph 2, sub-paragraph (b), which must be adjusted to the changing conditions of each country and territory, aim at different objects. Article 5 seeks to establish a computation basis for guiding the opium production policy of parties, article 12, paragraph 2, sub-paragraph (b), and paragraph 3, sub-paragraph (a) aim more directly at the illicit traffic. In the light of the background of article 12, paragraphs 2 and 3 and of its historical connexion with article 24^{1/} of the 1925 Convention and in view of the fact that the Conference intended to strengthen international control of narcotic drugs by supplementing the provisions of earlier conventions concerning the production of and trade in opium, and not to weaken such control, it cannot be assumed that the Protocol intended to give the Board lesser powers than it would have concerning an action which it could take under the 1925 Convention (recommendation of an import embargo in respect of opium) and the usefulness of which has not been disputed. It may, therefore, be concluded that the term "excessive quantities of opium" as used in article 12 of the Protocol has the same meaning as the corresponding term "excessive quantities"^{1/} used in article 24, paragraph 1 of the

^{1/} Which refers, however, to all narcotic substances covered by the 1925 Convention.

1925 Convention and that the Board's discretion to determine what "excessive quantities of opium" are, is not limited by the provisions of article 5 of the Protocol.

The finding of the Board under articles 12 and 13 of the Protocol need also not be related to a definite day (31 December) as under article 5.

(c) Under article 24 of the 1925 Convention the Board may, under certain procedural conditions, recommend the imposition of an import embargo in respect of substances covered by the 1925 Convention if it finds that excessive quantities of any substance covered by this Convention are accumulating in a country.^{1/} The limitation of this provision does not only relate to opium, but to all substances covered by the 1925 Convention; not only to stocks within the meaning of the Protocol, but to all holdings of a party, including retail holdings; and may be changing in accordance with the particular circumstances of each case. Similarly, as in the case of articles 12 and 13 referred to immediately above under (b) the fact that a country's opium stocks do not exceed the maximum permitted under article 5 of the Protocol, would not prevent the Board from assuming that excessive quantities of opium are accumulating in that country under the conditions of article 24, paragraph 1 of the 1925 Convention.

The finding of the Board also need not be related to a definite day (31 December) as under article 5 of the Protocol.

(d) Under article 16, paragraph 2 of the 1931 Convention, the amounts of raw materials (including opium) in possession of any drug manufacturer at any time must not exceed the amounts required by that manufacturer for manufacture during the ensuing six months. This period may, under exceptional circumstances, be extended by the government for individual manufacturers up to a period of one year.

^{1/} Note the differences between the English and French text of article 24, paragraph 1 of the 1925 Convention.

This provision limits the stocks of opium (and other raw materials) of individual enterprises while article 5 limits the opium stocks of a country as a whole.

For reasons similar to those given above under article 3, introductory paragraph and paragraph 1 and under article 4, introductory paragraph, parties may compute the maxima of article 5 separately for each of their territories.

Different rules concerning the limitation of stocks are established for each of the three groups into which article 5 divides the parties to the Protocol:

- (a) opium-producing states which are permitted to export their product no matter whether they manufacture opium alkaloids or not (sub-paragraph (a));
- (b) states which do not fall in the group mentioned under (a) and which manufacture opium alkaloids (sub-paragraph (b));
- (c) all the other states (sub-paragraph (c)).

Article 5, paragraph 1, sub-paragraph (a)

The rules of sub-paragraph (a) apply to parties which

- (a) are "producing" states, i.e. permit the cultivation of the poppy with a view to harvesting opium;^{1/}
- (b) which are listed in paragraph 2 (a) of article 6, i.e. they must be one of the following states: Bulgaria, Greece, India, Iran, Turkey, Union of Soviet Socialist Republics or Yugoslavia;
- (c) did not make the irrevocable declaration to the Board that they wish to cease producing opium for export (article 5, paragraph 2, sub-paragraph (a) of the Protocol).

^{1/} See above under article 3, Introductory paragraph and paragraph 1.

The maximum stocks which these parties may have are equal to their exports and use in the manufacture of "alkaloids" of opium during two and a half years of their choice.^{1/}

The first item in the computation is the amount of opium exported for medical and scientific needs. It does not make any difference whether the exported opium originates within the borders of the party concerned or has been produced in any of the other states, parties to the Protocol, which are referred to immediately above under (b).

The second item is the amount of opium used in the manufacture of alkaloids, i.e. of opium alkaloids. (The amount used for the manufacture of medicinal opium or opium preparations is not included.)

The years chosen by the party must be calendar years.^{2/} They need not be immediately consecutive. No year prior to 1946 can be chosen; but otherwise there is no restriction. Years following the coming into force of the Protocol may also be selected. No year not yet completed at the time of notification made or to be made under paragraph 3, sub-paragraph (b), clause (i) should, however, be chosen.

The computation of each of the two items referred to above must be based on the figures for three different years: two full and one half calendar year. Since the years and the half year selected may, but need not be the same for the computation of export and use, a minimum of three and a maximum of six different calendar years will serve as computation basis.

The figures for half a year must refer to half the amount of the total for a full calendar year and not to the first or second half of or any other six months' period within such a year.

^{1/} Additional stocks for quasi-medical purposes may be held under the transitional provisions of article 19, paragraph 2. For opium smoking see sub-paragraph (c) below.

^{2/} See resolution VII of the Conference.

Article 5, paragraph 1, sub-paragraph (b)

The provisions of sub-paragraph (b) apply to a party which, "having regard to the provisions of the 1925 and 1931 Conventions in so far as applicable to such a Party", permits the manufacture of "alkaloids", and is not subject to the provisions of the preceding sub-paragraph (a).

"Alkaloids" as used in sub-paragraph (b) means "opium alkaloids". Parties which permit, e.g. the manufacture of ecgonine alkaloids obtained from coca leaves, but not the manufacture of opium alkaloids would not fall within the category of states covered by this sub-paragraph.

It seems that the term "alkaloids" includes also opium alkaloids made from poppy straw or synthetically (e.g. papaverine). The fact, however, that this is done and the extent to which it is done must be considered by the Board in determining the "normal requirements" of the party concerned.

Parties which manufacture medicinal opium and opium preparations but not opium alkaloids do not fall within the scope of sub-paragraph (b).

The interpretation of the phrase "having regard to the provisions of the 1925 and 1931 Conventions in so far as applicable to such Party" may give rise to some questions. A party to the Protocol which is not a party to the 1925 and 1931 Conventions is not excluded from the scope of sub-paragraph (b).

The problem involved is not one of legal participation in, but that of compliance with the 1925 and 1931 Conventions.

The phrase seems to constitute merely a reminder that the parties concerned should comply with the provisions of the 1925 and 1931 Conventions applicable to them. The phrase is also in accordance with the idea that in determining the "normal requirements" the Board should take into consideration the over-all needs of international narcotics control as established by these conventions.

The term "applicable" would import the provisions of article 2, paragraph 3 of the 1931 Convention concerning estimates of states non-parties to that Convention.

It may also be assumed that the reference to the 1931 Convention also covers opium alkaloids such as acetyldihydrocodeine which are placed under the régime of the 1931 Convention by operation of the 1948 Protocol.

The normal requirements must be determined for the two calendar years immediately following the 31 December for which the maximum of opium stocks are calculated.^{1/}

It may be noted that in the case of sub-paragraphs (a) and (c) the maxima are computed on the basis of past statistics, while in the case of sub-paragraph (b) the Board has discretionary powers in determining the "normal requirements". This, however, does not mean that the Board need not take into consideration past statistics in making the determination. Particular attention must also be given to the views of the party concerned.

The "normal requirements" do not only include opium used in the manufacture of alkaloids, but also opium consumed as such as well as opium employed in the manufacture of medicinal opium and opium preparations.

Article 5, paragraph 1, sub-paragraph (c)

The term "opium consumed" includes also opium employed in the manufacture of opium preparations. The five years in question are the five full calendar years^{2/} preceding the 31 December to which the computation applies e.g. a party falling under sub-paragraph (c) must not have opium stocks on 31 December 1955 which exceed the total amount of opium consumed from 1 January 1950 to 31 December 1954.^{3/}

^{1/} Additional stocks may be held for quasi-medical purposes under the transitional provisions of article 19, paragraph 2. For opium smoking see sub-paragraph (c) below.

^{2/} Resolution VII of the Conference.

^{3/} Additional stocks for quasi-medical purposes may be held under the transitional provisions of article 19, paragraph 2. Parties belonging to the group of states referred to in article 5, paragraph 1, sub-paragraph (c) may hold stocks based on consumption for medical and scientific needs only. If such a party, however, reserves the right to permit opium smoking under article 19, paragraph 3, it may also include past consumption for smoking purposes in computing its maximum stocks.

Article 5, paragraph 2, sub-paragraphs (a) and (b)

The declaration by which a party indicates that it wishes to be removed from the category of states enumerated in article 6, paragraph 2, sub-paragraph (a), i.e. wishes to abandon the right to export opium produced within its borders is irrevocable. A party cannot be restored to this category by any further action except amendment of the Protocol (sub-paragraph (a)). On the other hand membership in one of the two other groups of states^{1/} into which parties are divided for the purposes of article 5, can be regained by a subsequent declaration (sub-paragraph (b)).

The Protocol prescribes that these declarations^{2/} must be made "at the time at which the next annual notification is due in accordance with sub-paragraph (b) of paragraph 3 of this article" (i.e. of article 5).

It seems that the reference to sub-paragraph (b) of paragraph 3 should rather be to sub-paragraph (c) which refers back to sub-paragraph (b), which specifies the date by which the annual notification must reach the Board. This sub-paragraph describes the contents of the notifications in question while the following sub-paragraph (i.e. sub-paragraph (c) of paragraph 3) regulates the timing and should therefore have been referred to. Accordingly the declaration is due to reach the Board not later than 1 August of the calendar year which precedes the 31 December for which the maximum stocks of the party in question would be computed for the first time under the rules applying to the group of states to which the party would be shifted e.g. if the declaration reaches the Board by 1 August 1955 the maximum stocks on 31 December 1956 would be computed in accordance with the rules applying to the new status of the party concerned while the maximum stocks on 31 December 1955 would still be computed in accordance with the party's old status. Changes from one group of states to another group of states may involve large adjustments

^{1/} Article 5, paragraph 1, sub-paragraphs (b) and (c).

^{2/} i.e. the declaration made under sub-paragraph (a) as well as that made under sub-paragraph (b).

in the size of stocks e.g. if one of the larger opium producing states abandons its position under article 6, paragraph 2(a), i.e. gives up the right to export opium produced within its borders without beginning or increasing manufacture of opium alkaloids on a large scale. The timing of the declarations of change serves to give the party concerned a sufficient period to bring about the necessary adjustment. The party would have, at least, seventeen months at its disposal including a full crop period from winter sowing to harvesting. Further time could be gained by a decision of the Board under article 5, paragraph 5, sub-paragraph (a).

Upon receipt of the declaration of change from one group of states to another the Board must notify the parties to the Protocol of the change of status involved. The provision (last sentence of sub-paragraph (a)) according to which the change of status becomes "effective" as from the date of the Board's notification requires, however, some clarification. It would be inconsistent with what has been stated above if it were assumed that as from the date of the Board's notification the opium stocks must immediately or as from the following 31 December be reduced to the level permitted under the rules which are applicable to the new category of states to which the party was shifted. It seems to follow from the provisions of paragraph 2, sub-paragraph (a) concerning timing of the declaration of change as well as from the provisions of article 5, paragraph (4) that the authors of the Protocol considered it necessary to give a state sufficient time to adjust its opium stocks to the requirements of the Protocol. Paragraph 4 also provides that the rules concerning maximum stocks should be applied not to the first, but to the second 31 December following the event which brings the Protocol into force in respect of the party concerned. It is therefore justified to assume that the term "effective" in the last sentence of sub-paragraph (a) of paragraph 2 merely indicates that the change of status becomes legally valid, but does not exclude the period of adjustment.

The effects of change from the group of states which enjoy the right of exporting opium produced within their own territories (article 6, paragraph 2(a)) to another group of states (article 5, paragraph 1, sub-paragraphs (b) and (c)) are not limited to the scope of article 5.^{1/} This follows from the phrase

^{1/} See also comments on article 5, paragraph 5, sub-paragraph (b).

"for the purposes of this Protocol" in the eleventh line and in the last sentence of sub-paragraph (a) of paragraph 2 of this article. The party concerned loses its privilege under article 6, paragraph 2(a). This means that although the party may continue to produce opium for domestic consumption, it must cease exporting opium produced within its boundaries. The question may be raised as to the final date on which the party may still execute such exports. Is it the date on which the change of status of the party concerned becomes "effective" i.e. the date of notification by the Board of the change^{1/} or the day^{2/} before the second 31 December following the declaration of change of status? For the reasons given above in connexion with the rules on maximum stocks applying to such a change of status of a party it may be suggested that the second alternative would be preferable. If the second 31 December following the declaration of change is the first date for which the maximum stocks are to be computed under the rules applying to the new status of the party, the day before that date would be the last one on which the party would be in a position to adjust its opium stocks to the new level and consequently should be in a position to export the opium. It would not matter whether the export opium comes from the last crop preceding the relevant 31 December or from an earlier one. To exclude the crop following the declaration of change but preceding the relevant 31 December would be impracticable.

It may also be suggested that other parties should not import opium produced within the borders of the party which gave up its status under article 6, paragraph 2(a), and exported by that party after the relevant date. It is, however, admitted that [at least in the beginning] evidence would in this case become very difficult indeed if the facts became controversial.

The right of the opium-exporting parties referred to in article 6, paragraph 2, sub-paragraph (a) to consume and export seized opium (article 7, paragraph 3) would also be affected by a declaration made under article 5, paragraph 2, sub-paragraph (a). It is suggested that any opium seized after the declaration [became effective by the Board's notification] (article 5,

^{1/} In accordance with the last sentence of article 5, paragraph 2, sub-paragraph (a).

^{2/} i.e. the 30 December.

paragraph 2, sub-paragraph (a))^{1/} should immediately be treated in accordance with the new status (article 5, paragraph 1, sub-paragraphs (b) and (c); article 7, paragraphs 1, 2 and 5) of the party concerned. It is not believed that the difficulties of adjustment would particularly be aggravated by such a procedure.

The special position which the opium exporting countries (article 6, paragraph 2, sub-paragraph (a)) have in respect of the coming into force of the Protocol would also be given up by a declaration made by a state under article 5, paragraph 2, sub-paragraph (a) prior to its deposit of instrument of ratification or accession. The effectiveness of the Protocol depends on the co-operation of "opium exporting" countries. It is for this reason that the coming into force of the Protocol depends on the adherence of at least three of these countries (article 21, paragraph 1). To include among these three a state which has been given by the Protocol the right to export opium (article 6, paragraph 2, sub-paragraph (a)) but has declared that it would not export opium, would not be in agreement with the purpose of article 21, paragraph 1.

The Protocol does not provide for the case in which the declaration of change of status reaches the Board later than it should under article 5, paragraph 2, sub-paragraph (a) and paragraph 3, sub-paragraph (c).

It is suggested that the required reduction in the stock level be carried out by the 31 December of the year following the (calendar) year in which the declaration of change reaches the Board.^{1/}

The question may also be raised whether the legal consequences of a change from one group of states to another result from the facts involved or depend on the declarations referred to under paragraph 2, sub-paragraphs (a) and (b).

^{1/} This may necessitate a revision of the notification under article 5, paragraph 3, sub-paragraphs (f) and (g). The following possibilities may also be considered: (a) Any declaration reaching the Board in time, i.e. by 1 August, should affect the permissible stock level on the second following 31 December, any declaration reaching the Board from 2 August to 31 December should refer to the third following 31 December; (b) the effects of any declaration reaching the Board in time to be taken in consideration in issuing the notifications referred to in paragraph 3, sub-paragraphs (f) and (g) should relate to the 31 December covered by the notifications. Declarations received later should refer to the 31 December covered by the following notifications and so on.

In view of the wording of the last sentence of paragraph 2, sub-paragraph (a)^{1/} it seems justified to assume that the declaration has a constitutive effect and not merely a declaratory one and that the change of status of a party results from the declaration of change and not directly from the factual economic changes involved. In view of the importance of the rules concerning maximum stocks of opium the Board may, however, find that failure of a party to declare the relevant economic changes^{2/} constitutes sufficient reason for appropriate administrative or enforcement measures of articles 11 to 13 of the Protocol.^{3/}

Article 5, paragraph 3, sub-paragraph (a)

The computation of the maximum stocks of opium exporting and opium consuming parties referred to in paragraph 1, sub-paragraphs (a) and (c) is made by addition of the relevant statistical data.

Paragraph 3, sub-paragraph (a) does not refer to the use of statistical data in computing the maximum stocks of the drug manufacturing countries referred to in paragraph 1, sub-paragraph (b). This, however, does not mean that the Board need not use statistical data at its disposal, in determining the maxima for such drug manufacturing parties.

Under article 27 of the 1925 Convention and article 14, paragraph 3 of the 1931 Convention the Board publishes an annual report to the Council on its work and on statistics of narcotics. The report is issued at the end of each calendar year and contains information on the Board's work during this year and statistical figures for the preceding calendar year; e.g. the report dated 13 November 1953 and published in December 1953^{4/} reports on the Board's work during 1953 and gives the statistical information for 1952. The Board revises often these figures in subsequent reports, in the light of additional information received in the meantime.

^{1/} Read together with sub-paragraph (b).

^{2/} Or making incorrect declarations.

^{3/} See in particular article 11, paragraph 1, sub-paragraphs (b) and (c); article 12, paragraph 1, paragraph 2, sub-paragraph (a).

^{4/} E/OB/9.

As regards the opium exporting parties referred to in paragraph 1, sub-paragraph (a):

As has been stated above in connexion with this sub-paragraph above the last year chosen for the statistical computation can or should be the penultimate year preceding the 31 December for which the computation is made. If e.g. the computation is made for the 31 December 1956, the last year which might serve as basis will be the year 1954. Published statistics or revised statistics for this year as well as for all the prior years chosen will be available as early as in December 1955, at any rate on 31 December 1956.

As regards the opium consuming parties referred to in paragraph 1, sub-paragraph (c):

Since the five full calendar years preceding the 31 December for which the computation is made are used as basis, statistical information for the years in question will have been published on this date. If e.g. the computation is made for the 31 December 1956, the relevant calendar years will be 1951-1955. The Board will have published statistics for these years by December 1956. There are often discrepancies between the export figures and corresponding import figures, e.g. due to the period of shipment. In the case of the opium-producing parties referred to in paragraph 1, sub-paragraph (a) it is suggested that the export statistics as furnished by such a party be accepted for the computation of the maximum stocks rather than the export figures which would result from the import figures of other countries.

It may happen that at the time at which a party chooses and notifies the years for the computation of maximum stocks under paragraph 1, sub-paragraph (a) and paragraph 3, sub-paragraph (b), clause (i), all the relevant statistical figures are not yet published by the Board e.g. if the years are chosen for computation of the stock maximum on 31 December 1956, the choice must be made and the notification reach the Board by 1 August 1955. The last year which can or should be chosen would be 1954. Although the statistics for 1954 will not yet be published by the Board on 1 August 1955, they have been or will be furnished by the party concerned and are known to it. When making the choice of years, the party can therefore know the exact figures at which it must aim for 31 December 1956. In the case of a consuming party referred to in paragraph 1, sub-paragraph (c) the exact figure to be aimed at by a given 31 December will not be known prior to the end of the preceding year.

The words at the end of paragraph 3, sub-paragraph (a): "and including those for the period ending 31 December of the preceding year as published subsequently" require some clarification.

As has been shown above, each annual report of the Board to the Council contains statistical figures for the year preceding that to which the report relates as well as for earlier years, e.g. the report for 1956 would contain figures for 1955 and some preceding years. The Conference seems to have held that the report for 1956 containing statistics up to 1955 may not be available by 31 December 1956, i.e. by the date for which stock maxima would be computed, or that if the report were available, it might not yet contain complete statistics for 1955. The Conference considered therefore that the Board would subsequently publish the statistics for 1955. The Protocol provides therefore that the statistical information to be considered should not only include information published in the annual report of the Board, but also the information relating to the full calendar year preceding the 31 December for which the stocks are computed, as established in the annual report or "published" i.e. revised or supplemented subsequently.

As has been pointed out above the statistics for the preceding year need be considered in computing the maximum stocks of the consuming parties referred to in paragraph 1, sub-paragraph (c), e.g. the "consumption"^{1/} figures for 1955 for the maximum stocks as of 31 December 1956.

In view of the fact that under article 22, paragraph 1^{2/} of the 1925 Convention and article 9, paragraph 1, sub-paragraph (b) of the Protocol statistics on opium stocks for the preceding 31 December must be furnished to the Board by 31 May, it may be assumed that the Board will generally examine but after this date whether the opium stocks held on the preceding 31 December are in agreement with the rules of article 5, paragraph 1, concerning maximum stocks.

At the time of examination the Board will often have more relevant statistical information which at the time of publishing the annual report for

^{1/} As to the scope of "consumption" in this connexion see above under paragraph 1, sub-paragraph (c).

^{2/} Introductory sub-paragraph and sub-paragraph (c).

the preceding year was not yet available. It may therefore be anticipated that the Board would employ such additional information and communicate it to governments in a separate publication subsequent to the annual report.

Article 5, paragraph 3, sub-paragraph (b)

The term "periods" in clause (i) refers to the years and half year to be selected under paragraph 1, sub-paragraph (a).

For the scope of choice of years see above under paragraph 1, sub-paragraph (a).

For the term "normal requirements" (clause (ii)) see above under paragraph 1, sub-paragraph (b).

It may be noted that the consuming parties referred to in paragraph 1, sub-paragraph (c) are not required to make a notification under paragraph 3, sub-paragraphs (b) and (c).

Article 5, paragraph 3, sub-paragraph (c)

The word "year" in the third line of this paragraph stands for "full calendar year".^{1/} The notification relating e.g. to the opium stock as of 31 December 1956 shall reach the Board by 1 August 1955.

Article 5, paragraph 3, sub-paragraph (d)

This sub-paragraph applies to the opium-exporting and drug-manufacturing parties referred to in paragraph 1 (a) and (b), but not to the opium-consuming parties mentioned in paragraph 1, sub-paragraph (c).

It is suggested that the provisions of paragraph 3, sub-paragraph (d) be applied also to the data omitted in an incomplete notification.

In the third line of this sub-paragraph the phrase "in time" is used in the English text, while the phrase "à la date prévue" is employed in the French text. These phrases refer to the requirement (paragraph 3, sub-paragraph (c)) that the notifications must be transmitted so as to reach the Board by 1 August of the year preceding the date to which they refer. The timing of dispatch

^{1/} See resolution VII of the Conference.

will depend on the means of communication employed (ordinary letter mail, air mail, telegram). No definite date is thus fixed for transmission. It may therefore be concluded that it was intended to express by the phrase "à la date prévue" the same idea as that conveyed by the phrase "in time".

As regards the "normal requirements" of drug-manufacturing parties referred to in paragraph 1, sub-paragraph (b): The phrase (lines 3-6 of paragraph 3, sub-paragraph (d)) "the Board shall ... adopt the data contained in that party's last relevant notification" requires the Board only to consider these data when determining the "normal requirements" i.e. the maximum stocks of the party. The Board retains in such a case its discretionary power to determine the maximum stocks of these drug-manufacturing parties. Otherwise parties which transmit the notification in time would be in a less favourable position than parties which were late.

The phrase "without further consultation" in lines 8 and 9 of paragraph 3, sub-paragraph (d) may be regarded as permissive but not necessarily as mandatory. The Board need not, but may consult the party concerned if it wishes to do so.

For the interpretation of the word "periods" in clause (i) see above under paragraph 3, sub-paragraph (b).

Article 5, paragraph 3, sub-paragraph (e)

The provisions of paragraph (d) are intended to facilitate the work of the Board, but not primarily to provide a sanction for the failure of a party to transmit a notification in time. In sub-paragraph (e) the Board is therefore given discretion to overlook the fact that it has received a notification after the relevant 1 August.^{1/}

Article 5, paragraph 3, sub-paragraphs (f) and (g)

Under the conditions of paragraph 3, sub-paragraph (c), an opium-exporting party referred to in paragraph 1, sub-paragraph (a), or a drug-manufacturing party referred to in paragraph 1, sub-paragraph (b) may not always know whether its annual notification reached the Board in time. The opium-exporting party

^{1/} Paragraph 3, sub-paragraph (c).

may therefore not know which years are chosen for the computation of its maximum stocks. Drug-manufacturing parties, no matter whether their notifications reach the Board or not, do not know their stock limits until the Board has notified them of its decision. Paragraph 3, sub-paragraphs (f) and (g) therefore requires the Board to inform annually opium-exporting and drug-manufacturing countries of the relevant data.

It is suggested that the Board send the notification provided for in sub-paragraph (f) also to opium-exporting and drug-manufacturing states such as those referred to in paragraph 1, sub-paragraphs (a) and (b) which are not parties. It is assumed that the Board will request non-parties to comply with the provisions of article 5 and if necessary apply appropriate measures provided for in articles 11 to 13.

The fact that the states referred to in paragraph 1, sub-paragraph (b) which are not parties to the Protocol would not export opium to parties but only to such non-parties as would not comply with the provisions of article 6, paragraph 2, would of course affect the size of opium stocks permitted to them.

It is believed that the Board may, at its discretion, include the notification to be made under paragraph 3, sub-paragraph (f), in its annual report published under article 27 of the 1925 Convention and article 14, paragraph 3, of the 1931 Convention.

What has been said in respect of non-parties may also be applied "mutatis mutandis" to territories of a party to which the Protocol does not apply under article 20.^{1/}

For the possible need for revising these notifications see above under paragraph 2, sub-paragraph (a) and (b); footnote on page 51.

Article 5, paragraph 4, sub-paragraphs (a) and (b)

It seems to follow from the wording of article 21 that the term "party" refers to a state in respect of which the Protocol has come into force. It may be concluded from this interpretation that the thirtieth day after deposit of the instrument of ratification or accession or the day of the coming into force of the Protocol (article 21, paragraph 1) whichever is the later,

^{1/} For the territorial application of article 5 see above under article 5, introductory paragraph.

constitutes for each party the date from which the first 31 December on which the level of opium stocks must not exceed the prescribed maximum (article 5, paragraph 1), is determined.^{1/}

If e.g. the Protocol came into force on 29 December 1955 and a party had deposited the instrument on 28 November 1955, the starting date for the computation would be 29 December 1955, because this date is later than the thirtieth day after the date of deposit. As a result the 31 December 1956 would be the first date on which the maximum stocks must not be exceeded. If the party deposited, however, its instrument on 2 December 1955, the starting point for the computation would be 1 January 1956, i.e. the thirtieth day afterwards because this day is later than the date of coming into force of the Protocol. The 31 December 1957 would then be the first date to which the stock limits would apply.

Under the provisions of paragraph 4 each party has a minimum of one year for adjusting its opium stocks to the level required under article 5.

Article 5, paragraph 5, sub-paragraph (a)

The authority of the Board under this sub-paragraph extends to all parties: opium-exporting as well as drug-manufacturing and opium-consuming parties (paragraph 1, sub-paragraphs (a), (b) and (c)).

To the extent that it is expected that non-parties apply the provisions of article 5^{2/} it must be assumed that the Board may grant the exemption to such states.^{3/} In view of the possible territorial application of article 5^{4/} the

^{1/} If, however, "party" is interpreted to mean a state which has deposited an instrument of ratification or accession the starting date for the computation would be the date of deposit or of the coming into force of the Protocol whichever is the later.

^{2/} See article 13.

^{3/} One need not enter into detailed discussion of the fact that this would not constitute an exemption from legal obligations, but rather an undertaking of the Board not to adopt under certain conditions and for a designated period the relevant measures under articles 11 to 13.

^{4/} See above under paragraph 1, introductory sub-paragraph.

Board may, for the same reasons, adopt this decision also in respect of territories to which the Protocol does not apply by virtue of article 20.

In determining whether exceptional circumstances are given the Board should pay attention to the circumstances of the country concerned as well as to the general opium situation in the world.

The "exceptional circumstances", under which the Board may grant the exemption, may, therefore, include inter alia: a succession of good harvests, e.g. if accompanied by bad crops in other opium-exporting states.^{1/}

The circumstances must be "exceptional".^{2/} It is not sufficient that compliance with the stock limits of paragraph 1 would cause financial losses to the party concerned. In particular it would not by itself constitute "exceptional circumstances" if opium importers turned to other legitimate opium exporters referred to in article 6, paragraph 2. It might, however, be considered "exceptional" if opium-importing parties turned to opium sources which are not permitted under article 6, paragraph 2. In general, normal economic events by themselves do not constitute "exceptional circumstances".

If by virtue of a series of bad crops in some opium-exporting countries the world's total stocks of opium sank or threatened to sink below a level sufficient to assure the satisfaction of medical needs for a reasonable period of time, the circumstances must be considered to be "exceptional" so as to permit other opium-exporting countries to exceed the limits of stocks established for them under paragraph 1, sub-paragraph (a). A similar situation may arise if one or more of the opium-exporting countries referred to under article 6, paragraph 2, sub-paragraph (a) ceases or reduces considerably opium exports.

The Board may, but need not prescribe conditions under which it grants the exemption. The Board may, in particular, indicate the measures which a party should take to reduce its opium production. These measures may go beyond those required under the terms of the Protocol.

In view of the fact that the opium stocks are computed from one 31 December to another, the period of time for which the Board grants the exemption must refer to one or more of such dates. The exemption must be limited to a "designated period of time", i.e. cannot be granted indefinitely.

^{1/} See, however, sub-paragraph (b) for transitional provisions.

^{2/} The circumstances set out under sub-paragraph (b) are exceptional.

It may be noted that the Board may not exempt from the obligations of article 5 other than that of complying with the rules concerning the maximum level of opium stocks. In particular, a party may not be exempted from its obligation to regulate its opium production "with a view to limiting to medical and scientific needs the quantity of opium produced in the world" (article 5, introductory paragraph) or to make the notifications required under paragraph 3, sub-paragraph (b).

Article 5, paragraph 5, sub-paragraph (b)

This sub-paragraph constitutes a transitional provision. It applies only to the opium-exporting states referred to in article 6, paragraph 2, sub-paragraph (a).

For the same reasons as those given above under sub-paragraph (a) for the application to non-parties, sub-paragraph (b) must also be applied to non-parties.

The circumstances outlined in this sub-paragraph would justify exemption by the Board under the conditions to be prescribed and for the time to be designated under sub-paragraph (a). The "exceptional circumstances" referred to in sub-paragraph (a) need not be present.

Sub-paragraph (b) lays down specific grounds, in addition to the circumstances referred to in sub-paragraph (a), on which the Board may exercise its power of exemption under sub-paragraph (a) and does not represent a more general invitation to the Board to consider the economic difficulties in question in connexion with other provisions of the Protocol, e.g. in connexion with the question whether the failure of a state to comply with provisions of the Protocol is sufficiently serious so as to justify relevant action under articles 11 to 13. This may be concluded from the fact that sub-paragraph (b) aims at avoiding economic difficulties which might arise for an opium-exporting state from too rapid a reduction to the stock levels required under paragraph 1, sub-paragraph (a) and that action under paragraph 5, sub-paragraph (a), constitutes the appropriate remedy which under the terms of the Protocol can be taken for such a situation. It may also be noted that sub-paragraphs (a) and (b) of paragraph 5 were not separated in the original draft.^{1/}

A state which has made a declaration under paragraph 2, sub-paragraph (a) does not any longer fall under the provisions of paragraph 5, sub-paragraph (b).

1/ E/2186, p. 90.

Article 6^{1/}

Article 6, paragraph 1

See discussion of this paragraph in connexion with the discussion of article 2.

Article 6, paragraph 2, sub-paragraph (a)

This sub-paragraph does not limit to the parties enumerated therein the right to export opium, but only the right to produce opium for export. Opium which has been produced within the boundaries of a party listed in the sub-paragraph may be exported by any party. This applies in particular also to medicinal opium.^{2/}

Opium preparations^{3/} (including "exempted" preparations^{4/}) are not subject to the restrictions of sub-paragraph (a).

The text of article 6 by itself does not seem to prohibit the export of opium seized in the illicit traffic if it can be established that the opium has been produced within the boundaries of one of the parties mentioned in sub-paragraph (a). It must, however, be concluded from the special provisions of article 7 that the export of such opium as of any other seized opium is permitted only under the particular conditions of this article.

The question may be raised how a party which imports opium can establish that the opium in question has been produced within the boundaries of the parties privileged under sub-paragraph (a).

^{1/} For discussion at the Conference see E/CONF.14/AC.1/SR.10 to SR.12; E/CONF.14/AC.1/SR.13, pp. 2 to 4; E/CONF.14/L.14; E/CONF.14/L.17; E/CONF.14/L.18; E/CONF.14/AC.1/SR.14, pp. 5 to 8; E/CONF.14/AC.1/SR.15, pp. 2 to 3; E/CONF.14/L.33; E/CONF.14/L.34; E/CONF.14/AC.1/SR.22, pp. 2 to 5; E/CONF.14/L.45; E/CONF.14/L.68; E/CONF.14/SR.9, pp. 19 to 21; E/CONF.14/L.83.

^{2/} See article 1, definition of opium.

^{3/} Called "galenical preparations" in article 1; for comments see above under article 1, definition of opium.

^{4/} Articles 4 (d) and 8 of the 1925 Convention. See also article 13, paragraph 1 (b) of the 1931 Convention.

If the exporter is one of these parties, one may assume that the importing country need not take any particular measures to establish that the opium is of proper origin. But even in the case of other exporters an appropriate assurance of the competent authorities of the exporting country should be considered to be sufficient unless the particular circumstances of the case advise additional precautionary measures such as a determination of the origin by scientific (physical and chemical) means.

It may be considered whether parties permitting the export of opium should not indicate in the export authorization the particular origin country or at least, in general, that the requirements of sub-paragraph (a) have been complied with.^{1/}

Opium originating in a territory of any of the parties mentioned in sub-paragraph (a) may not be exported if the Protocol does not apply to such a territory by operation of article 20.

In view of the limitation of the number of countries producing opium for export the Conference found it necessary to recommend that parties should take all appropriate steps to prevent restrictive business practices that would interfere with the normal international trade in opium for medical and scientific purposes at fair and reasonable prices, terms and conditions (resolution XV^{2/}).

Article 6, paragraph 2, sub-paragraph (b)

Even opium of the origin required under sub-paragraph (a) must not be imported from a state not a party to the Protocol or from a territory to which the Protocol does not apply by virtue of article 20.

Sub-paragraph (b) applies to opium "in whatever form" including medicinal opium, but not to opium preparations.^{3/}

There is no restriction on the export to non-parties or territories to which the Protocol does not apply if the opium is of the origin required under sub-paragraph (a).

^{1/} See also article 7, paragraphs 3 and 5.

^{2/} See also resolution XVI.

^{3/} See footnotes 2 and 3 under comments on sub-paragraph (a) on p.61.

Article 6, paragraph 3

Opium produced within a territory of a party other than the seven exporting countries mentioned in paragraph 2, sub-paragraph (a) may be exported to another territory of the same party under the conditions of paragraph 3. Such export, however, must not take place from a territory to or to a territory from to which the Protocol does not apply by virtue of article 20.

It may also be assumed that paragraph 3 does not apply to opium produced in a territory of one of the seven parties referred to in paragraph 2, sub-paragraph (a), to which territory the Protocol does not apply by virtue of article 20.

Paragraph 3 also does not expressly state the period to which the restriction applies. It cannot be assumed that the Protocol intended to limit the intra-territorial imports and exports which are made during the whole lifetime of the Protocol, to a single year's needs. Paragraph 3 must therefore be assumed to refer to each calendar year during which the intra-territorial imports and exports must not exceed one year's needs.

Only domestic consumption for medical and scientific needs may be considered in the computation of the permissible amounts. Consumption as used here includes the use of opium as such for medical and scientific purposes as well as use for the manufacture of opium preparations and opium alkaloids.

It is not necessary that the imports and exports in each calendar year do not exceed the actual domestic consumption during that year. The "needs for one year" are not necessarily identical with one year's consumption. At the time of import and export during the year it is impossible to foresee exactly what will be the actual consumption during that entire year. The "needs for one year" may be determined in a similar way as the estimates are made under article 8, paragraphs (a) and (b). Statistics on consumption in earlier years as well as plans for the extension of the manufacture of opium alkaloids and of medical services constitute the most important factors in the computation of the "needs for one year". Whether a party complies with the provisions of the Protocol in determining these needs is subject to review by the Board (articles 11 to 13) in the same way as the party's compliance with other stipulations of the Protocol.

There is no indication that the term "needs for one year" does not include military needs.

The question also arises whether the "needs for one year" i.e. the amount of opium which may be exported and imported in the intra-territorial trade are to be computed for the party concerned as a whole or on the basis of separate territories. In determining the needs of the party those of territories not subject to the Protocol by operation of article 20 must not be considered.

It does not matter that a particular territory imports in a given calendar year more than its needs for that period as long as the export from the opium-producing territory or territories does not exceed the needs of all the territories included in the computation.

In view of the definition of opium in article 1,^{1/} paragraph 3 applies to medicinal opium, but not to opium preparations.

It will be recalled that it is within the discretion of each party to treat the whole of its national possessions or any part of it as a single territory.^{2/} It is, therefore, within the power of each party, by appropriate legislative or administrative measures, to exempt from paragraph 3 shipments of opium from one part of its possession to another part.

Article 6, paragraph 4

Under article 18 of the 1925 Convention a party is bound to apply the import certificate and export authorization system to opium and other substances to which the Convention applies only so far as circumstances permit, if it finds it impossible to apply a particular rule of the system to trade with another state by reason of the fact that this state is not a party to the 1925 Convention.

Under article 6, paragraph 4 of the Protocol a party must not export opium to a state which is neither a party to the Protocol nor to the 1925 Convention and does not comply with all the relevant provisions of the import certificate and export authorization system. The party must apply fully the system to this transaction and if it finds it cannot do so, it must prohibit the export.

The same applies to territories to which neither the 1925 Convention (article 39) nor the Protocol (article 20) apply.

It may be recalled in this connexion that the import of opium from non-parties is not permitted (paragraph 2, sub-paragraph (b)).

Paragraph 4 applies to medicinal opium but not to opium preparations.^{3/}

^{1/} See the comments here.

^{2/} See comments on the definition of territory in article 1.

^{3/} See definition of opium in article 1 and comments thereon.

Article 7 ^{1/}

Article 7, paragraph 1

The Conference considered it desirable from an ideal point of view that opium seized in the illicit traffic should be destroyed. The Protocol provides, however, for exceptions as outlined in the following paragraphs.

The destruction need not take place as long as the opium is required for judicial proceedings or other action on the part of the authorities of the country concerned. ^{2/}

For return to owner of opium, see paragraph 4.

Article 7, paragraph 2

If a party does not wish to destroy opium seized in the illicit traffic, it may:

- (a) convert the "narcotic substances" contained in the seized opium into non-narcotic substances; or
- (b) appropriate the opium or the alkaloids manufactured therefrom for medical or scientific use. ^{3/}

The conversion and appropriation may be made "in whole or in part", e.g. one part of the opium seized may be used in the conversion, while another part is appropriated for medical and scientific purposes and a third part is destroyed (Paragraph 1).

The conversion must be made "under Government control". This would include conversion by the government itself.

It is also provided that the medical or scientific use for which the opium or alkaloids manufactured therefrom are appropriated must be by or under the control of the government.

^{1/} For discussion at the Conference see: E/CONF.14/AC.1/SR.13, pp. 5 to 10; E/CONF.14/L.33; E/CONF.14/L.38; E/CONF.14/AC.1/SR.22, pp. 5 to 11; E/CONF.14/L.45; E/CONF.14/L.74; E/CONF.14/L.77; E/CONF.14/SR.10, pp. 2 to 5; E/CONF.14/L.83.

^{2/} See article 18 of the 1931 Convention.

^{3/} See comments on article 19, paragraphs 1 and 3.

Paragraph 2 is patterned after article 18 of the 1931 Convention and even its wording is taken largely from this article. The Opium Advisory Committee stated ^{1/} that the word "control" in article 18 which is employed here in about the same connexion as in paragraph 2 of article 7 of the Protocol should not be interpreted in too restrictive a sense. The word "control" as used in article 18 of the 1931 Convention is more or less equivalent to "supervision". The same interpretation can be given to the word "control" in paragraph 2 of article 7 of the Protocol.

The term "Government" refers to the government the organs of which have made the seizure.

It may therefore be assumed that conversion through the usual commercial channels is permitted provided that the appropriate provisions of the 1925 and 1931 Convention concerning supervision are duly observed.^{2/}

It follows also that in the event of appropriation for medical or scientific use neither the opium nor the alkaloids manufactured therefrom may be exported because the substances would not be used under the control of the government which made the seizure.^{3/}

The term "alkaloids" refers only to substances which are within the scope of the narcotics treaties, e.g. morphine, codeine, thebaine. This may be inferred from the fact that they are to be used "under the control of the Government". Substances which are not under international narcotics control, e.g. papaverine manufactured from seized opium are not subject to the restrictions of article 7 and may be disposed of freely.

/The term "use" includes also employment of the opium and of the "alkaloids" in the manufacture of medicines. The resulting product other than opium alkaloids falling under international narcotics control is outside the scope of article 7 and in particular of paragraph 2 of this article. This applies specifically to preparations of these alkaloids and of opium, but not to "medicinal opium".^{4/7}

^{1/} Report on the nineteenth session of the Opium Advisory Committee: League of Nations Document C.530.M.241.1934.XI, pp. 9 to 10.

^{2/} See articles 5 to 7, in particular article 6 of the 1925 Convention; article 13, paragraph 2, articles 16 and 17 of the 1931 Convention.

^{3/} League of Nations Document, C.191.M.136.1937.XI, pp. 205 to 207.

^{4/} /Which is "opium" under the definition of article 1.⁷

The terms "narcotic substances" and "non-narcotic substances" require some clarification.

It will be remembered that the Conference expressed the view^{1/} that the term "narcotic substances" as used in the Protocol denotes the drugs derived from opium which come within the provisions of the 1931 Convention.^{2/} If this definition is adopted the term would apply to the following substances contained in opium: morphine, codeine and thebaine.

It may, however, be assumed that paragraph 2 of article 7 of the Protocol uses the term "narcotic substances" in a different sense.

The Commentary on the 1931 Convention^{3/} interprets the term "non-narcotic substances", which is used in the same connexion in the Protocol as in article 18 of the 1931 Convention, as meaning substances in Group I sub-group (b) and Group II of article 1, paragraph 2 of the 1931 Convention or falling outside the scope of this Convention. If this interpretation is accepted for the purpose of paragraph 2 of article 7 of the Protocol, the following of the above-mentioned "narcotic" substances which are contained in opium, would be considered "non-narcotic substances": thebaine (Group I, sub-group (b)) and codeine (Group II).^{4/} Only morphine is thus a "narcotic substance"^{5/} within the meaning of paragraph 2 of article 7. The authors of the Protocol were apparently thinking of the conversion of morphine into codeine when drafting this provision.

Although the text of paragraph 2 seems to treat conversion and appropriation for medical or scientific use as two separate cases, it may nevertheless be assumed that the prohibition of export applying to the alkaloids (including codeine) manufactured from the seized opium refers also to the codeine obtained

^{1/} Resolution II.

^{2/} See comments on the definition of poppy straw in article 1.

^{3/} League of Nations, document C.191.M.136.1937.XI, p. 207.

^{4/} In addition opium contains other substances which are not controlled by the narcotics treaties such as papaverine.

^{5/} Contained in opium.

from the conversion of morphine contained in the seized opium. Codeine thus obtained must be considered to have been "manufactured" from the seized opium.

The measures prescribed under paragraph 2 in respect of seized opium need not be taken as long as the opium is required for judicial proceedings or other action (e.g. determination of its origin) on the part of the authorities of the country concerned.^{1/} For return to owner of opium see under paragraph 4.

It is recommended that seized opium or the "alkaloids" manufactured therefrom which the government desires to appropriate for medical or scientific use be devoted to the requirements of the government or hospitals and scientific institutions [and not be handed over to commerce].^{2/}

Article 7, paragraph 3

This paragraph does not apply to parties which abandoned their position under article 6, paragraph 2, sub-paragraph (a) by a declaration made in accordance with article 5, paragraph 2, sub-paragraph (a).^{3/}

It does not follow from the fact that the rights under paragraph 3 are given to parties, that the Conference intended to impose a formal legal obligation on non-parties not to consume and export opium seized in their countries or the alkaloids^{4/} manufactured therefrom. Parties, however, would be legally bound not to permit the import of such alkaloids from non-parties. The import of the opium would already be prohibited under the more general provision of article 6, paragraph 2, sub-paragraph (b). Furthermore

^{1/} See comments on paragraph 1.

^{2/} See recommendation adopted in respect of article 18 of the 1931 Convention by the Opium Advisory Committee at its nineteenth session: League of Nations document C.530.M.241.1934.XI, pp. 9 to 10.

^{3/} See comments on this sub-paragraph.

^{4/} i.e. alkaloids falling under international narcotics control. Other alkaloids such as papaverine are free of the restrictions of article 7; see comments on paragraph 2.

non-compliance by a non-party with the provisions of paragraph 3 of article 7 may lead to appropriate action by the Board under articles 11 to 13.

Opium which is exported in agreement with the provisions of paragraph 3 may be imported even if it was not produced within the boundaries of one of the parties mentioned in article 6, paragraph 2, sub-paragraph (a). It may not be re-exported by the importing country. It may be re-exported. Consumption or export is permitted under paragraph 3 of article 7 only for medical or scientific purposes.^{1/}

It follows from the text of paragraph 3 that the parties referred to therein may manufacture the alkaloids themselves. The term "consume" includes also employment in the making of preparations of the opium and the alkaloids.

It may be considered whether parties exporting opium in accordance with this paragraph should not indicate in the export authorization the fact that the opium was seized.^{2/}

Article 7, paragraph 4

The term "licensed warehouse" refers generally to a public or private enterprise licensed to store goods. As used in this paragraph the term includes also:

- (a) licensed premises of a manufacturer of narcotic drugs (under article 6, sub-paragraph (a)^{3/} of the 1925 Convention governments must require a licence for the use of these premises);
- (b) licensed premises devoted to wholesale or retail trade (pharmacies) in narcotic drugs (under article 6,^{4/} introductory paragraph, governments must "control", but not necessarily "license" these premises. Some governments require licences for the use of such premises).

^{1/} See, however, in respect of consumption comments on article 19, paragraphs 1 and 3; in respect of export comments on article 19, paragraph 1.

^{2/} See also comments under article 6, paragraph 2, sub-paragraph (a) and under article 7, paragraph 5.

^{3/} See also article 10, sub-paragraph (a) of the 1912 Convention.

^{4/} See also article 10, introductory paragraph of the 1912 Convention.

It is recommended that the opium be not restored to the owner if the theft was facilitated by negligence of the owner or persons acting on his behalf particularly by non-compliance with regulations intended to safeguard the opium against theft.

Opium restored to the owner in accordance with paragraph 4 is free from the restrictions of article 7.

National legislation shall not permit the return of seized opium in cases other than those provided for in paragraph 4. This prohibition does, however, not apply to the return of opium seized from a person who is authorized to possess opium and who has been found innocent of the offence of which he had been accused in connexion with the opium seized.

Article 7, paragraph 5

This paragraph applies only to parties which permit neither the cultivation of poppy with a view to harvesting opium nor the manufacture of opium alkaloids. It serves to eliminate inequalities which would otherwise exist between these countries and the countries referred to in paragraphs 2 and 3 which are in a position to utilize the seized opium for the manufacture of alkaloids and export of opium respectively. [The term "manufacture" as used in paragraph 5 also includes "conversion".]

[It seems that paragraph 5 would not apply to a party which permits the manufacture of synthetic opium alkaloids such as synthetic papaverine; it would, however, apply to a party which, while not permitting the manufacture of opium alkaloids, permits the manufacture of other synthetic drugs with morphine-like effects such as drugs of the pethidine, methadone, morphinan or dithienylbutenylamine group.]

A party which requires a licence for the production of opium and manufacture of opium alkaloids but as a matter of policy does not issue such licences, would fall within the scope of paragraph 5.

A party which permits the manufacture of preparations of opium or opium alkaloids, would not for this reason, alone, be excluded from the scope of this paragraph.

The transactions to which paragraph 5 refers may take place only between parties. The export of seized opium may under this paragraph take place only from or to a state party to the Protocol. It may not take place from or to a territory to which the Protocol does not apply by virtue of article 20.^{1/}

Transactions under paragraph 5 of article 7 require the previous permission of the Board. The Board has discretionary power to grant or refuse the permission. The Conference suggested^{2/} however, that the permission should ordinarily be given if the conditions of paragraph 5 were fulfilled.

The Conference also declared that no such export might be made or authorized by the party concerned until the Board's permission has been obtained.

The party exporting opium under paragraph 5 must apply for and obtain the permission. The importing party need not do so, but must not import opium exported by a party which did not obtain the permission.

It is suggested that the Board send a copy of the permit to the importing party and furnish the exporting party with several at least three copies.

The Party's application and the Board's permit should contain the following data:

- (a) parties or territories involved in the transaction;
- (b) amount of opium to be exported;
- /(c) approximate amount of opium alkaloids to be obtained in exchange or to be extracted;/
- /(c)/ /(d) the calendar year to which the transaction refers;
- /(d)/ /(e) the exporting party's equivalent in opium of that year's requirements in the form both of medicinal opium and of drugs containing opium or opium alkaloids./

^{1/} For the general prohibition of importing opium from a non-party or a territory to which the Protocol does not apply by operation of article 20, see article 6, paragraph 2, sub-paragraph (b).

^{2/} Resolution V.

Each permit of the Board may be executed in one or more transactions. The permit may also refer to export by one or more enterprises to one or more firms. A separate permit is, however, required for export to each party or territory. The permit may cover a full calendar year or a part of the year, but not a period greater than a year.

It may be considered whether the authorization to export opium under paragraph 5 should not indicate the fact that the opium was seized. ^{1/}

A party referred to in paragraph 5 may dispose of the opium seized in the following manner:

- (a) by appropriation for medical or scientific use by or under the control of the Government (paragraph 2);
- (b) by export in accordance with paragraph 5;
- (c) by destruction (paragraph 1).

Seized opium which is "surplus" i.e. has not been disposed of under (a) and (b) must be destroyed.

The question arises as to the particular date at which seized opium becomes "surplus", subject to destruction. Although the computations referred to in paragraph 5 refer to each calendar year, ^{2/} it need not be assumed that opium not yet disposed of on 31 December of a given year is necessarily "surplus". Such an interpretation might compel the destruction of opium seized in the last few days of the calendar year. It is not believed that the authors of the Protocol wished to make the fate of the seized opium dependent on the accident of date of seizure. Whether opium is "surplus" depends on an evaluation of the amounts of opium seized and exported by the party under the provisions of paragraph 5 over a period of several or at least of two years. This view may also be based on the consideration that in accordance with the present practice estimates of requirements of narcotic drugs may be modified by supplementary estimates after the end of the calendar year to which they refer (article 5 of the 1931 Convention). ^{3/}

^{1/} See also comments on article 6, paragraph 2, sub-paragraph (a) and on article 7, paragraph 3.

^{2/} See resolution VII of the Conference as to the meaning of the word "year" used in paragraph 5.

^{3/} See also article 6, paragraph 2 and article 7, last paragraph of the 1931 Convention.

Opium exported under paragraph 5 of article 7 need not originate within the boundaries of one of the parties referred to in article 6, paragraph 2, sub-paragraph (a). 1/ It may not be re-exported by the importing country.

The amount of opium which a party may export under paragraph 5 of article 7 in any given calendar year must not exceed the equivalent in opium of that party's requirements for that year of medicinal opium and of drugs (including preparations) containing opium or opium alkaloids.

The total of estimates^{2/} of narcotic drugs which is established under article 5, paragraph 2 of the 1931 Convention and serves in computing the maximum of narcotic drugs which a country or territory may import under article 12, paragraph 2 of this Convention, is not equal to, but may be used in determining the "requirements" as understood in paragraph 5 of article 7 of the Protocol.

The total of estimates under the 1931 Convention does not include medicinal opium. The "requirements" under the Protocol include this opium.

Amounts necessary for the manufacture of preparations for the export of which export authorizations (under chapter V of the 1925 Convention^{3/}) are not required, and for purposes of conversion are included in the estimates, but not in the "requirements". Conversion figures cannot be included in the "requirements" because "conversion" constitutes manufacture and would exclude the party whose "requirements" are determined from the scope of paragraph 5 of article 7 of the Protocol. The amounts needed for the export of preparations are excluded because paragraph 5 aims at domestic needs of parties which import their needs of narcotic drugs.

The estimates do not include drugs outside the scope of the 1931 Convention (and the 1948 Protocol). The "requirements" include opium alkaloids outside the scope of narcotics treaties such as papaverine.

1/ Article 6, paragraph 2, sub-paragraph (a).

2/ See also article 8, paragraph 2 of the Protocol.

3/ See also article 13 of the 1931 Convention.

The requirements under paragraph 5 include

(a) the quantity of each of the opium alkaloids necessary whether in form of the alkaloid or salts or preparations of the alkaloids or salts for

- (i) use as such for medical and scientific needs (domestic);
- (ii) bringing the stocks (including the "government"^{1/} stocks) to the desired level;

(b) the quantity of medicinal opium necessary for the purposes referred to under (a) (i) and (ii).

In so far as estimate figures exist for the quantities referred to under (a) it may be assumed that these figures are equal to the corresponding quantities of "requirements". Supplementary estimates would modify the "requirements".

The equivalent in opium of the requirements is the amount of opium necessary to manufacture them. It can only approximately be determined.

The Board is the final judge of the party's "requirements". This may be considered from the fact that the Board has discretionary power to grant or refuse the export permit.

The equivalent in opium of the total of the estimates of narcotic drugs (article 5, paragraph 2 of the 1931 Convention) plus the equivalent in (raw) opium of the requirements of medicinal opium based on past consumption statistics may for practical purposes be taken to be equal to the equivalent in opium of the "requirements" under article 7, paragraph 5 of the Protocol. Differences resulting from exports of exempted preparations and from alkaloids not under narcotics control such as papaverine, will be insignificant. In practice it would also mostly be feasible to substitute for the requirements of medicinal opium the sum of the opium estimates made for the year in question under article 8, paragraph 1, sub-paragraphs (a) and (c) and (d).

The amount of seized opium so computed may be exported

- (a) in exchange for opium alkaloids or drugs containing opium alkaloids. The term "drugs containing opium alkaloids" comprises also the salts and preparations of the alkaloids as well as medicinal opium and opium preparations;

^{1/} See article 1, paragraph 4, of the 1931 Convention.

(b) for the purpose of extracting the opium alkaloids. The extracted alkaloids may be returned in their pure form or in form of their salts or preparations. [The alkaloids delivered as "extracted" need not be physically identical with those contained in the seized opium.]

The amount of the substances obtained under (a) and (b) is not limited; but it will normally not be more than can be made from the opium involved. This follows from the fact that the substances are obtained "in exchange" or by "extraction".

The substances obtained in exchange or by extraction may not be exported since they are obtained for the party's "own medical or scientific needs".

While the amount of seized opium which may be exported is established by the Board's permission, the amount of substances obtained in exchange or from the extraction is not determined by the Board, but by the government and business enterprises involved.

While under paragraph 5 the seized opium may be exported only to a party which permits^{1/} the manufacture of opium alkaloids,^{1/} there seems to be no objection to the delivery, by a third country, of the substances which are obtained in exchange.

It is recommended that [the date of actual dispatch] [the date on which the application to the Board for permission to export is posted] be used in computing the amount of opium exported under paragraph 5 during a given year. The opium-exporting party shall notify such dates to the Board and substantiate these dates if requested by the Board to do so (article 11, paragraph 1, sub-paragraphs (a) and (b)).

^{1/} As to the meaning of these words see above comments on the paragraph under discussion.

Article 10^{1/}

Article 10, paragraph 1, sub-paragraph (a)

[The term "Agency" as used in article 3 (paragraph 1) denotes one or more government agencies charged with the functions provided for in this article. As a result it refers also to the "other competent authorities" mentioned in sub-paragraph (a) of paragraph 1 of article 10. The report must, therefore, relate to the organization and functions of all the government agencies charged with functions under article 3. The special reference to "inclusion in the report, of the functions assigned under article 3 to the other competent authorities,^{2/} if any" may be regarded as emphasizing the importance of reporting on the division of the functions among the various government agencies. It need not be assumed that governments should not report on the organization of the "other competent authorities".]

[If the term "Agency" were used in the same sense as in article 3^{3/} it would include the "other competent authorities" referred to in article 10, paragraph 1, sub-paragraph (a). The separate reference, however, in this sub-paragraph to the "Agency" on the one hand and to the "other competent authorities" on the other hand seems to justify the conclusion that the term "Agency" refers to the main organ (national opium (monopoly) agency) charged with functions under article 3, while the term "other competent authorities" denotes other government organs which are charged with such functions under article 3 as cannot be assigned to the Agency for reasons of national constitutional law.^{4/} While the report must incorporate material on the organization and functions of the "Agency", it need contain only a description of the functions, but not of the organization of the "other competent authorities".]

^{1/} For discussion at the Conference see E/CONF.14/AC.1/SR.14, pp. 10 to 12; E/CONF.14/L.41; E/CONF.14/AC.1/SR.23; E/CONF.14/L.49; E/CONF.14/SR.10, p. 7.

^{2/} [i.e. other than the national opium (monopoly) agency.]

^{3/} [See paragraph 1 of this article.]

^{4/} [Article 3, paragraph 1.]

This report need be furnished only once.^{1/} Parties should, however, furnish such explanations as the Secretary-General considers necessary to make the report more complete or to clarify matters included in the report.^{2/}

The report under sub-paragraph (a) may be combined with the report under sub-paragraph (b).

A more summarized description of organization and functions must, at the discretion of the Commission, be included in the annual report referred to below in sub-paragraph (c).

Subsequent changes in the organization and functions must be reported to the Secretary-General under paragraph 2 below, and at the Commission's discretion, in a summarized way in the annual report.

Article 10, paragraph 1, sub-paragraph (b)^{3/}

The term "legislative" measures refers to general rules which are enacted by formal legislative (parliamentary) procedures (statutes, acts, laws) as well as to those enacted by executive organs (decrees, orders, regulations, etc.).

Under the provisions of the 1912 and 1925 Conventions^{4/} parties must furnish to the Secretary-General laws and regulations concerning the control of the production of and trade in opium, i.e. concerning the principal subject matters of the Protocol. As a result the Protocol need not and does not require transmission of laws and regulations concerning all matters regulated by it, but only on such matters as are not covered by earlier narcotics treaties such as control of the cultivation of the opium poppy for purposes other than the production of opium

^{1/} The Commission may wish to recommend that this report should be included in the first annual report of the party concerned furnished under article 10, paragraph 1, sub-paragraph (c).

^{2/} See also resolution 246 B (IX) of the Economic and Social Council.

^{3/} See article 4, sub-paragraph (b).

^{4/} Article 21 of the 1912 Convention (read together with article III of the 1946 Protocol) and article 30 of the 1925 Convention as amended; see also article 21 of the 1931 Convention and article 16 of the 1936 Convention.

and of the manufacture of narcotic substances from poppy straw (article 4, sub-paragraph (b)).^{1/}

Consequently parties need not furnish the texts of the laws and regulations under sub-paragraph (b) of paragraph 1 of article 10. They may, however, "report" by furnishing the legislative texts if they wish to do so and provided the texts necessary to give a complete picture of the situation are transmitted.

The report under sub-paragraph (b) need not contain material covered by the report under sub-paragraph (a). ^{2/}It should, therefore, include information on the organization, but not on the functions, of the "other competent authorities" referred to in this sub-paragraph.^{2/}

The report need be made only once.^{3/}

For combination with report under sub-paragraph (a) see above under this sub-paragraph.^{3/}

What has been said under sub-paragraph (a) about supplementary information which the Secretary-General may request, applies also to the reports under sub-paragraph (b).

A summarized report on the legislative and administrative measures must, at the discretion of the Commission, be incorporated in the annual report required under sub-paragraph (c) below.

Reports on subsequent changes in legislation and administration are required under paragraph 2 below and, at the Commission's discretion, may also have to be included in a summarized form in the annual reports.

^{1/} In so far as the 1931 Convention (articles 16 and 17) requires an accounting of the use of poppy straw as raw material for the manufacture of narcotic drugs relevant laws and regulations must be furnished under article 21 of this Convention.

^{2/} The inclusion or omission of this sentence in square brackets will depend on which alternative interpretation of article 10, paragraph 1, sub-paragraph (a) is adopted; see the first and second paragraphs of the comments on this sub-paragraph (a).

^{3/} The Commission may wish to recommend that this report be incorporated in the first annual report of the party concerned furnished under article 10, paragraph 1, sub-paragraph (c).

Article 10, paragraph 1, sub-paragraph (c)

/It is within the discretion of the Commission, but not of the party concerned to incorporate in, or annex to the annual report under article 21 of the 1931 Convention, the annual report made under sub-paragraph (c). This may be concluded from the fact that both types of annual reports must be made in accordance with the forms prescribed by the Commission.7

/It is within the discretion of the party concerned to incorporate in or annex to its annual report under article 21 of the 1931 Convention its annual report on the working of the Protocol.7

The annual report on the progress made towards the abolition of the use, production, import or export of opium for quasi-medical purposes and of opium for smoking (article 19, paragraph 4, sub-paragraph (a)) is to be included in the annual report under article 10, paragraph 1, sub-paragraph (c).1/

Article 10, paragraph 2

See comments under paragraph 1, sub-paragraphs (a) and (b) above.

"Important" changes concerning the matters set out in paragraph 1, sub-paragraphs (a) and (b) must be separately reported. Changes concerning other matters will, in general, be included in the next annual report.

1/ See also resolution 505 B (XVI) of the Economic and Social Council for the inclusion of the report on the abolition of opium smoking in the annual report made under article 21 of the 1931 Convention (and 1912 Convention).

Article 14^{1/}

The "legislative measures" include the enactment of effective penal laws.^{2/}

Article 15^{3/}

Article 16^{4/}

The following states were entitled to sign the Protocol:

- (a) The Members of the United Nations;
- (b) The following non-Member states invited by the Secretary-General to participate in the United Nations Opium Conference 1953 (resolutions 436 A and I (XIV) and 478 (XV) of the Economic and Social Council):
Albania, Austria, Bulgaria, Cambodia, Ceylon, Finland, Federal Republic of Germany, Hungary, Ireland, Italy, Japan, the Hashemite Kingdom of Jordan, Republic of Korea, Laos, Libya, Liechtenstein, Monaco, Nepal, Portugal, Romania, San Marino, Spain, Switzerland and Viet-Nam.
- (c) The following non-member states to which the Secretary-General sent a copy of the Protocol: none.

The states which signed the Protocol are listed in the comments on the next article.

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- ^{1/} For discussion at the Conference see: E/CONF.14/AC.1/SR.15, p. 12; E/CONF.14/L.41; E/CONF.14/AC.1/SR.23, pp. 8 to 11; E/CONF.14/L.49; E/CONF.14/L.49, p. 8; E/CONF.14/L.83.
 - ^{2/} See also article 5 of the 1936 Convention.
 - ^{3/} For discussion at the Conference see E/CONF.14/AC.1/SR.17, p. 5; E/CONF.14/L.36; E/CONF.14/AC.1/SR.22, p.11; E/CONF.14/L.45; E/CONF.14/SR.10, p. 8; E/CONF.14/L.83.
 - ^{4/} For discussion at the Conference see E/CONF.14/AC.1/SR.20, pp.20 to 23; E/CONF.14/L.36; E/CONF.14/AC.1/SR.22, p. 11; E/CONF.14/L.43; E/CONF.14/AC.1/SR.24, pp.14-15; E/CONF.14/L.53; E/CONF.14/L.62; E/CONF.14/SR.10, p. 8; E/CONF.14/L.83.

Articles 17 and 18^{1/}

Only states which in accordance with article 16 have signed the Protocol by 31 December 1953 may become parties by the deposit of an instrument of ratification. There is no time limit on this deposit.

The following states signed the Protocol by 31 December 1953:

Cambodia, Canada, Chile, China, Costa Rica, Denmark, Dominican Republic, Ecuador, Egypt, France, Federal Republic of Germany, Greece, India, Iraq, Iran, Israel, Italy, Japan, Republic of Korea, Lebanon, Liechtenstein, Monaco, Netherlands, New Zealand, Pakistan, Panama, Philippines, Spain, Switzerland, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Viet-Nam and Yugoslavia.

All Members of the United Nations as well as non-member states which were entitled to sign under article 16 or to which the Secretary-General, at the request of the Council, has sent a copy of the Protocol, may become parties by the deposit of an instrument of accession. A non-member state which has received a copy of the Protocol under article 16 and has thus become entitled to sign by 31 December 1953 need not receive a copy of the Protocol again under article 18 in order to be able to accede. Accession as used in article 18 means final accession. An instrument of accession, subject to the reservation of later ratification, cannot be accepted by the Secretary-General.

Article 19^{2/}

No country or territory may make use of the provisions of article 19 to permit any activity which was not legal and actually practised^{3/} within its

^{1/} For discussion at the Conference see: E/CONF.14/AC.1/SR.17, p.6; E/CONF.14/L.36; E/CONF.14/AC.1/SR.21, pp.3 to 4; E/CONF.14/L.43; E/CONF.14/AC.1/SR.22, p. 11; E/CONF.14/L.45, p. 7; E/CONF.14/AC.1/SR.24, pp. 14 to 15; E/CONF.14/L.53; E/CONF.14/SR.10, p. 9; E/CONF.14/L.83.

^{2/} For discussion at the Conference see: E/CONF.14/AC.1/SR.17, p. 6; E/CONF.14/L.27; E/CONF.14/AC.1/SR.20, pp. 3-13; E/CONF.14/L.47; E/CONF.14/L.48; E/CONF.14/AC.1/SR.23, pp. 11-14; E/CONF.14/L.49; E/CONF.14/L.60; E/CONF.14/L.69; E/CONF.14/L.74; E/CONF.14/L.81; E/CONF.14/SR.10, pp. 9-10; E/CONF.14/L.83.

^{3/} See however article 19, paragraph 1, sub-paragraph (b), clause (i) and comments thereon below.

boundaries on 1 January 1950. It is one of the principal aims of the Protocol to abolish these activities, which must therefore not be extended.

Under this article the quasi-medical use of opium and related operations are temporarily permitted under certain conditions (paragraph 1). Similarly opium smoking is permitted subject to certain restrictions (paragraph 3). The conditions of paragraphs 4 and 5 apply to both the quasi-medical use and opium smoking.

The Protocol itself defines neither "use for quasi-medical purposes" nor "smoking of opium". The Conference adopted, however, a resolution,^{1/} in which it is declared that the use of opium for quasi-medical purposes denotes "the use of opium without medical aid for relief of pain other than that caused by addiction to opium or to other narcotic drugs, but shall not include

- (a) the use of opium (i.e. opium preparations) dispensed in accordance with the provisions of article 9^{2/} of the 1925 Convention;
- (b) the use of drugs containing opium and exempted under article 8 of the 1925 Convention; and
- (c) opium smoking."

The exclusion of "opium smoking" from the definition of "use for quasi-medical purposes" is explained by the fact that the transitional rules applying to such use^{3/} are partly different from those applying to opium smoking.^{4/}

The opium preparations referred to under (a) and (b) of this resolution are not "opium" within the meaning of the Protocol.^{5/} The provisions of article 19 concerning the quasi-medical use of "opium" cannot therefore refer to

^{1/} Resolution XI.

^{2/} See the relevant comments under the definition of opium in article 1.

^{3/} Article 19, paragraphs 1 and 2.

^{4/} Article 19, paragraph 3.

^{5/} See comments on definition of opium in article 1.

these preparations. It seems that in defining the "quasi-medical" use the Conference referred to these preparations in order to indicate that while it is desirable to abolish the practice of using opium without medical aid, the use of these preparations without such aid does not constitute an undesirable practice if the use is made in accordance with articles 8 and 9 of the 1925 Convention.

The provisions concerning the "quasi-medical" use of opium apply not only to pure opium, but also to opium mixed with other substances provided that these mixtures do not constitute "galenical preparations" (galenical preparations including "exempted" opium preparations). Such mixtures are not excluded from the definition of opium.^{1/}

Article 19 can be applied on a territorial basis. A party may limit the relief offered in this article, to one or several of its territories. It cannot, however, make use of article 19 in favour of a territory to which the Protocol does not apply by operation of article 20. A party also must not extend an activity which on 1 January 1950 was permitted and actually^{2/} practised in one of its territories, to another territory in which this was not the case on this date.

Article 19, paragraph 1

No particular form is expressly prescribed for the "express declaration" referred to in the introductory sub-paragraph. It may, however, be assumed that a formal declaration is required i.e. a written (or printed) statement. This statement may appear above, beside or below the signature, may be included in the instrument of ratification or accession or may be recorded in a separate formal instrument deposited with the Secretary-General at the time of signature or of deposit of the instrument of ratification or accession in question. The declaration made under article 19 may be withdrawn at any time. A declaration

^{1/} See comments on definition of opium in article 1.

^{2/} As regards production of opium see, however, article 19, paragraph 1, sub-paragraph (b), clause (i) and comments thereon below.

made at the time of signature may be made again, in its original or modified form, at the time of such deposit. The declarations made at the time of signature may be modified within the limits of article 19 at the time of deposit of the instrument of ratification or accession. Relief may be claimed which was not requested at the time of signature. Declarations made at the time of deposit may later be modified only to the effect that rights originally claimed under article 19 are given up i.e. the declarations may be withdrawn partially.

Declarations under article 19 may not be made after the day of deposit of the instrument of ratification or accession.^{1/}

As regards the quasi-medical use of opium and related operations, it may be noted that no reference is made (sub-paragraph (b)) to the domestic trade in opium for quasi-medical purposes. This may be explained by the fact that the Protocol does not contain any express provision limiting the domestic trade in opium to medical and scientific needs.^{2/} There can, however, be no doubt that a party claiming the right to permit the use of opium for quasi-medical purposes may also permit the trade in and/or the non-commercial distribution of opium for this purpose.^{3/}

In view of the express reference in sub-paragraph (a) and (b) to use, production, import and export, any of these activities would not be permitted for quasi-medical purposes if it is not expressly reserved in the declaration.

While the declaration extends the purposes for which opium may be used, produced, imported, exported and traded, it does not in principle exempt from the control measures which under the Protocol must be applied to these activities; e.g. the production of opium for quasi-medical purposes is subject to the restrictions of article 3, the international trade in opium is subject to the provisions of article 6, paragraphs 2 to 4, i.e. only opium produced within the boundaries of the seven parties referred to in article 6, paragraph 2, sub-paragraph (a) may be imported and exported for quasi-medical purposes and such

^{1/} See also article 25.

^{2/} See relevant comments on article 2 and article 6, paragraph 1.

^{3/} As regards the limitation of the production of opium to medical and scientific purposes, see comments on article 5, introductory paragraph.

export is subject to the import certificate and export authorization system of article 6, paragraph 4. It is furthermore expressly stated, that the system of estimates and statistical returns (articles 8 and 9) must be applied to opium used, imported, exported and held for quasi-medical purposes (article 19, paragraph 4, sub-paragraph (b)).

No medical prescriptions are, however, required for the dispensation (retail sale) of opium for quasi-medical purposes. The requirement of medical prescriptions which serves to secure the medical use, follows from article 2 which limits the use of opium exclusively to medical and scientific needs. This limitation is temporarily suspended by a declaration under article 19.

It may also be assumed that a party referred to under article 6, paragraph 2, sub-paragraph (a) which has made a relevant declaration under article 19 may under the conditions of this article consume and export seized opium for quasi-medical purposes.^{1/}

In view of the fact that a declaration under article 19 may dispense from the requirement of using opium for medical or scientific purposes,^{2/} it may also be assumed that a party which made a relevant declaration under this article, may appropriate seized opium for quasi-medical use by or under the control of the government (article 7, paragraph 2).⁷

In view of the wording and the exceptional character of article 7, paragraph 2 it does not seem justified to assume that a party which under article 19 reserved the use of opium for quasi-medical purposes may appropriate seized opium for quasi-medical use by or under the control of the government.⁷

A party which has reserved, for itself or for one of its territories, the right to export opium for quasi-medical purposes may export opium only to such parties or territories as it has designated in its declaration and as have been named in relevant declarations of the importing parties. The requirement of a reservation on both sides of the transaction applies also to the right of importing opium for quasi-medical purposes. The Secretary-General must notify all declarations made under article 19 to all Members of the United Nations and to all non-member states which are parties or are entitled to become parties to the Protocol (article 26, sub-paragraph (d)).

^{1/} Article 7, paragraph 3.

^{2/} Article 2.

It is required that the use, import or export of opium in respect of which a reservation is made under article 19, paragraph 1 was permitted and traditional in the territory in question on 1 January 1950. If the activity was legally permitted on licence, but no licence granted as a matter of policy, it cannot be considered to have been permitted. It would also not be sufficient if the use, import and export occurred at the relevant time. These activities must have been "traditional" i.e. carried on for a considerable length of time. It is, on the other hand, not necessary that opium was actually used, imported or exported on the exact date of 1 January 1950 (article 19, paragraph 1, sub-paragraph (b), clause (i)).

It will be noted that production of opium which under article 19 is reserved for quasi-medical purposes need not have been permitted and traditional on 1 January 1950. It will, however, be recalled that the Protocol does not contain any express provision stipulating the actual limitation of the production of opium to medical and scientific needs.^{1/}

It is stipulated that no export of opium be permitted for quasi-medical purposes to a state not a party to the Protocol (paragraph 1, sub-paragraph (b), clause (ii)). This applies also to territories to which the Protocol does not apply by virtue of article 20. Parties may not import opium for quasi-medical purposes from states which are not parties to the Protocol including states which signed the Protocol and on this occasion made a relevant declaration under article 19 (article 6, paragraph 2, sub-paragraph (b)).

The undertaking to abolish the use, production,^{2/} import and export of opium for quasi-medical purposes need refer only to such of these activities as are reserved by the declaration (article 19, paragraph 1, sub-paragraph (b), clause (iii)).

The words "provided that" in the last line of the introductory clause of sub-paragraph (b) should be on a separate line, as they apply both to sub-paragraphs (a) and (b).^{3/}

^{1/} See comments on article 5, introductory paragraph.

^{2/} As to limitation of production to medical and scientific purposes see above comments and preceding footnote.

^{3/} See section 17, paragraph 2 of the original draft (E/2186, p. 107); see also footnote on p. 11 of E/NT/8.

Article 19, paragraph 2

This paragraph refers only to a party which has reserved the use of opium for quasi-medical purposes and not to other parties which made declarations under article 19, paragraph 1. It does not matter to which of the three groups defined in article 5, paragraph 1 the party belongs.

The word "years" in the last line of paragraph 2 of article 19 means "calendar years".^{1/} The two years the consumption statistics of which are used for the computation of the maximum stocks held for quasi-medical purposes on a given 31 December^{2/} are therefore the two full calendar years preceding that date, e.g. the maximum stocks on 31 December 1956 are computed on the basis of the figures for the years 1954 and 1955.

The Conference^{3/} declared that stocks of opium held by retail vendors licensed to sell opium for quasi-medical purposes do not form part of the "stocks". Such retail stocks therefore are not taken into consideration in computing the maximum stocks under article 5, paragraph 1 and article 19, paragraph 2. Retail stocks held for medical and scientific purposes are also excluded from the term "stocks"^{4/} and thus from computing the maximum stocks under article 5.

It will be noted that no additions are made to the maximum stocks of parties which reserve the use of opium for smoking under article 19, paragraph 3. Parties which do not belong to the opium-exporting countries referred to in article 6, paragraph 2, sub-paragraph (a) nor permit the manufacture of opium alkaloids (article 5, paragraph 1, sub-paragraphs (a) and (b)) may, however, compute their maximum stocks on the basis of statistics which include consumption for medical and scientific purposes as well as for smoking (article 5, paragraph 1, sub-paragraph (c)).

^{1/} Resolution VII of the Conference.

^{2/} Article 5, paragraph 1, introductory sub-paragraph and comments thereon.

^{3/} Resolution XIII of the Conference.

^{4/} See definition of "stocks" in article 1.

Article 19, paragraph 3

What has been said above under paragraph 1 regarding form, timing, modification and withdrawal of declarations refers also to declarations under paragraph 3 reserving the use of opium for smoking.

It will be noted that paragraph 3 does not envisage the possibility of reserving production, import and export for opium smoking while paragraph 1 does it for quasi-medical purposes. In view of the fact that the Protocol does not expressly limit the production of opium to medical and scientific needs^{1/} and that such a limitation can only be inferred from the restriction of the use^{2/} of opium to such needs, it may be assumed that a party which legitimately permits opium smoking under article 19, paragraph 3, may, within the same territorial limits, use opium produced domestically for such a purpose. For the same reasons as have been given above in connexion with the discussion of the use of opium for quasi-medical purposes there can also be no doubt that countries permitting smoking may also permit the trade in or non-commercial distribution of opium for such purpose.^{3/}

It must on the other hand be concluded that a party which makes a declaration under paragraph 3 may not import and export opium for smoking.^{4/} This view is also corroborated by the provision of paragraph 4, sub-paragraph (b) which requires statistical returns on the import and export of opium for quasi-medical needs, but not for smoking.

Under a declaration made in accordance with paragraph 3 not only pure opium, but also opium mixed with other substances may be smoked.^{5/}

1/ See article 5, introductory paragraph and comments thereon.

2/ And of the import and export; see article 6, paragraph 1; see comments on article 2 and article 6, paragraph 1.

3/ See however the provisions of the 1925 and 1931 Agreements.

4/ See article 6, paragraph 1 and article 25.

5/ Such mixtures are not excluded from the term "opium" while "galenical preparations" are; see comments on definition of opium in article 1.

Opium smoking which was not permitted on 1 January 1950 may not be reserved by a declaration under paragraph 3. If opium smoking was permitted on licence on this date, but no such licence was issued as a matter of policy, it cannot be assumed that opium smoking was "permitted" as required under paragraph 3. It is known that prior to the conclusion of the Protocol opium smoking has been permitted on medical certificate to small numbers of people in several territories in which this practice had legally been abolished. It may generally be assumed that such territories will not qualify under paragraph 3, since it could not be established that opium smoking was permitted on 1 January 1950 as required in this paragraph. It is, however, admitted that it will sometimes be difficult to distinguish in practice between a state or territory which outlawed opium smoking, but excepts opium smokers producing a medical certificate, and a state or territory in which a system of licensing and rationing exists and in which the number of licensed smokers obtaining continuously decreasing rations is very small.

It is recommended that the restrictions imposed on opium smoking prior to the conclusion of the Protocol be not relaxed by application of the provisions of paragraph 3.^{1/}

The declaration under this paragraph affects the purpose for which opium may be used; it does not free smoking opium from the applicable control measures of the Protocol.^{2/} What has been said in this connexion under paragraph 1 in respect of quasi-medical purposes applies mutatis mutandis to opium smoking, in particular to the production^{3/} of opium for smoking, which is subject to the restrictions of article 3; to the appropriation of seized opium for smoking under the control of the government (article 7, paragraph 2); to the consumption (smoking) of seized opium by parties referred to in article 6, paragraph 2, sub-paragraph (a) (article 7, paragraph 3). The system of estimates and statistical returns is expressly extended to smoking opium under article 19, paragraph 4.

^{1/} See resolution X; see also resolution XII of the Conference.

^{2/} Or of the 1912 Convention and the 1925 and 1931 Agreements.

^{3/} In practice, such production will often not be separated from production for medical or quasi-medical purposes.

Parties permitting smoking under article 19, paragraph 3 may obtain the necessary opium from

- (a) domestic production
- (b) seizures [appropriated under article 7, paragraph 2 or] diverted to consumption by smoking under article 7, paragraph 3.

Only persons 21 years or more of age may be permitted to smoke opium.^{1/} It is also required that they be "addicts" i.e. addicted to opium smoking. Persons who are not habitual opium smokers although otherwise addicted to narcotics may not receive opium for smoking. It is required that the persons are "addicts" at the time at which they obtain the opium.

It is therefore recommended that governments examine periodically the registered opium smokers. The details of such an examination will depend on the medical facilities and other practical possibilities of the territory involved.

It is also required that the persons to which article 19, paragraph 3 refers were registered by 30 September 1953 for the purpose of being permitted to smoke opium. It would not be sufficient if they were e.g. included in a list of suspected illicit opium smokers.

On the other hand persons duly registered may be given opium for smoking for the duration of their addiction. Some registered smokers may thus receive opium during their lifetime.

Paragraph 3 does not expressly require any effort to cure the registered opium smokers. It is, however, believed that the existence of a group of legal opium smokers contributes to the maintenance and even to the spread of illicit smoking. It is therefore recommended that the governments of the territories in which opium smoking is permitted under paragraph 3 use their best endeavours to cure the smokers.^{2/} Governments must also take appropriate measures to

^{1/} See also articles II of the 1925 and 1931 Agreements.

^{2/} See also recommendation IX of the Bangkok Conference of 1931 on the Suppression of Opium-Smoking.

prevent that opium received by registered smokers is diverted to illicit smokers. They should in particular fix the ration so as to ensure that the smokers do not receive more than is necessary to satisfy their own craving. In so far as this may be practicable rations should be fixed individually in accordance with the particular needs of each smoker. A system of periodical reduction of rations should also be applied.

[The provisions of paragraph 3 do not affect the right of using narcotic drugs [other than opium] in curing legal or illicit opium smokers from their addiction.]

Article 19, paragraph 4

Paragraph 4 extends provisions of the Protocol on annual reports,^{1/} estimates^{2/} and statistics^{3/} to the activities which may be reserved by declarations under paragraphs 1 and 3, while paragraph 5 provides for sanctions for violation of the provisions of paragraph 4.

The annual report mentioned in paragraph 4 is to be included in the report which a party must furnish annually on the working of the Protocol under article 10, paragraph 1, sub-paragraph (c) and which in its turn may be included in the report furnished under article 21 of the 1931 Convention.^{4/} Since the Commission is authorized to prescribe the form of the annual report furnished under article 10, it may be assumed that the Commission may also prescribe the details of the report on the abolition of the non-medical use of opium (article 19, paragraph 4) and in particular the way in which this report should be included in the general report on the working of the Protocol (article 10).

^{1/} Article 10, paragraph 1, sub-paragraph (c).

^{2/} Article 8.

^{3/} Article 9.

^{4/} See comments on article 10, paragraph 1, sub-paragraph (c).

The phrase "of opium for smoking" in the last line of sub-paragraph (a) of paragraph 4 of article 19 appears to depend on the word "abolition" in the fourth line of this sub-paragraph and not on the words "use, production, import or export" in the fourth and fifth lines. Since the import and export of opium for smoking cannot be permitted under article 19, paragraph 3,^{1/} it cannot be required that an annual report be made on the progress made towards the abolition of such import or export (article 4, sub-paragraph (a)).

The report under paragraph 4, sub-paragraph (d) must, at the discretion of the Commission, include the relevant legislative and administrative measures.^{2/}

It may be noted that paragraph 4 in extending the system of estimates and statistics to opium for quasi-medical purposes and smoking does not refer to production and as regards smoking does also not include imports and exports (sub-paragraph (b)). As has been pointed out under paragraph 3 above, the import and export of opium for smoking cannot be reserved by a declaration and is therefore not permitted.^{3/}

As regards estimates and statistics of production of opium^{4/} for quasi-medical purposes and opium smoking: no separate estimates and statistics are required, apparently because it would be impracticable to determine in advance whether opium produced or to be produced would be used for medical and scientific, quasi-medical or smoking purposes (sub-paragraph (b)).

Since only such estimates are required as are provided for in article 8, estimates of imports and exports of opium for quasi-medical purposes need not be furnished. Statistical returns however must be furnished on these transactions (article 9, paragraph 1, sub-paragraph (c); article 19, paragraph 4, sub-paragraph (b)).

The term "year" in the fourth line of sub-paragraph (b) means "calendar year".^{5/}

^{1/} See comments on this paragraph.

^{2/} See comments on article 10, paragraph 1, sub-paragraphs (b) and (c).

^{3/} Article 6, paragraph 1.

^{4/} Article 8, paragraph 3.

^{5/} Resolution VII of the Conference.

Article 19, paragraph 5

The sanction provided for in this paragraph for violation of the obligations stipulated in paragraph 4 is the invalidation of the declaration made under paragraph 1 or 3 as the case may be, i.e. it becomes illegal for the party concerned to continue the activities which it reserved by the declaration.

The obligations under paragraph 4 are substantive and not merely formal. A document in which no fair description is given of the progress made, may sometimes not constitute a "report" as required under paragraph 4. The same may apply to incomplete estimates or statistical returns. There may, however, be borderline cases in which it would be difficult to determine whether a party which furnished incomplete reports, estimates or statistics, has sufficiently complied with the provisions of paragraph 4 so as to avoid the sanction of paragraph 5.

It is assumed that the Board and the Secretary-General will often ask for explanations and supplementary information^{1/} when the information furnished seems to be /defective/ /incomplete/.

It is recommended that before setting the period of grace referred to in the penultimate line of sub-paragraph (a) the Board and Secretary-General request such explanation or supplementary information, if the case is considered sufficiently grave so as to justify the sanction of sub-paragraph (b) (invalidation of the declaration under paragraph 1 or 3).

The invalidation affects the whole declaration, i.e. all activities reserved therein, although the party concerned may have violated its obligation under paragraph 4 only in respect of one of these activities; e.g. a party which under paragraph 1 has reserved the right to produce, export and use opium for quasi-medical purposes, reports duly on the progress made towards the abolition of such export, but not on the progress towards the abolition of the use. Both export as well as use for quasi-medical purposes would become illegal.

^{1/} Article 11, paragraph 1, sub-paragraphs (a) and (b); Council resolution 246 B (IX).

It may, however, be assumed that the fate of a declaration made under paragraph 1 (quasi-medical purposes) may be separated from the fate of a declaration made under paragraph 3 (opium smoking) although both declarations may have been included in a single formal document of the party concerned. This will be the case if the information furnished by the Party is defective only in respect of the activities for quasi-medical purposes or only as regards the use of opium for smoking.

It is the date of posting and not of receipt by the Board or by the Secretary-General which is considered in determining whether the information has been submitted in time (sub-paragraph (a)), or whether the period of grace (penultimate line of sub-paragraph(a)) has been observed.

If the information is transmitted inadvertently to the Board instead of the Secretary-General or vice versa, it may be considered sufficient if the date of posting to the original addressee is satisfactory. The Secretary-General or the Secretary of the Board - as the case may be - will forward the communication to the right addressee.

The term "year" in sub-paragraph (a) (clause (i)) means calendar year.^{1/}

It is recommended that in the notification of delay (third and fourth lines from the bottom of sub-paragraph (a)) the Board or the Secretary-General specify in detail the information which the party must supply in order to avoid the legal consequences mentioned in sub-paragraph (b). These consequences should also be indicated in the notification.

Article 20^{2/}

A detailed commentary on this article is being prepared.

^{1/} Resolution VII of the Conference.

^{2/} For discussion at the Conference see E/CONF.14/L.21; E/CONF.14/AC.1/SR.20, pp. 14 to 18; E/CONF.14/L.46; E/CONF.14/AC.1/SR.24, pp. 15-16; E/CONF.14/L.53; E/CONF.14/L.61; E/CONF.14/L.65; E/CONF.14/L.85; E/CONF.14/SR.10, pp. 10 to 14; E/CONF.14/L.83.

Article 21^{1/}

See first paragraph of comments on article 5, paragraph 4, sub-paragraphs (a) and (b).

The term "manufacturing" in the seventh line of the first paragraph means "manufacturing narcotic drugs (opium alkaloids)".

Article 22^{2/}

The General Assembly (resolution 774 (VIII)) approved the assumption by organs of the United Nations of the functions and responsibilities assigned to them by the Protocol. In view of this resolution^{3/} it appears that action by the Council as well as consultation with the Commission is mandatory.^{4/}

The Council need not take positive action; it may also reject to initiate an amendment procedure. The Council has complete discretion as to the kind of amendment which it wishes to propose. An amendment drafted by the Council for submission to the General Assembly^{5/} or prepared for submission to an international Conference^{6/} called by the Council may be different from that suggested in the request for revision.

Article 23^{7/}

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- ^{1/} For discussion of the Conference see: E/CONF.14/AC.1/SR.17, pp. 7 to 10; E/CONF.14/L.36; E/CONF.14/AC.1/SR.22, p. 11; E/CONF.14/L.45; E/CONF.14/SR.10, p. 14; E/CONF.14/L.83.
- ^{2/} For discussion at the Conference see E/CONF.14/AC.1/SR.17, pp. 10 to 13; E/CONF.14/L.36; E/CONF.14/AC.1/SR.22, p. 12; E/CONF.14/L.45; E/CONF.14/SR.10, p. 14; E/CONF.14/L.83.
- ^{3/} See also Article 66, paragraph 3 of the Charter of the United Nations.
- ^{4/} Action by the Council would not be mandatory under the Charter (Article 62, in particular paragraphs 3 and 4); see also terms of reference of the Commission on Narcotic Drugs, ECOSOC resolution 9 (I), paragraph 2, sub-paragraph (a).
- ^{5/} Article 62, paragraph 3 of the Charter of the United Nations.
- ^{6/} Article 62, paragraph 4 of the Charter.
- ^{7/} For discussion at the Conference see: E/CONF.14/AC.1/SR.20, p. 18; E/CONF.14/L.36; E/CONF.14/AC.1/SR.22, p. 12; E/CONF.14/L.45; E/CONF.14/SR.10, p. 14, E/CONF.14/83.

Article 24^{1/}

Article 25^{2/}

See articles 19 and 20.

Article 26^{3/}

(The Commission may wish to arrange for an examination of the different language versions of the Protocol with a view to commenting on divergencies if any.)

1/ For discussion at the Conference see: E/CCNF.14/AC.1/SR.20, p.19; E/CCNF.14/L.36; E/CONF.14/AC.1/SR.22, p. 12; E/CONF.14/L.45; E/CONF.14/SR.10, p. 14; E/CONF.14/L.83.

2/ For discussion at the Conference see: E/CCNF.14/AC.1/SR.20, p. 19

3/ For discussion at the Conference see: E/CONF.14/AC./SR.20, p. 19; E/CONF.14/L.36; E/CONF.14/L.45; E/CONF.14/AC.1/SR.20, p. 12; E/CCNF.14/L.84; E/CONF.14/SR.10, pp. 21, 24; E/CONF.14/L.83.