Number 106 December 2018

RESOURCE MATERIAL SERIES

FEATURED ARTICLES

SUPPLEMENTAL MATERIAL

The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

RESOURCE MATERIAL SERIES NO. 106

UNAFEI

Akishima, Tokyo, Japan December 2018

Takeshi Seto
Director

United Nations
Asia and Far East Institute
for the Prevention of Crime and
the Treatment of Offenders
(UNAFEI)

2-1-18 Mokuseinomori, Akishima-shi, Tokyo, Japan
unafei@i.moj.go.jp

CONTENTS

INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 106. This volume contains the work product of the 169th International Training Course, conducted from 9 May to 14 June 2018. The main theme of the 169th International Training Course was *Criminal Justice Practices against Illicit Drug Trafficking*.

One of the most serious global problems currently faced by criminal justice authorities is illicit drug trafficking, which involves the cultivation, production, manufacture, distribution, sale, delivery and possession of drugs and other illicit substances. Illicit drug trafficking not only facilitates drug abuse, which itself is a serious problem, but also generates substantial profits for organized criminal groups. These illicit profits fund such groups' activities and stimulate their growth, and much of these profits infiltrate the legitimate business sphere and impair the integrity and stability of legitimate economic and financial systems as a whole. Even more troubling is the growing link between illicit drug trafficking and the financing of international terrorism.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held this Course to explore various issues that relate to combating organized crime. This issue of the *Resource Material Series* contains papers contributed by the visiting experts, selected individual-presentation papers from among the participants, and the Reports of the Course. I regret that not all the papers submitted by the participants of the Course could be published.

I would like to pay tribute to the contributions of the government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI's international training programmes. Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

December 2018

瀬戸 毅

Takeshi SETO
Director of UNAFEI

RESOURCE MATERIAL SERIES

No. 106

Work Product of the 169th International Training Course

"Criminal Justice Practices against Illicit Drug Trafficking"

UNAFEI

VISITING EXPERTS' LECTURES

THE INTERNATIONAL NORMATIVE FRAMEWORK ON DRUG CONTROL AND ITS EVOLVING CONTEXT

*Celso Eduardo F. Coracini**

I. CURRRENT GLOBAL SITUATION OF DRUG TRAFFICKING

The international community has agreed on normative instruments to regulate the licit production and trade of certain drugs in the early XXth century,[1] which have been replaced by, and currently consist of, three treaties on drug control.[2] At that time, the main concern was to regulate the production of, and trade in, opium, which had been at the centre of the Opium Wars and had devastating health consequences, especially in China at the end of the XIXth century. Gradually, control over an increasing number of psychoactive substances meant that authorized use would be restricted to medical and scientific purposes. That normative development is the basis for the identification of production and trade that is illicit and for a discussion on the array of measures intended to address drug trafficking.

The continued monitoring of the cultivation and production of traditional drugs, such as opium and heroin, as well as coca and cocaine, are instrumental to understanding the evolution of global drug markets and prediction of drug use fluctuations.[3] In addition to monitoring the supply of, and the demand for, controlled drugs, the need for monitoring the spread of new psychoactive substances[4] has been fundamental, for its impact on health, on the dynamics of drugs markets, and as the basis for informed debates and decisions on the scheduling of new substances under the international drug control system.

The 2018 World Drug Report,[5] as in previous years, contains detailed data on various aspects of drug control, including trafficking routes, which are based on an assessment of drug-seizure data, as provided by Member States and validated by UNODC. The last three years have notably observed a considerable increase both in the production of opium and heroin (especially from Afghanistan), as well as of coca and cocaine (especially from Colombia), which are likely to result in substantial pressures for the increase of the demand of those drugs, including based on retail price reductions and on a geographical diversification and expansion of drug markets. Cannabis has continued to be the most widely illicitly cultivated and consumed drug, with strains and products of very high levels of THC.[6] Whereas legislative changes in Canada and Uruguay, as well as in some states of the United States, may contribute to changes in the perceived harm of its use, the consequences of such normalization of non-medical use in those jurisdictions will have to continue to be monitored, in particular in relation to their impact on health systems, security and international

* Crime Prevention and Criminal Justice Officer, Division for Treaty Affairs, United Nations Office on Drugs and Crime (UNODC). The views expressed in this paper, summarizing lectures delivered at UNAFEI, do not necessarily represent the views of the organization.

[1] See UNODC, *A century of international drug control*, 2008, available from: https://www.unodc.org/documents/data-and-analysis/Studies/100_Years_of_Drug_Control.pdf.

[2] The three drug control conventions are the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol (United Nations, *Treaty Series*, vol. 976, No. 14152), hereinafter the "1961 Convention", the 1971 Convention on Psychotropic Substances (United Nations, *Treaty Series*, vol.1019, No. 14956), hereinafter the "1971 Convention", and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (United Nations, *Treaty Series*, vol. 1582, No. 27627), hereinafter the "1988 Convention".

[3] *Contribution of the Executive Director of the United Nations Office on Drugs and Crime to the special session of the General Assembly on the world drug problem to be held in 2016*, UNODC/ED/2016/1, 26 February 2016, p. 16.

[4] See UNODC, *New psychoactive substances: overview of trends, challenges and legal approaches*, 2016, E/CN.7/2016/CRP.2*, available from: http://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_59/ECN72016_CRP2_V1601405_reissued.pdf) ; and UNODC, *The challenge of new psychoactive substances*, 2013, available from: https://www.unodc.org/documents/scientific/NPS_2013_SMART.pdf.

[5] Available from: www.unodc.org/wdr2018.

[6] Cannabis and cannabis products are currently undergoing review by the World Health Organization.

cooperation.

The non-medical use of prescription drugs has gained considerable magnitude, and pharmaceutic opioids have been misused in different regions. North America currently faces an unparalleled opioid crisis, mainly originated due to overprescription of fentanyl, which has led to historic increases in overdose deaths. In parallel, the emergence of new psychoactive substances has stabilized, but continues to pose significant public health threats and to be a challenge for law enforcement action around the world.

II. INTERNATIONAL LEGAL FRAMEWORK ON DRUG CONTROL

The three international drug control conventions are recognized by the international community as the cornerstone of its drug control system. Typically, in international legal matters, countries will normally conduct negotiations and seek agreement on issues that have a transnational impact, and most will be reluctant to engage themselves in respect of issues that are constrained within their borders.

For that reason, the 1961 and the 1971 Conventions, while expressing concern for the health and welfare of mankind, are mostly focused on regulating drug production and trade for medical and scientific purposes. The importance of health measures, including prevention of drug abuse, education and treatment of drug use disorders, was recognized in the 1971 Convention, notably its article 20, and a similar provision was introduced in article 38 of the 1961 Convention through its 1972 Protocol. Both provisions include the need for Parties to duly train personnel for those purposes.

The 1988 Convention, which was developed against the background of the increasing power of drug cartels in the 1980s, contains an articulated provision aimed at harmonizing the description of drug-related criminal offences (with the highlight of the first definition of money-laundering offences in an international treaty), and it mostly focuses on facilitating and rendering more effective judicial and law enforcement international cooperation in relation to drug trafficking (which often requires transnational investigations and cooperation). Both the 2000 United Nations Convention against Transnational Organized Crime[7] and the 2003 United Nations Convention against Corruption[8] offer tools for Member States to address drug trafficking from the perspective of measures targeting sophisticated forms of criminality, driven by profit and facilitated by corruption and money-laundering strategies. Among such tools are the anti-money-laundering framework, special investigative techniques, and their use as a basis for extradition, mutual legal assistance and joint investigations.

The scope of narcotic drugs and psychotropic substances under control is determined by a scheduling process, which is based on the scientific review of new or already controlled substances by the World Health Organization. Similarly, the scope of controlled substances, under the 1988 Convention, frequently used in the illicit manufacture of narcotic drugs and psychotropic substances is based on the scientific review by the International Narcotics Control Board. In both cases, the concerned entities formulate recommendations on adequate and proper schedules or tables for decisions to be taken by the Commission on Narcotic Drugs.[9]

The drug control treaties established and mandated the International Narcotics Control Board as the monitoring body responsible for supervising their implementation and administering a system of estimates of drug requirements and statistical returns (with differences for psychotropic substances), aimed at advancing the aims of the treaties: to "limit the cultivation, production, manufacture and use of drugs to an adequate amount required for medical and scientific purposes, to ensure their availability for such purposes and to prevent illicit cultivation, production, and manufacture of, and illicit trafficking in and use of, drugs" (article 9, paragraph 4, 1961 Convention).

The Commission on Narcotic Drugs was established in 1946 by the Economic and Social Council of the

[7] United Nations, *Treaty Series*, vol. 2225, No. 39574.
[8] United Nations, *Treaty Series*, vol. 2349, No. 42146.
[9] For more details on the procedures to schedule drugs and precursors under the international drug control conventions, see UNODC, Note by the Secretariat on Challenges and future work of the Commission on Narcotic Drugs and the World Health Organization in the review of substances for possible scheduling recommendations, E/CN.7/2014/10, available from: https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_57/_E-CN7-2014-10/E-CN7-2014-10_V1388967_E.pdf.

United Nations, preceding the drug control conventions. In addition to its treaty functions related to deciding on the scheduling of controlled substances, it is the central policy-making body of the United Nations on drug matters. The Commission monitors global trends and proposes new concerted measures or agreed policies. Besides resolutions and decisions adopted during its annual sessions, the Commission has been instrumental for the adoption of high-level political declarations and plans of action.[10]

Those documents, adopted by the Commission, the Council or the General Assembly, are fundamental for the development of national policies and strategies, as well as laws, despite their non-binding nature, and this is all the more so when they are adopted by consensus and acted upon by Member States. In such policy debates, the international community coined the term "common and shared responsibility" to describe the principle that binds the drug policies of different countries together, including the need for each State to adopt measures at the national level that contribute, for example, to the reduction of illicit drug demand, and to overcome the artificial differentiation of responsibility among countries that are predominantly seen as producing or as consumer markets.[11]

The latest instrument reflecting the array of measures and language of consensus of the international community, including on matters that are not addressed in detail in the drug control treaties, is the outcome document adopted by the United Nations General Assembly at its special session on the world drug problem, held in 2016.[12] As the reading of all operational recommendations arising from that document reveals, the drug control framework is not isolated from other normative instruments. It includes and encompasses applicable international human rights norms, as well as standards and norms in crime prevention and criminal justice.

In addition to supporting the Commission on Narcotic Drugs and the International Narcotics Control Board as their secretariat, the United Nations Office on Drugs and Crime is mandated to provide technical assistance to States, upon their request, in the implementation of international drug control norms, and in assisting them in efforts to reduce the world drug problem.

III. CONCLUSIONS

In sum, countering drug trafficking should not be an isolated action, but integrated as part of a comprehensive policy of promoting and protecting public health. This objective is therefore narrowed down not only by the concern with selecting approaches that prove to have systemic positive effects, including on reducing the influence and profits of organized criminal groups, but also by the concern with protecting and respecting human rights.

Such efforts depend on political willingness as well as technical capacity to adequately cooperate in transnational investigations and prosecutions, and the exchange of operational information and, as much as possible, direct contact among authorities of cooperating countries is fundamental for effectiveness. Data collection also needs to be improved and expanded for the development of sound policies.

The international community faces considerable challenges, which include the need to reduce knowledge disparities across the globe, which may lead to national laws and policies that are not adapted to their context. When it comes to non-controlled substances manufactured to mimic the effects of controlled drugs, States are still to find a proactive modality of response, which takes account both of the already insufficient forensic services in many countries, and of the potential variety of chemical variants for many drugs.

Finally, there are barriers to the availability of controlled drugs for medical and scientific services that

[10] More information is available from: http://www.unodc.org/unodc/en/commissions/CND/Political_Declarations/Political-Declarations_Index.html.
[11] See the 1998 Political Declaration and Plan of Action on International Cooperation towards and Integrated and Balanced Strategy to Counter the World Problem (available from: http://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_52/Political-Declaration2009_V0984963_E.pdf) and chapter I of the 2012 Annual Report of the International Narcotics Control Board (available from: https://www.incb.org/documents/Publications/AnnualReports/AR2012/AR_2012_E_Chapter_I.pdf).
[12] A/RES/S-30/1, available from: https://undocs.org/A/RES/S-30/1.

need to be overcome, as well as barriers to the necessary delivery of social and health services to persons with drug use disorders or who illicitly use drugs. The work of Governments to address drug trafficking is not isolated from those services, which should be brought closer to those who need them. Cooperation and coordination among authorities in charge of providing health and social services is important, as well as addressing justice and law enforcement.

COMBATING ILLICIT DRUG TRAFFICKING BY UNDERCOVER OPERATIONS

*Wasawat Chawalitthamrong**

I. INTRODUCTION

Drug crime is a major problem facing every society in the world at present. They are different from the past by having secretly specialized and complicated systems. New technology techniques are used as tools, and drug crime is committed in systematic ways and in networks which involve organized crime and transnational crime, causing severe damage and effects on society, economics, politics and national security. Investigation cannot lead to offenders so efficient special investigation is needed to be used for wiretapping, intercepts, undercover operations, and controlled delivery. Special investigation plays a very important role in suppressing and convicting offenders.

To understand how to handle organized crime and drug dealers, the comprehension of laws, investigation systems and techniques of drug crime investigation are necessary. Moreover, creating networks for information exchange and joint investigation will be the permanent solution and drug crime prevention.

II. CHAPTER ONE

A. Investigation Principles and Techniques of Drug Crime Investigation

Drug crime is different from other crimes since it is committed by a group of people engaged in organized crime and by secretly specialized and complicated systems. Normal investigation cannot lead to a drug lord. The drug lord always avoids prosecution and conviction due to the lack of evidence such as drugs and money from drug dealings, except for money from money laundering. Collecting evidence and judicial proceedings with offenders need effective investigative techniques that are different form general crime suppression. To operate systematically and efficiently, undercover operations are the best solution for drug crime and for obtaining justice.

Because undercover operations involve investigation techniques, we need to understand clearly about investigation principles, the scope of universal drug trafficking proceedings and laws, for example, the United Nations Convention against Transnational Organized Crime 2000. State parties must cooperate in order to suppress transitional crime. Also, state parties can impose bold measures to give authority to law enforcement authorities in order to collect related evidence, such as by wiretapping, controlled delivery, sting operations and special laws relating to narcotics control and suppression in each state.

When considering drug crimes committed by a group of people, there are sharing the work, demanding money in return, and breaking laws. Those are considered as crimes that are the meaning of organized crime according to the convention so special investigation is applied for drug-related crime suppression. State parties need to develop progressive laws suited to anti-crime and crime-suppression strategies. However, special investigation must be considered thoroughly to not affect human rights including residence, body, communication and freedom. Drug crime is different from other crimes. Normal investigation cannot prove drug lords' guilt. Typically, only the drug dealers are arrested so to collect evidence and to proceed against the drug lords requires investigation techniques. In case of conspiracy, authorities must collect evidence proving that the offenders conspired. Only having evidence such as drugs and money is insufficient to lead to drug lords or prove that they have conspired. The Measures for Suppressing Narcotic Offenders Act B.E. 2534 (1991) provides that two or more persons conspiring to commit an offense relating to narcotics shall be guilty of conspiracy, and if the offense is subsequently committed, shall all be equally liable for the penalty

* Head of Sector, Department of Special Investigation, Ministry of Justice, Thailand.

imposed for such offenses.

To collect evidence and proceed with offenders under drug trafficking, authorities need special investigative techniques such as wiretapping and intercept to prove offenders' guilt. To collect evidence and proceed extensively, there are guidelines for special investigation and rules for operating legitimately. Therefore, undercover agents are very important witnesses in narcotics cases, especially offenses about supporting or conspiracy due to the fact that narcotics cases need undercover agents to interfere with offenders to gather key information to arrest them.

B. Features of Narcotics Litigation

Drug crime and drug offenses are significantly different from other litigation. Drug crime involves two or more persons conspiring to commit an offense and has a network in which drug lords or heads of the organized crime group are just commanders. They are not associated with any process of drug trafficking, so it is hard to find them guilty and subject them to law enforcement due to these separate actions. Only drug traffickers and sub-drugs dealers are arrested.

Drug crime earns large profits. It easily motivates the offenders to commit their offense, risking big money by doing it once or twice. That is why there are always new faces instead of those who are arrested.

Drug crime is a transitional crime. Offenders usually use methods of transacting their property so they are not caught. They know exactly that financial institutions would give the information to state agencies. Assets and property do not pass through the financial system but are spent immediately on goods, for instance, cars, gold and jewels, or even livestock like crocodiles and ostriches.

Drug crime is a crime that needs special measures for judicial proceedings, such as conspiring measures, entrapment, measures to regulate the transfers, wiretapping, witness protection, suspended prosecution and plea bargaining. Also, drug crime is unique in that there is no victim. A drug addict is a drug victim who gets effects from drugs, so the victim becomes an offender. Therefore, both the producers and the drug addicts are offenders. Even authorities who possess drugs are considered illegal, so there is a legal protection measure for them in case of doing undercover operations, sting operations and transferring drugs under their control.

C. Features of Narcotics Operations

Organized crime is an action by a group of people, including planning, illegal offenses or legal action with unlawful conduct. They are an organizational structure, commanding in order to commit illegal acts by low-level members while commanders or other high-ranking persons of the organization become wealthy and do legal work. They might be a group of powerful persons because crime earns large profits. Criminals need money and property from offenses to gain power and manpower to inspect authorities' suppression. The structure of organized crime might be different depending on the network and the organization. There are 4 levels of commanders, as stated below.

- Level 1 Chiefs, or bosses, (an investor or a drug lord which is behind the operation) are manipulators responsible for organizational management. Usually, there is only one person, and this person is not associated directly with the business and property which comes from illegal offenses except for laundering money. This person always does a legal job for concealing the offense.

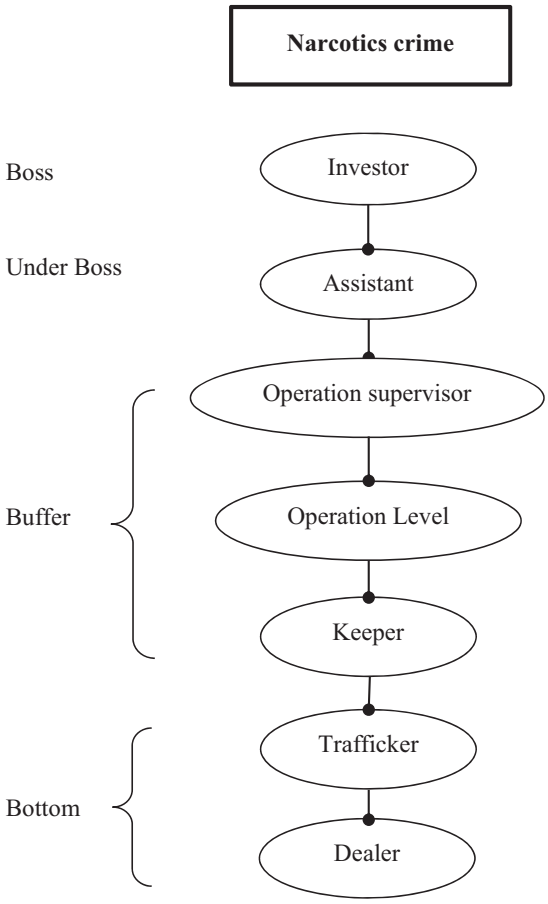
- Level 2 Assistants, or under-bosses, are responsible for collecting data of process, reporting to a chief and following up on commands or policies from the chief.

- Level 3 Operation Supervisors, or buffers, are middlemen between high-level members and low-level members to protect the high-level positions from investigation.

- Level 4 General Staff, or bottom, are persons who commit offenses following the commands from the higher position, and they are normally caught easier than persons holding any of the other positions.

The process of drug trafficking is performed in a network, or an organized crime group, which covers an entire country or international area. The network is regulated by loyalty and honesty. It is extremely strict

and if anybody does not follow the regulations, there will brutal punishment which can cause danger to their families, friends and themselves. When one in an organization, usually someone at the bottom such as a trafficker, a recruiter, a dealer and a drug addict, is arrested, he or she typically does not give any information, especially about the high-level positions, to the authorities. Features of the process of drug trafficking can be described in the following diagram.



D. Collecting Evidence in Narcotics Operations Using Special Techniques

The United Nations Convention against Transnational Organized Crime (UNTOC) 2000 allows the state parties to use special investigation by adjusting to their domestic laws. Special investigative techniques consist of:

- Controlled delivery
- Undercover operations
- Electronic surveillance

1. Controlled Delivery

Controlled delivery is the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offense and the identification of persons involved in the commission of the offense. However, a delivery method under control is quite inconvenient and complicated due to the consent of the States parties concerned.

A controlled delivery is a law enforcement technique that allows the transport of illegal drugs or other contraband, under law enforcement supervision, to those persons who have arranged for the shipment. It is not considered as a sting operation or an offense conducted by competent authorities.

(i) Possession of contraband by authorities or persons responsible for controlled delivery

Authorities or persons are responsible for controlled delivery under law enforcement supervision.

(a) Illegal drugs – the permission under the ministerial regulations which identifies a person with authority, a destination, a return and a report to the minister of the Ministry of Public Health

In this process, the drug delivery needs to be sent by the person who wants to transmit drugs to a country which is the destination of an assigned recipient. An operator entering a residence or a private place of a drug sender is considered as having been done with the sender's permission and a delivery to a recipient by entering a residence or a private place is also concerned as having been done with permission. While evidence taken illegally and unconstitutionally is unacceptable, the above-described practice is allowed by the provisions of the constitution.

(b) Lack of authorization for law enforcement officers to possess contraband for controlled delivery

However, many jurisdictions still lack legislation or constitutional provisions that authorize law enforcement officers to carry or deliver contraband. In these countries, law enforcement officers who do so are considered to have violated the law and may be found guilty of drug crime.

(ii) Possession of contraband by other persons involved in controlled delivery

In this case, a spy owns the contraband because of having an association with a network or crime organization. This kind of spying needs to be controlled strictly to prevent losing the contraband during the process. The spy must be the one that is trusted and accepted to be a part of law-enforcement process.

In Thailand, legal proceedings with authorized senders are not addressed in the provisions of any laws. For most cases, the criminal procedure code and constitution permit confinement for up to 24 hours. However, if it is a special case, confinement is allowed for 3 days and the offender must be sent to the court. Hence, if authorities commit an offense, they will not be defended by law enforcement.

The aim of controlled delivery is to ensure that the authorities are able to find, investigate, search and seize evidence. The technique used for the investigation is a special technique to track investors, manipulators and other offenders. This might take time longer than the law provided. If it is drug trafficking to other countries or the network of transitional drug dealing, the investigation might take longer than the law provided and contrary to human rights under the constitution. Nevertheless, to use the measure is necessary and also the path for investigation. Collecting evidence will be an advantage for gaining reliability and validity. In addition, an attorney can acknowledge the facts about the case, which makes the trial fast and equitable. In conclusion, controlled delivery measures are an exception to common legal protections under the constitution.

(iii) Possession by offenders

When there is a seizure, making the offender help the authority send the controlled delivery must be approved. If there is no approval, the evidence will be considered unlawful due to forcing.

2. Undercover Operations

Undercover operations may be used where it is possible for a law enforcement agent or other persons to infiltrate a criminal organization to gather evidence. Undercover operations should only be carried out by well-managed and properly trained staff. However, this technique is dangerous and is always the last choice of investigation. To do this technique needs to be carried out carefully and with the permission of the court or a person in authority.

Undercover operations avoid detection by the entity the person is observing, especially by disguising that person's identity or using an assumed identity for the purposes of gaining the trust of an individual or organization to learn or confirm confidential information or to gain the trust of targeted individuals in order to gather information or evidence. The person to go undercover probably could be an authority but sometimes another person under the supervision of the authority. The assigned person needs to keep the mission confidential and keep hiding. For example, an undercover agent is an efficient technique and needs to be used to interfere and gather information on organized crime. The agents need to disguise and hide their personal information such as name, address, status and occupation. They might need to gather information that might be helpful from citizens. Even if it is a very effective technique, it is always the last option due to its danger to the agents and probably reveals the agents' status. Moreover, undercover operations probably could have

been requested by the organized crime group to commit offensesor illegal deeds, such as offenses against property, taking drugs and murders, to prove the new member's loyalty to their organization. So that undercover operation needs be carried out by well-managed and properly trained staff.

Undercover operations involve a technique in which a person disguises his or her identity for the purposes of gaining the trust of a network or an organization to be able to enter its residence in order to gather the information or evidence which is stated below.

(i) Acknowledgement of information from duty

An undercover agent assigned to do a task in a crime organization or network has a different duty because the duty is divided clearly. No one can do the duty for someone else. This is the acknowledgement of one's own information from duty.

(ii) Acknowledgement of information from investigation

Acknowledgement of information from investigation in an under undercover operation uses special investigation tools to gain concealed information from the crime organization. However, undercover operations affect a suspect's rights, so the legality of the technique has been considered, including how far it can go before it violates the suspect's rights. It is also important to avoid entrapment. Each country has enacted conditions and rules differently. For instance, the United States of America provides that it must be an illegal incident. To avoid entrapment, the undercover operation must not encourage the suspect to engage in a drug crime that he or she was not predisposed to commit. Thus, law enforcement officers must collect sufficient evidence to prove the suspect has committed drug crimes before the undercover operation started. Such evidence includes the suspect's conduct or prior convictions related to drug crimes.

In Japan, there is a condition that undercover operations need permission with legality. The operation rules must relate to benefits, regulations, and ethics. Nevertheless, the crime operation always associates with other states in the same region. To succeed in undercover operation needs international cooperation.

The practice of undercover operation for police officers at the present (Omaracerid Wattanavipul, Document of The Practice of Undercover Operation for Police Officers under Law, Drugs Investigation by Undercover Operation under supervision, B.E.2551) takes place in many ways, as follows:

(i) Undercover

Undercover is to disguise one's identity in a crime organization to gather evidence and roles within the organization. Sometimes, there is an authority involved with the offense. For example, an authority has a person do the operation under the authority's supervision. That person must keep it secret and disguise him- or herself as a Co-operating Individual, or CI, but as another person's identity in public. Also, an informant gives information about the crime activity by getting involved or associating with the activity. Reliability and trust are important for getting this person as a witness.

(ii) Document concealment

If the target has influence in its area, they might have the policemen or the authorities check ID cards or any documents from the undercover agent. This could probably obstruct the operation or put the agent in danger. Thus, holding a fake ID card can decrease the target's suspicion. The responsible government sector can help in this process.

(iii) Vehicle concealment

Mostly, criminals or targets who already committed an offense would be very cautious. The vehicle following after them or nearby their house will be suspected the most. Vehicles used for investigation might be in varied forms, such as a company car, public transport, etc.

(iv) Place concealment

An observation post is another special investigative technique. If the target has its location in an impossible area to monitor, there is a need to move into a house or a building for observation. Somehow, it might set up a junk shop to get in touch with the target because this kind of shop is where to buy stolen property. In the case of narcotics, the authority might establish a store for selling pharmaceutical production tools.

(v) Situation concealment

Situation concealment is needed when the target is experienced in the landscape or the area is hard to approach. Using too many authorities in the investigation might cause the mission to fail so there is a situation simulation, for instance, setting up a Buddhist fundraising by the agent disguised as a villager in the target's area to gather information.

(vi) Occupation concealment

In some situations, undercover or impersonation is not enough to gain information. The occupation concealment can help much more and reduce the target's suspicion. Sometimes, it takes time to collect evidence. For example, a contractor is running his own company but gathering information about collusion in bids at the same time. If there is bid rigging, the agent can probably find the leader.

(vii) Information concealment

Some investigations require information concealment. The arrests in the case may cause damage to the offender such as paying a penalty or having their business shut down (illicit CD factories, entertainment places that are open over time or arranging drug parties, or drug factories). These offenders may have strategies to follow the movement of officials such as getting to know some relevant officers and having monthly benefits delivered to the officers. This causes the arrest to fail because the offenders are aware of the arrest in advance, or even set the scene for the officers. So the arrest process needs to be concealed by informing them to go to another location instead. Then, they are suddenly ordered to search and arrest the target.

(a) Using spies as witnesses in drug cases

Spies are divided into two types.

- *Created spies*
  This type of spy may be someone who is in the drug industry. In a criminal organization, usually, they are the ones we call 'little men'. These people are responsible for handling small jobs in the criminal organization. This type of spy can give information but requires some benefit in return, such as money or other advantages.

- *Offered spies*
  This type of spy offers to give information themselves; mostly they are involved in the criminal group. But this type of spy needs different benefits, such as requiring the police to remove their data from the profile, wanting to quit, betraying the group, or money. There are lots of strategies and techniques in the spy process such as watching and tracking following the information from the information files that are systematically made, or wiretapping using high technology gadgets, or financial flow monitoring, including disguise or infiltrating the criminal organization.

3. Electronic Surveillance

For example, wiretapping, or intercepting communications, can be done in accordance with legal requirements. This is to protect the freedom of the individual and without interference.

Why use spies in drug cases? Because drug crime is different from other crimes. First, the circle of drug offenses is wide. Each step in the process may, or may not, be offensive. For example, there are some important steps in the process of dealing with offenses of exporting drugs.

(i) Negotiating with foreign traders

If there is a law of conspiracy in that country, this action is a conspiracy offense.

(ii) Negotiating between local traders and minority trade networks

This action is a conspiracy offense.

(iii) Preparing and delivering drugs

At this stage, the supplier may be guilty of possession or guilty of possession for sale or even guilty of distribution.

(iv) Preparing to export
This action may include the offenses of possession for sale and preparation.

(v) Delivering drugs to foreign traders
If the action is done in Thailand, the deliverer may be guilty of possession, possession for sale, and distribution. But if it is done in another country that Thai traders have to deliver to, it is an export offense.

Second, in each drug offense, there are many offenders. The offense network is quite complex.
(i) It has real offenders
(ii) It has a coordinator or trade agent to be a trade negotiator, or to run a business, instead of a capitalist, a coordinator, or a trade representative, depending on the size of the network. If the network is big, there are several levels.
(iii) The agent works like a salesman, surveying for customer groups.
(iv) The deliverers deliver drugs to the meeting points.
(v) The financial manager is in charge of paying, receiving and laundering money. This may be done through regular business or through other illegal business.

Each network is structured in a close structure, which has the following key components:

Cut out
They try to limit the relationship of offenders to the greatest extent possible so as to not let evidence of the offense be connected to others, especially, the heads of the criminal organization. No one knows each other. They will contact only the real co-workers, like the major dealers and agents, but the deliverers will not know the agents or the major dealers.

Need to know
They limit the information. In each offense action, the offenders only know information on a need-to-know basis. This especially happens at the lower level and close to the offense. For example, the deliverers will know where to drive but they do not know who to go to. These networks may be established in the normal business environment, such as tourism business, trade business, or charitable organization.

Code
Offenders use code to contact each other.

Third, drug crime is international because drug sources are available in certain areas. The main area is the Golden Triangle. But the consumers are everywhere, so the drugs are indispensable goods that make an enormous profit for traders. A commercial network is created to connect producers and consumers around the world. Destroying one place cannot stop the problem, because there will be other people, and other places involved to carry on the drug trade.

So it is necessary for officers to study the system of action of the offenders. For example, officers must study the types of drugs, including how drugs are being hidden, sold, and made in the various forms of drugs, such as heroin, powder or granules, and especially, investigate the sources of drugs, and those who are involved with drugs. The study will always be useful to investigate the crime of narcotic drugs. According to the evidence of the narcotics drugs authorities, it appears that the "Golden Triangle" is an important center for drug importation into Thailand or other countries, such as Myanmar, Laos and Thailand. The thread of drug smuggling starts from the northern provinces, then expands to other provinces by cars, buses, and trains. Smuggling by car, they usually hide drugs underneath the footrest, seat, spare tire, door edges, or make a secret box hidden in inside the car, or concealed by mixing with goods and utensils, consumption, medication, or attached to the body. It depends on the type and quantity of the drugs, or depends on the situation. In particular, smuggling abroad is considered major smuggling, often by air, by sea or by mail. This requires special investigation and spies in order to investigate in a systematic way to get the information to link to the major offenders in the process.

E. Drug Prosecution in Thailand: Seeking Evidence in Drug Cases by Using Spies

Drug offense cases include several minor offenses, such as drug use and drug possession offenses. These offenses do not really have problems with evidence in prosecution because the arrest happens at the time of

the offense. There is no need to seek other evidence in support. But the offenses related to production, import, export, possession for sale and conspiracy offenses need evidence to support the prosecution of the offenders to follow the elements of the crime. Most drug arrests are only for those who possess or transport drugs. The suppression of drugs is not working as it should because the drug trade is a big system. It is a complex network. They have major dealers or influencers behind them. Moreover, they cut their work into many parts, which makes it even more difficult to take legal action over the major dealers. So evidence must be reasonably and reliably gathered along with details to confirm that the suspects are involved with the offense. Therefore, various types of investigative techniques are used in the search for evidence in drug cases, such as luring by the authorities or undercover agents.

Undercover operations are important investigative approaches to gathering evidence to bring the offender to justice by accessing the criminals. Then, the information obtained during the operation is associated with the offense algorithm and the network of related persons to plan and find a way to suppress the group of people. In Thailand, drug court investigators use the disguise method to find evidence to prosecute, such as drug luring. The officers will ask if they want to buy drugs from the seller or go meet with the seller himself or with spies (Confidential Informants). When the seller agrees to sell and deliver drugs, the officers will arrest the seller. According to the court's judgment, investigative methods can be used in this way to confirm the offense of the accused by the testimony of the officer in court, including other evidence such as photos, money luring and drugs.

Another form of disguise is to be one of the offenders to collect evidence to document the sources and dates of drug trafficking. In such cases, the officers will not reveal themselves. They will collect the information and evidence that has been sent to another officer, to collect evidence, leading to the prosecution of the offender. And after the arrest, the officer may testify in court.

In addition, in the case of disguise by the presence of another person, in the case where the officer is required to have access to the offense but cannot get close to the offenders because there are no spies or cases to investigate in the closed area. In such cases, it is necessary for the official to identify himself as someone else in order to reach the offender or to conduct an investigation. For example, disguise of occupation by showing that a related occupation is required to enter the area, or disguise of the person who has contact with the offenders or the involved person.

In line with international practice, they legislated the laws and regulations, the procedures and the conditions of disguise which are summarized in terms of the rules and conditions of disguise. The following are disguise monitoring procedures:

1. How Disguise Can Be Done by the Official
   (i) Infiltration or embedding into drug crime organizations continuously and for a long time.
   (ii) The luring the offenders into selling narcotics or disguise for a while
   (iii) Luring a drug or disguise, which can complete the task at once.

2. Criteria for Applying for a Disguise Permit
   (i) The requesting officers are the officers under the law on drug trials.
   (ii) Authorized commanders are the heads of the national police, or delegates, or the secretary-general of the narcotics control board.

3. Conditions to Allow Disguise
   (i) Investigations of offenses that may have been committed to disguise are: legal offenses related to narcotics in production, import, export and distribution, distribution of drugs or conspiracy to support or attempt to commit such offense.

   (ii) There should be reasonable grounds to believe that disguise will obtain the information or evidence of drug offenses and one of the following necessary cases.

   - To investigate the seizure of a major drug offender or related person because of the circumstances of the wrongdoer as appropriate.

- Investigating and arresting drug offenders in other ways is difficult or there is risk of injury or damage in the performance thereof.

- For extending the results of the offender's drug arrest.

4. The Camouflage Operation without Prior Permission

The camouflage operation without prior permission shall require the competent official to carry out the disguise operation in an urgent and timely manner. But he must report the urgent need to the authorities quickly; not more than three days from the date of the commencement of the operation.

In summary, the disguise, as prescribed in Thai law, with the element is the action to hide status or the purpose of the operation by disguise information. The purpose of the disguise is to disguise the facts about the duties of the official. The basis for the offense that can be investigated by disguise is drug offenses in the production, import, export, distribution, possession to distribute, conspiracy, support, or attempt to commit those offenses. It should be reasonable to believe that such operations will obtain information or evidence of drug offenses.

F. Person Undercover

- Have the knowledge and ability to solve problems immediately.
- Have a personal touch in the target area. Sometimes, access to certain areas requires a person who can use the local language.
- Have knowledge and experience in the subject that they will disguise.

To disguise themselves, the officers or staff members have the following methods.

- Creating a story to reach the target group harmoniously.
- To act as if he /she has gone into action or practice;
- Impersonation to enter into a criminal organization.
- Solving the problem of disguise

G. Control and Monitoring of Disguise Operations

The disguise operation will be under the control of senior officials in order to be properly implemented along with the law to prevent harm. The planning and implementation guidelines are as follows.

(i) The actions taken during the specified period must be reported to gather relevant evidence. This may be investigated by other means to confirm the message from the disguise.

(ii) The disguise must be aware of its own state. Otherwise, the disguise may be involved in the offense with criminal organizations. If an offense is committed, it must be reported to the superiors. This may result in the cancellation of such activity or action.

(iii) In some disguise operations, there may be other organizations who investigate the same crime groups in other ways. When a member of a crime organization is arrested, there may be an investigation whether another organization is also acting within the crime organization. In this case, the disguise process must be canceled for the safety of the disguise.

H. The Use of Spies in Entrapment

The principle of entrapment is set forth by the United States Supreme Court in the case of *Sherman v. United States* (1958). The court maintains that luring is a deceptive act or an inducement of a person who has no idea or consent to commit the offense for the purpose of prosecuting the person.

The method of the lure may be as follows:

- The use of persons who have been in contact with the person, the network or the criminal organization to establish trust. These people may be double agents, *i.e.*, they are paid by both the criminal organization and the officers.
- The use of spies in criminal organizations to lure
- The use of officers by the advice of persons who have been in contact with the criminal organization. In practice, this is called a 'major lure'

The use of special measures may affect the freedom of the people, which is contrary to the due process of law, which may cause problems and obstacles in litigation as per the following considerations.

(i) Spy as a witness

Witnesses who are spies in drug cases are very important witnesses during the trial process because they not only are witness to the crime and know the details of the offense in the case, but they also know the network of the offenders. However, in the interrogation of witnesses who are spies in the investigation, investigators may allow the person not to provide personal information such as domicile or occupation for the benefit of witness protection. The investigators record only the testimony of the witness in the inquiry. When the case is brought to court, the court cannot summon the witness to the floor because the witness did not reveal his name and domicile. Therefore, there is a lack of testimony to confirm the guilt of the offender, or supporters who are not in the place of arrest. In practice, most cases with spies as witnesses in the investigation, the witness usually does not come to court. As a result, the court may listen only to the testimony during the inquiry. The defendant has no opportunity to object to the witness. When there is no confirmation by a spy in the court, the court will often consider the matter in favor of the defendant and dismiss the case.

(ii) The information received from the disguise of the spy

It can be said that the operation of the spies and disguise of the officials cannot gather all the evidence. Other investigative methods are needed to collect evidence. But what has been given by the spies and disguise is very beneficial to the case because the information obtained is the information that confirms the place of the offense, the offenders, the network, system, the division of duties, and the escort of the criminal organization. It helps other investigations to be done correctly straight to the target. Without such an investigation, investigative information and clues may not be systematically investigated because the offenders will try to hide and find out how the officials know the various things. In some cases, disguise officers carry out investigations in multiple locations to obtain information confirming the offense of a network or criminal organization by using the method of wiretapping and electronic equipment so that data is sent to the operating center.

(iii) The exhibits from the arrest

All the exhibits—drugs, money, belongings that are used in the crime—will be impounded as evidence of the defendant's guilt. But it still cannot point out the other offenders who were not arrested at that time or at previous times.

I. Listening to Witnesses as Spies in Narcotics Cases in the Court of Thailand

According to the judgment of the Supreme Court of Thailand, the court will accept the luring method except that it may not create a temptation to persuade someone who does not intend to commit an offense, such as Mr. A never intended to sell heroin before but the police ask for heroin and will pay a good price. Mr. A wants to get money so he goes to find heroin. This act of Mr. A is considered as having been caused by being lured into wrongdoing. Mr. A will not be punished. The judgment of the Supreme Court agrees if the accused or the defendant is intent on committing the offense himself but the officers have no witnesses to prosecute the accused or the defendant. So the lure is needed to arrest the offenders. The evidence that is derived from the lure is acceptable evidence. When applying these guidelines to the issue of disguise, it could be separately considered in two cases. First, if the disguise officer contacted or committed a crime to obtain evidence and the offenders have committed crime regularly—*i.e.*, not committing an offense because of the persuasion of the official—this is a legal practice because the offender was not persuaded by the lure to commit the offense. The evidence obtained from such lure can be accepted as evidence. Second, in a case where the official is responsible for causing another person to commit an offense, it is considered as a lure to commit an offense (entrapment). The evidence obtained cannot be accepted as evidence to punish the offender.

III. CHAPTER TWO: CASE STUDY

A. A Sting Operation to Catch the Big Heroin Dealers within the Last 10 Years in Thailand

1. Prologue

The Department of Special Investigation (DSI) was requested by the USA Drug Enforcement Administration (DEA) to probe drug (heroin) trafficking from Thailand to the U.S. The Drug Enforcement

Unit took charge of the case.

2. Operations

(i) Investigation

We knew that heroin was being trafficked from Thailand to the U.S., as informed by the Drug Enforcement Administration (DEA).

The Drug Enforcement Unit (DEU DSI) started an investigation to find where the heroin was manufactured. Generally, qualified heroin, Double UOGLOBE brand, was produced in neighboring countries, dominated by minorities. The gangs that had alliances in Thailand could smuggle drugs due to the fact that they were supported by some Thai governors, Black Moozer, with the cooperation of Lt. Preeda Trakoolpreeda, who was a Black Moozer soldier and held Thai nationality. He was the leader of the Thai alliance and had connections both within and without Thailand.

The investigation mainly focused on the group of Lt. Preeda Trakoolpreeda. It reported that a couple, Mr. Wirot and Mrs. Fang, were the heads. Both lived in Fang district, Chaingmai. So the agents were assigned to buy heroin from Mr. Wirot. Two agents, Mr. Henry (DEA) took the role of a Malaysian drug dealer and Mr. Suwat took the role of a Thai drug dealer, convinced them to make a trade and then send drugs to Malaysia and the U.S.

The two agents disguised themselves in the dealer groups for 2 years and made trades until seven drug dealers were arrested with 100 bars of heroin (amount 36 kilograms), with an estimated street value of 300 million baht or 8.3 million US dollars in Thailand and valued at 10 times that, or 83 million US dollars, in the U.S.

(ii) Trading

(a) The undercover agents tried to convince Mr. Wirot and his family to trust them, and Mr. Wirot eventually talked with the agents about drug trafficking.

(b) The undercover agents agreed to find a middle man to buy drugs by giving him 10 percent of the profits in return.

(c) The undercover agents made an appointment with Mr. Suwat, a Thai undercover agent.

(d) Mr. Suwat met Mr. Wirot and his wife more than 5 times to purchase heroin, and Mr. Wirot was fully aware of the transactions.

(e) Mr. Wirot agreed to send 2 bars (amount 720 grams) of heroin of Double UOGLOBE brand.

(f) Mr. Suwat checked the drug, estimated the value at 500,000 baht, or 14,000 US dollars.

(g) After checking the quality, Mr. Suwat found that it was good quality, so he contacted Mr. Wirot to buy 40 more bars of heroin at a cost of 10 million baht. Before the shipment one day, Mr. Wirot and his wife asked Mr. Suwat to declare if he had enough money. The agents had prepared to take a picture to collect as evidence, but Mr. Wirot cancelled the appointment and gave an excuse that it was heavily raining.

(h) Because of Mr. Wirot's cancellation, Mr. Suwat contacted him again and blamed him for damaging his business. He asked Mr. Wirot to recompense him with 10,000 US otherwise he would stop doing business with him. Mr. Wirot didn't have money to pay so he apologized and asked Mr. Suwat to meet with Lt. Preeda to confirm that everything had already been prepared and the shipment had not arrived on the due date due to the heavy rain. The undercover agents also investigated whether it was raining or not at that time and found that it was true. Mr. Wirot was blamed by Lt. Preeda, which is why Mr. Suwat did not wait for the shipment.

(i) Mr. Suwat made an appointment with Lt. Preeda a few weeks later. Lt. Preeda said that he also suffered damages, explaining that he had to pay for the shipping because of no purchasers. Then Mr. Suwat gave Lt. Preeda 5,600 US dollars to help cover the damages and make Lt. Preeda trust him.

(j) Next, Mr. Suwat met Lt. Preeda again and invited Mr. Henry who was a Malaysian undercover agent of DEA. He lied to Lt. Preeda, saying that Mr. Henry was his business partner.

(k) Later on, there were more than five meetings to make deals. The largest amount was 100 bars (36 kilograms) of heroin.

(l) Lt. Preeda came to check money by himself in the final meeting before doing payment and shipment and sent four drug smugglers to meet Mr. Suwat.

(m) On the next day, Lt. Preeda and his gang including seven people were arrested with 100 bars heroin of Double UOGLOBE brand.

(iii) Successful special investigative measures

(a) The Special Case Investigation Act B.E. 2547 (2004)

Section 27. If it is necessary and to benefit the compliance with this Act, the Director-General or person designated thereby shall have the power to have anyone prepare a document or evidence or falsify his/her identity in an organization or a group of people for the benefit of the investigation, which however shall be according to the regulations provided by the Director General. When preparing such a document or evidence or when falsifying his/her identity in a particular organization or a group of persons for the purpose of the investigation as stated in paragraph one, this action shall be considered legitimate.

In this case, Mr. Suwat, Mr. Henry and the undercover agents were drug dealers within the scope of section 27.

Section 24. To perform his/her duty hereunder, the Special Case Inquiry Official shall have the following powers:

To enter any dwelling place or premises to search when there is a reasonable ground for suspecting that a person suspected of committing a Special Case offense is hiding there or possessing properties which is considered an offense or acquired by committing an offense, or which has been used or will be used in committing an offense of a Special Case, or which may be used as evidence, while there is also a reasonable ground to believe that by reason of the delay in obtaining a warrant of search, the person shall escape or the property may be relocated, hidden, destroyed or transformed from its original condition.

This case was conducted without a search warrant because the evidence would be destroyed if it took long time.

Section 31. Expenses used for the investigation of a Special Case as well as advancing disbursement shall be according to the regulations of the Ministry of Justice upon the approval of the Ministry of Finance.

This case used expenses according to section 31 until completed. On the contrary, the regular measures would not give the amount of money (5,600 US dollars) to help cover the expenses of the shipping and to make Lt. Preeda trust Mr. Suwat.

B. King Cobra Operation

1. Prologue

The Department of Special Investigation (DSI) was requested by the USA Drug Enforcement Administration (DEA) to probe a gang of drug trafficking in the Golden Triangle area from countries neighboring Thailand. Drugs were being sold and delivered through Thailand to a third country. The Enforcement Unit took charge of this case.

2. Operations

(i) Investigation

The investigation was started to arrest the major transitional drug dealers, which are Mr. Arlong Seali, Mr. KriangKrai Seali and Mrs. Pranee Seali, Mr. KriangKrai's wife. The DEA said that Mrs. Pranee is Mr. Arlong's niece.

The investigation aimed at Mr. Arlong, Mr. KriangKrai and Mrs. Pranee. It was reported that Mr. Arlong is a boss of the gang, and Mr. KriangKrai and Mrs. Pranee are under-bosses. Mr. Arlong was not associated with the drugs and money, but had other business such as import and export company and a stone company to cover up his offense.

The undercover operation, King Cobra, was conducted through cooperation between Thailand and the DEA, which sent two undercover agents to complete the mission for three years. The two suspects were arrested and the warrant of arrest was issued. However, Mr. Arlong was not prosecuted. Since the arrests, Mr. Arlong has stopped drug dealing and trafficking.

(ii) Trading

(a) Investigation and personal information of three suspects which are Mr. Arlong, Mr. KriangKrai and Mrs. Pranee.

Mr. Arlong, 65, has two wives. Both Mrs. Yupa, 60, and Mrs. Kingkan, 30, reside in Thailand and neighboring countries.

Mr. KriangKrai, 45, and Mrs. Pranee, 43, are married, having two daughters, 14 and 12, residing in Chiang Saen District, Chiang Rai Province, Thailand.

Mr. Arlong has no property registration, money or assets. Mrs. Yupa, his first wife, runs the import and export company without Mr. KriangKrai and Mrs. Pranee as partners. The company has two offices in Bangkok and Chiang Rai. Based on his passport, Mr. Arlong had traveled between neighboring countries and Hainan many times.

Mr. KriangKrai and Mrs. Pranee are convenience store owners and partners in a stone carving company in Chiang Rai. Mrs. Kingkan, Mr. Arlong's wife, is a partner in the company. Mr. KriangKrai and Mrs. Pranee have two houses, two cars, a motorcycle and 30,000 US dollars in their bank account. Mr. KriangKrai had traveled between neighboring countries and Hainan many times.

(b) Planning to approach the target

From the investigation, it was hard to get a major target like Mr. Arlong, and the import and export company of Mrs. Yupa is far away from the drug manufacturing area. The way to get to Mr. KriangKrai and Mrs. Pranee was the stone carving company.

(c) Two teams of undercover agents were sent to the company to inspect and gather information to prepare for the undercover operation. It was found that the company staff consisted of a manager, Mr. KriangKrai, and a few employees.

(d) Undercover

Mr. Tee, a Thai undercover agent
Undercover information
Age: 40
Status: Single
Domicile: Southern Thailand
Present Address: Bangkok
Occupation: A partner of a delivery express company in southern Thailand, an owner of an Internet Café in Bangkok and a football pool agent. Relatives have an import and export company in Malaysia.

Mr. Tony, a Malaysian undercover agent
Undercover information
Age: 60
Status: Married, 2 wives, Thai and Malaysian
Domicile: Penang, Malaysia
Present Address: Penang, Malaysia
Occupation: An owner of a shipping company, shipping to Europe and China

The investigation team sent both undercover agents to the stone carving company and made up a story about exporting carved stone to Penang in Malaysia. They wanted to see the goods and asked for the price lists and shipping method. They visited the company three times in three months and had dinner with Mr. KriangKrai every time. Finally, they bought a sample of carved stone.

(e) Two months after the purchase of the sample stone, the undercover agents went back to the company again to consult with Mr. KriangKrai about the stone. They wanted him to make a hole inside the stone to make it lighter for cheaper shipment fees. He made it according to their request, but Mr. Tony was still not satisfied. He wanted the stone to weigh less by making a bigger hole and also wanted to cover up the hole. After finishing their business meetings, they would go to dinner and drink alcohol. The undercover agent sometimes left for two months in connection with him and his wife.

(f) When Mr. KriangKrai finished the stone, the undercover agents went to pick it up and had dinner as they usually did. This time, he asked if they had any drugs to put into the stone. They both pretended to be startled. He said that he knew everything about the business they were doing. Mr. Tee said that the problem was exactly the quality of heroin, not the price. Mr. KriangKrai told him that he might find a better one at a good price for him.

(g) Mr. KriangKrai met them several times to negotiate the drug deal at the hometown of Mr. Deang in Chaingmai and in Bangkok. They made a deal at 600,000 Baht per unit (two bars per unit) and picked up the drugs in Bangkok.

(h) The undercover agents asked Mr. KriangKrai for a sample to test before making a large purchase so he agreed to give a bar of heroin to Mr. Tee in Bangkok.

(i) Mr. KriangKrai taught how to avoid police tracking by buying a new telephone and a new sim card. Therefore, Mr. KriangKrai used a new telephone and a new sim card to contact Mr. Tee. After receiving the heroin, they had to trash their telephone.

(j) Mr. KriangKrai also wanted to know about Mr. Tee's career, so he came to receive money and told him to deliver the drugs as soon as possible.

(k) A week after Mr. KriangKrai had received the money, he called Mr. Tee to explain that there would be a call for the drug delivery.

(l) On April 10th in the evening, Mr. Aoun called Mr. Tee and informed that he would deliver the drugs on April 11th at an abandoned amusement park in Bangkok. He did not say the time but told Mr. Tee to wait for his call. Mr. Tee informed his commander and scheduled a meeting with the investigation team. From their experience, they thought that Mr. Aoun would definitely not deliver the drugs at the amusement park but at some other place that would have a large crowd and ways to escape. They guessed it would be a department store nearby the amusement park which had many exits and had no hidden cameras. Thus, they went to the place and divided into 4 groups, 2 groups heading to the department store and others joining with people in the early morning on April 11th.

(m) On April 11th, Mr. Aoun called Mr. Tee about the delivery at the amusement park and Mr. Tee told him that his staff would wait there. At 3 P.M., Mr. Aoun called him back and told him to move to the parking lot of the nearby department store which the investigation team had presumed. He was 30 minutes late. He came to where the undercover agent told him and then drove off. The undercover agent tracked him down and tried not to make him aware. They did not want to arrest him that day because they wanted Mr. KriangKrai to trust them and sell them a large amount of heroin.

(n) After the drugs were tested, the heroin, Double UOGLOBE brand, it was found that the drugs were of good quality and had been produced in the Golden Triangle area. The car used for drug delivery and Mr. Somchai, the car owner, were caught in the next two months with 20 kg of Ice found in his car.

(o) Mr. Tee told Mr. KriangKrai to make an appointment for the next purchase of 100 units. They had met many times, but they could not make a deal. He wanted money before delivery, but Mr. Tee wanted to

exchange money for drugs.

(p) The negotiation happened many times, but they still could not make it. Mr. KriangKrai offered Mr. Tee to move to a casino in the Golden Triangle area while transporting heroin. After he had received money, Mr. Tee was allowed to come back (This actually happens in drug trafficking. The head buyer would be a hostage). The undercover team would not agree with the offer.

(q) The investigation team tried extremely hard to buy heroin, but they were so cautious and experienced. The investigation team decided to issue arrest warrants which included four suspects, Mr. KriangKrai, Mrs. Pranee, Mr. Aoun and Mr. Somchai.

(r) They were arrested but there was no evidence implicating Mr. Arlong.

(s) Since his arrest, Mr. Arlong has stopped drug trafficking.

IV. REFERENCES

Pattama Warin, (2011). *Factual discovery in narcotics cases: a case study on the admissibility of confidential informants as witnesses*, Bangkok: Thammasat University.

Mayura Wimollohakarn, (2010). Seeking evidences in drugs cases by using special investigation methods, Bangkok: Thammasat University.

Kittipong Kittayarak, (2000). *Justice on the path of revolution*, Bangkok: Vinyooshon.

Pol. Col. Surachai Tianchai, *Investigative techniques*. Retrieved from http://chiangsan.chiangrai.police.go.th/detective%20lesson5.html.

Joseph Wheatley, (2017). *U. S. Law Enforcement Techniques Against Organize Crime Group. U. S. Department of Justice.*

Kären, M. H., Christine, H. O. & Henry L. C., (2013). *Police Operations: Theory and Practice.*

PARTICIPANTS' PAPERS

TRANSNATIONAL ILLICIT DRUG TRAFFICKING IN BRAZIL: ADDRESSING GOOD PRACTICES FOR CONFISCATION OF PROCEEDS AND INTERNATIONAL COOPERATION

*Rodrigo Leite Prado**

I. INTRODUCTION

According to its Constitution, Brazil is a democratic republic in which the rule of law prevails. Brazilian legislation boasts modern statutes criminalizing drug trafficking and money laundering, fair tools to deprive perpetrators of their unlawful proceeds and provisions granting the deployment of advanced investigation techniques against organized crime, all of them largely compliant with the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. However, daily news reports bear testimony of the increasing role of Brazilian criminal syndicates in the global cocaine business and the general perception of insecurity in the country.

The purpose of this paper is twofold. The first section attempts to contextualize the fight against drug trafficking in Brazil. It outlines the country profile as an aggressive consumer and transit-point of illicit drugs, the statutory response to this problem and some of the legal, institutional and practical barriers faced by national authorities to confront the illegal drug trade. The second section, limited to the scope of *transnational* drug trafficking, is intended to draw underlying problems and possible solutions concerning two focus points: the confiscation of proceeds and international cooperation related to drug smuggling.

II. OVERVIEW OF THE FIGHT AGAINST DRUG TRAFFICKING IN BRAZIL

A. Current Situation of Illicit Drug Trafficking in Brazil

Despite the socioeconomic advances experienced during the two past decades, violence rates in Brazil have never been higher[1]. Many of the factors contributing to this multi-causal phenomenon are widely known: the infamous inequality, the lethality and corruption of the police, the urban militias, the combination of spatial segregation, weak state presence and territorial disputes over "squatter" neighborhoods and overcrowded penitentiaries. Notwithstanding the lingering cultural and human development issues attached thereto, it is ubiquitously understood that an important part of this scenario is linked to drug trafficking operated by local organized crime groups.

Due to its porous land borders with the world's top three cocaine-producing countries (Colombia, Peru and Bolivia) and its long coastline on the Atlantic, Brazil emerged as an obvious transit-point for drug trafficking towards the East. The heightened availability of cocaine in the country skyrocketed the local drug market over the last decade, making it the second biggest consumer of cocaine, the world's leading consumer of crack – cocaine's cheapest and most addictive derivative – and increasingly of marijuana and ecstasy[2].

The escalation of the domestic drug demand in Brazil changed deeply the profile of the country's criminality. Once confined to territorial disputes in penal facilities, the *comandos* (gangs involved with drug trafficking) gained control of the narcotics supply, corrupted the system and its agents and spread into the outskirts, creating a criminal network that operates outside and inside prisons[3]. Nowadays, besides smuggling and distributing drugs, the *comandos* commit violence throughout the country and control many aspects of life in *favelas*[4]. Their sizeable criminal portfolio includes racketeering, extortion, corruption and

* Federal Prosecutor, Criminal Division of the Federal Prosecution Office in Minas Gerais, Federal Prosecution Service of Brazil.

[1] Fórum Brasileiro de Segurança Pública, *Anuário Brasileiro de Segurança Pública 2017* (São Paulo, pubd online 2017) <http://www.forumseguranca.org.br/wp-content/uploads/2017/12/ANUARIO_11_2017.pdf> accessed 20 March 2018.

[2] United Nations Office on Drugs and Crime (UNODC), *World Drug Report 2017* (Vienna, pub'd online 2017) <http://www.unodc.org/wdr2017/en/topics.html> accessed 20 March 2018.

murder, as well as a huge market of firearms smuggling, responsible for 50 per cent of the weapons accessible today within the Brazilian territory[5].

The "marijuana polygon" in the arid Northeast of Brazil, the country's sole drug-producing area, meets only a slight part of the local demand for cannabis. Almost all the illicit substances are imported. The main gateway connects Bolivia's cocaine and Paraguay's marijuana to the major cities in the Southeast and the southwestern tri-border region (Brazil, Paraguay and Argentina), entering the country whether by land, plane or boat cruises through the tropical wetland area of Pantanal. From Peru and Colombia, the vast inhabited lands and waters of the Amazon forest are a staging ground for the distribution of cocaine, notably via the northern tri-border region (Brazil, Peru and Colombia), a major hub for local drug smuggling. All it takes is to fly into one of Amazonia's many clandestine landing tracks or to cross the boundary rivers.

The *comandos* also share control of the suppliers and routes related to the cocaine exported overseas. Three of them – the hegemonic First Command of the Capital (*Primeiro Comando da Capital - PCC*), the Red Command (*Comando Vermelho*) and the Northern Family (*Família do Norte*), based respectively in the States of São Paulo, Rio de Janeiro and Amazonas – have stretched their power over the borders and already took over part of the drug trafficking in Bolivia, Paraguay and Peru. As noticed in the UNODC World Drug Report 2017, Brazil has been the single most frequently mentioned country of departure of cocaine shipments to Europe, Africa and Asia over 2010-2015. The main direct destinations are the Iberian Peninsula and the ports of Rotterdam (Netherlands) and Antwerp (Belgium), whereas a second route uses the West African countries of Nigeria, Guinea, Guinea Bissau and Ghana as transit points, from which the cocaine is dispatched to Spain and Italy. The use of drug mules and twin-engine airplanes for exporting cocaine still exists, but undeniably most of the drugs smuggled from Brazil are concealed inside containers shipped to Africa and Europe, profiting from the rising commerce with the European Union and the corruption of port agents on both sides of the Atlantic[6].

B. Legal Framework

Historically, Brazilian legislation has been very influenced by the United Nations conventions on drugs. The country's official commitment to "eradicate" supply and demand of illegal narcotics led to the adoption of a prohibitionist approach on the matter, placing drug trafficking and drug consumption under the same criminal justice umbrella and engendering massive incarceration.

The 11,343 Drug Law, enacted in 2006, covers nearly all regulations related to drug abuse and drug trafficking in Brazil, including procedural and health policy provisions. The new law intended to make a definitive distinction between drug consumption and drug dealing: the former, comprising the possession, storage, transportation or cultivation of illicit substances for personal use, was depenalized and subject to social-educational measures, while the latter, related to the import, export, preparation, production, manufacture, sales, offer, storage, transport, prescription or delivery of illicit substances for consumption or supply, was subject to a harsher punishment of imprisonment from 5 to 15 years. It also contains rules about controlled delivery, covert operations, incentives for collaboration with the justice system and asset recovery.

Money laundering is dealt with by Law 9,613, as amended by Law 12,683, enacted in 2012. All the illicit conduct referred to by the FATF[7] Recommendations are sanctioned with imprisonment from 3 to 10 years, regardless of the predicate offence involved. It provides extensive measures for freezing, seizing and forfeiting illicit proceeds, instruments and their equivalent value, as well as licit property aiming to compensate victims for crime-related damages.

---

[3] MIRAGLIA, Paula, *Drugs and Drug Trafficking in Brazil: Trends and Policies* (Washington, Center for 21st Century Security and Intelligence, Latin America Initiative, pub'd online 2016) <https://www.brookings.edu/wp-content/uploads/2016/07/Miraglia-Brazil-final.pdf> accessed 20 March 2018.

[4] "Favelas" are squatter settlements characterized by simple housing, less-than-average access to public services, high population density and informal property rights.

[5] Viva Rio, *Arms Control* (Rio de Janeiro, pubd online 2011) <http://www.vivario.org.br/en/human-security/arms-control/> accessed 20 March 2018.

[6] Carta Capital, *Os Caminhos da Cocaína que Sai do Brasil para a Europa* (São Paulo, pubd online 2017) <https://www.cartacapital.com.br/internacional/os-caminhos-da-cocaina-que-sai-do-brasil-para-a-europa> accessed 20 March 2018.

[7] Financial Action Task Force.

A last legal instrument of paramount importance for the struggle against large-scale drug trafficking is Law 12,850, enacted in 2013, which addresses organized crime in Brazil. It criminalizes the participation in and the funding of organized crime groups and regulates in detail the deployment of advanced investigative techniques, such as controlled delivery, audio and video surveillance, undercover operations and collaboration agreements. Along with Law 9,296, enacted in 1995 and related to communications interception, Law 12,850's provisions are applicable on a subsidiary basis to drug trafficking operated by criminal syndicates.

C. Obstacles to Countering Illicit Drug Trafficking in Brazil

Highlighting the factors that withhold effective enforcement of drug trafficking in Brazil is no easy task. From the legal response perspective, the lack of objective criteria to determine which amount of illicit substance pertains to "personal use" has become a giant loophole for police and judicial discretion. Despite the intended improvements of the 2006 Drug Law, the "war on drugs" culture remained the same among the criminal justice actors, leading to a 123 per cent rise of incarcerations linked to drug trafficking[8], most of them related to low-level criminals with no connection with organized crime. Likewise, 44 per cent of the prison population consists of pre-trial detainees, feeding a vicious cycle that only strengthens recruiting and coercion in overcrowded penal facilities run by *comandos*[9].

The double jurisdiction applicable to drug trafficking offences – federal courts, when there are sufficient grounds to believe that a specific drug dealing involves substances directly smuggled into the country or out of the country, or state courts, in the residual cases – makes it almost impossible to enforce a national anti-drug policy. As a result, most arrests and convictions in Brazil do not target traffickers strategically, threaten the *comando* regime or affect the violent criminality surrounding drug rings.

As for the practical challenges, there are more than plenty. Drug and arms trafficking, police corruption and brutality, intergang warfare and absence of the state in vulnerable urban areas are interwoven in Brazil. One feeds on the other, perpetuating violence, marginalization, territory control and counter-violence. The cheap supply of illicit substances, especially crack, has ensnared thousands of addicts among the poor, forcing them to work for traffickers in order to acquire drugs.

From the institutional point of view, the police lack expertise in collecting financial evidence, as well as appropriate personnel and minimum structure for forensics. The tiny military contingent in Amazonia and Pantanal does not stand a chance to oversee Brazil's 12,000 kilometers of wild jungle, swamps and rivers. Furthermore, overpopulated incarceration facilities favour the management of prisons by *comandos*, while the judicial system, overwhelmed with an average of 10,000 cases per judge, struggles against inefficiency and high impunity rates among white-collar criminals.

III. KEY FOCUS POINTS: CHALLENGES AND POSSIBLE SOLUTIONS

Notwithstanding all the harsh drawbacks aforementioned, one must permanently seek ways to overcome adversity. The present section intends to address uncomplicated solutions, raised from the experience acquired by the Brazilian National Prosecution Service in actual investigations, to bypass challenges at the fronts of asset recovery and international cooperation related to transnational drug trafficking. The highlighted barriers are objectively listed and followed by an operational proposal to overcome them, as well as a real-case example of success.

[8] Organization of American States (OAS), *The Drug Problem in the Americas* (Washington, pub'd online 2013), <http://www.oas.org/documents/eng/> accessed 20 March 2018.
[9] Instituto Sou da Paz, *Relatório da Pesquisa Prisões em Flagrante na Cidade de São Paulo* (São Paulo, pubd online 2012), <http://www.soudapaz.org/upload/pdf/justica_prisoesflagrante_pesquisa_web.pdf>, accessed 20 March 2018.

A. Deprivation of Property Related to Transnational Drug Trafficking in Brazil

1. Barriers Related to the Identification of High-Value Targets: Criminal Organizations Leaders, Gatekeepers and Politically Exposed Persons (PEPs)

Proposal:

● Before opening the investigation, gather comprehensive background information about known targets, including family members, nominees, power-of-attorney holders, 'straw men' and their companies. Submit the output to the Financial Intelligence Unit (FIU) in pursuit of suspicious/currency transaction reports. With the results, identify the account holders involved in the suspicious transactions, beware of PEPs, employees and gatekeepers (accountants, notaries, solicitors etc.). Track their possible liaisons with the targets and initiate the investigation against the potentially responsible parties.

* *After the seizure of $200,000 hidden in a speedboat on the Amazon River, a financial investigation unveiled the links between the money seized and lawyers hired by incarcerated members of the Northern Family Cartel. It eventually gave rise to the launch of Operation "L.M.", allowing the identification of the main suppliers of cocaine in the northern tri-border region and the heads of the Northern Family, as well as the forfeiture of assets belonging to 173 of its members. One year later, a thorough linkage analysis based on the evidence seized in the investigation led to the strike of a second Operation. Charges were dropped and the case awaits trial.*

2. Barriers Related to the Adherence to a Culture of Promoting Money Laundering Investigations and Seeking Asset Recovery

Proposal:

● Launch a parallel money laundering investigation as soon as the predicate offences' perpetrators are pinpointed. Attempt to estimate the value of the proceeds and start tracing assets acquired after the crime was committed, whether under the names of the perpetrators or under the names of the third-parties mentioned in subheading 1. Cross-check the results with suspicious and currency transactions reported by the FIU. Assess the money laundering risks in accordance with regional patterns of drug trafficking and formulate hypotheses from typologies described in FATF and FATF-Style Regional Bodies, bearing in mind red flags of concealment and disguise, unusual transactions or operations without economic rationale. To (in) validate the hypothesis, use all information available, including open source, tax and financial intelligence.

● Prioritize initiatives in favour of big, promising cases with active media coverage and engagement of society.

● Begin by allocating the returned assets to the benefit of the branches reluctant to adhere to the new paradigm.

* *Operation "V." attempted to dismantle a criminal organization dedicated to the trafficking of amphetamine to North America and Europe. The money laundering probe was set forth from day one; it brought up not only evidence of many typologies of concealment, but also data related to unexpected trafficking modi operandi and the identity of conspirators in the United States and Venezuela. Freezing warrants were enforced simultaneously in four countries. The accused were all convicted of drug trafficking and money laundering.*

3. Barriers Related to the Expertise to Conduct Money Laundering Investigations and Seeking Asset Recovery

Proposals:

● Designate specific law enforcement branches, prosecution offices and courts to deal with money laundering cases.

● Create an inter-institutional Asset Recovery Office responsible for tracing, seizing and managing stolen assets.

● Put into action an ambitious capacity-building programme with basic contents on money laundering

and asset recovery aiming at police officers, prosecutors and judges throughout the country.

** In 2006, after realizing that most prosecutors and judges lacked the expertise to assess financial crime and money laundering cases, the Brazilian Federal Justice Council decided to entitle specific courts in each State to deal with such matters. Positive outcomes arose after years of struggle, but they eventually changed the culture towards white-collar criminality and spread basic operational know-how on economic crimes among the Federal Justice community. Nowadays, specific courts are being designated to deal with international cooperation, a matter still unknown to most practitioners.*

4. Barriers Related to the Existence of and Access to Public Registries

Proposals:

● Implement a permanent working group among the agencies involved directly or indirectly in the phenomenon of crime, setting a timeline to accomplish predetermined tasks, a methodology to assess the results and new goals to be reached every year.

● Adopt an aggressive plan of gathering, structuring, exchanging and mining data available in dispersed public and private registries.

** The National Strategy for Fighting Money Laundering and Corruption (ENCCLA) was set forth in Brazil after 2004 and nowadays benefits from the participation of more than 50 federal and state-level agencies. Among its dozens of achievements, ENCCLA has drafted the current money laundering and organized crime legislation bills, published guidelines and manuals, created databases and enhanced coordination among rival agencies. Most of the databases available to the Federal Prosecution Service today have been shared from other agencies.*

B. International Cooperation Related to Transnational Drug Trafficking in Brazil

1. Barriers Related to the Diversity of Legal Traditions, Terminology and Measures to Ensure Punishment (Due Process, Dual Criminality, Reasonable Cause, Mandatory Refusal)

Proposal:

● In order to build trust, avoid miscommunication and prevent refusal of assistance, establish informal contact as a starting point in any request related to countries with relevant cultural or legal differences. It offers a good opportunity to learn about the justice systems involved, better understand each other's requirements and act as a prelude to a subsequent formal Mutual Legal Assistance Request (MLAR). Informal contacts comprise connections with counterparts, liaison magistrates, police attachés, FIU liaison officers and focal points in international cooperation networks. If distrust is an issue, practitioners can address the implications of providing information on a merely theoretical basis, prior to any discussions of substance on the matter.

** In 2014, as a result of Operation "M. P.", warrants of arrest, search and seizure and asset freezing were enforced simultaneously in Brazil, Italy, Portugal, Germany, Spain, Serbia, Montenegro and Peru. They targeted the exploitation of cocaine routes by a joint-venture formed by the Brazilian First Command of the Capital and the Calabrian Mafia 'Ndrangheta. 1.3 tons of cocaine and 10 vessels were seized during the arrests. The evidence collected also uncovered bank accounts in Singapore related to the corruption of officials investigated in the infamous "Car Wash" probe in Brazil.*

Informal contacts were essential to ensure the coordination among all countries under Brazil's guidance, notably with Serbia, in light of the profound language and legal tradition barriers between the two jurisdictions. The enforcement of freezing orders in Singapore was also a challenge; due to its both Common Law and Eastern grounds, different charges had to be dropped in Brazil, two new requests of assistance were drafted and unexpected evidence was required to match the Singaporean Law. The criminals were convicted in Brazil and Italy and the freezing order in the Car Wash probe is still being enforced.

2. Barriers Related to the Timely, Full and Valid Execution of Requests of Assistance

Proposals:

● When the case reaches beyond domestic borders, it is crucial to immediately focus on international cooperation. Making proactive, early contact may aid in diagnosing potential challenges, obtaining additional information and making strategic decisions. It also gives the foreign jurisdiction the opportunity to prepare for its role in providing cooperation.

● Since formal MLARs are time-consuming and resource-intensive, appeal first to the available informal assistance channels. Usually, they are fit for all non-coercive measures, such as intelligence gathering, obtaining public records and locating assets or persons.

● Multilingual forms can be a way to expedite the exchange of informal assistance and document it.

● Most drug trafficking cases use Interpol-channeled documents. Make sure that their chain of custody is spot on and that the documents obtained will be admissible in court as evidence; if not, submit an MLAR.

● Envisage the creation of an international cooperation unit within your agency. It is helpful to execute urgent requests, review MLAR drafts, control follow-up efforts and ensure capacity-building.

∗ *The International Cooperation Unit of the Brazilian Prosecutor General's Office was established in 2015. Its many tasks encompass the management of international cooperation networks and informal contacts, the review of active requests drafted by Brazilian authorities, the oversight of the execution of passive requests in Brazil – as well as their direct execution, in urgent or sensitive cases – and the supervision of each and every international assistance case in the interest of the Federal Prosecution Service. It accomplished a lot after one year: 2,236 follow-up cases were opened, 560 informal requests were granted, 113 missions abroad were completed and four Memoranda of Understanding were signed, among others.*

A good example of the difference made by the International Cooperation Unit can be found in the extradition request of V. A. M., a well-known Paraguayan drug dealer. Pursuant to Interpol's request of provisional detention for the purpose of extradition, V. A. M. presented a Brazilian birth certificate and claimed not to be eligible for extradition, according to the Brazilian Constitution. His deception manoeuvre almost succeeded, had not the Unit been previously informed about the Paraguayan request, proactively checked his nationality and started an inquiry to solve the deadlock. The Prosecutor-General presented evidence about the falsehood of his Brazilian birth certificate to the Supreme Court before he could be released and V. A. M. was extradited months later.

3. Barriers Related to Coordinating the Deployment of Advanced Investigation Techniques

Proposals:

● If the assistance requested involves the deployment of advanced investigation techniques, use a step-by-step process in which the outcome obtained pursuant to one request is used to support the next one. It helps making important decisions at each stage and adopting corrective measures in a timely fashion.

● Videoconferences, face-to-face meetings and instant message groups are important tools to ensure coordination. They should aim at the identification of the executing authority, the definition of execution parameters and the anticipation of possible obstacles to overcome.

● Due to jurisdictional matters, consider creating joint investigation teams to deal with cases involving the execution of controlled deliveries, electronic surveillance or covert operations.

∗ *In 2015, the Netherlands requested assistance to conduct a controlled delivery of cocaine supposed to be shipped from a Brazilian port in a three-day time frame. Many flash videoconferences were run to coordinate the measures among the border control and customs authorities involved in both jurisdictions. In order to prevent causing a stir at the harbour, the original request of installing a GSM tracking device was abandoned in favour of the infiltration of Brazilian and Dutch policemen to monitor the cargo in each territorial sea and attend to the chain of custody from one tip to the other. Brazilian and Dutch warrants were granted in time and the drugs shipped reached the Netherlands under full surveillance, allowing the identification of high-value targets, the seizure of the cocaine smuggled and the arrest of port authorities and several members of the gang.*

4. Barriers Related to the Identification of Relevant Information about Domestic Cases Abroad

Proposal:

● Transnational crimes always leave leads on both sides. Enforce and foster spontaneous disclosures, intelligence sharing and proactive discussion.

* *As a member of the Network of Anti-drug Prosecutors in Iberoamerica (RFAI), Brazil has recently joined the "Bogotá Protocol", an intelligence sharing platform related to drug trafficking through container shipments. It has delivered great results and proven to be a hallmark of success in preventing and combating trafficking inside containers, thus the slight broadening of its scope to include air cargo shipments and joint investigation teams. Other countries have applied to join the Protocol, such as Belgium and the Netherlands.*

THE ROLE OF INTERNATIONAL JUDICIAL COOPERATION IN THE EGYPTIAN AUTHORITIES' INVESTIGATIONS OF ILLICIT DRUG TRAFFICKING

*Mohamed Habib**

I. INTRODUCTION

Drug trafficking is a global illicit trade involving the cultivation, manufacture, distribution and sale of substances which are subject to drug prohibition laws. The national authorities are continuously monitoring and researching global illicit drug markets in order to gain a more comprehensive understanding of their dynamics, but practice shows that combating such phenomena requires cooperation and coordination between the various authorities at different levels. The investigation of illicit drug trafficking is a key part of this research, as it seeks the importance of cooperation between the domestic authorities combating the illicit drug trafficking on the one hand and the cooperation on the international level between the law enforcement agencies on the other. This paper will give an overview on the drug situation in Egypt, the legal framework of combating the illicit drug trafficking and the national anti-drug institutions. Then the paper will discuss the importance of cooperation in general and judicial cooperation in particular on both the national and international levels.

II. GENERAL DRUG SITUATION IN EGYPT

Egypt is not a significant producer or consumer of narcotics or precursor chemicals, despite the fact that opium poppy and cannabis plants are grown in Egypt. The substances that are most commonly abused are cannabis, which is known in Egypt as *bango* (cannabis herb), hashish (cannabis) and legitimate pharmaceuticals[1]. Egypt's long and mostly uninhabited borders, combined with the high level of shipping passing through the Suez Canal Zone, have made Egypt prone to the transshipment of Asian heroin. Egypt is considered a transit point for Southwest Asian and Southeast Asian heroin and opium moving to Europe, Africa, and the US. It is also considered as a transit stop for Nigerian couriers[2]. Other types of narcotics periodically pass through Cairo International Airport. Transshipment has diminished considerably in recent years due to the elevation of security in Egypt and the region as a whole.

A 2003 study conducted by the Government of Egypt showed that the narcotics problem costs the Egyptian economy approximately $800 million annually, including the amount spent on illegal drugs and what the government spends to combat the problem. The most commonly seized drug in the country is cannabis, in a variety of forms. In the first three quarters of 2011, more than 52,000 kg of cannabis was seized by anti-drug authorities in Egypt. In addition to this, close to 70 acres of illicit cannabis plantations were destroyed[3].

Synthetic designer drugs are also rife in Egypt, and during the first three quarters of 2011 more than 45 million psychotropic pills were seized. As a large-scale producer of cold medicines, Egypt is a major importer of ephedrine and pseudoephedrine, important precursor chemicals for the production of the drug methamphetamine. It is feared that these chemicals may be being diverted to illicit drug laboratories. Research by the United Nations Office of Drugs and Crime suggests that approximately 0.44% of 15-64 year olds in the country use opiate drugs, while 0.5% take amphetamines. 6.2% of 15-64-year-old Egyptians are estimated to use cannabis. 50.1% of those seeking treatment for drug abuse are estimated to do so for cannabis use. 42.7% do so for opiate/opioid drug addiction[4].

---

* Chief Prosecutor, Member of the Technical Office of the Court of Cassation, Cairo, Egypt.

[1] https://www.unodc.org/pdf/egypt/egypt_country_profile.pdf., accessed on March 21st, 2018.

[2] United States Department of State, *Bureau for International Narcotics and Law Enforcement Affairs*, International Narcotics Control Strategy Report, Volume I, Drug and Chemical Control, March 2010, Egypt Profile, p. 262.

[3] Dr. Dalal ABD EL WAHAB, General Secretary of Mental Health, DRUG SITUATION AND POLICY, 2014, https://rm.coe.int/drug-situation-and-policy-by-dr-dalal-abd-el-wahab-general-secretary-o/168075f0e5.

III. THE LEGAL FRAMWORK OF ILLICIT DRUG TRAFFICKING IN EGYPT

A. On the International Level

Egypt is party to the three major international drug control treaties: the Single Convention on Narcotic Drugs of 1961 (as amended in 1972), the Convention on Psychotropic Substances of 1971, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.[5]

Also, it ratified the crime-related treaties, such as the United Nations Convention against Corruption (UNCAC, Feb. 2005) and the United Nations Convention against Trans-National Organized Crime (UNTOC) and two of its protocols: A- Protocol to Prevent, Suppress and Punish Trafficking in Persons, B- Protocol against Smuggling of Migrants. (March 2004).

The abovementioned treaties are considered to be legal instruments for the Egyptian authorities as they are legally binding documents according to the Egyptian constitution[6]. In addition, the Egyptian authorities use those treaties as legal bases for international judicial cooperation between the Egyptian judicial authorities and the foreign judicial authorities.

B. On the National Level

1. Law No. 182 / 1960 for Combating Narcotic Substances, Organizing its Usage and Selling Them

The law was issued on June 6, 1960 and published in the Egyptian Official Gazette on June 13, 1960. It consists of 56 articles divided into 9 chapters, and 6 tables are attached thereto. Chapter One is named narcotic substances and contains the general rule which prohibits anyone from importing, exporting, producing, owning, possessing, or buying or selling narcotic substances or exchanging them or distributing them without a license. Chapter Two provides regulations for the import, export and transport of narcotic substances. Chapter Three deals with drug trafficking and the necessary regulations and permissions needed to legitimate trafficking. Chapter Four deals with the trade of narcotic substances through pharmacies and regulates the work of the pharmacists. Chapter Five prohibits the production, extraction, separation or manufacture of any substance of the narcotic substances. Chapter Six deals with the materials that are subject to certain restrictions as narcotic substances. Chapter Seven deals with the plants that are prohibited to be cultivated. Chapter Eight and Chapter Nine deal with the general rules and penalties of the crimes stipulated in the law.

2. Rules Stipulated in the Law

(i) The law adopted sanctions depending on the seriousness of the offender and the gravity of the crime to the society, Article 33 stipulates the penalty of capital punishment for those who export or import without a license the narcotic substances provided for in Article 3, as well as those who produced, mined, separated or manufactured drug substances for the purpose of trafficking.

Article 34 adopted the penalty of capital punishment or life imprisonment for the category of less serious offenders than those referred to in the preceding article, a group of drug traffickers and plant cultivators which are mentioned in the table (No. 5) and traffickers, as well as persons who had licenses for the possession of drugs to use for certain purposes where certain acted in any way other than those purposes, and offenders who conducted or prepared a place for drug abuse. Finally, Article 35 deals with the case of providing narcotic substances for abuse without charge or facilitating drug abuse, which is punished with a sentence of life imprisonment.

(ii) Article 37 stipulates slightly less harsh penalties in order to deal with criminals for the possession of narcotic substances for personal use and made the penalty of imprisonment and a fine of ten thousand EGP to Fifty thousand EGP. However, the second paragraph of Article 37 allowed the courts in the case of a

---

[4] http://www.ginad.org/en/world/countries/65/egypt, accessed March 21, 2018.

[5] Egypt ratified Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs on Jan 14th, 1974. Also, ratified the Convention on Psychotropic Substances of 1971 on June 14th, 1972. Finally ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs on March 15th, 1991. Check http://www.unodc.org/unodc/en/treaties/index.html) accessed march 21, 2018

[6] Article 151 of the Egyptian Constitution (www.constituteproject.org/constitution/Egypt_2014.pdf?lang = ar) accessed March 21, 2018.

convicted addict to refer him or her to a specialized facility for treatment rather than imprisonment. This compulsory admission starts from 6 months and does not exceed 3 years, during which monitoring and evaluation of treatment is to be performed by a multidisciplinary committee. However, such article is inactive for unknown reasons.[7]

(iii) The law stipulated in Article 38 the punishment of the person who has been in the status of possession of narcotic substances with no intention of trafficking or the handling for personal use so the law covers all the practical cases as no holder of narcotic substances will go unpunished.

(iv) The law criminalizes, in article 33(d), criminal organized groups. The law reads as follows:

> Anyone even if he/she is abroad, who forms a gang or manages it or interferes in its management or its organization or joins it or participates in it and its purpose was trafficking in narcotic substances or submitting it for abuse or committing any of the crimes set forth in this article inside the country.

The abovementioned crime considers an application to the criminal organized group within the prospective of the Egyptian legislation for combating narcotic substances. However, this crime has some difficulty in practice as the definition of gang is not clarified in the article or the number of persons that is needed to label them as a gang. In addition, the law does not mention any conditions related to the hierarchy of the persons who participated in the gang.

Those gaps in the article gave judicial precedents wide authority to characterize the merits of the cases and develop the legal principles that govern such criminalization of gangs. It is worth mentioning, the criminal organized group has been defined in the Egyptian legal system, but not in the context of the Law on Combating Human Trafficking and the Law on Combating Smuggling of Migrants[8].

3. Pharmacy Law No. 127/1955

The law was issued on March 10, 1955. It consists of 96 articles divided into 8 chapters. The law mainly deals with the regulations and conditions needed to work as a pharmacist or open a pharmacy. However, the law stipulated detailed rules regarding the importing and manufacturing of drugs and other substances that may be used for medical purposes, but it lays within the category of narcotic substances.

4. The Anti-Money Laundering Law Issued by Law No. (80) for 2002 as Amended.

The Anti-Money laundering law was promulgated by law No. 80 for 2002; the Law was amended three times; by virtue of Law No. 78 for the year 2003, then by virtue of Law No. 181 for the year 2008 and by virtue of Law No. 36 for the year 2014.

It is worth mentioning that the old approach of the Egyptian legislator in that law was to determine and list the predicate offences which may generate proceeds used in money laundering activities. The modern approach of the Egyptian legislator did not adopt the old trend and specifies the predicate offences but contains a provision that defines the predicate offences generally as follows[9]: "Every act that constitutes a felony or misdemeanor under Egyptian law, whether the crimes are committed within the Egyptian territories or abroad, provided that such crimes are penalized by both Egyptian and foreign laws".

To sum up, the Anti-Money Laundering Law allows the initiation of money laundering investigations in cases where the illicit drug trafficking crime generated proceeds to be laundered.

IV. NATIONAL ANTI-DRUG INSTITUTIONS

There are many institutions that deal with illicit drug trafficking domestically. Some of the institutions provide medical care to others for the prevention and raising the awareness, in addition to the law

[7] Ibid, 3; Usually the courts are reluctant to apply such article due to security issues and less trust in the abilities of the specialized facilities to monitor the convicted person.
[8] Article 1 of The Law No. 82 of 2016 on Combating Illegal Migration & Smuggling of Migrants, article 1 of The Law No. 64 of 2010 on combating Human Trafficking.
[9] Article 1(c) of law no 80/ 2002, http://www.mlcu.org.eg/AML%20law%20En.pdf, accessed march 21, 2018.

enforcement agencies (police, prosecution, customs, border control and immigration authorities), which play an important role in tracing the crime and the perpetrators to bring them to justice for deterrence. This paper will shed light upon three main national institutions that play an essential role in combating the crime from two different perspectives.

A. Anti-Narcotics General Administration (ANGA)

The Anti-Narcotics General Administration (ANGA) is Egypt's main agency responsible for overseeing anti-drug operations in the country. It is a specialized department in the Ministry of Interior (Police). To this end it undertakes a range of activities, including intercepting drug smuggling operations, seizing illicit drug manufacturing facilities and equipment, and confiscating drug proceeds. ANGA was first established in 1929, making it one of the oldest anti-drug organizations in the Arab world. It works with national law enforcement agencies and with foreign anti-narcotics agencies to achieve the aims of preventing the supply of illicit substances. In the past it has cooperated successfully on numerous occasions with the Drug Enforcement Administration (DEA) of the US, resulting in the seizure of large amounts of narcotics and drug-related proceeds. Though Egypt is not a major producing country, limited growth of cannabis and opium takes place in the Sinai region, and ANGA carries out regular crop eradication activities. The agency also carries out drug awareness activities and is involved in a number of programmes to reduce the amount of drug abuse that takes place[10].

Based on the ANGA report for the year 2004, in the general framework of the Ministry of Interior's tackling of the narcotic drug cultivations in the Sinai Peninsula, ANGA prepared a comprehensive plan in cooperation with the Central Security Forces and the Armed Forces, to fulfil the following objectives: (i) destroying illicit cultivations in rigid and remote areas; (ii) arresting cultivators and tools used for cultivation; (iii) attacking storage places of *bango* (cannabis herb) after collecting it; (iv) imposing tight control on all outlets, and smuggling areas from the Sinai to other governorates[11].

According to the US State Department 2005 report, late in 2004, a joint DEA-ANGA investigation uncovered an MDMA laboratory located in a small apartment building in Alexandria, Egypt. ANGA raided the laboratory, arresting four individuals and seizing chemicals, paste, and equipment. This was the first known discovery of an MDMA laboratory in Egypt, and according to the DEA, the first in the Middle East, and may represent a new trend toward shifting artificial drug labs to the region due to the region's relatively lax regulation of commercial chemical products. With the passage of the first anti-money-laundering law in 2002, which criminalized the laundering of proceeds derived from trafficking in narcotics and numerous other crimes, seizures of currency in drug related cases has amounted to over 3,000,000 Egyptian Pounds ($485,000)[12].

B. The Public Prosecution

In Egypt, the Public Prosecution is considered one of the most important authorities based on its role in the effective enforcement of the rule of law and its concern with the protection of human rights. This is reflected in the review of its functions, characteristics and independence.

The Judicial Authority Law (JAL)[13] defines the Public Prosecution as the legal representative of the community in initiating criminal proceedings and is presided over by the Prosecutor General followed by the Assistant Prosecutor General, Senior Attorney General, Attorney General, Chief Prosecutors, Public Prosecutor, and assistants.

The Constitution of the Arab Republic of Egypt affirms the independence of the Public Prosecution and is an integral part of the judiciary. Article 189 of the Constitution states that:

"The Public Prosecution is an integral part of the judiciary, which undertakes investigation and the initiation and prosecution of criminal proceedings except for what is excluded by law."

---

[10] https://www.state.gov/j/inl/rls/nrcrpt/2015/vol1/238967.htm, accessed on March 21, 2018.
[11] Ibid 3.
[12] United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report, Volume I, Drug and Chemical Control, March 2007, Egypt report, p. 529.
[13] The Judicial Authority Law no. 46 for the year 1972, issued and published on 5 October 1972.

Article 67 of the JAL states that the members of the Public Prosecution cannot be dismissed like other judges. Article 26 of the same law states that prosecutors are subordinate to their superiors in order of rank and then to the Attorney General.

The Public Prosecution is responsible for investigating crimes as part of the judicial authority in Egypt, as it enjoys impartiality and independence. It also combines the powers of investigation and indictment. Under the investigation authority, it controls all interrogation procedures from questioning the accused, cross examining witnesses and collecting evidence that enables it to show the truth in the case, either to acquit the defendant or to convict him.

The Public Prosecution shall prepare the decision of referral and bring the criminal case before the competent criminal court as a party representing the society *vis-à-vis* the accused. The role of the Public Prosecution shall be governed at the trial stage by the principle of confrontation between the litigants. The jurisdiction of the Public Prosecution extends to all parts of the Egyptian territory, including all crimes committed therein, as well as crimes committed by Egyptians outside the Egyptian territory in accordance with article 3 of the Egyptian Penal Code.

1. The Public Prosecution's role in International Judicial Cooperation
   - Egypt has concluded several treaties on the exchange of legal assistance and extradition with many countries all over the world. These treaties are all aimed at achieving justice, arresting the perpetrators and preventing them from escaping justice.
   - The Public Prosecution benefits from those mutual legal assistance and extradition treaties as it performs the duties and responsibilities entrusted to it by virtue of those treaties.
   - It submits requests to extradite fugitives to other countries for prosecution for crimes committed in Egypt, and in turn it responds to requests for extradition submitted to them by other countries.
   - In the absence of bilateral or multilateral treaties, the Public Prosecution responds to requests for judicial and legal assistance and extradition on the basis of the principle of reciprocity, as long as they do not conflict with Egypt's sovereignty, national security, public order or legal system.

2. The International Cooperation Office of the Prosecutor General Office

On 19 October 1999, the Prosecutor General issued Decree No. 1884 of 1999 on the establishment of the Office of International Cooperation, the enforcement of judicial sentences and the welfare of prisoners. It is mandated to examine and execute all requests of international judicial cooperation referred by the Central Authority and to review the papers of the requests then to be reported to the Prosecutor General who has the authority to give the final decision either to accept or refuse the assistance in light of the information attached to the request. The requesting State may be asked to provide any additional information or documents if it seems that the information and documents submitted are insufficient.

C. National Council for Combating and Treating Addiction (NCCTA)

The National Council for Combating and Treating Addiction (NCCTA) is a governmental body responsible for the programme to reduce demand for illicit drugs in Egypt. It was first established in 1986, and today its primary activities are training drug treatment and rehabilitation workers and mounting drug awareness campaigns.

V. DOMESTIC AND INTERNATIONAL COOPERATION

The need for cooperation is essential to combat illicit drug trafficking. Cooperation between the relevant institutions takes place domestically and on the international level.

A. Cooperation on the National Level

Practice has shown the crime of illicit drug trafficking has completely changed, in terms of the perpetrators of the crime and the means used to commit it. The recent cases show that the criminal acts done by criminal organizations follow a regime and plan to conceal their activities and protect their business. Further, to disrupt and dismantle criminal organizations, it is essential to identify, investigate, prosecute and

punish high value targets, *i.e.* leaders of the organizations, and there is a need of multi-agency cooperation and coordination on the domestic level to combat the illicit drug trafficking. The information and evidence obtained are very important for investigation and prosecution because they show how illicit drugs were found and how the criminal behaved at that time, thus clarifying the situation of the possession and demonstrating the illicit intention of the criminals.

Thus, clear strategy and MOUs between the authorities working in the field is essential and may improve the quality of evidence in illicit drug trafficking cases. It is important that the relevant authorities exchange views and share the barriers and good practices among them. This will lead to strong cases and everyone will be updated on the new forms and techniques of the criminals and their plans of how they commit crimes.

B. Cooperation on the International Level

Cooperation on the international level can be between different institutions, either between Law Enforcement Agencies (police to police), Judicial Authorities, and treatment or policy institutions.

This part of the paper will focus on international cooperation between the law enforcement agencies and the judicial authorities. International judicial cooperation which happens between the national and foreign authorities has played an essential role in the recent cases of illicit drug trafficking that involve criminal organized groups where their criminal acts are committed in different territories. The role played by international judicial cooperation assists in solving the dilemma of the cases by gathering the evidence, attaching testimony needed, capturing the illegal narcotic substances, tracing the proceeds of the crime and extraditing the fugitive criminal.

The means of international cooperation varies from one institution to another, as for the Egyptian authorities ANGA and the Public Prosecution benefit to the maximum from the means of the international cooperation available.

For the police-to-police cooperation, the means of cooperation vary in terms of sharing of intelligence information, the criminal records of suspects, the new types of narcotic substances appearing in the society, and the flow of the illicit drug trafficking.

On the other hand, the most well-known means of international judicial cooperation are as follows: mutual legal assistance requests, extradition requests, transfer of convicted persons, asset recovery requests and serving of judicial papers.

Below are some of the good practices of the national anti-drug authorities in the area of international cooperation.

C. ANGA's Experiences in International Cooperation

ANGA has been both a regular and an active participant in the Arab Office for Narcotic Affairs which is part of the Arab Interior Ministers Council (AMIC) of the League of Arab States. ANGA also regularly attends Commission on Narcotic Drugs (CND) meetings.

On June 30, 2003, in cooperation between ANGA in Egypt and Libya, a seizure of cannabis weighing 1150 kg in the port of Masrata in Libya was seized before it was smuggled to Egypt. Also late in 2004, a joint (US Drug Enforcement Administration) DEA-ANGA investigation uncovered an MDMA laboratory located in a small apartment building in Alexandria, Egypt. ANGA raided the laboratory, arresting four individuals and seizing chemicals, paste, and equipment. This was the first known discovery of an MDMA laboratory in Egypt, and according to the DEA, the first in the Middle East[14].

The activities of ANGA in cooperation with its international partners achieved success in combating illicit drug trafficking. The practice shows the need for cooperation and coordination in the cases that involve multi-lateral parties such as criminal organized groups or the crime took place in different territories as the individual work will not result in successful cases.

[14] Ibid 3.

D. Public Prosecution's Experiences in International Cooperation

As it has been mentioned above, the forms and mechanisms of international cooperation can be summed up as follows: extradition, mutual legal assistance in criminal matters (MLA), transfer of prisoners, seizure and forfeiture of illicit proceeds of crimes, the recognition of foreign criminal judgements, the transfer of criminal proceedings, service of the judicial papers, and joint investigation teams.

Although Egypt does not have domestic law for international judicial cooperation, it is party to various multilateral and bilateral conventions and treaties[15] dealing with international judicial cooperation. The prosecution office uses those treaties as legal basis for such cooperation. In many cases the prosecution office use the tools of international cooperation to fulfill the ongoing investigation that taking place in Egypt, specifically the MLA requests to collect evidence as testimony or documents for ships and cargos captured abroad and linked to the investigation in Egypt.

The following case study will demonstrate how the prosecution office can by the means of international judicial cooperation build a strong case of Illicit drug trafficking.

1. Case Study

The Prosecution Office opened an investigation concerning Narcotic Material (Cannabis) brought into Egypt by sea.

According to the police investigations conducted jointly by the police officers of the Anti-Narcotics General Administration (ANGA), three persons (A), (B), (C) were involved. (A) and (B) constituted a criminal gang for bringing cannabis into Egypt from Morocco by sea on board a vessel owned by the accused / (C).

The vessel is known as "Adam" holding the number I.O.M. 08804775 and flying the flag of Comoros. The defendants aimed to bring such shipment into Egypt with the help of the ship crew, who are of Syrian nationality, to be unloaded in international waters in the Mediterranean Sea and delivered to several small boats that would enter into Egypt at different times. The investigation showed that the "Adam" vessel was shipped before the Moroccan coast having on board a shipment of cannabis, that exceed fifteen tons and approximately weighted twenty tons, though the international waters of the Mediterranean Sea.

Therefore, the ANGA's officers communicated with the American anti-narcotic department in Cairo to notify the findings of the investigation; accordingly, the vessel was seized on 17 April 2013 by the Italian authorities and taken to one of the Italian ports on the island of Sicily. On 20 April 2013 the Egyptian Pubic Prosecution issued a search warrants against the accused (A), accused (B) (son of the first), and accused (C). The defendant (B) (son of the first accused), and defendant (C) were arrested on 20 April 2013; they were caught while the first was handing the latter, an amount of money of one hundred thousand US dollars that believed to be the expenses of the Syrian crew.

Questioning accused (B) (son of the first accused), he denied all charges brought against him stating that he met A. B. under a request by his father A.S. and the seized amount of money was a down payment for the purchase of a boat owned to A. B. known as "Noah". Added that his father is out of the country in the current period; Questioning A. B. he denied all charges brought against him stating that the seized amount of money was the deposit for the purchase of the "Adam" vessel not "Noah", arguing that Omar Ahmed ignored the deal since it is with his father not him; he added that he knew about the seizure of Adam on 17 April, 2013 because of having narcotic material on board and it was taken to Marsala, Province of Trapani; where he denied any relation to the seized narcotic saying that it's the responsibility of the vessel's Captain and its crew.

Questioning officers of the ANGA, they gave statements in a manner similar to the finding of the report mentioned above; and listing the names of the Syrian crew. Witnesses added that the crew members are part of the criminal gang that is constituted by the Egyptian defendants with a view to bring cannabis from Morocco to Egypt; and its role was to bring the illegal narcotic material into Egypt while being fully aware of

[15] On the bilateral level Egypt concluded many judicial cooperation treaties; Arab Countries such as: Algeria, Tunisia, Morocco, Libya, Jordan, Lebanon, UAE and European countries: France, Greece, Malta, Cyprus, Turkey, Russia, Ukraine, Albania, Romania, (Italy), Switzerland; and the USA.

the nature of the shipment.

The international cooperation office of the Prosecutor General sent a mutual legal assistance request to the Italian authorities to give its consent to take the necessary actions to furnish the findings of the ongoing investigations conducted by the Italian authorities concerning the seizure of "Adam" that was flying the Comoros flag on 17 April 2013, which is kept in Marsala, Province of Trapani, Italy[16]:

- Furnish us the testimonies of the Syrians crew members and matching their data with those set out at the judicial request. Also to provide us with the nature of the accusations that have been filed against them in addition to all the data concerning the ongoing investigations carried out by the Italian authorities in this regard and copies of their passports;

- Take the Syrian crew's testimonies, if not, concerning their relation with the Egyptian defendants, and how they received the instructions from the boat's owner and to identify him. Also to confront them, with the outcome of the investigations conducted by the Egyptian authorities, and to be questioned about the capture incident, the navigation route and the port of destination as well as the reason of their presence in front of the Moroccan coast in case of denying, and how they obtained the narcotic shipment;

- Furnish the technical reports regarding the examination of the seized narcotic drugs; while identifying its precise volume, nature and weight;

- Examine the "Adam" and provide us with its data, indicating the whereabouts of the narcotics at the time of the seizure and how it looked then.

The request was implemented and documents returned from the Italian authorities and the case was referred to the court. The competent court rendered its judgement in absentia against the defendants on May 14th, 2017 sentencing them for 10 years in addition to fine and confiscation penalties.

VI. CONCLUSION AND RECOMMENDATIONS

This paper tried to demonstrate the legal framework of the illicit drug trafficking and general drug situation in Egypt. Although, the laws and institutions in Egypt are playing an important role in combating the crimes of illicit drug trafficking, the development of the criminal conduct of the criminals requires more cooperation between the relevant authorities on the national and international level.

It is highly advisable that the legislation on combating narcotic substances needs to be amended in the area of the criminal organized groups, and procedural rules regarding the international judicial cooperation in cases of transnational crimes of illicit drug trafficking need to be added.

As for international judicial cooperation, it is important to overcome some procedural challenges. The long process of diplomatic channels that the requests shall follow affect the speed of the criminal investigations. It is important to establish direct contacts between the relevant authorities in the region through regional networks and platforms and to designate focal points to assist the criminal investigation and allow the flow of the information and intelligences between the competent authorities.

Finally, there should be an increase in the awareness of the importance of tracing the proceeds of illicit drug trafficking through initiating money laundering investigation or implementing confiscation sanctions on the assets located abroad and attributed to the convicted persons by the means of international judicial cooperation.

---

[16] This Request is made on the bases of *Principle of Reciprocity*, the United Nation Convention Against Transnational Organized Crime (UNTOC) (adopted by General Assembly resolution 55/25 of 15 November 2000) to which both Egypt and Italy are members states; the Arab Republic of Egypt signed it on 13 December 2000 and ratified it on 5 March 2004, while Italy and signed it on 12 December 2000 and ratified it on August 2, 2006; and the Single Convention on Narcotic Drugs to which Egypt ratified on 20 Feb. 1967.

ILLICIT DRUG TRAFFICKING IN COTE D'IVOIRE

*Yasmine Keita**

I. HISTORICAL BACKGROUND AND CURRENT TRENDS

In 1973, the Economic and Social Council of Côte d'Ivoire was reporting of the spread of drugs in Côte d'Ivoire and highlighted the need for efficient transnational cooperation to fight against illicit drug trafficking: "The drug issue is a fairly recent phenomenon which current development must make us aware that evil exists, that we must stop it before it is too late and help each other, with our neighbours and other nations, if we want to achieve concrete results"[1].

The strategic geographical position of Côte d'Ivoire, located between the producer countries of Latin America and Asia and the consumer countries of Europe, and the presence of the most important port in West Africa, made it a drug-transit country. Then, by dint of crossing the country, drugs ended up affecting the local populations and the phenomenon of consumption has increased, taking advantage of the migratory flows and the economic growth.

Until the mid-1980s, the most common drug was cannabis, mainly grown in isolated clandestine plantations and located in forested areas.

Table A. Cannabis seizures and offenders 1969–1971

Year	Seized and destroyed quantity*	Number of offenders arrested	Ivoirians
1969	13,1	6	5
1970	8	36	7
1971	28,658	61	17

*Unit: Kilograms

Although there are no official statistics about the scope of cannabis production, studies on the issue show that its increase was due to the collapse of coffee and cocoa prices on which Côte d'Ivoire had founded its economy. After their abrupt loss of income, farmers have found a lucrative substitute through the cannabis crop, which was hidden in tens of hectares of coffee or cocoa plantations.

> According to a survey undertaken by the OGD between 1994 and 1995, two thirds of cannabis farmers in the country began cultivating in response to the price collapse of cocoa and coffee. 22 Cannabis farmers earn about CFA 500,000 for a sack weighing 20 – 25 kg: CFA 20 – 25,000 per kilo. When crop yields are taken into account, a farmer who devotes 0.1 ha to cannabis cultivation can earn the equivalent of 30 – 40 ha of cocoa cultivation.[2]

While income seeking is the primary driver of cannabis cultivation, its growth must also be considered within the context of local consumption. In addition to domestically produced cannabis, other drugs have spread, including heroin, cocaine and amphetamine-type stimulants introduced by land, air and sea from

* Judge, Court of First Instance of Abidjan, Côte d'Ivoire.

[1] Economic and Social Council of Côte d'Ivoire, Rapport sur le problème de la drogue en Côte d'Ivoire, (Abidjan, 1973; pubd online 2017) <http://ces.ci/accueil/saisinedetail/58> accessed 6 Apr. 2018.

[2] United Nations Office for Drug Control and Crime Prevention, *The Drug Nexus in Africa*, (Austria, 1999 ; pubd online 1999) <https://www.unodc.org/pdf/report_1999-03-01_1.pdf> accessed 6 Apr. 2018.

neighbouring countries — such as Ghana and Nigeria — which are hubs of international traffic.

Table B. Drug seizures from 2010 to 2015

Year	Cannabis	Heroin	Cocaine	BZDs*	ATS	Non-specified
2010	3643,25 kg	0,637 kg	1,995 kg			84880 units
2011*	691,207 kg	0,927 kg	0,991 kg			101944 tablets
2012	3991,227 kg	45,341 kg	27,346 kg	116 316 tablets		
2013	4152,896 kg	4,33 kg	20,947 kg	3422,094 g	1254 kg	197136 tablets
2014	2,897 Tons	1,778 kg	9,77 kg	7,273 kg	0,5 kg***	12268 kg***
2015	4,02 Tons	0,78 kg	18,08 kg	3,82 kg	96,4 g	

* Benzodiazepines /** Five months only / *** First six months

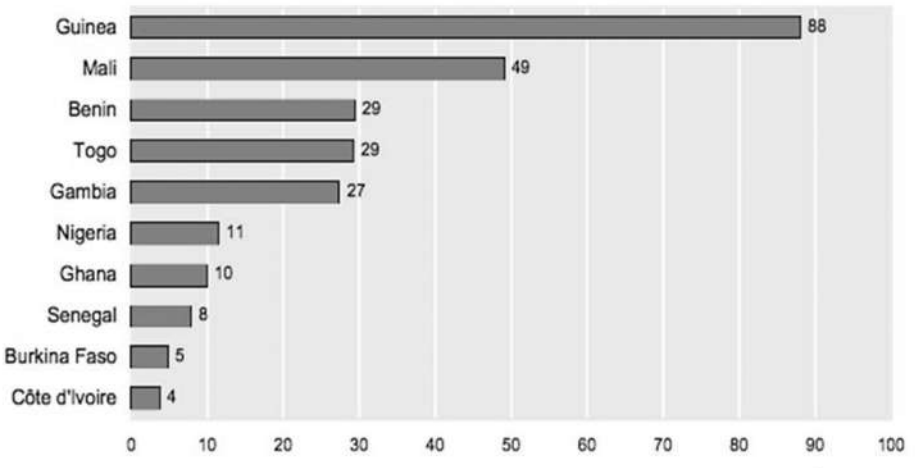
Source: www.unodc.org

In 2002, with the country split between a rebel-held North and a government-held South, drug trafficking actors made the most of the opportunity to implement new modes of consumption. In urban areas, makeshift shelters for narcotics and psychotropic substance consumption — called *fumoirs* — were implanted and are constantly developing. In Côte d'Ivoire there is at least one of these drug areas in each city. At least one hundred are reported to exist in Abidjan alone. Frequent police demolition operations do not seem to deter leaders of illicit drug trafficking, who find a significant financial windfall with it.

In the specific case of cocaine smuggling, Côte d'Ivoire remains a transit country that does not play a central role in the traffic.

> Despite being well connected to Europe, Cote d'Ivoire is the source of very few of the couriers and has had no major seizures associated with its territory. More research would be required to determine why this country seems to be overlooked by cocaine traffickers, particularly as it was formerly a favourite point for transshipping heroin.[3]

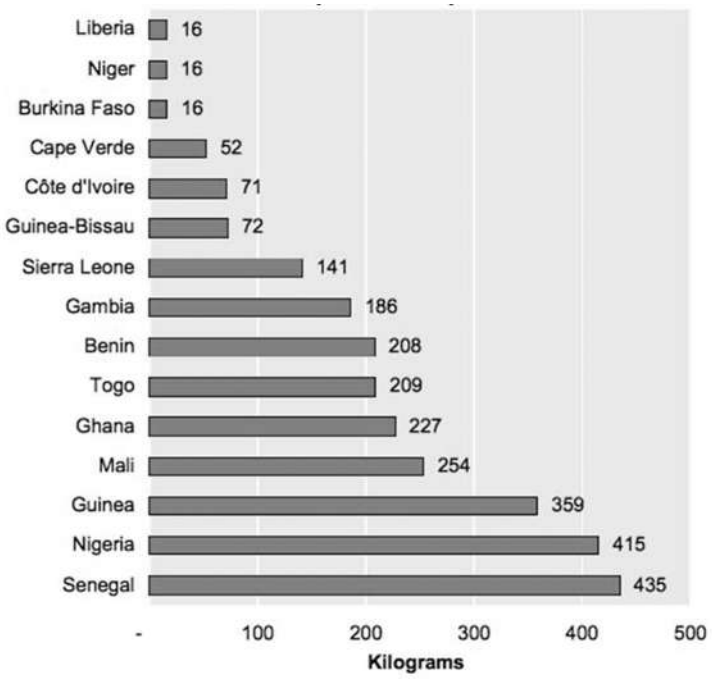
Figure 1. Detected cocaine couriers on flights to Europe per 100,000 international passengers by country of embarkation (January 2006-May 2008)



Source: Elaborated from Interpol (COCAF); UNODC (IDS); and ICAO[19]

[3] United Nations Office on Drugs and Crime, *Drug Trafficking As A Security Threat In West Africa*, (pubd online November 2008) <http://www.unodc.org/documents/data-and-analysis/Studies/Drug-Trafficking-WestAfrica-English.pdf> accessed 8 Apr. 2018.

Figure 2. Cocaine seizure volume on flights to Europe by country of embarkation (January 2006-May 2008)



Source: COCAF/IDS database

II. LEGAL AND INSTITUTIONAL TOOLS

Until the 1980s, Decree No. 53-100 of 5 October 1953 established the Public Health Code that governed drug offences. Since the adoption of Law No. 88-686 of July 22th 1988 establishing repression against illicit traffic and use of narcotics, psychotropic substances and poisonous substances, Côte d'Ivoire has had a repressive legal tool. Also, the country has set up specialized structures and agencies to fight against illicit drug trafficking.

A. Criminal Justice System in Côte d'Ivoire

As a former French colony, Côte d'Ivoire has inherited from France the legal system of Civil Law, as opposed to the Common Law system, which is mainly found in English-speaking countries. In accordance with the principle of the right of appeal, in criminal cases as in civil cases, the judicial system is divided between the Lower Courts – which are the First Instance Courts – and the Upper Courts – or Appeal Courts. First instance and Appeal Courts judge at the same time the facts and the law, whereas the Supreme Court rules only on the legality of Lower Courts' decisions.

Criminal courts punish infringements against property, individuals and society. The Penal Code, which defines and punishes offences, and the Code of Penal Procedure, which establishes the framework of criminal procedures, distinguish three types of public offences and the relevant courts which have jurisdiction to hear such matters. Thereby, contraventions that are minor offences are punishable by a maximum term of imprisonment of 2 months and/or a fine that does not exceed CFA 360,000 (650 USD). They are referred to the *Tribunaux de simple police*. Offences punishable by more than 2 months and less than 10 years of imprisonment are called *délits* and are referred to the *Tribunaux correctionnels*. Finally, crimes that are serious felonies are heard by the *Cours d'Assises*, which are composed by three professional judges and six jury members. When minors[4] have committed crimes or *délits*, juvenile courts and juvenile assize courts are solely competent to rule on such cases.

In some special cases such as criminal cases, or when the complexity of the case demands it, the Public

[4] According to the Penal Code, a minor is a person who has not reached the age of 18 at the time of committing the offence.

Prosecutor requires the opening of a judicial inquiry. He then seizes an examining judge who is in charge of conducting investigation within the limits of the mandate given by the prosecutor in his initial indictment[5]. This is the inquisitorial system, as opposed to the adversarial system used in Common Law countries.

At the end of his inquiry, if the judge finds that the charges are sufficient, he sends the case to the relevant court for judgement. In Côte d'Ivoire, the principle of collegiality is applied in such a way that every hearing is presided over by one judge (called the President) who is assisted by assessors. Most drug cases are investigated directly by law enforcement agencies under the supervision of the Public Prosecutor[6].

B. The Existing Legal Framework for Investigation and Prosecution of Drug Offences

Côte d'Ivoire is party to the main treaties and conventions in the field of drugs and international crime. Thus, it has acceded to:

(i) The Single Convention of Narcotic Drugs, 1961;
(ii) The Convention on Psychotropic Substances, 1971;
(iii) The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988;
(iv) The United Nations Convention against Transnational Organized Crime, 2000.

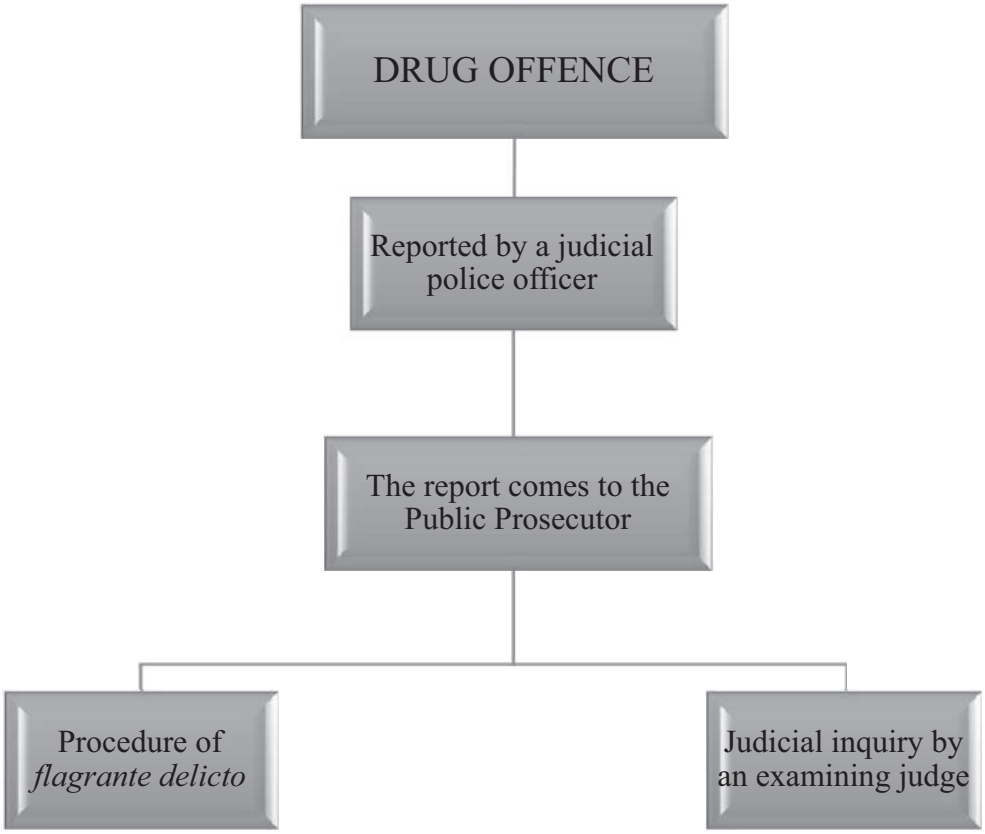
At the national level, the provisions of the 1988 Act punish cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs.

The sentences of imprisonment under this text are severe and the perpetrators of these offences cannot benefit from extenuating circumstances. For example, possession of drugs for consumption is punishable by a minimum sentence of twelve months' imprisonment and a fine of CFA 200, 000 (350 USD). Similarly, possession of drugs for the purpose of sale is punishable by at least five years in prison and a fine of CFA 500,000 (900 USD).

In accordance with the Penal Code and the Code of Criminal Procedure, an investigator — who shall be a judicial police officer — reports these offences to the Public Prosecutor, who decides on the mode of prosecution. He can either choose the procedure known as *flagrante delicto* or require an investigating judge to open a judicial inquiry.

[5] A criminal case may be brought before an investigating judge either by the Public Prosecutor as well as a victim. Even in the second situation, the judge has to open a case after the initial indictment of the prosecutor. He cannot open a criminal investigation *sua sponte*.
[6] See paragraph B below.

Chart 1. Investigation and prosecution in drug offence cases



The cases that are referred to the Tribunal most frequently are those of consumption and narcotic sale. Insofar as these are material offences, the seizure of the drug is one of the crucial elements upon which the judge's decision rests. Therefore, the investigator's work must be meticulous.

C. Actual Drug Cases

The main cases of drug offences are those of consumption and sale. Two actual cases have been chosen to be exposed in order to illustrate the current trends. The first one concerns three individuals who were brought before the Criminal Court on charges of drug consumption. Following anonymous information, officers of the Department of Narcotics and Drugs police had apprehended those three people and seized 400 grams of cannabis in the vicinity of a *fumoir*. During the pre-trial investigation, two of them admitted being found in possession of cannabis, while the third claimed to have been arrested outside the *fumoir*. At the hearing, they all contested the charges against them. The Court found that the charge against the third defendant, on whom no drugs had been found, was insufficient, and sentenced each of the two others to twelve months' imprisonment and a CFA 200,000 (350 USD) fine, which is the minimum penalty for such cases. In most of the consumption-related cases, when several people are arrested at the same time, they often name their provider or the owner of the *fumoir*. But the investigators' task is made difficult by the lack of information, which is most often limited to a nickname.

However, the second example demonstrates the effectiveness of some investigations. In a procedure in which two persons had been sentenced for heroin and cocaine sale, the defendant was named as the owner of several *fumoirs*. Following a radio message from the Police Department of Narcotics and Drugs, the suspect was arrested and interrogated. He told the investigating officers that he used to supply several drug sellers. He has been brought before the Correctional Court under the charge of possession of drugs for sale. As he had not been arrested in possession of drugs, the charge has been modified in that of facilitation to other people of the use of narcotics, and he was sentenced to 10 years' imprisonment, CFA 10,000,000 (18,000 USD) fine and his movable and immovable property was confiscated, as it was alleged to be the product of the offence or to have been used to commit it.

In these two actual cases, as well as in the most common drug-related cases, the preliminary phase led by

law enforcement agencies is crucial.

D. Governmental Structures and Specialized Agencies

The Ivorian government has set up numerous specialized agencies in charge of hunting and arresting drug offenders:

(i) The Inter-ministerial Committee to Combat Drug Abuses (CILAD). Created by Decree No. 94–399 of July 28, 1994, this committee coordinates the action of administrations and structures involved in prevention, information, medico-social care and the repression of drug addiction. It is overseen by the Ministry of the Interior;

(ii) The Police Department of Narcotics and Drugs (DPDS);

(iii) The Anti-Drug Section of the National Gendarmerie;

(iv) The Transnational Organized Crime Unit (UCT). Created by decree No. 2014–675 of November 5, 2014 and supported by the United Nations Office on Drugs and Crime, the UCT's core mission is to combat all types of trafficking, fight against corruption and money laundering as well as maritime piracy. It also has to provide the competent authorities with information for the development of control strategies and policies and to conduct investigations to gather evidence for prosecution;

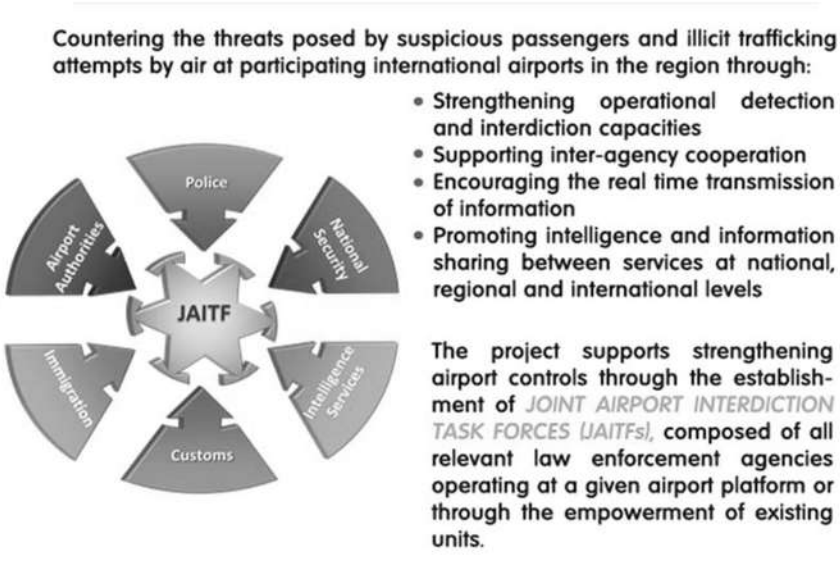
(v) The Airport Anti-Trafficking Cell. This unit gathers interministerial structures of the National Police, National Gendarmerie, Customs and Waters and Forestry. It was created as part of the AIRCOP Project[7].

E. International Cooperation

By ratifying the main international conventions on the fight against drugs, Côte d'Ivoire has undertaken to cooperate with other States Parties. It therefore joined two major international projects.

1. Airport Communication Programme (AIRCOP)

This multi-agency project gathers the UNODC, the World Customs Organization (WCO) and the International Criminal Police Organization (INTERPOL) along with 24 countries in Africa, Latin America, Europe and the Caribbean. Funded by the European Union, Canada, Japan, Norway and the United States, it aims to facilitate joint investigations and rapid exchange of operational information between law enforcement agencies to promote intelligence-led investigations for intercepting drugs in participating countries.



Source; www.unodc.org

[7] See Section C-1 below.

In Côte d'Ivoire, the Joint Airport Interdiction Task Force is now operational, after several training and monitoring sessions.

2. The West Africa Coast Initiative (WACI)

At the regional level, the ECOWAS Action Plan to Address the Growing Problem of Illicit Drug Trafficking, Organized Crime and Drug Abuse in West Africa is backed by the United Nations and INTERPOL through the West Africa Coast Initiative (WACI). It is in a start-up phase in Côte d'Ivoire.

WACI is a joint technical assistance framework aimed at:

- Enhancing national enforcement and justice institutions; and to build capacity for better national, regional and international enforcement cooperation;
- Creating Transnational Organized Crime Units (TCUs) for national inter-agency enforcement coordination, information exchange and intelligence gathering, and serving as the entry and support point for regional and international enforcement operations;
- Increasing regional and national capacity-building, primarily in the vulnerable countries, as identified by ECOWAS (Côte d'Ivoire, Guinea, Guinea-Bissau, Liberia, and Sierra Leone);
- Contributing to security sector reform in the WACI countries.[8]

[8] Presentation of the WACI <http://www.unodc.org/westandcentralafrica/en/newrosenwebsite/TOC/waci.html>

DRUG LAWS IN MALAYSIA: WHETHER THE DRUG LAWS HAVE BEEN EFFECTIVE IN CURBING THE DRUG MENACE IN MALAYSIA

*Chandra Segaran Subramaniam**

I. INTRODUCTION

The phenomenon of drug abuse is really a global problem that has haunted modern society. Its notoriety practically does not confine itself within specific geographical borders nor differentiate its numerous victims in terms of ethnicity or the socio-economic status of nations. Malaysia itself is no exception because each year the statistics of new drug addicts identified has steadily given rise to staggering drug laws around the world, whereby trafficking in drugs carries the mandatory death penalty or life imprisonment in most of the countries in South East Asia. Nevertheless, the drug problem seems to have persisted unabated. The problem is considered more challenging, largely due to its close proximity to the Golden Triangle, the main heroin-producing region. However, the development of Amphetamine-Type Stimulants (ATS) such as methamphetamine, which has a bigger market and offered high profits, contributes to the higher prices in Malaysia. This makes Malaysia particularly attractive for the operation of international drug trafficking syndicates, thus presenting a big challenge for the Royal Malaysia Police (RMP), in particular the Narcotics Crime Investigation Department (NCID).

The Royal Malaysia Police (RMP), in particular the Narcotics Crime Investigation Department (NCID), is always serious and committed in combating illicit drug production, manufacturing, trafficking and abuse in the country. The drug situation in Malaysia is very much under control with regular detection and disruption of drug trafficking syndicates, dismantling of clandestine laboratories, seizures of drugs and illegal proceeds of drug traffickers mainly by the NCID, as well as other enforcement agencies such as the Royal Malaysia Customs, National Anti-Drugs Agency (NADA), the Malaysia Maritime Enforcement Agency and the Malaysia Border Security Agency (AKSEM).

The objective of this paper is to discuss the issue of the effectiveness of the country's various drug laws, particularly the *Dangerous Drugs Act 1952*, in combating the drug menace. It is fervently hoped that such discussion will be able to greatly provide an insight to assist the respective authorities in tackling and curbing the nation's drug problems more effectively. The arguments raised in discussing this issue are primarily based on statistical data obtained from the NCID of the RMP. Despite their deficiencies, police statistics are closer to the real amount of crime than other statistics.

II. MALAYSIA DRUG SITUATION: *THE FOUR DRUG WAVES*

During the nineteenth century, the colonial British master that governed Malaya, as Malaysia was then known, recruited labourers from China and India respectively to develop the abundant tin mines and rubber plantations. These labourers brought along with them their habits of opium smoking and marijuana. This period, which can be identified as the country's first drug wave, has now almost vanished except for marijuana abuse.

Subsequently the trend of drugs has changed from being opiate-based (heroin, morphine, marijuana) which are depressants to amphetamine-based (ecstasy, amphetamine, yaba pills), which are stimulants regarded as the country's second and third drug waves. The emergence of *New Psychoactive Substances* (NPS) in the world, in what can be called now the fourth drug wave, was first detected in Europe about three years ago, and about 800 types have been in the market. In Malaysia, we have already traced 20 types of NPS, but we can only take action on seven of them, as they are listed under the Poisons Act 1952. Although the Malaysian

* Head of Legal/Investigation Unit, Narcotics Crime Investigation Department, Royal Malaysia Police.

authorities have been working round the clock to combat the spread of illegal drugs, the fight is hampered by global demand.

III. DOMESTIC DRUG LAWS

In order to control and curb the drug menace, Malaysia enacted the following five relevant drug laws namely:

A. Dangerous Drugs Act 1952

This is the country's main drug law which regulates the importation, manufacturing, selling, possessing, exporting and usage of all types of drugs. Besides, that, it also provides for the punishment for various drugs offences under the Act, which includes the mandatory death sentence for drug trafficking. Recently there are many significant developments in this Act which have drastically transformed the legal jurisprudence in this branch of the criminal law. One such significant change is the amendment to Section 39B of the Act of which the judge has discretionary power to impose life imprisonment and not less than 15 strokes on conviction instead of the death penalty. However, the court's discretionary power is subject to certain conditions, and, importantly, the accused has an obligation to assist the enforcement agencies, particularly the NCID, in disrupting drug trafficking within or outside of Malaysia (*see Appendix 1*). Prior to the amendment, the trial judge had no discretionary power even if the accused may have assisted the enforcement agencies. The trial judge handling the case is forced to impose the death sentence on conviction since there is no other penalty provided in that law. With this amendment, the accused has the option to cooperate with the enforcement agencies for a lighter sentence. The word "*assist*" is not defined in the Act and this may lead to some uncertainty, and perhaps controversies, in determining to what extent the accused needs to assist the enforcement agencies. This new amendment came into force on 15th March 2018.

The other change is the introduction of a new section 37A in the Dangerous Drugs Act 1952 which allows the invocation of multiple presumptions. These multiple presumptions have indeed been effectively buried in *Muhammad bin Hassan v PP*[1]. In that case, the court gave a clear distinction between the word "deemed" used in s. 37(d)[2] and the word "found" employed in s. 37(da)[3] of the Dangerous Drugs Act 1952. The court was of the view that the word "deemed" possession in section 37(d) is by operation of law and there is no necessity to prove how that particular state of affairs is arrived at. There need only be established the basic or primary facts necessary to give rise to that state of affairs, *i.e.* the finding of custody or control. The word "found" in the operative phrase of section 37(da), on the other hand, connotes a finding after a trial by the court. Thus, to come to the presumptions of possession and knowledge under section 37(d), one need only to arrive at a finding of having had "in custody or under control anything whatsoever containing" the drug (as opposed to the drug itself), whereas to arrive at the presumption of "trafficking" under section 37(da), a finding of being "in possession" of the drug is necessary, in addition to proof of the relevant minimum quantity specified. To conclude, the court opined that once the presumption of possession under section 37(d) has been invoked, then the prosecution cannot resort to another presumption of trafficking under section 37(da) of the Act. The introduction of double presumption in Section 37A of the Dangerous Drugs Act 1952 is indeed a setback to Malaysian jurisprudence and impliedly overruled the decision made in *Muhammad bin Hassan v PP*[4].

It has been claimed that the law nowadays has become more draconian, but in a series of recent decisions from the superior courts which, in essence, ruled that the accused is entitled to a fair trial and if those rights are violated, the conviction cannot be sustained, may bring comfort to some. Some of these cases include *Prasit Punyang v PP*[5] and *Zulkefly bin Had v PP*[6]. They echoed the "right to a fair trial" principle propounded in *Lee Kwan Woh v PP*[7].

---

[1] (1988) 2 CLJ 170
[2] Section 37(d) any person who is found to have had in his custody or under his control anything whatsoever containing any dangerous drug shall, until the contrary is proved, be deemed to have been in possession of such drug and shall, until the contrary is proved, be deemed to have known the nature of such drug;
[3] Section 37 *(da)* any person who is found in possession of :-
[4] *Supra*, n. 1.
[5] (2014) 7 CLJ 392
[6] (2014) 6 CLJ 64.
[7] (2009) 5 CLJ.

In *Prasit Punyang v PP*[8], the court opined that there was merit in the contention of the appellant. In accordance with the provisions of s. 182A (1) of the Criminal Procedure Code[9], it was the duty of the presiding Judge, at the conclusion of the trial, to consider all the evidence adduced before him. The legislature had advisedly used the term "all the evidence". The emphasis must be on the word "all". The cautioned statement tendered by the appellant was evidence which the Judge should have taken into consideration in order to make a finding whether or not the prosecution had proved its case beyond reasonable doubt.

The Judge must consider carefully whether the cautioned statement was capable of raising a reasonable doubt as to the prosecution's case. The appellant's cautioned statement was recorded a day after the arrest of the appellant. It was important, therefore, to point out that the appellant had mentioned the basic facts of his defence at a very early stage of the police investigation against him that the drugs found in his bag belonged to him, and they were brought upon request by one "Mail" and he has no idea about the drug hidden in the boat. Accordingly, the defence of the appellant was not something that was sprung for the first time in the defence case. The evidence led by the prosecution left questions unanswered, especially the role of "Mail". The fact that the defence was not a recent fabrication was supported by the contents of the appellant's cautioned statement which was substantially similar to the defence advanced.

Meanwhile in *Zulkefly bin Had*[10], the trial judge failed to appreciate and give due consideration to the defence's evidence adduced by the appellant. The issue or fact of whether the drugs were found in car PBH 1632 or AEQ 5321 was a pivotal and primary fact in this case. The trial judge had also failed to consider the testimony of the accused's wife, which had supported that of the appellant about his involvement with the car in which the drugs were found. Even though the prosecution witness who acted as *Agent Provocateur* (AP) had testified that he had constantly contacted the appellant *via* mobile phone until the later stage before the arrest and an ambush was carried out, there was no mobile phone belonging to the appellant tendered in evidence or any seizure made of the said mobile phone. The seizure form had also not disclosed any mobile phones seized from the appellant. Doubt as to this AP's veracity was raised, and the trial judge had not taken this witness statement into consideration at all. The failure of the trial judge in making a critical analysis of the AP's evidence, which was the main thrust of the prosecution's case against the appellant, was also an oversight and a fundamental failure warranting appellate intervention.

In *Lee Kwan Woh*[11], at the close of the prosecution's case, the learned trial judge ruled that he did not wish to hear submissions as he was satisfied that the prosecution had made out a *prima facie* case as required by s. 180(1) of the Criminal Procedure Code[12]. This ruling formed the first ground of complaint in this case. The second complaint is that the learned trial judge failed to judicially appreciate the evidence, thereby misdirecting himself, which misdirection has occasioned a miscarriage of justice. Taking the first ground, the issue here is whether a court acting under s. 180(1) is entitled — to quote from the subsection — to "consider whether the prosecution has made out a *prima facie* case against the accused" without affording the accused an opportunity to make a submission of no case. No doubt the subsection does not expressly confer such a right upon an accused. However, counsel submitted that his client has a constitutionally guaranteed right to a fair procedure by virtue of Article 5(1) of the Federal Constitution. He argued that this right had been

---

[8] *Supra* n. 2.

[9] (1) At the conclusion of the trial, the Court shall consider *all* the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.
(2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.
(3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal

[10] (2014) 6 CLJ 64.

[11] (2009) 5 CLJ 631.

[12] (1) When the case for the prosecution is concluded, the Court shall consider whether the prosecution has made out a *prima facie* case against the accused.
(2) If the Court finds that the prosecution has not made out a *prima facie* case against the accused, the Court shall record an order of acquittal.
(3) If the Court finds that a *prima facie* case has been made out against the accused on the offence charged the Court shall call upon the accused to enter on his defence.
(4) For the purpose of this section, a *prima facie* case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction.

violated by reason of the learned judge's ruling. This is an important submission and calls for careful consideration. Whether the right claimed in the instant case exists at all turns on the interpretation of Article 5(1) which provides that: "*No person shall be deprived of his life or personal liberty, save in accordance with law*". Before we embark upon that interpretive exercise, it is important to bear in mind the principles that govern the interpretation of the Federal Constitution.

In the first place, the Federal Constitution is the supreme law of the Federation. Though by definition it is a written law, it is not an ordinary statute. Hence, it ought not to be interpreted by the use of the canons of construction that are employed as guides for the interpretation of ordinary statutes. Indeed the prismatic interpretation of the Constitution gives life to abstract concepts such as "life" and "personal liberty" in Article 5(1), and it confers on our citizens the most cherished of human rights—it must on no account be given a literal meaning. It should not be read as a last will and testament.

More importantly, the majority of the court also accepted the omnipresence of Article 8(1) of the Constitution[13] when interpreting its other provisions. And that brings us to the next principle of interpretation.

The third principle in this case is when interpreting the other provisions of the Federal Constitution, in particular, those appearing in Part II[14] thereof, we must do so in light of what has been correctly referred to as the humanising and all pervading provisions of Article 8(1). That article reads: "All persons are equal before the law and entitled to the equal protection of the law". That article guarantees fairness of all forms of State action. When Article 5(1) is read prismatically and in the light of Article 8(1), the concepts of "life" and "personal liberty" housed in the former are found to contain in them other rights. Thus, "life" means more than mere animal existence and includes such rights as livelihood and the quality of life. "Personal liberty" includes other rights such as the right to travel abroad. In *Loh Wai Kong v. Government of Malaysia*,[15] the court said that "personal liberty" includes "liberty to a person not only in the sense of not being incarcerated or restricted to live in any portion of the country but also includes the right to cross the frontiers in order to enter or leave the country when one so desires."

In this case the court[16] also considered the expression "according to law" appearing in Article 5(1). The expression "law" includes procedural law. Here the point is not whether the question of procedure is more important under one Constitution than under the other. If the expression 'in accordance with law' were to be construed as to exclude procedure, then it would make nonsense of Article 5 of the Federal Constitution.

The law on the identity of exhibits has also undergone a radical change. A discrepancy in weight alone is not sufficient to dislodge the case for the prosecution. The question the court has to ask itself now is, whether the exhibit produced has passed the test of reliability? If the answer is in the affirmative, the identity is no issue as stated in *Lew Wai Loon v PP*[17] . In this case the appellant, charged with the offence of trafficking in 2,831 grams of heroin under section 39B(1)(a) of the Dangerous Drugs Act 1952, was sentenced to death by the High Court upon being found guilty as charged. The Court of Appeal dismissed his appeal and hence, appeals to the apex court. The appellant's appeal was confined to one ground, *i.e*., that there existed serious doubt as to the identity of the drug exhibit. The appellant submitted that there were discrepancies in the gross weights of the drug exhibits. The three different gross weights of the drug exhibits alleged by the appellant were, *inter alia*: (i) 3.5 kg given by SP1, the Head of the Narcotics Department at Kuala Lumpur International Airport (KLIA) who found the drugs with the appellant; (ii) 3,720 grams given by SP9, the forensic unit officer; and (iii) 3,703.8 grams given by SP3, the chemist. The appellant further submitted that the mere statement by the investigating officer ('SP7') and SP9, that the weighing scales used by them were not calibrated, without scientific evidence to show that the scales were not accurate, was not good law. The appellant also submitted that there was a break in the chain of evidence in the handling of the drug exhibit as there was no explanation given on the movement of the drug exhibit. On the other hand, the prosecution

[13] Article 8(1) of the Federal Constitution says, "All persons are equal before the law and entitled to the equal protection of the law".
[14] Part II of the Federal Constitution is pertaining to Fundamental Liberties from Article 5 to 13.
[15] *[19781] LNS 106*; [1978]2 MLJ 175.
[16] Lee Kwan Woh (2009) 5 CLJ 631.
[17] (2014) 2 CLJ 649.

submitted that the relevant witnesses had explained the discrepancies on the drug exhibit. It was submitted by the prosecution that the differences in the weights given was due to the types of weighing machines used by the respective witnesses and as such, there was explanation given for the variations in the weights. In dismissing the appeal the court opined that the discrepancy in the weight of the drug alone should not *ipso facto* cast doubt on its identity. There are other primary factors to consider such as the facts and/or events that form the foundation for its admission as a piece of evidence. One fact and/or event to consider was whether there was any break in the handling or custody which tantamount to a break in the chain of evidence which, if occurred, should cast doubt in the exhibit as a reliable and trustworthy piece of evidence. In the instant case, the discrepancies as to the weight of the drugs, although not necessary, were explained by SP1, SP7 and SP9. The obvious explanation for the discrepancies in the weight of the drug exhibit as obtained by SP1, SP7 and SP9 was due to their use of uncalibrated weighing machines as compared to the weight obtained by SP3 who used a calibrated weighing machine. Although their explanations might not have been necessary, the explanation was given or could easily be inferred from their testimonies.

Further the drug exhibit admitted in evidence in this case was the same as those seized by SP1 at the KLIA. SP1 who marked the drug exhibit before passing it to SP7 testified and confirmed that it was the same drug exhibit that he seized from the appellant at KLIA. The unchallenged confirmation by SP1 should be given due consideration in determining that there was no issue of doubt in the identity of the drug exhibit. This was one of the facts and events that formed the foundation not only for the admission in evidence of the drug exhibit but also its reliability and trustworthiness as a piece of evidence.

In regard of agent provocateurs, which represent the prosecution's most effective arsenal in drug trafficking cases as the evidence of an agent provocateur is to be given special treatment. Their evidence is always admissible and his credit worthiness presumed. However, in the decision by the apex court in *Wan Mohd. Azman Hassan v PP*[18], apart from its comprehensive discussion on the law on agent provocateurs, it opens a window for the defence to argue that entrapment ought to be considered in determining the culpability of the accused in certain situations. Under section 40A of the Act[19], the evidence of the agent provocateur cannot be excluded in the exercise of judicial discretion. Otherwise admissible evidence such as this one under section 40A[20] of the Act does not become inadmissible merely because it had been improperly or unfairly obtained. Section 40A (2) of the Act[21] affirms this admission notwithstanding any other laws, written or otherwise, to the contrary. He may thus relate the full story of what happened in his negotiations with the drugs seller and any statements made by the latter to him shall be admissible in evidence.

The common law position that entrapment is not a substantive defence remains the law. In any event, it is for the appellant to prove that he committed this offence as a result of an entrapment. This can only be determined from the facts to be evaluated by the trial court. In other words it is a question of fact. As there was no finding of facts on this issue by the trial court the issue of entrapment as a defence did not arise in this case. On this point alone, it demolished the argument raised by the appellant. For the defence to operate at all, the appellant needed to show that he was actually an "unwary innocent" who would not, but for the entrapment, have committed this offence. The facts in this case however show that the appellant was a person with an opposite disposition; *i.e.*, that of an "unwary criminal" who readily participated in the offence. In this case, at worst, SP3's action can only be described as soliciting the appellant to supply the drugs. There was no entrapment as such.

The court[22] was of the view that, in the fight against the drug menace, Parliament has deemed it fit that evidence of an agent provocateur be admissible without any restrictions. The trial judge is no longer vested

---

[18] (2010) 4 CLJ 529

[19] Dangerous Drugs Act 1952 – Section 40(1) Notwithstanding any rule of law or the provisions of this Act or any other written law to the contrary, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under this Act if the attempt to abet or abetment was for the sole purpose of securing evidence against such person.

[20] *ibid*

[21] *Ibid*-Section 40A (2) Notwithstanding any rule of law or this Act or any other written law to the contrary, and that the agent provocateur is a police officer whatever his rank or any officer of customs, any statement, whether oral or in writing made to an agent provocateur by any person who subsequently is charged with an offence under this Act shall be admissible as evidence at his trial.

[22] *Supra* No. 18

with discretion to exclude such evidence. The court is only to interpret legislation and not to add new elements, especially when the words in statutes are clear and unambiguous. There is thus no further need to subject that evidence to any balancing exercise as proposed by learned counsel in his submission.

However, the presumed credibility of an agent provocateur can be challenged and is usually challenged or for some credible reasons his evidence ought to be received with caution or completely rejected as in *PP v Bird Dominic Jude*[23]. Bird Dominic Jude is an Australian man has escaped the death penalty for a second time after a Malaysian court rejected an appeal by prosecutors against his acquittal on drug charges. He was arrested in March 2012 at a cafe near his apartment in Kuala Lumpur and accused of trying to supply an undercover police officer with 167 grams of methamphetamine, an amount that carries a mandatory death sentence. He was acquitted after the case fell apart amid allegations of corruption on the part of the prosecution's star witness and his entire testimony had been disregarded as his credibility had been destroyed.

B. Dangerous Drugs (Special Preventive Measures) Act 1985

This piece of preventive legislation provides powers to the Executive to detain a drug trafficker for up to two years at a time without going through the process of a court of law. This law provides the Royal Malaysian Police power to detain an individual for not more than 60 days for drug-related offences. Following the preliminary 60-day detention, individuals can be detained for a period of not more than 2 years by the Home Ministry or to be restricted for two years and have been strapped with an electronic monitoring device (EMD) to monitor their movements.

C. Dangerous Drugs (Forfeiture of Property) Act 1988

The aim of this law is to provide the authorities with the powers to trace, freeze and forfeit the assets of the drug traffickers, and the onus is placed on the liable person or drug trafficker to prove that his properties were gained through legal means.

D. Drug Dependents (Treatment and Rehabilitation) Act 1983

This law deals specifically with the treatment and rehabilitation of drug dependents. The RMP, particularly the NCID, have power to enforce this law. But with effect from 14th January 2017, all investigations relating to drug dependents' cases are now enforced by the National Anti-Drug Agency (NADA) in the Ministry of Home Affairs, which was aimed to reduce the burden on the police force. NADA has adopted a paradigm shift in transforming the treatment and rehabilitation services into a more accessible one and providing people with drug-related problems an opportunity to undergo drug treatment and rehabilitation services on a voluntary basis known as Cure & Care 1Malaysia Clinic. It is an alternative to compulsory drug rehabilitation centres, which involve the process of arrests, court orders and legal implications. It has received recognition and is regarded as one of the best practice to be followed in the whole region.

E. Poison Act 1952

This law meanwhile provides for the control, sale, import and export of poisons, precursors and other essential chemicals.

IV. CURRENT DOMESTIC DRUG SITUATION

In 2017, NCID seized a larger amount of drugs in 2017 as it intensified enforcement against drug syndicates. This includes improving the security checks at Malaysia's international airports and the country's border entry points. Methamphetamine and heroin remain as the two most commonly abused drugs in Malaysia respectively made up seizures of 1,258.33 kg and 653.79 kg compared to last year of 653.79 kg and 425.24 kg respectively. The total drug value seized in 2017 is worth about RM 198.54 million compared to RM 188.97 million in year 2016.

In 2017, the number of persons arrested for possession of drugs was 82, 866 compared to 72, 675 in 2016. As for drug abuse cases, the RMP have arrested 84, 006 persons in year 2017 compared to 128, 031 in year

[23] [High Court Kuala Lumpur Criminal Trial No: 45A-13-05/2012]

2016. Those who were arrested by the RMP in 2017 are indeed not for rehabilitation purposes but merely for punishing them for administrating drugs, which normally the court imposes either fine or imprisonment.

On the other hand, 2017 marked a higher number of people arrested under the Dangerous Drugs Act (Special Preventive Measures) 1985. A total of 1237 people were arrested under the preventive laws, compared to 1015 in 2016.

Meanwhile the total value of properties seized under the Dangerous Drugs (Forfeiture of Property) Act 1988 continued to increase from 2016 with RM 99.4 million to RM 113.7 million in 2017. However, the amount of the value of properties forfeited in 2017 decreased to RM 7.03 million compared to RM 15.1 million in 2016 as most the cases are pending for process of court.

Intensified enforcement efforts done by the NCID had resulted in many successes in tackling the supply dimension of the drug problem. The drug trafficking syndicates continue to adapt their manufacturing strategies in order to avoid detection which resulted in the syndicates changing their modus operandi. Rather than conducting their operations in state-of-the-art facilities, these syndicates conduct their operations in smaller labs to avoid detection by authorities. With drug processing methods at their fingertips, these syndicates resort to constructing 'kitchen labs' in order to produce the drugs to cater to their customers. These labs, easily constructed and requiring less manpower to be operated than an advanced lab, pose a threat for the local drug enforcement agencies as it is far more difficult to be located. The construction of these kitchen labs contributes to the higher number of clandestine laboratories dismantled by NCID as well as the increase in the number of people arrested in recent years. In 2016, a total of 14 manufacturing facilities and pill processing operations, primarily crystalline methamphetamine and ecstasy facilities, were dismantled. Due to the continuous robust enforcement, the number of arrests in clandestine laboratories in 2017 has decreased to 73 persons compared to 130 persons in 2016.

From the statistics of the drugs seized by the NCID from the year 2016 to 2017, they clearly show there was a hike in drug activities which mainly contributed to the *International Drug Trafficking Syndicates* (IDTS). The IDTS are known to use Malaysia as a temporary hub to transport these substances to other countries, especially Indonesia, China, Japan, Korea and Australia. NCID, however, continues to monitor these illicit activities with active enforcement actions and joint operations with local authorities and cooperation from international drug enforcement agencies. This resulted in the numerous successes in operation which contributes to the figure of seized drugs in recent years.

V. DRUG LAWS VERSUS MINIMAL MANPOWER

In formulating the strategies in combating the country drug problems the Government has adopted the following approaches:

(a) Supply Reduction

(b) Demand Reduction

Supply reduction is principally aimed at stopping the inflow of drug supplies into the country due to the reason that Malaysia is a country which does not produced her own drug supplies. On the other hand, demand reduction deals with the treatment and rehabilitation of drug addicts including preventive education to the society. In respect of supply reduction the tasks are shouldered by various enforcement agencies such as the police (NCID), Customs Department and the Malaysia Border Security Agency (AKSEM).

By and large, the NCID is the backbone and lead agency in the fight against drug trafficking activities. Even though the RMP has a workforce of approximately of 104,000 personnel (as of 2017), the NCID itself is hardly made up of 4,160 (4%) personnel of the total workforce throughout the country.

The point raised above is to indicate that to enforce the drug laws with such minimal manpower would clearly entail a heavy responsibility. As such to gauge whether the drug laws are effective in such a state would not fair judgement by itself.

VI. CONCLUSION

It can be seen from the above arguments that the drug problems posed a rather unique situation whereby, despite Malaysia's very stringent drug laws, it does not seem to have been effective in curbing the drug menace. All available statistics show the discouraging situation whereby there is a constant increase in all types of arrests. As such it can be concluded that the present drug laws of the country have not been effective in curbing the nation's drug problems. Illicit drug smuggling and trafficking cannot be overcome by a country alone. Drug syndicates operate without boundaries and continue to find new markets and expand their activities. To combat the drug problem effectively, more initiatives have to be aggressively planned and executed to ensure successes in combating the drug menace.

Cooperation among international organizations and regional counterparts is vital to overcome the illicit drug trafficking in Malaysia. The RMP, particularly the NCID, will continue to cooperate with foreign counterparts in their continuous effort to overcome illicit drug activities in the country. Thus, it is imperative to enhance the intelligence, enforcement and drug detection capabilities with a view of serving the main purpose of identifying and crippling the drug syndicates in this region.

BIBLIOGRAPHY

1. Mimi Kamariah Majid, 1995. Dangerous Drugs Laws. Kuala Lumpur: Malayan Law Journal Sdn Bhd.

2. Hisyam Abdullah @ Teh PohTeik, 2014. Drugs Trafficking and the Law.

3. Data Analysis, Narcotics Crime Investigation Department, Police Headquarters, Royal Malaysia Police, Bukit Aman, 2018

4. Dangerous Drugs Act, 1952

5. Dangerous Drugs Act (Special Preventive Measures), 1985

6. Dangerous Drugs Act (Forfeiture of Property) 1988

7. Drugs Dependents Act (Rehabilitation & Treatment), 1983

8. Poisons Act, 1952

Appendix 1

DANGEROUS DRUGS ACT 1952 (REVISED 1980)
ACT 234

39B Trafficking in dangerous drug

(1) No person shall, on his own behalf or on behalf of any other person, whether or not such other person is in Malaysia-

(a) traffic in a dangerous drug;

(b) offer to traffic in a dangerous drug; or

(c) do or offer to do an act preparatory to or for the purpose of trafficking in a dangerous drug.

(2) Any person who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Act and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, be punished with whipping of not less than fifteen strokes.

[(2) Subs. Act A1558:s.2]

(2A) In exercising the power conferred by subsection (2), the Court in imposing the sentence of imprisonment for life and whipping of not less than fifteen strokes, may have regard only to the following circumstances:

(a) there was no evidence of buying and selling of a dangerous drug at the time when the person convicted was arrested;

(b) there was no involvement of agent provocateur; or

(c) the involvement of the person convicted is restricted to transporting, carrying, sending or delivering a dangerous drug; and

(d) that the person convicted has assisted an enforcement agency in disrupting drug trafficking activities within or outside Malaysia.

[(2A) Ins. Act A1558:s.2]

(2B) For the purposes of subsection (2A), "enforcement agency" means-

(a) the Royal Malaysia Police;

(b) the National Anti-Drugs Agency;

(c) the Royal Malaysian Customs Department;

(d) the Malaysian Maritime Enforcement Agency; or

(e) any other enforcement agency as may be determined by the Minister.

[(2B) Ins. Act A1558:s.2]

(3) A prosecution under this section shall not be instituted except by or with the consent of the Public Prosecutor:

Provided that a person may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until the consent has been obtained.

(4) When a person is brought before a Court under this section before the Public Prosecutor has consented to the prosecution the charge shall be explained to him but he shall not be called upon to plead, and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.

THE CRIMINAL JUSTICE SYSTEM AGAINST ILLICIT DRUG TRAFFICKING IN PAKISTAN

*Asghar Ali Yousafzai**

I. GEOGRAPHICAL LOCATION OF PAKISTAN

Pakistan is located in South Asia and is at the junction of Central Asia and the Middle East, which gives its location great significance. Pakistan's total land border is 6,774 kilometres long, and it borders four countries. While surrounded by land from three sides, the Arabian Sea lies in the south. On the north-east side, Pakistan shares a 500-kilometre-long border with China, and, on the eastern side, it has a 2,912 kilometre border with India. The border between Pakistan and Afghanistan is called the Durand Line and is 2,430 kilometres long. The border between Pakistan and Iran is also called the Pakistan-Iran Barrier and is 909 kilometres long. The Arabian Sea is located south of Pakistan with a coastline of 1,046-kilometres. The Arabian Sea also serves as an important trade route between Pakistan and other countries.

II. CURRENT SITUATION OF ILLEGAL DRUG TRAFFICKING IN PAKISTAN

The Golden Crescent is the name given to the principal area of illicit opium production located at the crossroads of Central, South, and Western Asia. The Golden Crescent covers three countries—Afghanistan, Iran and Pakistan—whose mountainous peripheries define the crescent. Afghanistan is the world's largest producer of hashish and opiates. The majority of opium produced in Afghanistan comes from Kandahar and Helmand provinces.

Due to the ongoing continuous war over the last four decades, Afghanistan has become the global epicentre of poppy cultivation and narcotics production. This is perhaps due to the universally agreed phenomenon that drug trafficking not only generates substantial profits for organized criminal groups, but the illegal profit earned this way remains a major source of funding of such criminal groups and helps in financing international terrorism. The drugs normally smuggled from Afghanistan include opium and other poppy products. This is due to the large-scale cultivation of poppy crops in Afghanistan in which a gradual increase has taken place since the year 2001 till the year 2017. According to the UNODC Afghan Poppy Survey Report 2017, the poppy cultivation in Afghanistan has increased from 7,606 hectares in 2001 to 328,000 hectares in 2017.

As Pakistan shares a common border of 2,611 kilometres with Afghanistan, the illicit drug trafficking from Afghanistan poses a serious social, political and security problem not only for Afghanistan itself but also for Pakistan and other countries of the region.

* Senior Superintendent of Police, National Highways and Motorway Police, Ministry of Communications, Pakistan.

III. DRUG TRAFFICKING ROUTES

The routes followed for the purpose mostly join at different border points between Baluchistan and Afghanistan, then passing through Baluchistan towards the Arabian Sea as below:

S/No	Transit Route		Exit from Pakistan
1.	Chamman-Muslim Bagh-Qila Saifullah-Loralai-DG Khan		
2.	Quetta-Panjpai-Kalat-Khuzdar-Bela	Karachi	Arabia Sea
		Hub	
3.	Noshki- Kalat-Khuzdar-Bela	Karachi	Arabia Sea
		Hub	
4.	Barabcha-GirdiJungle-Kharan-Karachi	Karachi	Arabia Sea
		Hub	
5.	Barabcha-GirdiJungle-Kharan-Washuk-Ormara		Arabian Sea
6.	Choto-GirdiJungle-Dalbadin-Kalangor-Pasni		Arabian Sea
7.	Choto-Chagi-Girdi Jungle-Dalbadin-Kalangor-Mand/Turbat-Radeeq-Jiwani		Arabian Sea
8.	Choto-GirdiJungle-Kharan-Washuk-Ormara		
9.	Choto-Dalbadin-Kalangor-Mand/Turbat-Pasni/Gwadar		Arabian Sea
10.	Noshki-Kharan-Washuk-Kalangor-Pasni		Arabian Sea
11.	Barabcha-Yakmacu-Mushkel		Arabian Sea
12.	Barabcha-Chagi-Koh Sultan-Taftan		Arabian Sea
13.	Rabat-Koh Sultan-Saindak-Taftan		Arabian Sea
14.	Kani-Aminabad-Dalbadin-Kharan-Washuk-Kalangor-Pasni		Arabian Sea

IV. AVAILABLE STATISTICS

As per data obtained from the Anti-Narcotics Force, 1,177 operations were carried out against illegal drugs/narcotics dealers in the year 2017. In these operations various narcotic drugs were confiscated. In total, 32,573.10 Kg of opium, 7,132.20 Kg of morphine, 19,775.915 Kg of heroine, 102,113.593 Kg of hashish and 387.09 Kg of cocaine were seized during these operations, which shows that a huge amount of drug trafficking takes place in Pakistan.

V. CHALLENGES

The following are the main challenges faced by the LEAs in combating illicit drug trafficking:

A. Porous Border with Afghanistan

Afghanistan and Pakistan have a 2,430-kilometre-long porous common border called the Durand Line. It passes through hilly and mountainous areas. Due to the difficult terrain and tribal belt, there is uncontrolled movement of persons across the border. The situation is further worsened due to the fact that tribal people are residing on both sides of the border, having common social bonds and family relationships. The easement rights conventionally exercised by Afghan peoples for movement of their goods through the Pakistan border is another aspect of this challenge, as vehicles on their way back from Afghanistan are normally being used to import illicit narcotic substances into Pakistan.

B. Afghan Refugees in Pakistan

Another challenge is that around 3 million Afghan refugees settled in Pakistan. Due to the unbridled movement of these refugees in the country, they can easily roam around the entire country; thus not only is law and order jeopardized but illegal drug trafficking is also facilitated.

C. Lack of Control on Financial Transactions

The majority of the transactions between the tribal peoples associated with narcotics trafficking and their Afghan counterparts takes place through the *hawala/hundi* system. This leads to an absence of control of unusual financial transactions that take place in the illegal trade. Under the law, Section 67 of the Control of Narcotics Substances Act, 1997, financial institutions are responsible to report any unusual financial transactions when there is no apparent source of income. However due to the prevalent system of *hawala/hundi* this provision is almost impracticable in the area.

D. Prevalent Security Situation

Due to the war on terror in Pakistan the security situation across Pakistan is precarious. Most of the areas in the far-flung mountainous regions of the Federally Administered Tribal Area (FATA) are infested with terrorists; hence, ANF cannot operate there against the drug peddlers. Apart from FATA the situation in Balochistan is also precarious. Several sub-nationalist Baloch organizations are involved in active terrorism against the state of Pakistan. Some of the areas through which the smuggling routes pass are no-go areas for ANF and other Law Enforcement Agencies working for drug control.

E. Corruption within Drug Control Departments

It is an established fact that some officials in the drug control agencies are involved in corruption. These "black sheep" in collusion with the drug peddlers not only give protection to the drug peddlers, but also help in transportation of narcotics. A case in example is the FIR dated 06-09-2015 lodged against a high-ranking officer of Police Service of Pakistan in the Police Station Wadh District Khuzdar, Balochistan under 9(C), CNSA-1997 on the directions of the undersigned.

F. Poor and Uneducated Populace

One of the factors facilitating the thriving narcotics business in Pakistan is the lack of literacy and prevalent poverty among the masses. The poor and illiterate youth become easy victims for transportation of narcotics in return for petty sums of money.

G. Rehabilitation of Drug Addicts

According to the UN report on drug addicts, there are 6.7 million people in Pakistan who are drug addicts. This poses a serious challenge to the control of narcotics, and unless a detailed programme is implemented for rehabilitation of these addicts, there will always be demand for drugs.

H. Lack of Modern Technology for Detection of Drugs

One of the problems in controlling drugs in Pakistan is the lack of modern expertise and state-of-the-art gadgetry.

I. Witness Protection

Witness protection is another challenge of the day. Drug trafficking is a transnational organized crime.

People engaged in this crime are members of very powerful groups. Persons who give evidence against these groups are hardly available. Witnesses normally hesitate and even refuse to give testimony before the courts, and the culprits are ultimately acquitted.

VI. LEGAL FRAMEWORK

Cognizant of the gravity of the problems connected with drug abuse and illicit drug trafficking, the government has promulgated a number of laws in the country from time to time. Various Law Enforcement Agencies (LEAs) both at federal and provincial levels, *i.e.* the Anti-Narcotics Force, Provincial Police, National Highways & Motorway Police, Pakistan Customs and respective Excise and Taxation Departments of the provinces, have been tasked under the law to take action, within their respective domains, against narcotic drugs.

A number of statutes have been enacted from time to time to deal with narcotic drug trafficking and their use. These include, the Dangerous Drugs Act, 1930, the Customs Act, 1969, the Prohibition (Enforcement of Hadd) Order, 1979 and Control of Narcotics Substances Act, 1997. Moreover, the Pakistan Penal Code, 1860, the Motor Vehicles Ordinance, 1965 and the National Highways Safety Ordinance, 2000 also contain penal provisions for certain acts committed while under the influence of drugs. The Code of Criminal Procedure (Act V of 1898), along with the Qanoon-e-Shahadat Order, 1984, provide procedural law, in conjunction with the Narcotics Control Act, 1997, for arrest, investigation and trial of the offenders and for procedures for arrest and seizure of the drugs.

"The Control of Narcotics Substance Act, 1997, being the latest and more exhaustive law on the subject of narcotics as compared to the other laws and by virtue of sections 74 and 76 of the Act, ibid, its provisions have overriding effect on any other law for the time being enforce"[1]. Therefore, the legal framework available under this Act is discussed hereinbelow:

VII. CRIMINALIZATION OF ILLICIT DRUG TRAFFICKING

Illicit drugs or narcotic drugs under section 2, clause (s) of the Control of Narcotics Substance Act, 1997 refers to coca leaf, cannabis, heroin, opium, poppy straw and all manufactured drugs. This law has further defined these substances and their derivatives in detail under the respective clauses of the section. For instance clause (t) of the section has defined opium which, as per the said provision, means "poppy straw that is to say, all parts of the poppy plant (*Papaver Someniferum* or any other species of *Papaver*) after moving, other than the seeds and includes the spontaneously coagulated juice of capsules poppy which has not been submitted to any manipulations other than those necessary for packing and transport. This definition also includes any mixture with or without natural materials of any of the above forms of opium including a mixture containing more than 0.2% morphine"[2]. The law has further defined opium derivatives.

The Control of Narcotics Substance Act, 1997 has not only imposed a prohibition on the cultivation of narcotic plants, possession of narcotic drugs etc. Import or export of narcotic drugs and trafficking or financing the trafficking of narcotic drugs etc., owning, operating premises or machinery for manufacture of narcotic drugs, acquisition and possession of assets derived from narcotics offences and adding abetment or association in narcotics offences under section 4, sections 6, 7 and 8, 10, 12 and 14 of the Act but has also provided punishments for these crimes, respectively, under sections 5, 9, 11, 13, 15 and 16 of the Act.[3]

VIII. PROCEDURE FOR SEARCH AND SEIZURE ETC. IN NARCOTIC DRUG OFFENCES

The Control of Narcotics Substance Act, 1997, contains both substantive as well as procedural law. The relevant sections referred to above are substantive provisions for crimes of illicit drug trafficking while Chapter-III of the Act, comprising of sections 20 to 35, deals with procedural matters including arrest, search, seizure, undercover and controlled delivery operations etc. Section 20 of the Act relates to the powers of the

[1] 2000 Pakistan Criminal Journal 1222.
[2] Section 2, (s), Narcotics Control Substance Act (Act No. XXV), 1997.
[3] The Control of Narcotics Substance Act (Act XXV) of 1997.

Special Court constituted for the purpose under this Act to issue warrants for arrest of any person whom it has reason to believe committed an offence of illegal illicit drug trafficking etc. The power of the Special Court under this provision is to issue search warrants both during day- or night-time. The law under section 21 also empowers police officers not below the rank of Sub-Inspector to enter any building, place or premises etc. for the purpose of search and to effect seizure and arrest without any warrant, if he has knowledge or information that a controlled substance in respect of which an offence is punishable under the Act and that a warrant for arrest or search cannot be obtained against the suspect without affording him an opportunity for the concealment of evidence or to facilitate his escape. In such circumstances, he enters into the building, place, premises or conveyance and breaks open any door and removes any other obstacle to such entry in case of resistance and is empowered to seize such narcotic substances. However, such powers conferred on police officers by the Act are subject to certain conditions, as held by Special Court decisions. In one such case the honourable Court held that:

> Search and seizure proceedings by obtaining a search warrant was a rule and exercise of unusual power to effect search without warrant was an exception. Conscious application of mind needed on part of officer to effect search or arrest without a warrant as to possibilities of escape or concealment of evidence on part of the offender. Provision of section 21, (2) of Control of Narcotics Substances Act, 1997 required that before or immediately after taking any action under section 21, (2) of the said Act, officer concerned must record grounds and the basis of his information and proposed action and forthwith send a copy thereof to his immediate superiors. Such safeguard was provided to prevent abuse of extraordinary powers.[4]

Section 24 of the Act also provides for undercover and controlled delivery operations. This provision is addressed below.

IX. UNDERCOVER AND CONTROLLED DELIVERY OPERATIONS

Section 24 of the Act deals with undercover and controlled delivery operations. This provision lays down that, subject to the conditions laid in the said section, the Federal Government may give approval in writing to controlled delivery operations, for the purpose of gathering evidence in Pakistan or elsewhere relating to the commission of any offence against this Act or similar law of a foreign state. The controlled delivery is carried out through properly designed operations to give opportunity to intending criminals engaged, or about to engage, in illicit drug trafficking to manifest that conduct or provide other evidence of it.

X. DISPOSAL OF PERSON ARRESTED IN ARTICLES SEIZED

Section 27 of the Act provides procedures for disposal of a person and articles seized. Under the said provision, persons arrested and articles seized have to be forwarded without delay to the Special Court having jurisdiction.

XI. PRESUMPTIONS OF INTENT IN TRAFFICKING AND POSSESSION OF ILLICIT ARTICLES ETC.

The law presumes under section 29 of the Act that whenever any narcotic drug, psychotropic substance or controlled substance, including cannabis, coca or opium poppy plant, is growing on any land cultivated by such persons, any apparatus designed or adopted for the production or manufacture of any narcotic drugs, psychotropic substance etc. for which such person fails to account satisfactorily is presumed to have committed an offence under the Act. However, the presumption laid down under this provision has been subjected to certain qualifications by the honourable Court, particularly in light of the fundamental rights of citizens provided under Article 14 of the Constitution.[5]

[4] 1999 Pakistan Criminal Law Journal, 1033.
[5] 2000 Pakistan Supreme Court Cases (Criminal) Supreme Court (Pak) 792.

XII. CONFISCATION OF ARTICLES AND PROCEEDS OF ILLICIT DRUG TRAFFICKING

Irrespective of whether an accused person is convicted or acquitted during trial of an offence, the Special Court has been empowered by section 33 of the Act to decide whether any article frozen or seized is liable to confiscation. Moreover, narcotic drug psychotropic substances are controlled substances that have to be disposed of under section 516 (a) of the Criminal Procedure Code.

XIII. LEGAL IMPEDIMENTS AND PRACTICAL CHALLENGES IN COMBATING ILLICIT DRUG TRAFFICKING

The clandestine nature and complexity involved in identifying, tracing and seizing of the proceeds of crime related to narcotic drugs, Law Enforcement Agencies are facing serious challenges in this regard. Due to the procedural technicalities involved in the trial of offenders, conviction of such criminals is also a challenge for Law Enforcement Agencies and the prosecution. The challenge is further aggravated by the ongoing Afghan war for the last four decades. The war has virtually turned Afghanistan into a global epicentre of poppy cultivation and narcotics production. Afghan drugs pose a serious social, political and security problem not only for Afghanistan itself but also for its neighbouring countries. Because Pakistan shares a common border of 2,611 kilometres with Afghanistan, Pakistan has thus become the major victim and major transit country for Afghan opiates and hashish.

XIV. CONCLUSION

Given that generally the motive behind illegal drug trafficking is to pursue financial gain, which not only generates substantial profits for organized criminal groups, the illegal profits remain the major source of funding of such criminal groups and their activities which in turn lead to the growth of their illegitimate business sphere. Resultantly, the profit earned through such businesses penetrates into the legally operated business sphere and eventually impairs integrity and stability of the economic and financial systems around the globe. The linkage between illegal drug trafficking and financing of international terrorism has made the issue more troubling for the entire global community. Therefore, more effective strategies need to be devised through inter-agency coordination both on the national and international levels. Moreover, applicable laws on the subject need to be reviewed and updated to cope with modern-day challenges in the field.

SMUGGLING OF ILLICIT DRUGS AIDED BY CUSTOMS PLAYERS

*Marie Catherine R. Nolasco**

I. INTRODUCTION

The entry into the Philippines of large volumes of imported illicit drugs was initially believed to be through the various islands of the Philippines, taking into consideration the archipelagic nature of the country. However, there have been reservations on this because of the proliferation of smuggling activities being perpetrated by the "*players*"[1] or "*fixers*" at the Bureau of Customs.

In an investigation conducted by the National Bureau of Investigation in September 2013, whereby 62 kilograms of methamphetamine hydrochloride—commonly known as *shabu*—were seized by virtue of the service of a search warrant[2] issued against the occupants of a condominium unit in Manila used as a "drying station" of shabu, large empty tea packs were found inside the premises. Examination conducted on the tea packs revealed the presence of shabu residue.

It was assumed that tea packs containing shabu were smuggled into the country through boats entering through the various islands of the Philippines. There was no opportunity to confirm or disprove it. The investigation reached a dead-end since no documents were found within the premises that could lead the investigation beyond the three (3) Chinese nationals arrested during the operation, since, as with other investigations, the arrested Chinese nationals were mum when questioned.

Another investigation in December 2016 conducted by the Task Force on Anti-Illegal Drugs (TFAID) of the NBI in the City of San Juan yielded a total of almost 800 kilograms of shabu in a series of interrelated operations.[3] Likewise, no documents were found in the premises subject to the search warrant that would provide leads as to the source of the illicit drugs. Similarly, no additional information was revealed by the Chinese nationals arrested in the operation. As in the other case, there were indications that the same were also smuggled into the country.

A breakthrough came about in 2017, when the Bureau of Customs sought the assistance of the NBI in the investigation of the contents of five (5) metal cylinders from China containing a total of over 600 kg of shabu.

II. INVESTIGATION OF THE SHABU CONTAINED IN METAL CYLINDERS

A. Initial Discovery of the Shabu by the Bureau of Customs[4]

On 26 May 2017, the Bureau of Customs' (BOC) Criminal Intelligence and Investigation Service (CIIS) sought the assistance of the National Bureau of Investigation's (NBI) Anti-Organized and Transnational Crime Division (NBI) and the Philippine Drug Enforcement Agency (PDEA) to assist them in the investigation and processing of the methamphetamine hydrochloride, or shabu, they discovered in a warehouse in Valenzuela City.

---

* Executive Officer for Operations, Anti-Organized and Transnational Crime Division, National Bureau of Investigation, Philippines.

[1] "*Players*", or "*fixers*", are the terms used to refer to those who facilitate/process the importation of goods in the Bureau of Customs.

[2] Search Warrant No. SW 13-147-MN issued by the Regional Trial Court of Malabon City on 06 September 2013.

[3] By virtue of Search Warrant No. 16-031 issued by the Regional Trial Court of Makati City, Branch 65 and a series of related operations, such as interdiction.

[4] *Joint Affidavit*, dated 14 August 2017, executed by the operatives of the AOTCD in filing charged against the importers of the shabu. (NPS Docket No. XVI-INV-17H-00206)

A total of 605 bags of shabu were found inside five (5) metal cylinders placed in wooden crates. After deliberations among the BOC, NBI and PDEA, it was decided that a controlled delivery would be conducted as to one of the cylinders containing shabu. The controlled delivery was led by the PDEA. Delivery was made to the ultimate consignee as indicated in the documents. The consignee was arrested by the PDEA for violation of R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002). A total of 100 bags of shabu were seized at the address indicated, with a net weight of 100,181.0 grams (100.181 kg).

Meanwhile, the rest of the transparent bags containing a white crystalline substance and the four cylinders containing the same were left in the custody of the NBI-AOTCD for field testing, seizure, qualitative and quantitative examination and further investigation. Personnel from the NBI Forensic Chemistry Division (FCD) were, thus, called-in for the field testing.

B. Investigation Conducted by the AOTCD[5]

After the illicit drugs were seized, the NBI-AOTCD conducted a thorough investigation on how the shabu was able to pass through the BOC without being detected. Various modes of investigation were utilized, among which are: (1) interviews of witnesses, officials and employees of the different departments of the BOC, experts in the field of importation, among others; (2) backtracking of the import documents, accreditation papers, as well as the various customs orders and issuances; (3) verification with several government agencies; and (4) issuance of subpoenas to those who participated in the importation.

Based on the investigation, the warehouse where the metal cylinders containing the shabu were found is owned by a company engaged in international sea and air freight forwarding. The company receives several items for shipment from its various warehouses in China and assembles and consolidates the same into a single lot. Once a container is filled up, it contacts its broker in China to arrange for the shipment of the containers to the Philippines. Since the company is no longer a registered forwarder of the Bureau of Customs, to continue its operation as an international freight forwarder, it hires consultants handling the release of goods from the Bureau of Customs. These consultants in turn use the *players* for the importations. The *players* charge an *all-in package* of one hundred ninety thousand pesos (Php190,000)[6]. It means that for the said amount, the player will provide a "consignee-for-hire"[7], pay the taxes and duties, and deliver the container to the importer.

Further, the player guides the importer through the consultants in the preparation of the import documents. The player revises the packing list with the corresponding harmonized system (HS) codes to be used by the importer to ensure that the shipment would be categorized as "general merchandise."

In the importation of the shipment which includes the five (5) metal cylinders containing the shabu, the same procedure was adopted. The actual packing list of the importer was revised by the player. As prepared by the player, the packing list forming part of the import documents to be submitted to the BOC indicated the contents as cutting boards, footwear, kitchenware and molds, contrary to the actual contents of the original packing list as transmitted by the importer's warehouse in China.

In the course of the preparation of the documents, the shipment was brought to the Port of Shihu where it was loaded into a vessel. It arrived at the Manila International Container Port (MICP) on 15 May 2017.

On 17 May 2017, the customs broker hired by the player lodged the details of the shipment in the Bureau of Customs Electronic to Mobile (E2M) System. As part of the all-in package, the player's customs broker entered a trading company or the consignee-for-hire as the importer/consignee for the shipment.

The player and the consignee-for-hire verbally agreed that the player would use the business name of her trading company in exchange for a royalty/retainer of one thousand five hundred pesos (PhP 1,500.00) per container. The shipment was assigned a "Green Lane" tag by the Selectivity System of the Bureau of Customs. Because the shipment was tagged "GREEN", no physical inspection and further documentary

---

[5] *Transmittal of the NBI to the Department of Justice*, dated 14 August 2017 (NPS Docket No. XVI-INV-17H-00206).

[6] Equivalent to around US$3,800.

[7] A "consignee for hire" is a consignee whose business name is used as consignee of the various importation of the player's clients.

examination was required. All that was needed was the payment of customs fees and taxes.

On 23 May 2017, the shipment was released from the MICP. It was loaded onto a truck owned by the player and delivered to the importer's warehouse on 24 May 2017. Upon arrival of the container, the warehouse personnel listed its contents, and checked the same to see if it matched the actual packing list e-mailed from China. They then called up the individual consignees of the shipments to inform them of the arrival of their goods.

At around 5 or 6 o'clock in the evening of 25 May 2017, the warehouse manager, who is also the importer/consolidator (hereinafter referred to as importer), received a call from a Xiamen Customs Police Officer, asking if the shipment of five (5) insulator machines had arrived. The warehouse manager answered that it arrived on 24 May 2017. The Xiamen Customs Police Officer then told the importer that the shipment contained voluminous drugs; and that the shippers thereof were arrested in China.

Fearing that the shipment would be discovered in his warehouse by the Philippine authorities, the importer then coordinated with the Chinese Embassy in the Philippines. He also called up a Philippine customs official, who has contacts with the Customs of China to assist him. After proper verification by the Philippine Customs official with the Xiamen Customs Police Officer, the package as described was indeed part of the shipment. The information was relayed by the Philippine Customs official to his superior, the BOC-CIIS head. Consequently, the assistance of the NBI and the PDEA were sought.

C. Result of the Investigation

As a result of the investigation conducted by the NBI-AOTCD, charges for Importation of Dangerous Drugs, under Section 4 of the *Comprehensive Dangerous Drugs Act of 2002* (R.A. 9165) were filed against the actual consignee's importer, players, consultants, broker and the consignee-for-hire.[8] The case is now pending before the Regional Trial Court of Manila and arrest warrants have been issued against them.[9]

In addition, criminal cases for Unauthorized Practice of Customs Broker Profession, under Section 28 of the *Customs Brokers Act of 2004* were filed against the player and the consultants. Criminal cases for violation of the *Anti-Graft and Corrupt Practices Act* (Republic Act 3019, as amended) were also filed against employees of the Bureau of Customs: the Chief of the Risk Management Office (RMO) and two employees of the Formal Entry Division (FED).[10]

III. BEATING THE SYSTEM OF THE BOC

A. Selectivity System of the BOC

The players at the Bureau of Customs have wittingly or unwittingly paved the way for the drug traffickers to smuggle illicit drugs into the country passing through the Bureau of Customs itself.

The customs player in his testimony before the *Senate Blue Ribbon Committee on Accountability of Public Officers and Investigations (Blue Ribbon)* hearings in the *Inquiry, in Aid of Legislation, Into the Php6.4 Billion Worth of Shabu Shipment From China, on the Possible Malfeasance, and Nonfeasance of Bureau of Customs (BOC) Officials and Employees* and the corresponding parallel investigations before the *House Committees on Dangerous Drugs and Good Government and Public Accountability* admitted the employment of the "*tara system*", whereby he pays off customs officials to ensure the release of the importations he processes.

According to the player, he was provided with the HS Codes and other methods to give his shipments a better chance of being tagged "green" in the BOC's Selectivity System. Under the said system, when given a green tag, goods are released without further inspection. All that has would have to be done is the payment of the assessed duties and taxes, and the shipment will be released from the Bureau of Customs without

[8] *Ibid.*
[9] *Criminal Case No. R-MNL-18-00347-CR.*
[10] The cases were docketed as NPS Docket No. XVI-INV-17I-00251 and NPS Docket No. XVI-INV-17I-00252. The case against the Chief of the RMO was dismissed while the cases against the employees of the FED are awaiting Resolution of the Prosecutor of the Department of Justice.

inspection.

True enough, in the investigation conducted by the NBI-AOTCD, for the period of 31 March 2017 to 29 May 2017, or for almost two (2) months, out of the six hundred sixty-four (664) shipments processed by the player through his broker and consignee-for-hire, five hundred thirty-two (532) were tagged green, one hundred twenty-three (123) were tagged yellow and only nine (9) were tagged red.[11] (With a yellow tag, only a documentary check is made on the shipment while with a red tag, documentary check and physical examination is conducted.) This is despite the fact that the consignee-for-hire utilized by the player is a "new importer" and a "sole proprietorship", which are considered as high risk by the Selectivity System.

B. Insufficient X-ray Machines

Since the shipment was assigned a green lane, it did not have to go through the x-ray machines. Under the current set-up of the BOC, only a small number of containers pass through the x-ray machines due to the limited machines available. Had the container containing the metal cylinders been examined through the x-ray machines, the magnitude of the size of the metal cylinders would have alerted the inspector. The discrepancy between the actual contents of the container and the packing list submitted with the import documents could have been detected.

IV. CONCLUSION

Entry of illicit drugs in large volumes through the Philippine ports has become an easier and perhaps a cheaper mode for drug traffickers. Corruption coupled with the lack of sufficient technology has allowed entry under the noses of customs officials. If not for the timely information coming from the Chinese authorities, over 600 kilograms of shabu would have been distributed in the Philippines; thus, taking a big step backward on the current administration's war on drugs.

V. RECOMMENDATIONS

It is recommended that the Philippine government invests in sufficient x-ray machines to enable the BOC to have an efficient 100% inspection of all importations and not just a small percentage. This will deter the proliferation of smuggling not only of drugs but other contraband as well. Further, law enforcement agencies should develop partnerships with other nations to enable sharing of intelligence.

[11] *Transmittal filed by the NBI before the DOJ* under NPS Docket No. NPXVI-INV-17I-00251, dated 18 September 2017.

THE EFFECTIVENESS OF THE RECENT AMENDMENT OF THE NARCOTICS ACT AND THE SUPREME COURT DECISION ABOUT THE NUMBER OF OFFENCES IN NARCOTICS CASES

*Nitchan Hadsarang**

I. ILLICIT DRUG SITUATION IN THAILAND

A. Overview

Illicit drugs have been one of the biggest problems in Thailand for a long time. Among the various types of drugs, methamphetamine is the most problematic one. According to the statistics from the Office of the Narcotics Control Board, between 2011 to 2016, there were approximately 100,000 methamphetamine cases each year, followed by cannabis or kratom cases with the approximate number between 6,000 and 20,000 each year. The government has been engaging in the war against illicit drugs, especially methamphetamine, for years with the approach of harsh measures to eliminate and isolate drug offenders by using a very strict narcotics law and strong punishments. Despite this effort, the situation did not get better, and even got worse. Prisons have been crowded with drug offenders while the number of drug cases has not been significantly decreased. According to recent statistics, Thailand's incarceration rate ranks among the world's top ten[1]. Thus, the government decided to change its approach towards illicit drugs in the hope of solving the problem of crowded prisons; hence, the amendment to the Narcotics Act B.E. 2522[2], namely, the Narcotics Act (No. 6) B.E. 2560[3]. Although this amendment has been in effect for only about a year, I will address it in this paper.

Apart from, and not directly related to, the problem of the crowded prisons is a somewhat disputable interpretation and application of law specifically in narcotic cases by the Supreme Court of Thailand, which I think, results in a peculiar outcome of punishment that I will also address in this paper.

This paper will be based mainly on category I narcotics (more details in the next section below) defined in the Narcotics Act B.E. 2522 with emphasis on methamphetamine because the majority of the prisoners in Thailand are those convicted of possession of methamphetamine for disposal and/or for the actual disposal of it[4].

B. Methamphetamine

Methamphetamine has been the most widespread drug in Thailand for years. It is commonly being distributed in two forms. The first one is in the form of a pill. Methamphetamine pills usually have low quantity of pure substances. They often have the colour of orange and sometimes green. But in recent years, the quantity of pure substances of methamphetamine pills has been higher. The other form of methamphetamine is a crystalline white powder which typically has a very high quantity of pure substances. Methamphetamine traded in Thailand is mainly produced in the Golden Triangle[5] area (the mountainous area that overlaps Thailand, the Republic of the Union of Myanmar and Lao People's Democratic Republic). It is smuggled through the country's border in the northern part of Thailand and then is distributed to the other parts of the country. Methamphetamine has been spreading among workers, truck drivers, as well as teenagers and young children, often causing them mental and physical problems.

---

* Judge of the Chiang Mai Juvenile and Family Court, Thailand.

[1] https://www.oncb.go.th/SitePages/narcotics_effect.aspx. (available in Thai only).

[1] http://www.prisonstudies.org/highest-to-lowest/prison-population-total.

[2] A.D. 1979.

[3] A.D. 2017.

[4] http://www.correct.go.th/stat102/display/drug_select_date_user.php (available in Thai only).

[5] https://en.wikipedia.org/wiki/Golden_Triangle_(Southeast_Asia).

II. LEGAL FRAMEWORK

A. Narcotics Act B.E. 2522

1. Overview

This act criminalizes and sets out the main rules and punishments for narcotics offences. It classifies narcotics into five categories which are:

- category I consisting of dangerous narcotics such as heroin;
- category II consisting of ordinary narcotics such as morphine, cocaine, codeine, medicinal opium;
- category III consisting of narcotics which are in the medicinal form and contain narcotics of category II as ingredients in accordance with the rules prescribed by the minister[6] and published in the Government Gazette;
- category IV consisting of chemicals used for producing narcotics of category I or category II such as acetic anhydride, acetyl chloride;
- category V consisting of narcotics which are not included in category I to category IV such as marijuana, kratom plant.

Methamphetamine falls into category 1 of this act.

2. Estoppel

Prior to the amendment by the Narcotics Act (No. 6) B.E. 2560, section 15, paragraph 3, subparagraph (2) states that the production, import, export or possession of narcotics of amphetamine or derivatives of amphetamine of the quantity computed to be pure substances of 375 milligrams or more or is of narcotics substances thereof of 15 doses or more or is of pure weight of 1.5 grams or more shall be *regarded*[7] as production, import, export or possession for disposal. This estoppel prohibits offenders from defending themselves or presenting any evidence to prove that they have no intention to dispose of the narcotics.

3. Punishments

Punishments range from fine or imprisonment to the death penalty depending on the category and quantity of the pure substances of narcotics. According to section 66, paragraph 1 of this act, anyone who disposes or possesses for disposal narcotics of category I without permission and in a quantity computed to be pure substances, or in the number of dosages, or in net weight, that does not reach the quantity prescribed in section 15, paragraph 3 will be liable to imprisonment for a term of 4 to 15 years, or a fine of 80,000 to 300,000 baht[8], or both. And in paragraph 2, if the narcotics under paragraph 1 are of a quantity computed to be pure substances of the quantity prescribed in section 15, paragraph 3, but not over 20 grams, the offender will be liable to imprisonment for a term of 4 years to life and a fine of 400,000 to 5,000,000 baht[9]. And in paragraph 3, if the narcotics under paragraph 1 are of a quantity computed to be pure substances over 20 grams, the offender will be liable to imprisonment for life and a fine of 1,000,000 to 5,000,000 baht[10], or the death penalty.

According to section 67 of this act, the punishment for an offender who possesses narcotics of category I without permission will be liable to imprisonment for a term of 1 to 10 years, or a fine of 20,000 to 200,000 baht[11], or both. That means an offender who possesses methamphetamine with the computed pure substances less than 375 milligrams or at a dosage less than 15 or the net weight less than 1.5 grams will be punished with less severity.

From the abovementioned section 66 and section 67 with the estoppel set forth in section 15, paragraph 3, subparagraph (2), we can see that the differences of punishment between the accusation for the possession of methamphetamine and the possession for disposal of methamphetamine are quite large. Moreover, in practice, there is a classified norm of each courthouse for adjudicating various cases including narcotics, and specifically, methamphetamine. This norm governs the final punishment that will be given to the convicted defendant. These factors seal the fate of the convicted defendant and end up sending more and more people to jail.

---

[6] Minister of Public Health.
[7] Emphasis added.
[8] Approximately 2,500 to 9,500 US$.
[9] Approximately 12,700 to 159,800 US$.
[10] Approximately 31,900 to 159,800 US$.
[11] Approximately 600 to 6,300 US$.

B. Narcotics Act (No. 6) B.E. 2560

The most recent amendment of the Act in 2017 is aimed to help solving the prison overcrowding problem This amendment changes the estoppel provision in section 15, paragraph 3 by replacing the word "regarded" with "presumed". So, for narcotics crime committed from 16 January 2017 onwards, defendants can now deny the charge of possession for disposal and present their evidence in court to prove that the possession of the narcotics is not for disposal. This amendment aims to reduce the number of prisoners as I mentioned earlier. But from what I have seen and adjudicated in narcotics cases, especially methamphetamine cases, I have found that only a few defendants took advantage of this newly amended provision. I will address this problem in the next section.

C. Supreme Court Decision

According to section 91 of the Criminal Code, if a defendant commits more than one distinct and different offence, the court shall punish that defendant for each of the offences. This provision would be obvious if the committed offences are distinct and different in their natures. For example, if someone possessed narcotics and when a police officer tried to arrest him/her, that person killed the police officer, it is clear that this person committed two distinct and different offences of possession of narcotics and murder. But what if the situation is not that clear cut? For instance, if someone is a drug dealer and he/she possesses 100 tablets of methamphetamine for disposal and then sells 50 of them to another person, is it only one offence or two offences since he/she has the intention from the start to sell the methamphetamine. Now, if that same person possesses 100 tablets of methamphetamine for disposal and then sells all of them to another person, how many offences this time?

There is nothing in section 91 or the other provisions that talk about how to distinguish these two examples. To answer these questions, the Supreme Court of Thailand ruled that, for the first instance, the possession of 100 tablets of methamphetamine for disposal constitutes an offence, and since the offender only sells half of them to another person, it constitutes another offence. While in the latter instance, the offender sells all of the methamphetamines that he/she possesses with the intention of disposal; thus, the offender is deemed to commit only one offence. Consequently, the first offender will receive higher punishment than the second offender.

Because Thailand uses the civil law system, there is no judge-made law like in those countries with common law system. But the Supreme Court's decisions are treated as precedent of interpreting and applying laws so they have binding force. This issue will also be addressed in the next section.

III. UNDERLYING PROBLEMS

A. The Effectiveness of the Newly Amended Section 15

In the real world, at least, from my own experience, I only saw a few cases in which the defendants admitted that they possessed the methamphetamine but denied that the possession was for disposal. Most of the time, the defendants either plead guilty to the whole charge or plead not guilty at all. This maybe because of two reasons: one, if they plead guilty to the whole charge, they will normally get half deduction of the final punishment. Two, if they admit the possession of the methamphetamine but deny that it is for disposal, they have the burden to prove it because the law "presumes" that the possession is for disposal. And it is quite hard to prove. If they are lucky enough to prove it, then the baseline of the punishment will be somewhat lower, but if they are unsuccessful, they will usually get only one-third or one-fourth deduction of the final punishment. It means that this recent amendment of section 15 is not that effective in practice.

B. Supreme Court Decision

As I explained earlier, it is very surprising that the outcomes of two cases are quite different: one who is not-so-good a drug dealer that he can sell only a portion of the methamphetamines in his possession, and the other one who is a competent drug dealer that can sell all of the methamphetamine in his possession. For example, a defendant who is charged with the possession of 15 tablets of methamphetamine for disposal and disposes 14 of them, will get at least 8 years of imprisonment before the deduction (a minimum of 4 years for the possession for disposal and another minimum of 4 years for the disposal in accordance with section 66, paragraph 1 of the Narcotics Act). Meanwhile, another defendant who is charged with the possession of 15 tablets of methamphetamine for disposal and disposes all of them will get only at least 4 years of imprisonment before the deduction. Is the punishment proportional for the crimes committed by these two

defendants?

A Supreme Court case dating back to 1979, case no. 1074/2522, states that, the defendant's possession of heroin for disposal means that he had the intent to dispose of it. And the amount of heroin he disposed of was the same amount he possessed for disposal, so his act constitutes one offence.

In 1976, case no. 638/2519, states that, the possession of heroin and the disposal of it have separable intent even though the heroin that the defendant disposed of was part of the heroin that he possessed. The act of disposal creates another offence by means of another intent other than possession, thus, constituting multiple offences.

A more recent decision in 2010, case no. 6634–6635/2553, in a sting operation, police made a deal to buy 20,000 doses of methamphetamine for 500,000 Baht (approximately 15,800 US$) from the defendants. Afterward, the defendants were arrested with the handed over drugs of 19,800 doses, 200 short of the amount dealt. Later, the remaining 200 doses were found in the defendants' car. The court of first instance rendered the judgement that the act constituted two offences of possession for disposal and sale of methamphetamine resulting in 50 years of imprisonment (33 years and 4 months for the offence of possession for disposal and another 33 years and 4 months for the offence of sale[12] but the final imprisonment was capped at 50 years in accordance with the Criminal Code Section 91), and life imprisonment for the second defendant (life imprisonment for both offences). The Court of Appeal Region 5 affirmed. The Supreme Court states in its decision that the defendants intended to sell 20,000 doses but merely mistakenly handed over only 19,800 doses, so, it is deemed that the defendants had sold all of the 20,000 doses, which was the same amount they had in possession for disposal. Consequently, their acts constitute only one offence. The first defendant got 33 years and 4 months of imprisonment, and the second defendant still got life imprisonment.

IV. POSSIBLE SOLUTIONS

A. Reconsideration of the Policy, Taking into Account Other Circumstances, and Shifting the Burden of Proof

In my opinion, this issue has to be dealt with through the policy of the government against illicit drugs. Thailand is a civil law country that mainly uses adversarial trial procedures, which means that, especially in criminal cases, the prosecution has the burden to prove beyond reasonable doubt that the defendant is guilty. But section 15, paragraph 3 of the Narcotics Act B.E. 2522 disrupts this principle by shifting the burden of proof to the defendant in light of fighting against illicit drugs. So, the government should carefully consider its view of narcotics offenders, whether to continue to strongly punish the offenders, or to shift the focus to more preventive measures and treat some offenders more like patients who need rehabilitation rather than sending them to jail, and to help them to get back on the right track. Particularly in Thailand, sending someone to jail has proven, in many situations, not to be the best choice. Some people even say, if you send someone to jail, it is like sending that person to a school that teaches you how to commit more serious crimes. If the government really wants to soften the punishment of drug dealers and give them more leeway with respect to the committed crimes, then the law should give more flexibility to the defendants to deny the charge of possession for disposal and to prove that the possession was not for disposal. Maybe shifting the burden of proof of the possession for disposal charge to the public prosecutor would be one idea; or maybe requiring the public prosecutor to prove some preliminary facts to demonstrate that the possession of the drugs was for the purpose of disposal but allowing the defendant to offer evidence against it. This will place less burden on the offenders and may help the amended section 15 be more effective.

B. Reconsideration of the Supreme Court Decision

The fastest way of dealing with this issue is to have more debate about the Supreme Court decision and reconsider the precedent set by the decision. One might say that the two situations are different because the defendant who only sells a portion of the possessed drugs has a chance to sell the remaining drugs to another person; hence, creating a large network for the illicit drug business if the defendant has not been arrested. But, in my opinion, there is not much difference between the two situations in which the offender can sell all

[12] He pleaded guilty in the investigating phase so he got 1/3 deduction of life imprisonment which equals to 33 years and 4 months.

of the methamphetamine in his or her possession or only a portion of it. The harm that these two cases will do to the society is the same. The selling of the remaining portion and expanding the illicit drug network is more like a prediction of the future. So, it is not proportionate to punish these two offenders differently. The underlying thought of this issue should be based on the intent of the defendant. In my view, the intent of possession for disposal and the intent of disposal are different and separable. So, the act of possession for disposal and the act of disposal should always constitute two offences.

V. CONCLUSION

While it may seem like these issues are not directly related to fighting illicit drug trafficking, and the two issues that I address sound like they contradict each other, but I think in order to make the effort of solving the illicit drug problem run smoothly, the whole system should be in harmony, reasonable, and effective. However, in the meantime, there is no concrete or clear-cut conclusion for the issues in this paper. But I hope to share my views and opinions with the other participants, and I would love to get suggestions and to learn about practices from other jurisdictions in other countries either with similar or dissimilar legal systems.

REPORTS OF THE COURSE

GROUP 1
EFFECTIVE INVESTIGATIVE AND PROSECUTORIAL MEASURES TO DETECT, PROSECUTE AND PUNISH LEADERS OF CRIME ORGANIZATIONS AND HIGH VALUE TARGETS

Rapporteur: Mr. Asghar ALI (Pakistan)
Co-Rapporteurs: Mr. Rashmi SINGAPPULIGE (Sri Lanka)
Mr. AMAYASU Ryo (Japan)

Chairperson	Ms. Yasmine Nagnouma KEITA	(Cote d'Ivoire)
Co-Chairperson	Mr. Khurshed Iskandar ISOZODA	(Tajikistan)
Members	Mr. Maurice Kouadio N'DRI	(Cote d'Ivoire)
	Ms. TSHIBOLA Mulumba Annie	(D.R. Congo)
	Mr. Augustus Apelis Mathew BRAY	(PNG)
	Mr. FUKUSHIMA Yoshihiko	(Japan)
	Mr. Valentyn SHMITKO	(Ukraine)
Advisers	Prof. Masahiro YAMADA	(UNAFEI)
	Prof. Hidenori OHINATA	(UNAFEI)

I. INTRODUCTION

This group workshop commenced on 23rd May 2018 under the guidance and advice of Professor Masahiro YAMADA and Professor Hidenori OHINATA. Group 1 unanimously chose Ms. Yasmine Nagnouma KEITA as chairperson and Mr. Khurshed Iskandar ISOZODA as co-chairperson, Mr. Asghar ALI as Rapporteur and Mr. AMAYASU Ryo and Mr. Rashmi SINGAPPULIGE as co-rapporteurs.

Drug trafficking is a global crime and it has distinctive characteristics. Drug-related organized crime cannot ordinarily be investigated by conventional investigative methods alone. For example, it is a victimless crime in most cases. Moreover, the witnesses in drug-related crimes do not feel safe while testifying against the drug traffickers. Therefore, special investigative methods are needed to detect and prevent drug trafficking.

Group 1 was assigned the thematic topic: "Effective investigative and prosecutorial measures to detect prosecute and punish leaders of crime organization and high value targets". The Group worked in a structured manner and produced with consensus the following report analysing the pros and cons of the special investigative techniques used for detection and prevention of drug-related crimes, both domestically and internationally. The report discusses in detail the techniques and use of controlled delivery, informants, electronic surveillance, undercover operation, and use of protection of witnesses and immunity in exchange for testimony.

II. USE OF INFORMANTS

A. Introduction

Although drug crime is done systematically in that there are no victims and it is conducted secretly, because relationships between each other are weak and the organization is also complicated, we obtain evidence from the organizers concerned who have been arrested, it is characterized by hardship and it has characteristics different from other crimes. Therefore, in order to clarify the whole picture of the organization, to identify the members of the organization, to arrest and prosecute the leaders of the organization, it is important to obtain information from an informant who is familiar with the actual circumstances of the organization. The use of informants is also very effective to develop leads for the investigation. The term "informant" refers to a person who is not a member of the investigating institution. In many cases, the informants may be citizens who are offenders, such as members of the organization.

B. Current Situation in Each Country

In all countries, investigative agencies obtain information on criminal organizations from informants and use them for investigation. However, in the provincial areas of Papua New Guinea, the population is small, and the residents are familiar with each other, so if the residents provide information to the investigation agencies, this is known to the other residents. For this reason, residents are unwilling to provide information to investigation agencies, and there are circumstances in which investigating agencies are unlikely to obtain information. This is not limited to Papua New Guinea; as long as communities are closely knit, such circumstances will be common to all countries.

Regarding informants, countries such as Pakistan, Tajikistan and Ukraine have legislation in this regard. In these countries, provisions for protecting informants and provisions on remuneration for informants are stipulated. Particularly in Pakistan, information on informants is restricted so that personal information, such as the name and address of the informants, is protected. This information can only be known to investigators who have directly contacted the informants. Even the investigators' superiors cannot learn the identities and other personal information of the informants. In this way, since informants are thoroughly protected, investigation institutions are more likely to obtain information from informants.

In other countries such as Sri Lanka, Cote d'Ivoire, Congo and Japan, there are no laws on informants. However, even in these countries, investigative agencies give remuneration to informants in return for information. In addition, the investigative agency does not disclose the identity of the informants and protects them so as to make information easier to obtain.

C. Common Issues and Problems

In general, information on drug crime organizations is unknown to the outside. Thus, it is more desirable to obtain information from insiders. But, the informants themselves are criminals and sometimes tell lies. Sometimes these lies make it impossible for investigators to achieve the purpose of the investigation.

In addition, the information provided may be fragmentary. Initially, they may deliberately wait for the response of the investigative authorities with only fragmentary information in order to seek more beneficial return from investigation authorities. This seems to be caused by ulterior motives of providing information. Their motives include money, retribution, immunity, greed, and so on. But it is not a problem that their motives are impure. It is important for investigators to firmly identify the motivation of the informants.

In this regard, even if they initially cooperate with law enforcement agencies, informants sometimes betray investigators. This is the case where the informants think that it is more attractive to the high value targets of the drug crime organization.

This will cause more serious damage than just a lie. In other words, if the investigator cannot grasp this situation in advance, in the worst case the investigators may face difficulty. On the other hand, regarding informants, once a drug crime organization knows the existence of informants, the members of the drug crime organization add various adverse activities including murder. Therefore, we must conceal them from the drug crime organization without fail, but it is not easy. Most countries have no legal system to protect them. There are also concerns that investigators will let them do illegal actions or dangerous things. In some cases, investigators may bear legal responsibility.

In addition to these, informants are used as a starting point for investigation, because it emphasizes confidentiality and difficulties in collecting other evidence. In other words, at the trial, it is not customary to make informants testify. Also, when using information obtained from the informants to prove the crime in court, the prosecutor needs to disclose the information on the informants at least to the accused and the judge. Otherwise, the information will not be admissible in a court of law.

Finally, there is also the problem of corruption of the investigators when using the informants. When an investigator contacts an informant alone by emphasizing the confidentiality of informants, it may cause corruption and the like. Also, when giving money to an informant as compensation, it may be paid from a budget separate from the normal budget. In such cases, there is no need to make a record, which may encourage corruption of investigators.

D. Solutions

Members of Group 1 recognize that it is important to use informants to arrest high value targets of drug crime organizations. But if law enforcement agencies make a mistake in using the informant, the investigation will fail.

First, it is important to strongly manage informants. Also, in advancing the case, law enforcement should refrain from making decisions with information from an informant alone. Considering information obtained from other investigation methods, such as undercover operations, the accuracy of the information from the informant should be ascertained. It is also important to confirm certain related information from multiple informants. In other words, it is necessary to collect information not only passively but also actively.

In addition, a legal framework to protect informants is also necessary. It may be something similar to the witness protection system. On the other hand, unlike witnesses, long-term relationships with informants will continue, so it should be kept in mind that informants are not necessarily on law enforcement's side indefinitely.

There are several ways to prevent corruption of investigators related to informants, such as using multiple investigators when contacting informants. Also, if money is provided as remuneration, then it must be properly accounted for in regard to informants. The informant's name can be a number or a codename. By keeping records, the authorities can check whether the payment was legally justified.

It is thought that as a method of paying appropriate compensation to informants, payment should made after the investigation. This is because we can adjust the amount to pay according to the investigation result.

Finally, it must be reiterated that a trustworthy informant is extremely useful for arresting high value targets of a drug organization. On the other hand, if an investigation that relies only on the informant is continued, the investigation sometimes may not lead to arrest of the high value target. Therefore, it is necessary to use informants actively by combining other investigation methods and investigation results.

In other words, we need to sublimate, or distil, "the information" provided by the informant to "intelligence" and use it to investigate the high value targets.

III. ELECTRONIC SURVEILLANCE AND COMMUNICATION INTERCEPTION

A. Introduction

There is no concrete definition of this investigative technique. However, it is recognized that some types of electronic devices, such as audio recording, visual recording or wiretapping, will be employed in the course of investigation. Utilization of electronic surveillance and communication interception are very useful measures for obtaining information of the existing criminal activities and also being able to identify future offences. It is one of the best methods of collecting critical evidence with low risk since the operator and investigator can monitor from a remote distance. The evidence will be admissible and reliable for prosecution and trial. Nonetheless, the application of this method is a very sensitive issue due to the concern with abusing individual privacy rights.

The goals of electronic surveillance are:

(i) To gather strong and precise evidence with low risk.

(ii) To expose the nature of a criminal offence (organizational structure, network, process, activity and so on).

B. Current Situation

Almost all countries of Group 1 use electronic surveillance and communication interception as investigative techniques, although some countries have legal frameworks for these techniques. Electronic surveillance and communication interception are used in Tajikistan by law enforcement agencies, and there is a legal provision for this process. Similarly, Ukraine, Pakistan and Japan have legislation for electronic surveillance and communication interception. However, there are no legal frameworks for electronic

surveillance and communication interception in Sri Lanka, Cote d'Ivoire, Democratic Republic of Congo and Papua New Guinea. Nonetheless, Papua New Guinea and Democratic Republic of Congo, where electronic surveillance and communication interception are not covered by legislation, law enforcement agencies do conduct electronic surveillance and communication interception.

In Japan and Pakistan, prior permission is not required for the use of electronic surveillance in public places. In Pakistan the Superintendent of police may authorize electronic surveillance. Besides the legal issues, other general constraints that every country is now facing are the infrastructure and technology issues. Even though electronic surveillance is very effective, the government has to invest a lot of money in order to employ high technology devices. In addition, new communication technologies are introduced to the world market many times a year, particularly multifunction wireless phones, which are used by the organized crime groups.

C. Common Issues, Problems and Solutions

The hurdles in the use of electronic surveillance and communication interception are as follows:

1. Prior Approval

In order to protect the rights of privacy of people, it is absolutely essential that permission is obtained from a judge before starting the process of communication interception. Generally, the request of an investigator to use this method is strictly scrutinized by a judge or other authority before granting permission. In most cases, the interception of either a mobile or fixed-line phone shall be equally subject to the prior approval criteria. With regard to the interception of electronic communications, like e-mail or website tracing, prior permission is also required.

2. Scope of Criminal Offence

Electronic surveillance and communication interception does affect privacy rights, so this method should be executed only when necessary. In other words, it should be conducted in critical criminal investigations such as when other investigation techniques have not worked or appear unlikely to succeed or would be too dangerous to try. In addition, it shall be applied to investigations in only serious crimes or offences related to organized crime groups. Japanese law provides details of crimes for detection of which this method can be used, such as offences relating to drugs, firearms, and human smuggling.

3. Duration

The available period for conducting electronic surveillance and communication interception varies from country to country. We found the range to be from ten days at the first stage in Japan up to a maximum 30 days. However, in Pakistan, there is no limit on the number of days for electronic surveillance.

4. Approach to Non-relevant Information

Another problem with the use of electronic surveillance and communication interception is risk of misuse and disposal of irrelevant information. When carrying out communication interception, it is very important to analyse the information received as to whether it is useful and can be used as evidence or not. On the one the hand, there will be a lot of non-relevant information in the case, *i.e.* social talk or private discussions. This information should be deleted or cut off since it is generally not admissible in court. The disclosure of such information, even when not related to the case, is prohibited in order to protect privacy rights. However, if, during electronic surveillance and communication interception, the investigator unexpectedly found information about other crimes or a plan to commit imminent crimes outside the scope of the permission, for example, to commit some serious crimes such as murder or firearms trafficking, using such information can be a difficult decision for investigators. The official may opt to interfere to safeguard a person's life but this action may tip-off the suspect and make him aware of the communication interception. On the other hand, such information gathered under the permission of one case may be not be admissible in another case subject to the law of each country. The best solution in such a situation may be to establish a legal framework or guidelines which the investigators must follow.

5. Post-interception Requirements

The post-interception process is very complicated. In addition to sorting out the non-relevant information, harmonizing the relevant information and making records, there are still some points of concern. We categorize them as follows:

(a) Preservation of Evidence

For preserving the evidence, the following steps are required:

- Wiretapping: Creation of a transcript and a summary report (Pakistan and Japan - submitting a transcript to the court after the processing)
- Sealing the record: The sealing of the material evidence (audio recordings, visual recordings, etc.) after use.
- Creation of a report and submission to a court—wiretapping and other devices

(b) Slang or Encoded Language

Yet another problem or difficulty in the use of electronic surveillance and communication interception is use of slang or encoded language used by criminals. Even when investigating officers listen to the conversation of the criminals, it is hard to understand their conversation as they use encoded words to convey to each other. Similarly, the problem of interpretation of other language may crop up in interception of international communication. In such situation, the appropriate experts will be required for decoding encrypted messages or translating foreign languages by expert interpreters.

(c) Cooperation of Communication Companies

Unless the provisions of laws clearly specify the authority for communication interception and electronic surveillance, the communication companies, such as telephone companies or webmasters, will be reluctant to cooperate with law enforcement. In Pakistan, all the telecommunication companies are under the authority of the PTA (Pakistan Telecommunication Authority), and these companies are legally bound to cooperate with law enforcement agencies. But in the countries where there is no specific law for electronic surveillance, the telecommunication companies always try to avoid access to their customers' communications since they are afraid of probable litigation and losing customers. In Japan, the representatives of telecommunications companies are always present with investigators when communication interception is taking place.

6. Further Action

Group 1 recognizes that electronic surveillance and communication interception is an important tool for law enforcement to get reliable information and evidence to combat serious crime. With the different situations in each country, it is indispensable to explore such tools for further effective use and each country may broaden the scope of their legal framework to facilitate such techniques while paying heed to privacy rights. From a technical point of view, the respective governments should consider allocating a sufficient budget for buying state-of-the-art electronic gadgets to keep abreast with the criminal groups. Investigators and relevant officials should also learn and be trained in cutting-edge technology for communication interceptions and surveillance. Additionally, officials who are engaged in wiretapping should be highly sensitized to privacy rights of citizens.

IV. UNDERCOVER OPERATIONS

A. Definition

Undercover operations consist of surveillance of persons suspected of committing offences, carried out by specialized officers acting as participants to those offences. To that end, designated officers are authorized to use an assumed identity. They cannot act in a way that instigates the commission of offences. (Model Legislative Provisions against Organized Crime, UNODC) In other words, it is a planned investigative and surveillance process in which police officers use disguises and subterfuge to gain evidence and intelligence against criminal offenders who have become resistant to traditional policing methods.

An undercover operation must be differentiated from entrapment. When the agent induces a person to commit a criminal offence that the person would have otherwise been unlikely or unwilling to commit, this kind of behaviour amounts to entrapment. As a matter of a fact, this agent is an *agent provocateur*. This evidence collected is not admissible in court.

Undercover operations can be classified as simple or complex. Simple undercover operations usually last less than six months, have a limited budget, and have no sensitive issues that would elevate the operations to

a higher level of review within the investigating agency.

A simple undercover operation might include the undercover officer who buys drugs from a local drug seller on two or more occasions with the investigative goal of identifying and successfully searching and seizing the drug dealer's supply, or that of the supplier.

A complex undercover investigation is usually long term and more sophisticated in both the use of specialized techniques and the creativity of the investigation itself. Complex investigations can include investigations of public officials, even if the investigation is of short duration.

B. Current Situation in Each Country

Only three countries represented in this group have legal provisions on undercover operations: Pakistan, Tajikistan and Ukraine. In the other countries (Cote d'Ivoire, DRC, Japan, Papua New Guinea, Sri Lanka), it is not stipulated in the law. However, simple undercover operations are carried out by law enforcement agencies. In the countries where undercover operations are not covered by legislation, the law enforcement officers still do simple undercover operations. For example, if police officer(s) get information that there is a drug dealer selling drugs, they use an informant to confirm the information and then the police officer will approach the drug dealer and purchase drugs and then arrest the drug dealer and charge him.

In Papua New Guinea, the use of the police officer to actually purchase the drugs will be unsuccessful as everyone knows who the policemen are. The actual purchase of the drugs will have to be made by an informant or civilian, and then the police can arrest the drug dealer.

In Pakistan, law enforcement agencies do not need a warrant from the court before undertaking an undercover operation. This authority has been delegated to the police superintendent and, in the case of the Anti Narcotic Force (ANF), to the Director General of the ANF.

In Tajikistan and Ukraine, undercover operations are also performed within the safeguards of legal provisions.

Japan does not have special provisions concerning undercover operation. Nevertheless, article 58 of the Narcotics and Psychotropic Control Law provides that "with the authorization of the Minister of Health, Labour and Welfare, a narcotics agent can receive a narcotic drug from any person". Based on this provision and on paragraph 1 of article 197 of the Code of Criminal Procedure, undercover operations are conducted mainly against subordinates of crime syndicates.

C. Main Issues

Group 1 pointed out the following as the main issues and problems in the use of undercover operations. To begin with, several countries of Group 1 lack legal frameworks for the authorization of undercover operations. Secondly, many countries do not have access to the use of modern technology which is necessary for conducting undercover operations. Thirdly, the concerned members of law enforcement authorities are not sufficiently trained in the use of undercover operations. Fourthly, the dearth of sufficient manpower is also one of the challenges faced by countries of Group 1. Another problem in the use of undercover operations is the high risk and threat to the life of the officer involved. Lastly, another problem in conducting undercover operations is the lack of sufficient and adequate funding, as undercover operations require a great deal of money.

D. Recommendations

- Enactment of special legislation in the countries where there is no legal framework for undercover operations;
- Recruitment of sufficient police personnel for undercover operation is required;
- Specialized training of the concerned officers for undercover operations is necessary;
- Cutting-edge equipment required for undercover operations must be provided to law enforcement agencies;

- Undercover agents and their families must be protected (revelation of their identity or any harm perpetrated against them must be harshly punished, such as in France);

- Specialized accounts for undercover operations, such as in Thailand, must be created to cover the expenses involved in undercover operations.

V. CONTROLLED DELIVERY

A. Definition

Controlled delivery is commonly recognized as the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more states, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence. (See Article 2 (i) of the UNCTOC Convention.) The UNCTOC requires State Parties to use the necessary techniques to allow for the appropriate use of controlled delivery, if permitted by the basic principles of the State Party's domestic legal system (paragraph 1 of Article 20).

1. The Goals of Controlled Delivery

The goals of controlled delivery are to: (i) broaden the investigation to higher levels of the criminal organizations, (ii) get additional evidence in cases concerning organized smuggling, (iii) get proof that the violations of law are intentional, (iv) discover storage places for smuggled goods and seize additional contraband, and (v) detect the final destination of smuggled goods. The controlled delivery method could be utilized inside one country's jurisdiction, or it could be conducted with international cooperation by allowing controlled transportation of smuggled goods over the borders of one or more countries. In the first case, it is known as domestic or internal controlled delivery while in the later case it is called international controlled delivery.

Controlled delivery can be carried out by:

(i) Recruiting a cooperative suspect after initial recovery of the illicit substance.

(ii) Using a "blind courier", by covert surveillance of the smuggled goods without the cooperation of the suspect, in which case the suspect does not know that the contraband was discovered by customs officials or the contraband is smuggled by a courier company that has not been informed of the controlled delivery.

(iii) Using the cooperation of the courier company for conducting the controlled delivery operation.

2. Current Situation in Participating Countries

Several participating countries of the 169th UNAFEI International Training Course have utilized controlled delivery successfully, bringing to justice the leaders of criminal groups rather than merely arresting couriers or seizing drugs which unknown persons own. In Japan, controlled delivery has been used by law enforcement agencies and there is a legal framework for this process. Similarly, Pakistan and Tajikistan and Ukraine also have legislation in place allowing for controlled delivery. However, there is no specific legal provision for controlled delivery in Sri Lanka, Cote d'Ivoire, Democratic Republic of Congo and Papua New Guinea. Controlled delivery has been used not only domestically but also internationally in cases where the consignments are delivered to other countries. However, each country has somewhat different laws and approaches in this matter. For example, there are two types of controlled delivery, namely live controlled delivery, which allows the original contraband to be moved to its final destination under the control of law enforcement officers, and clean controlled delivery, in which law enforcement agencies remove and substitute drugs with a harmless substance before allowing the consignments to be delivered. Also, the scope of controlled delivery is different from one country to another. In some countries, beyond drug trafficking, this technique is used to investigate other types of crimes such as illegal firearms trafficking and money laundering.

3. Common Issues, Problems and Solutions

Live operations and clean operations: The members of Group 1 recognized that controlled delivery is a useful method for arresting suspects and seizing illicit drugs. We also discussed the differences between the use of live and clean controlled delivery operations. In other words, we sought to determine which operation

would be more effective. With regard to both operations, we analysed the advantages and disadvantages as follows:

(a) Advantages of live controlled delivery operations

(i) Possibility of obtaining indefensible evidence that the suspects have conducted drug smuggling, in particular the chance of disclosing the transaction of drug trafficking and of annihilating organized criminal groups.

(ii) Reduction of the risk of controlled delivery operations being exposed by the suspects, especially in cases in which the final destination of the delivery was unclear.

(b) Disadvantages of Live Controlled Delivery Operations

(i) Burden of carrying out the surveillance.

(ii) Hazardous aspect of the disappearance of the drugs and the suspects.

(c) Advantage of clean controlled delivery operations

(i) Prevention of risk of the disappearance of the drugs or other smuggled items.

(d) Disadvantages for clean controlled delivery operations

(i) Risk of disclosing the controlled delivery operation.

(ii) Risk of losing the evidence of the suspect's drug smuggling.

4. Solutions

Our Group reached the consensus that it is always necessary to consider the checks and balances before law enforcement agencies decide to launch controlled delivery operations. In addition, before performance of such operations, it will be necessary to collect and evaluate all available information on whether the delivery situation is part of a systematic smuggling operation, if the recipient is a member of a criminal group, and whether he has a prior criminal record. Utilization of informants should also be considered. Before arresting or approaching the offender, law enforcement agencies should analyse information about the offender, including his or her contacts, means of communication and address to evaluate the possibility of recruiting the suspect after arrest. At this point, it is to be decided if the offender can be recruited for controlled delivery or if the controlled delivery should be carried out by covert surveillance of the offender to the final destination of the smuggled goods.

5. How to Use the Results of Controlled Delivery as Admissible Evidence at the Trial Stage

Controlled delivery is mostly conducted in the investigative stage of a criminal case for collecting information to reach the criminal networks. Nevertheless, the officers who employ this technique must carefully plan and prepare the operation in order to guarantee the success of the seizure and arrest and ensure that such evidence is securely used at the trial stage. When law enforcement officers detect contraband, it is essential to mark the evidence, packages, containers, etc. to be able to identify them after seizure at the final destination. The contraband should be tested, weighed and evaluated by credible experts. The parcel or container should be photographed or videotaped before and after the search and after its preparation for controlled delivery. Each country's procedural law should be applied in order to guarantee the admissibility of the evidence. In this phase of planning of the operation, the law enforcement officers should consult prosecutors to avoid misinterpretation of legal details and conduct the controlled delivery in a way such that it can be used as admissible evidence in court. All necessary warrants to conduct electronic surveillance or searches and seizures etc. should be obtained before carrying out the actual operation.

6. Cooperation at the National and International Levels

Controlled delivery may be conducted within the country where the drugs are detected or with the cooperation of countries from where the drugs are originated, transited and where they are delivered to the receiver. The major concern is that, in order to get good results, the controlled delivery should often be done promptly and without any delay to prevent the awareness of targeted offenders. Therefore, cooperation of all concerned authorities is required.

On the international level, cooperation may be achieved through bilateral or multilateral agreements between countries, effective and fast contacts between law enforcement agencies and by regular information exchanges. It should be pointed out that in order to conduct successful controlled delivery, the concerned countries should have already established good relations before starting the process. It would be useful to have mutual understanding treaties or guidelines beforehand for smooth cooperation among the concerned countries. The same approach can be applied to domestic operations as well. Many authorities may be involved in conducting a controlled delivery operation, *i.e.* the police, customs office, narcotics office, border guard, port officers, courier services, telecommunication companies. Therefore, these authorities will have to cooperate with each other. One way to organize smooth operations is to set up fundamental guidelines and Standing Operating Procedures for the concerned authorities to be followed in a controlled delivery situation.

7. Utilization of Cooperative Offenders for Controlled Delivery

The cooperation of an offender to carry and deliver the detected drugs to his criminal network under supervision of law enforcement officials is also recognized as one method of controlled delivery. However, comprehensive prior arrangements among competent authorities will be needed before starting this process. One of the difficulties in employing this technique is to negotiate with the offender for their cooperation. Some countries may provide an immunity system subject to their laws to facilitate such cooperation. For example, in Pakistan, the law provides for the pardon, or mitigation of punishment, of the accused if he or she provides useful information to the investigating officer or prosecution. But in other participating countries, there is no such legal framework for pardon or mitigation of punishment. In such cases, law-enforcement officers have to rely on so-called "gentlemen's agreements" in negotiations with the offender. Usually the operating officers may not be able to give any promises to the offender. In this case it is essential for investigators to cooperate with prosecutors who have first-hand knowledge of the sentencing system and who can influence the sentencing at the trial stage. If the country has a plea-bargaining system, the prosecutors could directly inform the offender of the difference in imposed penalties in case of refusing or accepting cooperation. In the absence of a plea-bargaining system, the prosecutors may still indirectly influence the court proceedings. If the offender agrees to cooperate, investigators have to evaluate his or her ability to carry out orders and whether his or her unusual behaviour could jeopardize the operation. Law enforcement officials should undertake this kind of operation only when they are confident of the offender's reliability, because otherwise there is a significant risk of losing track of the offender as well as of the controlled item. This is one reason why investigators often prefer clean controlled delivery.

8. Combination of Controlled Delivery with Other Investigation Techniques

Besides being an independently recognized investigative method, controlled delivery is actually conducted with a combination of different investigative and surveillance methods that are utilized to control the movement of the item in question. The process of controlled delivery may be initiated on the information provided by the informants. The informants or undercover agents may also be used to accompany the delivered item or the cooperating offender. Physical covert surveillance of the delivered item or the criminal is often used. Electronic surveillance should also be an essential part of the delivery. For example, if an electronic device attached to the delivered item could be used to determine the location of the item or notify the investigators of the disclosure of the item, it would make the controlled delivery almost perfect. In such cases, the officials would know the appropriate time to enter the offender's house, office or other respective location and arrest him with the evidence. However, in most of the countries, regular investigators are not qualified to operate electronic surveillance equipment, and, therefore, experts or special units should participate in carrying out the operation.

9. Appropriate Timing to Enter the Targeted Location

The most difficult point of controlled delivery operations is to decide on the appropriate time to arrest the offender along with the controlled item in order to create strong evidence. If the law enforcement agency enters into the targeted house/location before the parcel is opened, the offender may raise an excuse or plea that the parcel was delivered by mistake, and he or she intended to return it to the courier service. In addition, early arrest may cut off the offender from the criminal network or alert the higher levels of the criminal organization that the operation is intended to reach by employing controlled delivery. On the other hand, the delay of arrest will increase the probability of the criminal's escape or losing track of the offender and the controlled item. Appropriate timing of entering the house/location to make the arrest or seizure, therefore, is of utmost importance. Nevertheless, officers should not enter the suspect's house/location before he/she has completely opened the parcel. When the parcel has already been opened, he or she cannot deny

being the recipient. As aforementioned, law enforcement agencies may have to rely on an advanced electronic device to inform them of the right time to enter the offender's house/location and arrest him with the incriminating evidence.

10. Limitations on the Usage of the Controlled Delivery Method

Controlled delivery, especially live CD, is an investigative method involving a high level of risk and requiring vast professional skill and knowledge on the part of the investigator. When controlled delivery is employed, we should consider the cost-effectiveness and the time frame constraints for this method compared to other investigative techniques in advance. Nevertheless, Group 1 recognizes that it ought to be a beneficial technique to establish a link between the illicit drugs exposed and high-level criminals to achieve the goal of combating organized crime. In order to conduct a controlled delivery operation effectively, we need to combine it with other appropriate techniques such as utilization of informants, undercover agents and electronic indicators for opened parcels, and to fully conduct the follow-up investigation to gain the evidence which can identify it as an organized crime. It is also critical to conduct skills training by sharing best practices before launching the operation and to establish a close relationship with the related authorities for the realization of a speedy and smooth operation.

VI. PROTECTION OF WITNESSES AND IMMUNITY IN EXCHANGE FOR TESTIMONY

A. Introduction and Definition

The cooperation of drug offenders is crucial in dismantling drug trafficking organizations since they know the structure, activities and functioning of these groups. However, criminal organizations have the means to prevent potential witnesses from collaborating with law enforcement and judicial authorities by threatening them and their relatives.

To overcome the unwritten "rule of silence", national authorities have to ensure witnesses' protection at every step of the proceedings. On the other hand, as they might have committed offences, such informants / witnesses may be reluctant to cooperate with law enforcement and prosecution authorities.

According to article 24 of the United Nations Convention against Transnational Organized Crime, each State Party has to take appropriate measures to provide effective protection from potential retaliation or intimidation for witnesses who give testimony and for their relatives and other persons close to them.

The protection of witnesses may consist of physical protection such as:

(i) Police escort to and from the court;

(ii) Close protection;

(iii) Re-location;

(iv) Non-disclosure or limitations on the disclosure of information concerning their identities and whereabouts;

(v) Changing identity.

Several measures may also be adopted to provide psychological safety:

(i) Keeping the witness fully informed of the proceedings;

(ii) Allowing expert counsellors to accompany him/her to the court;

(iii) Providing a room where the witness can wait before testifying, so that he/she is not in physical contact with the accused or his relatives during the trial.

Also, procedural or in-court measures can be set up to allow the testimony to be given in a manner that

ensures the witness' safety, *e.g.* by providing testimony through communications technologies such as video links or other appropriate means.

The choice of the form of the protection—from basic and affordable measures to more complicated ones—has to be made on a case-by-case basis, depending on the completeness of the testimony, the role of the witness in the criminal group and the level of threat he or she may be facing.

Another means to encourage witnesses' cooperation is to reward their testimony by a limited or total immunity, which may consist of stopping the prosecution or promising not to prosecute them for a specific offence related to the case for which they are about to give testimony. Immunity is different from plea bargaining as the latter usually aims to obtain leniency in the sentence.

The UNCTOC encourages States Parties to "consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention" (article 26, para. 3).

B. Current Situation in Each Country

1. Witnesses Protection

Although most countries have no specific witness protection programmes, all of them have a general legal framework that ensures witness security during the trial stage.

In Pakistan, under the general provisions, female witnesses who fear for their security can be offered protection within a "shelter house" for an unlimited period. Special legislation addressing the issue of witness protection is in process.

In Côte d'Ivoire, the Democratic Republic of Congo, Japan and Papua New Guinea, the police escort and protect witnesses who testify in the court.

In 2015, Sri Lanka adopted an act to provide assistance and protection to any witness who might need it[1]. Under the provisions of this Act, a victim of an offence or a witness who has reasonable grounds to believe that any harm may be inflicted on him or her due to his or her cooperation in criminal proceedings shall be entitled to seek protection from such harm. Therefore, the authority established for protection of the victims and witnesses or any Court may grant a request to provide relevant protection measures.

Tajikistan and Ukraine have specific legal frameworks that guarantee protection by the police and/or public prosecutor to any witness who feels unsafe. Several measures are available, such as personal escort, bodyguards, protection of property, and concealing or changing of identity.

2. Regarding Immunity in Exchange for Testimony

With the exception of Pakistan and Japan, none of the participating countries represented in Group 1 have specific legislation dealing with immunity in exchange for testimony. However, in Côte d'Ivoire, DRC, and PNG, general legislation authorizes public prosecutors to refrain from prosecuting a person who gives useful information for the investigation.

In Pakistan and Sri Lanka, an informant or potential witness who has taken part in the offence may agree to plea bargain. When an accused person becomes an "approver" or "state witness", judges in Pakistan may grant the witness complete immunity or leniency while in Sri Lanka the Attorney-General may only grant the witness leniency. In this case, the statement has to be made in open court, without any compulsion. In Japan, a new act came into force on 1st June 2018 regarding leniency and immunity for the suspect or accused in exchange for testimony regarding an organized crime, but so far no cases have been dealt with under this law.

[1] Parliament of the Democratic Socialist Republic of Sri Lanka, *Assistance to and Protection of Victims of Crimes and Witnesses Act*, No. 4 of 2015.

C. Common Issues and Problems

In addition to the significant resources that are required to implement effective protection of witnesses, extreme precautions are required, and protection cannot be provided in every case. Moreover, the credibility and accuracy of a witness's testimony can be diminished by his or her fear of reprisals by the members of the criminal organization. It also can lead the witness to change his or her testimony and/or refuse to make a statement in open court. When a programme is set up, psychological and practical barriers can be encountered that compromise its success:

(i) High expectations;

(ii) Lack of cooperation and/or discipline of the protected witness;

(iii) Lack of ability to refrain from using an old identity and contacting old acquaintances;

(iv) Insufficient psychological training;

(v) Insufficient social capacity to cope with the drastic change in lifestyle the programme requires;

(vi) Factors related to the witnesses' frequent criminal background.

In countries that allow police officers to appear in court as witnesses, there is no specific protection. As regards immunity in exchange for testimony, the main concern is about ethical issues, as the practice may be perceived as inciting impunity.

D. Solutions

(i) Since witness protection measures may be considered as affecting the defendant's rights to a fair trial, a specific legal framework is required;

(ii) Define who may be a protected witness and the general type of protection that may be provided;

(iii) Set out the factors to determine admission to a protecting programme;

(iv) Settle a witness protection authority in charge of deciding on the type of measures to be applied and applying such measures;

(v) When necessary, amend the rules of evidence to permit the use of video link systems during trial;

(vi) Amend mutual assistance agreements in criminal matters to address the issue of international relocation.

VII. CONCLUSION

After threadbare and thorough deliberations, Group 1 reached consensus on the following conclusions. The current paper mainly emphasizes and explores the utilization of special investigative techniques in the battle against organized crime. These techniques, if used in a calculated and professional manner, could prove to be very successful in order to broaden the investigation to higher levels of criminal organizations. On the other hand, no judicial decision can be based only on a single piece of evidence. Therefore, it is important to realize that one successful operation of controlled delivery, electronic surveillance etc. might not be sufficient to secure the conviction of the offenders. Special investigative techniques should always be supported by effective utilization of conventional investigative tools. It is also obvious that the scope of special investigative techniques covered by this paper is not final, and the arsenal of law enforcers must always be creatively supplemented by new methods in accordance with the trends and developments of the criminal world.

GROUP 2

CONFISCATION OF DRUGS AND PROCEEDS DERIVED FROM DRUG OFFENCES: A WAY FORWARD FOR EFFECTIVE ENFORCEMENT

Rapporteur: Maxine Tuedian Bernard (Jamaica)
Co-Rapporteurs: Aida Syeliza Binti Abdul Jalil (Malaysia)
Yoshie Takeuchi (Japan)

Chairperson	Mohamed Ahmed Habib	(Egypt)
Co-Chairperson	Ihor Yaselskyi	(Ukraine)
Co-Chairperson	Chandra Segaran Subramaniam	(Malaysia)
Members	Cheick Sala Sangare	(Mali)
	Ismail M. I Hammad	(Palestine)
	Roshan Wijesinghe	(Sri Lanka)
	Shunichi Akima	(Japan)
	Takahiro Konishi	(Japan)
Advisers	Prof. Takuya Furuhashi	(UNAFEI)
	Prof. Nozomu Hirano	(UNAFEI)
	Prof. Ryo Futagoishi	(UNAFEI)

I. INTRODUCTION

A. Overview

Illicit drug trafficking yields significant profits for criminal organizations, and the profits are reinvested in illegal activities conducted by those organizations, including international terrorism. Therefore, a fundamental priority for law enforcement agencies dealing with combating illicit drug activity is to confiscate illegally obtained assets along with the illegal drugs. The confiscation of drugs and assets, however, requires first to successfully identify, seize and trace them. Moreover, those assets are often laundered to hide the true nature, origin and ownership of criminal proceeds. Thus, covering legislative and practical loopholes by sharing strong anti-money laundering policies and confiscation methods throughout the world is an essential issue in combating illicit drug trafficking.

This group shared the current situation, legislation and good practices of each participating country and discussed the possible solutions for the common challenges that we face concerning this issue.

B. International Conventions and Frameworks

As it is broadly recognized among law enforcement agencies worldwide, there are several international conventions addressing combating money-laundering and confiscation of criminal proceeds.

1. United Nations Convention against Transnational Organized Crime 2004 (Palermo Convention)

For instance, the United Nations Convention against Transnational Organized Crime 2004 (hereafter referred to as the "Palermo Convention") stipulates in its Article 7 that each state party "shall institute a comprehensive domestic regulatory and supervisory regime" for specified business operators and "establish a Financial Intelligence Unit (hereafter referred to as 'FIU') to serve as a national center for the collection, analysis and dissemination of information regarding potential money-laundering". It also urges the states parties in its Article 12 to adopt measures to enable confiscation of proceeds derived from, and property, equipment or other instrumentalities used in criminal offences.

2. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention)

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereafter referred to as the "Vienna Convention") also requires each party in its Article 5 to adopt measures to enable confiscation of proceeds from or instrumentalities used in drug-related crimes as well as narcotic

drugs and psychotropic substances.

3. Financial Action Task Force (FATF)

Since money laundering is a transnational crime, each country is encouraged to work in harmony within the international frameworks such as the Financial Action Task Force (hereafter referred to as the "FATF") and the Egmont Group[1].

The FATF Recommendation most recently revised in 2012, which is recognized as the international standard for anti-money-laundering measures and which should be adopted by the member states, includes criminalization of money laundering, adoption of measures to enable them to identify, trace, freeze and confiscate criminal proceeds, and possible adoption of non-conviction-based confiscation.

II. DRUGS

A. Identification and Tracing

1. Overview

The discussion found that all participating countries commonly use traditional investigative methods such as informants and random checking as measures to identify drugs. Due to current threats and rapid technological development, some countries have adopted special investigative tools to identify and trace drugs, such as controlled delivery, undercover operations and electronic surveillance (video surveillance and interception of wire, oral, or electronic communications).

Some participating countries have jurisdiction to conduct these special investigations while enforcement agencies in some of the countries conduct controlled delivery, undercover operations and surveillance in practice without written jurisdiction. The group has agreed that the uses of these techniques vary from country to country and is aware of controversy surrounding their use, such as abuse of power and infringement of human rights.

2. Challenges and Countermeasures

Drug law enforcers have to continuously keep pace with criminal modus operandi and current drug trends. Drug traffickers, in an effort to elude law enforcement, will consistently change their methods of concealment and their trafficking behaviour and routes forcing investigators to be reactive rather than proactive[2]. Another challenge identified is that there are inadequacies in trained or specialized personnel coupled with weak financial support to conduct special investigation.

To remedy these challenges, we suggest that the countries faced with these challenges engage in capacity-building for their investigators, such as training in proactive investigation techniques, surveillance, undercover operations where the legislation will permit and to a greater extent consistent refresher training in current drug trends which can be done by engaging international partners and sharing current trends.

To address the issue of inadequate financial resources, we recommend that the responsible agencies/country identify and put measures in place to ensure at the very least that investigators are provided with the basic resources necessary to interdict drug trafficking activities. Some of these basic necessities vary from technological resources, financial support for witnesses and informants to physical resources.

From the discussions it was also recognized that witness protection, and the lack thereof, is an issue in some countries which negatively affects the gathering of information in identifying and tracing drugs. Witnesses are reluctant to assist law enforcement with information as to where drugs are stored and the identities of the criminals involved. This hinders investigators and further exacerbates the issue of conducting proactive investigation.

Concerning this challenge, we recommend that countries adopt Article 24 of the Palermo Convention on

[1] The Egmont group is a united body of 155 Financial Intelligence Units (FIUs). The Egmont provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing (ML/TF)

[2] For example, the dark web can be described as one of the most recent emerging threats in the field of drug trafficking.

"Protection of Witnesses"[3].

B. Seizing Drugs

1. Overview

Most of the countries need search warrants or written authority to conduct searches, with the exception of Malaysia[4], Mali[5] and Sri Lanka[6]. All participants confirmed that enforcement agencies will seize all drugs that they identify. Pre-testing will be carried out on the drugs seized to verify that the substances seized were drugs.

Some of the countries stated that investigation will be done by public prosecutors and the drugs will be handed over to their storage/exhibit/evidence facility. In some countries, enforcement agencies such as police and customs officers will conduct investigation into drug seizures. The drugs then will be sent to a forensic laboratory for analysis to confirm that it is a narcotic drug and that the substance is illegal. After getting a conclusive result, drugs seized will be kept in secure storage by enforcement agencies, public prosecutors' offices or other competent authorities.

2. Challenges and Countermeasures

From the discussion, we identified one of the challenges as being limited storage areas and lack of financial allocation to keep the drugs during the trial phase, which normally takes years in some countries. This may lead to loss or theft of exhibits in custody.

To effectively counter this challenge, we agreed that early disposal of the larger portion of the drugs seized is recommended by applying to the appropriate or competent body to dispose of the said exhibits before the conclusion of the case. To do this, it is necessary to amend the domestic laws in some counties which are in need of but do not have such provisions. Increased financial allocations to investigative bodies can also be suggested to assist in providing adequate storage areas coupled with sufficient human resources.

C. Disposal or Use of Drugs

1. Overview

All countries stated that drug exhibits will only be disposed of on conclusion of the court case. Committees consisting of public prosecutors or police officers and other stakeholders are established to monitor the disposal of drugs in some jurisdictions. Some of the countries[7] may need approval from specific authorities such as enforcement agencies, environmental bodies and/or other health officials beforehand.

The common method used to dispose the drugs is burning in incinerators by appointed and competent enforcement agencies. It was noted that the methods of disposal vary by country as in some countries burning is carried out in open spaces and in one country[8] it is carried out in the presence of the public. For some countries, some drugs are not being destroyed but are used for medical treatment as well as scientific study/research purposes[9].

2. Challenges and Countermeasures

In some countries there is an issue of lack of trust in members of the police department or competent authorities by the public, fearing that there will be issues of corruption. Because excessive amounts of drugs are seized by law enforcers, from time to time there may be concerns embedded in the minds of civilians that the drugs seized are being infiltrated back into the black market by corrupt officials.

To effectively counter this challenge, it was suggested in the group to have a special vetted agency,

---

[3] "Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate for their relatives and other persons close to them."
[4] Dangerous Drugs Act, 1952
[5] Penal Procedure Code, 2001
[6] Criminal Procedure Code No. 15, 1979
[7] Malaysia, Japan, Egypt, Sri Lanka and Mali
[8] Sri Lanka
[9] Sri Lanka and Palestine

committee or independent persons participate in the disposal proceeding to mitigate allegations of corruption against law enforcement.

There is no single international standard addressing the disposal of drugs seized by law enforcers. In all countries represented there were varying methods of how and when seized drugs are disposed. For some, the disposal is done in public, for others in incinerators. Some countries expressed that there are concerns regarding disposal raised by environmentalists.

Regarding this challenge, it is suggested that the Single Convention on Narcotic Drugs, 1961 should adopt and declare an internationally accepted method of disposal of drugs seized in an effort to alleviate the varying methods of drug disposal. In treating this issue, it is recommended that stakeholders such as environmentalists, non-governmental organizations (NGOs) and members of the public be engaged through workshops, surveys and research to arrive at an accepted method of disposal.

III. ASSETS

A. Identification of Assets

The group examined the ease or lack thereof of identifying assets in its respective jurisdictions. In any asset tracing investigation there are objectives to be considered: locating the assets, linking them to an unlawful activity with a view to freezing or confiscating them and proving the commission of the relevant offence. Identification of assets is carried out in a similar manner in almost all countries represented. This is done by:

1. Search Procedures

Searching is a very effective method of gathering evidence to trace these assets. Search procedures are conducted in all countries, some with warrants and in some cases without warrants because their legislation does not require such. Searches minimize the opportunity for document destruction and concealment, and they can avoid deliberate or inadvertent failure to produce documents following an agency request. There are, however, notable disadvantages to conducting searches and seizures of documents in tracing assets as sometimes the material gathered is very large and is time consuming to analyse. For example, the vast number of documents gathered during a search takes a considerable amount of time to review.

2. Financial Intelligence Units (FIUs)

It was confirmed from the discussions that all countries have well-established FIUs. In some jurisdictions the names or titles given to this body differ, but the meaning or classification remains the same. FIUs in some countries are tasked to identify assets linked to the predicate offences being investigated. In some countries, they do not have investigative powers and, therefore, will only seek to identify assets when requested by the investigative body, which in most cases is the police or narcotics investigative body. Once assets are identified, then the next step is to trace these assets to verify if they are proceeds that were derived from criminal activities.

3. Information Obtained by Investigation and Interrogation

Assets are identified through interviews and interrogations in some countries. For example, during interviews suspects and their relatives are asked certain questions relative to their addresses and addresses of associates. The information garnered is then used to identify assets which may have been acquired from criminal conduct.

4. Tracing Assets

From all indication the group shares similar methods of asset tracing in that they seek to trace assets through similar channels such as financial institutions, public records and government/non-governmental bodies charged with recording and documenting purchases and acquisitions.

Tracing of assets in drug investigations is conducted by the FIUs in some countries. These units are considered pre-trial bodies or pre-investigative bodies and can undertake investigation into tracing of assets. For other countries, assets are traced by the police under direct or indirect supervision of the prosecution, and the FIUs have no investigative authority. Assets are also traced, upon the request of the FIU, prosecution or police department, across borders using or requesting international cooperation.

In some participating countries there is a structured process or formal committee/body in place to undertake this type of tracing while in others it is done informally or professionally through established networks or stakeholders.

5. Challenges and Countermeasures

As stated above, it was discovered that there are certain limitations on scope in that FIUs in some countries only respond to requests of another investigative body while those in some other countries are not authorized to conduct investigations.

To address the issue of the varying roles of FIUs it was suggested that some countries strengthen or broaden the scope or authority given to FIUs, which will afford their FIUs the power to have a commitment to the investigations process. This will ensure cohesiveness and, to a greater extent, continuity. It is also recommended that the FIUs which do not have investigative authority coordinate and communicate with other investigative bodies.

The issue of third party ownership and unregistered properties/assets was identified as a challenge in all countries; in some instances the assets concerned are registered to a third party individual or company which makes it extremely complicated when tracing ownership of assets. In other instances, the assets identified are unregistered and difficult to trace.

Those countries with concerns about third party ownership and unregistered assets should consider implementing FATF Recommendation 4 (2017) which includes instituting legislative measures to enable their competent authorities to freeze, or seize and confiscate (a) property laundered, (b) proceeds from or instrumentalities used in or intended for use in money laundering predicate offences without prejudicing the rights of *bona fide* third-party owners.

There is a difficulty in identifying and tracing criminal proceeds when the transaction is conducted across international borders due to legislative powers and the slow pace of assistance in international cooperation (Mutual Legal Assistance), whereas a written request is mandatory but takes too much time in processing. Dual criminality is an issue that affects tracing these assets as whenever the offence concerned is not an offence in the participating country then there will be limited or no assistance.

It is recommended that clear guidelines be established addressing international cooperation between countries and that measures be implemented when assets are identified and traced overseas. Countries should have adequate legal basis for providing assistance and where appropriate should have in place treaties, arrangements and other mechanisms to enhance cooperation and expedite assistance which should include addressing the issue of dual criminality. In addition each country should engage in networking mechanisms establishing appropriate focal points when conducting these investigations. This will enhance cooperation between countries and reduce the response time in forwarding trace requests.

It was also pointed out in discussion that criminals tend to avoid using established financial institutions and spend below thresholds that will raise concerns. This is a major problem for some countries as it allows criminals to conduct illicit transactions which often go undetected.

In countering the issue of unreported suspicious transactions, it is recommended that the affected countries adopt FATF Recommendation 21 (2017), which speaks tipping-off and confidentiality.

We also agreed that all countries should engage in capacity-building for law enforcement officers including prosecutors and that they should organize training sessions aimed at enhancing the knowledge base of financial investigators, developing their skills and competencies especially in a technological sense.

B. Measures of Freezing and Confiscation of Assets in Illicit Drug Investigations

1. Freezing of Assets

Evidently all participating countries engage in the practice of freezing assets of suspects believed to be acquired through criminal conduct, whether directly or indirectly. These assets are oftentimes frozen on an application of the investigative body or the prosecuting authority. These applications must be approved by a competent court, and in some cases the applicant must prove that the assets to be frozen are directly or

indirectly the proceeds of criminal conduct or that those assets are directly related to the charged offence. In most countries[10] the assets are frozen throughout the investigation process until the conclusion of the case.

In some cases, a bond is placed on the asset and the suspect/accused is allowed to utilize the asset depending on the type of property; however, the holder cannot dispose, destroy or transfer the asset. In all cases when assets are frozen and involve a third party, the party is duly informed and in certain instances they are given the right to appeal.

2. Confiscation of Assets

Relative to confiscation of assets, the general consensus is that assets are deemed confiscated or forfeited on authority of the court or an equally competent body and are only so confiscated on conclusion of trial or investigation. In countries such as Ukraine and Egypt, two methods of confiscation of assets are practiced. This is, however, dependent on the type of asset and the value. The method used depends on whether the assets were directly used in the commission of the predicate offence or the value of the assets. Some countries practice two methods of confiscation, such as Jamaica and Malaysia, that is, criminal and civil forfeiture.

When confiscating assets, anti-money-laundering measures are one method in the criminal sense. In this procedure, the assets are only liable for confiscation if it is proven that they were direct proceeds of the crime and the accused is convicted of the said offence(s). In civil forfeiture proceedings, the assets can be confiscated regardless of whether or not a conviction is obtained; if the accused is acquitted, civil proceedings are immediately initiated with a view to seizing assets identified and traced, and it is upon the defendant to prove the legitimate source of his/her assets.

Another notable procedure practiced in some countries[11] is the principle of "equivalent value" or "value-based confiscation", which stipulates that once the court determines that the benefit that accrued to the individual/accused was directly or indirectly obtained from illegitimate conduct, it would enforce a financial liability such as an amount, usually in multiples of the profit or benefit derived from the crime which is realizable against the assets of the individual.

All but three represented countries, Mali, Malaysia and Palestine, have clearly established and specific money laundering acts or procedures. For some it is classified as the Money Laundering Act which stands on its own, and for some it is embedded in articles in their Proceeds of Crimes Act. Money laundering procedures are initiated as a result of predicate offences and intentions to deprive criminals of their profits derived from criminal conduct.

In one country[12] there is no link between money laundering investigation and drug crimes, and it is investigated just like any other criminal investigation. In another country[13] there is a supreme committee consisting of all stakeholders responsible for money laundering policies to gather the efforts and coordinate the parties tasked. This supreme committee is headed by the FIU.

In Japan it is presumed that any property obtained from criminal conduct during the purported time of the commission of any drug offences provided for can be regarded as proceeds of the crime. This is dependent on the affordability of the offender and what can be reasonably assumed as property beyond his scope or any known benefits he has been in receipt of.

Two countries[14] have no distinction between Money Laundering Laws and Proceeds of Crimes Acts but are subjected to predicate offences dictated in law. It is however possible to initiate money laundering investigations in absence of those predicate offences as well as conduct money laundering investigations simultaneously with the criminal or predicate offence(s).

[10] Except Malaysia and Jamaica
[11] Except Sri Lanka and Mali
[12] Ukraine
[13] Palestine
[14] Japan and Ukraine

3. Challenges and Countermeasures

In some countries[15] confiscation is only possible after final verdict, and the verdict must be in favour of the prosecution. Some frozen assets deteriorate during the investigation process, and should the prosecution or competent body fail to prove its case, then the assets may devalue, which can result in the state having to compensate the party or in the reverse where on conclusion of the case the asset is forfeited but has deteriorated and is of no value.

It is recommended that countries institute a special vetted agency or committee with expertise in property management to manage the storage and utilization of high value assets that are frozen by the state. This committee can develop measures to preserve or market the assets during the course of the investigation and where legally possible the state can earn revenue from the asset in its frozen state.

The time for completion of criminal procedures is exhaustive in some instances, and the assets are sometimes stored at a high cost to the state, for example, storage for high value assets. To counter this challenge, it can be recommended that the state institute alternate procedures, such as bonding the owner of the asset, that is, the owner will retain the asset/property and be liable to pay the state the value of the asset at the time of freezing should he fail in his bid to retain the asset on conclusion of the investigation.

The burden of proof rests on the state/prosecution in some countries, and the standard is beyond reasonable doubt, which is oftentimes difficult to prove, especially where a continuous drug crime must be proven. In Malaysia, where non-prosecution is practiced when freezing assets, the standard of proof is on the balance of probability.

It is recommended that countries adopt best practices of other countries, such as simultaneously bringing both cases before the court to eliminate the time wasted waiting for a conviction on the predicate offence. Also, amendment in legislation can be encouraged to make provision for civil proceedings where the burden of proof is shifted from the prosecution to the defendant.

C. Disposal of Assets

1. Forfeited Assets

All participating countries have provisions for disposing assets forfeited to the state or competent body. In most instances the assets are disposed of on the instructions of a court or competent body on the conclusion of the investigation and almost always when there is a conviction. The method of disposal varies depending on the type and value of assets. These variations include but are not limited to:

a. Auctions for moveable property such as motor vehicles;

b. Caveats placed on immovable property such as land;

c. Monetary assets transferred to government institutions;

d. Assets utilized by investigative bodies or departments that made the case such as (boats, motor vehicles, houses, etc.);

e. Monetary assets lodged in interest-bearing accounts and its allocation decided by the state; it may also be utilized in drug investigations such as payment for informants.

In some countries[16] a designated body or committee is assigned to assess the assets forfeited and make a decision on the best way to dispose of the asset. This is so when the asset is considered disposable, for example, a fish pond, animals and other perishable assets.

2. Returning Seized Assets

Participants' countries have systems or procedures in place to return assets whenever there is an

[15] Japan, Egypt, Ukraine and Sri Lanka
[16] Malaysia, Ukraine and Jamaica

acquittal in a case or where the prosecution or investigative body has failed to prove beyond a reasonable doubt that the assets were proceeds of criminal conduct such as drug crimes.

3. Challenges and Countermeasures

Some challenges identified were common among all participating countries, especially where the assets frozen deteriorated while in storage and, hence, the disposal is counter beneficial to the state. This is a result of lengthy trial process and administrative proceedings.

Countries can employ an approach whereby assets that devalue quickly are disposed using the "value-based procedure"; the owner can retain the asset but must pay to the state the equivalent value at the time of freezing.

Some forfeited assets are of little or no use to the state. For example, in one country where houses are forfeited to the crown/state, there is difficulty selling them as buyers are concerned about their safety.

It can be recommended that countries either amend legislation or adopt best practices where the drug trafficker is made to compensate the state an assumed value of property believed to be obtained from criminal conduct particularly in cases where there is a difficulty in identifying where the dirty money was integrated back into society as legitimate gain.

There are no clear procedures in some countries addressing how assets are valued. For example, where a committee is responsible for valuing the assets forfeited, there are no clear guidelines on assigning valuation. Therefore, those countries with no clear guidelines in valuing or revaluing high priced assets should consider instituting unambiguous and written guidelines on disposal of those assets.

IV. CONCLUSION AND GENERAL RECOMMENDATIONS

In conclusion, the group reached a consensus that illicit trafficking in narcotic drugs and psychotropic substances and drug-related offences is a global problem that needs global and new solutions. As the different jurisdictions adopt different systems to identify, trace, freeze and confiscate drugs and assets in drug cases, they recognize that the need to strengthen multidisciplinary measures at the international, regional, national, local and community level to prevent drug-related crimes and foster social development and inclusiveness is very much a requirement in all the jurisdictions.

The group reached the following recommendations:

a. Monitor current trends and drug trafficking routes and share experiences, best practices and lessons learned in order to prevent and counter the misuse of international trade for illicit drug related activities. In addition, note the current initiatives by the UN institutions in preventing and countering the diversion of precursors for illicit use and illicit financial flows stemming from drug trafficking and related crimes.

b. Strengthen coordinated border management strategies as well as the capacity of border control and law enforcement and prosecutorial agencies, including where appropriate the provision of equipment and technology, along with the necessary training and maintenance support in order to prevent, monitor, and counter trafficking in drugs, trafficking in precursors and other related crimes such as illicit financial flows, smuggling of bulk of cash and money laundering.

c. Develop and strengthen mechanisms of domestic coordination and timely and efficient information sharing between authorities involved in identifying and countering drug trafficking and related money laundering. Integrate financial investigation more thoroughly into interdiction operations to identify individuals and companies involved in such activities.

d. Strengthen and utilize existing and relevant regional, sub-regional and international networks for the exchange of operational information to prevent and counter money laundering and illicit financial flows.

e. Promote effective measures capable of addressing the links between drug crimes and the assets generated from such crimes for successful confiscation procedures.

f. Improve the availability and quality of statistical information and analysis of illicit drug cultivation, production and manufacturing, trafficking, money laundering and illicit financial flows, including appropriate reflection in reports of the UNODC and the International Narcotics Control Board in order to better measure and evaluate the impact of such crimes and to further enhance the effectiveness of criminal justice responses in that regard.

g. Enhance the capacity of law enforcement and criminal justice agencies especially in forensic science in the context of drug investigations and issuing guidelines to the investigating authorities regarding harmonizing the implementation of anti-money-laundering laws.

GROUP 3
MULTI-AGENCY AND INTERNATIONAL COOPERATION

Rapporteur: Mr. Rodrigo LEITE PRADO (Brazil)
Co-Rapporteurs: Ms. Marie Catherine NOLASCO (Philippines)
Mr. NAKAJIMA Hirokazu (Japan)

Chairperson	Mr. Nitchan HADSARANG	(Thailand)
Co-Chairperson	Mr. Mostafa Hicham ELBASTAWISSY	(Egypt)
Members	Ms. NKULU Mbayo Marie Claude	(D.R. Congo)
	Mr. Modibo SACKO	(Mali)
	Mr. IBROHIMZODA Abdushukur Ibrohimjon	(Tajikistan)
	Mr. Murod Abdurakhimovich MAVLYANOV	(Uzbekistan)
	Ms. SADA Yoshiko	(Japan)
Advisers	Mr. Junichiro OTANI	(UNAFEI)
	Ms. Mana YAMAMOTO	(UNAFEI)
	Ms. Mika KITAGAWA	(UNAFEI)

I. INTRODUCTION

Protecting citizens from the harmful consequences of drug trafficking has become a major global concern. Despite the differences related to each country's realities and legislation, it is a phenomenon that poses unexpectedly similar challenges to nations and cannot be solved without a united effort.

Indeed, Tajikistan and Uzbekistan struggle every day to deal with the flow of opiates into their territories through the Afghan border. The Democratic Republic of Congo and Mali face analogous problems as transit countries for cocaine, a significant part of which comes from Brazil, a hub for the distribution of cocaine smuggled from Colombia, Peru and Bolivia towards the East. Meanwhile, drug mules recruited from the Philippines cross Malaysia with stimulants, a part of which may arrive in Japan. Egypt has limited production of cannabis and heroine, but gets its supply from foreign countries. For all we know, the proceeds of the criminal activities may be handed to a Brazilian *hawala* to be deposited in a fictitious bank account in a Thai bank and laundered through real estate purchased in the Philippines by a dummy corporation.

Despite the efforts of the United Nations to address the issue of international drug trafficking, the problem persists. It feeds from a bad equation: high demand for illicit substances, poverty among mules, failed states, higher profits for supply rings and a vast array of financial, commercial and transport professionals who benefit from the criminal chain. Unlike state agents, drug traffickers are not bound by territorial borders.

Cultural traditions and legal systems can be used both as a sword and a shield. Criminal groups are aware of this. They take advantage of the jurisdictional limits of countries to operate freely and shield themselves from prosecution. No matter how devoted a country may be in combating drug trafficking, it is a battle that cannot be beaten alone. That is the reason why nations should resort to mutual dialogue and cooperation.

The main objective of the group workshop is to exchange experiences related to each participant country's challenges and good practices on the front of international cooperation on drug trafficking, in order to achieve better mutual understanding and find possible solutions.

After reviewing the main issues related to multi-agency and international cooperation on drug trafficking matters, the group agreed to focus the discussion on the following topics: border control, information exchange, mutual legal assistance and its financial aspects. The discussion, summarized below, led to sixteen (16) recommendations.

In the presentation of the group's report, each participant's input was referred to under the name of the country they represent. Their ideas do not necessarily reflect their countries' policies.

II. SUMMARY OF THE DISCUSSION

A. Border Control

Border control was the most frequently mentioned issue by the participants. Thailand, Tajikistan, Uzbekistan, the Democratic Republic of Congo and Brazil reported similar problems related to their status as transit-point countries for illicit drug smuggling. These problems persist due to (i) the insufficiency of border outposts and checkpoints; (ii) the deterioration of the existing facilities and road signals; (iii) the deficiency of specific capacity-building for troops, police and customs officers; (iv) the shortage of personnel; and (v) the lack of technical means, such as appropriate vehicles, x-ray machines, radar, optical observation equipment and night vision/infra-red devices.

The Democratic Republic of Congo, Brazil and Thailand highlighted the challenges inherent to their vast and porous boundaries, some of them spread over forests, jungles and different bodies of waters. Meanwhile, Japan and the Philippines, both archipelagic in nature, have difficulty in guarding their coastlines. In isolated areas, it is the absence of the state that cuts deeper, unleashing free drug smuggling through pathways and waterways.

Tajikistan and Uzbekistan reported encountering severe difficulties at their borders with Afghanistan, an opium source country whose economy and institutions have proven incapable of tackling poppy trafficking. Afghan smugglers have adopted a system of drug trafficking without physical contact, by means of burying drugs at the border area in plastic bags. Although the Tajik and Uzbek authorities can seize the illicit substances, such *modus operandi* makes it hard to adjudicate the traffickers, especially in light of the impossibility of undertaking investigation measures inside the Afghan territory.

Brazil and the Democratic Republic of Congo shared concerns related to their inland borders with multiple states, some of them sources of illicit substances, like Colombia, Peru and Bolivia, or destination countries, like Angola.

Japan introduced a complicated issue to deal with: the transshipment of drugs in foreign vessels beyond the jurisdiction of the national coastal authorities. The challenge was said to be particularly tricky because many ships have fake flags or no flags at all, enhancing the need for intelligence disclosure from the outbound ports in order to raise the Japanese authorities' suspicion of specific vessels used for trafficking.

The abuse of airports, seaports and free ports/economic zones by drug syndicates for the sake of transshipment and drop-off of illegal substances was mentioned by the Philippines as well. Thailand reported that criminal rings have also taken advantage of the international postal service. Both countries emphasized the increasing role of couriers, runners and peddlers in trans-border drug trafficking. These couriers pose as tourists in exchange for money.

Brazil described the feeble monitoring of its inland borders, despite the number of governmental agencies with overlapping duties related to boundary control. Part of the problem is due to the lack of a national border control policy, entailing poor institutional coordination, instability of goals, unpredictability of resources and little accountability.

Mali reported fruitful outcomes after establishing an office of its anti-drug unit (CAAT) at the Bamako Airport. By working side by side with foreign countries, they have been able to seize cocaine and methamphetamine.

Tajikistan also provided input about promising results related to its National Counter-Narcotics Strategy for 2013-2020, aiming at the structuring and amelioration of the Tajik border facilities and the increase in mobility of the frontier guards, personnel and equipment.

Thailand saw the need for enhancing day and night joint patrols by the rivers. Such policy should be addressed along with the establishment of quick response units on both sides of the border, in case one

country stumbles upon a drug dealer and the perpetrator tries to run away to the neighbouring country.

The discussion moved on to the need of enacting treaties to grant the possibility of conducting hot pursuits in neighbouring countries, in order to avoid impunity and the loss of investigative windows of opportunity. However, most of the members of the group considered it an impossible solution, taking into consideration jurisdictional issues.

B. Information Exchange

The participants were unanimous in acknowledging the importance of information exchange in countering transnational drug trafficking. Tajikistan and the Democratic Republic of Congo mentioned the existence of specific agreements with neighbouring countries aiming at information exchange, but Tajikistan said there have been no fruitful results so far. On this subject, Uzbekistan added that an agreement sealed with Afghanistan in 2017 has contributed to effective sharing of information related to drug trafficking.

Japan emphasized the need for data exchange on a daily basis to perform the Coast Guard duties. This is one of the reasons to foster relations of trust with other states, because transnational crimes cannot be solved on the ground of only one country's efforts. A successful investigation launched as a result of intelligence shared from a foreign agency was presented as a good practice, leading to a large seizure of methamphetamine concealed inside a container.

The Philippines also mentioned the successful seizure of about 600 kilograms of methamphetamine hydrochloride after information was received from China. The Philippines, Japan and Uzbekistan concurred about the disadvantages of mutual legal assistance (MLA) as opposed to direct information exchange, pointing out that the MLA procedure is usually complicated and takes a long time. Japan added that probes based on information provided abroad have been conducted by its National Police Agency; although mutual legal assistance is considered to be the appropriate way to produce evidence, a report based on information may be admissible in court if the defence consents.

It was suggested by the Philippines that there is a need for "active and strong cooperation with foreign counterparts. Strengthening the bilateral, regional and multilateral coordination is crucial in the conduct of international operations"[1]. The Democratic Republic of Congo and Mali underlined the important role played by INTERPOL in this field. Egypt and Brazil reckoned that the information exchange can be performed not only through agency-to-agency contacts, but also through liaison magistrates, police attachés, FIU liaison officers and focal points of international cooperation networks.

The Democratic Republic of Congo reported that, even though its drug trafficking legislation is still weak and Memoranda of Understanding (MoU) with neighbouring states and Southern African Development Community (SADC) members have been signed, the country could also benefit from effective information exchange with other countries.

The Philippines encouraged "embassies and consulates to undertake tighter screening of visa applications of nationals known to be involved in drug smuggling activities, and immigration officials should closely monitor and track their activities. This can only be achieved if concerned agencies have sufficient administrative and financial support"[2].

As a good practice, Brazil presented a project adopted by the Network of Anti-Drug Prosecutors in Ibero-America called the "Bogotá Protocol", an intelligence sharing platform related to drug trafficking through container shipments. It has delivered great results and has proven to be a hallmark of success in deterring and combating smuggling inside containers, hence the broadening of its scope to include air cargo shipments.

C. Mutual Legal Assistance

Concerning MLA, Egypt introduced a major barrier against the country's efforts to perform international assistance: the absence of domestic laws, bylaws or guidelines on the subject. While its Constitution provides

[1] *Drug Courier or Drug Mule* http://pnp.gov.ph/operations/483-drug-courier-or-drug-mule, citing PDEA as source.
[2] Ibid.

for the assimilation of international treaties as domestic legislation and Egypt has ratified all the major multilateral Conventions, proper regulation on the procedure of requesting and granting international cooperation remains unclear.

Brazil made a long exposé on obstacles faced by its practitioners when it comes to effective transnational assistance, most of them associated with the lack of minimum expertise on international cooperation affairs. Specialized units devoted to managing informal assistance, providing capacity-building and reviewing MLA drafts do not exist in most Brazilian state level police, prosecution services and courts, entailing scarce resort to formal and informal international cooperation, along with low-quality experiences with MLA requests. As for the federal level institutions, despite the significant progress experienced during the past decade, the perception of the Brazilian legal procedures as "universal" by practitioners and the disregard for other countries' grounds and ways to grant assistance are almost widespread. This attitude has taken its toll on the performance of outgoing MLA requests, distinctively on those addressed to countries with different legal traditions. In such cases, the assistance sought tends to be lengthy, erratic and subject to frequent calls for clarification. Meanwhile the evidence obtained does not always match the local standards of admissibility. Other barriers include legal terminology differences, insufficiency of grounds in the requested country and procedural inconsistencies.

Japan presented the number of MLA requests made by its police and prosecutorial authorities in 2016 and concluded that, in light of the statistics related to crimes perpetrated by foreigners in the same year, a modest resort to international assistance has been done by local practitioners. A possible explanation for the MLA underuse in the country is the maximum time set by the Japanese law for the pre-trial detention of perpetrators: 20 days, which is not enough to obtain formal assistance. Therefore, Japan proposed that, in those cases when the evidence subject to MLA is not indispensable for indictment, formal assistance may be requested to obtain additional proof to support prosecution.

Uzbekistan raised attention to the obstacles posed by discrepancies in domestic legislation concerning the list of banned substances and the conditions related to the lawful use of precursors and prescribed drugs. It was asserted that it could lead to the impossibility of granting international cooperation due to dual criminality issues. Accordingly, in view of his professional experience, the Uzbek participant suggested a prompt update of the list of common illicit substances and precursors published by the Commission on Narcotic Drugs of the United Nations, which could be recommended to its member states as a standard for MLA purposes. The topic led to a comprehensive discussion among the participants. Egypt, Brazil, Japan, and the Philippines replied that the endorsement of a unified list would not be realistic for economic and diplomatic reasons. However, other solutions were suggested. These include (i) urging the UNODC to create a working group to study the subject; (ii) establishing MoUs to allow the exchange of information, regardless of the different approaches of each country on the drugs banned; (iii) harmonizing the list of illicit substances and precursors with neighbouring countries through bilateral treaties; and (iv) bypassing the question via the inclusion of the concept of "analogue substances" in the banning lists.

Japan clarified that bilateral treaties with various nations have achieved good results, but it does not mean the country would not grant assistance to other countries when requested on grounds of reciprocity.

The Democratic Republic of Congo adduced a pact on security, stability and development that was signed by the countries located in the Grand Lakes Region and has shown good outcomes related to MLA. Likewise, Mali described fruitful results by virtue of an existing regional platform for international cooperation and MLA treaties sealed with fellow states.

Brazil reported that deploying special investigative techniques through MLA has been specifically difficult for its practitioners. Wiretapping and the interception of electronic communications have posed insurmountable obstacles due to the need for timely judicial supervision by the requesting state, whereas controlled deliveries and undercover operations depend highly on comprehensive coordination between counterparts and may face sovereignty challenges. As a result, most practitioners rely on operations carried out by the police or customs without judicial concurrence, or simply give up on them. The general lack of awareness about informal cooperation channels and their role in international assistance has accounted for many of the aforementioned obstacles.

The great value of making informal contact as soon as the case reaches beyond domestic borders was also pointed out. Signs of transnational dimensions include having family, assets or companies abroad, granting or receiving loans/investments from overseas and making suspicious trips. Previous contacts offer a good opportunity to learn about the justice systems involved, better understand each other's requirements, identify potential challenges and act as a prelude to a subsequent MLA request. If distrust is an issue, practitioners could address the implications of providing assistance on a merely theoretical basis prior to any discussions of substance. Strict enforcement of the principle of specialty within each agency, granting attention to confidentiality requests and fostering effective reciprocity are conditions frequently reckoned with as necessary to increase and maintain trust between nations.

Brazil also described the difficulties related to MLA faced by its 588 prefectures located in the inland border. Because most boundary rivers and pathways allow free circulation of individuals, drugs and assets, the lengthy procedure of translating MLA requests and sending them through central authorities have rendered it almost impossible to provide an effective response to criminal activity. The situation is particularly critical in the 30 twin-cities along the border, because their territories spread over both sides and bear no physical limits besides simply crossing a street.

D. Financial Institutions

Thailand and the Philippines presented challenges associated with laundering the proceeds of drug trafficking inside and outside the financial system. This was addressed in the Philippines by amending its Anti-Money Laundering Law to cover transactions made in casinos. Brazil accentuated the importance of international cooperation in identifying high-value targets through non-official financial transactions, whether through formal or informal channels, a point of view with which Egypt concurred.

Brazil introduced challenges related to the refusal of assistance on grounds of fishing expeditions, in light of the insufficient identification of bank accounts and other assets in MLA requests aimed at obtaining financial records and freezing orders. Another frequent obstacle pertains to meeting the dual criminality criteria with countries described as tax havens when the charges are related to tax evasion or capital flight. The group discussed alternatives for identifying bank accounts and assets without the input of the requested state, whereas Japan asserted the convenience of trying to obtain financial records by means of addressing a domestic non-coercive request to the bank's branches within Japan.

Mali made a thorough exposé on its financial intelligence unit, CENTIF, which is entitled to oppose the execution of suspicious bank transactions on the basis of serious, concordant and reliable information. The country also provided input on the role of the Intergovernmental Action Group Against Money Laundering in West Africa (GIABA), an agency backed by the Economic Community of West African States (ECOWAS).

The Democratic Republic of Congo added that the country can count on two governmental bodies under the direction of the Central Bank to counter money laundering and financing of terrorism: a national commission in charge of overseeing the domestic financial institutions and a special council which reports suspicious transactions directly to the president of the Republic. Local banks have the obligation of refraining from carrying out such transactions, under penalty of fine.

Brazil and Egypt advanced the discussion of the importance of the Egmont Group network in sharing precious intelligence on financial matters, side by side with main asset recovery networks.

III. RECOMMENDATIONS

After a thorough discussion among the participants, the following recommendations were made:

1) having treaties or memoranda of understanding among neighbouring countries, in order to:

   (a) enhance coordination of border control policies and strategies;

   (b) facilitate MLA by means of the exemption of translation and the exemption of intermediation through central authorities;

(c) create joint patrols and quick response units on both sides of land and river borders; and

(d) grant specific measures to reconcile sovereignty and law enforcement in transboundary twin cities;

2) on a domestic level, institutionalization of global border control strategies and permanent border control task-forces, along with the quantitative and qualitative upgrade of border control facilities, equipment, technology and capacity-building;

3) enhancement of visa application screening and monitoring of aliens known to be involved with drug trafficking, even before the beginning of their displacement towards the border;

4) creation of international cooperation units within the main agencies involved (police, customs, prosecution service, border control and narcotic agencies, FIUs), intended to:

(a) oversee the agency's international cooperation efforts;

(b) manage international assistance networks and informal contacts;

(c) review drafts of outgoing MLA requests;

(d) supervise the execution of incoming MLA requests;

(e) control follow-up measures;

(f) allow direct cooperation between counterparts; and

(g) provide appropriate capacity-building;

5) promotion of an active international cooperation culture among practitioners based on the following paradigms:

(a) legal systems are culturally conditioned and do not have a universal rationale;

(b) upholding justice in a global society involves not only preserving the country's citizenry, but also overcoming cultural biases;

(c) obtaining international cooperation depends on the consideration that the assistance sought will have to comply with the requested state's law and be useful before the requesting state's courts;

(d) because the matter may not be dealt with in the same manner as it is in the requesting state's jurisdiction, both in substance (grounds) and form (procedure), requests should mention the core conditions for the measure to meet its due process rules;

(e) in order to build trust, avoid miscommunication and prevent refusal of assistance, informal contact should be used as a starting point in any request related to countries with relevant legal differences;

(f) depending on the country involved, informal cooperation will suffice to obtain the assistance;

(g) in order to be enforced, requests must provide all data available about the measures sought, such as the identification and possible location of suspects, witnesses and companies, the addresses to be searched, the evidence to be seized, the records to be produced and the assets to be frozen;

(h) making proactive, early informal contact can aid in diagnosing potential challenges, gathering additional information, making strategic decisions and allowing the foreign authority to prepare for providing assistance;

6) creation of a national board formed by central authorities, the Ministry of Foreign Affairs and each agency's international cooperation units, aiming at coordinating views and efforts towards international cooperation;

7) publication of online booklets concerning each country's criminal justice system and basic MLA provisions;

8) exchange of professional and cultural knowledge by means of joint training courses, seminars and workshops;

9) strict enforcement by the prosecution services of the principle of specialty and the observation of other conditions imposed by the requested country;

10) supporting the harmonization of every country's domestic law with the provisions of the United Nations convention on drug trafficking;

11) fostering communication and integration among agencies and officers in charge of informal cooperation (law enforcement attachés, liaison magistrates, network focal points);

12) implementation of intelligence sharing platforms and counterpart networks;

13) encouraging usage of the UNODC Mutual Legal Assistance Request Writer Tool, along with other UNDOC tools;

14) development of domestic procedures related to the transnational chain of custody of evidence, in order to meet the requirements of other countries;

15) capacity-building related to investigating transnational money laundering and using open source and FIU tools to trace foreign bank accounts and assets; and

16) devotion of comprehensive effort to allow international cooperation based on a list of common illicit substances and precursors, whether through the United Nations or by bilateral treaties.

SUPPLEMENTAL MATERIAL

Report of the Follow-Up Seminar for the Second Phase of the Third Country Training Programme (TCTP) Focusing on the Development of Community-Based Treatment of Offenders in the CLMV Countries (Updated)
by UNAFEI

UNAFEI

REPORT OF THE FOLLOW-UP SEMINAR FOR THE SECOND PHASE OF THE THIRD COUNTRY TRAINING PROGRAMME (TCTP) FOCUSING ON THE DEVELOPMENT OF COMMUNITY-BASED TREATMENT OF OFFENDERS IN THE CLMV COUNTRIES*

From 26 to 28 June 2018, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) hosted the Follow-up Seminar for the Second Phase of the Third Country Training Programme (TCTP) Focusing on the Development of Community-Based Treatment of Offenders in the CLMV Countries (hereinafter, the "Follow-up Seminar"). This report summarizes the proceedings, country presentations and general discussions held throughout the Follow-up Seminar.

Proceedings

1. Ms. Kayo Ishihara, Deputy Director of UNAFEI, welcomed the participants and announced the opening of the Follow-up Seminar. Further, she recognized the efforts of the Japan International Cooperation Agency, the Department of Probation of Thailand (DOP), and the Thailand International Cooperation Agency (TICA) in organizing and implementing the TCTP with the cooperation of UNAFEI. Noting that the establishment of effective community-based treatment (CBT) in the CLMV countries faces numerous challenges, it is very important to share periodically what each country has achieved and to evaluate progress. To achieve the goal of the TCTP, Deputy Director Ishihara stressed that it is important for all participants, as experts and practitioners, to take the initiative to introduce and develop CBT in their respective countries, making use of the knowledge and insights obtained during the TCTP.

2. Mr. Payont Sinthunava, Deputy Director-General of the Department of Probation (DOP) of the Ministry of Justice of Thailand, emphasized the importance of implementing the Tokyo Rules in criminal justice systems in order to rehabilitate offenders in the community with their families and to allow them to become productive members of society. Noting that the first two phases of the TCTP have demonstrated the importance of implementing probation practices in the context of each country with an understanding of the "big picture" in terms of legislative, executive and judicial powers of the state, this Follow-up Seminar presents an opportunity to discuss the progress and challenges of implementing community-based treatment in the CLMV countries, with the goal of full implementation of the Tokyo Rules in the near future.

3. The Visiting Expert, Dr. Manuel G. Co, Ex Officio Member of the Board of Pardons and Parole and Administrator of the Parole and Probation Administration (PPA) of the Republic of the Philippines, delivered a presentation on "Countermeasures to Supervisees who Commit Bad Conduct".

4. Country presentations detailing progress made since the first phase of the TCTP were made by the delegations from Cambodia, Laos, Myanmar, and Viet Nam.

5. Lectures were delivered by: (1) Mr. Hitoshi Miyake, Principal Examiner of the Kanto Regional Parole Board, on an "Outline and details of punishment and sanctions imposed on persons released on parole and persons under probation with suspension of execution of the sentence" and (2) Deputy Director Ishihara, on the "Legislative Steps for Introduction of Community-based Treatment of Offenders".

Visiting Expert's Lecture

6. Dr. Co presented on the topic of dealing with supervisees who violate conditions of probation or parole, considering the question of whether revocation of probation or parole should be considered a failure of the system. In the Philippines, community corrections is implemented through individualized treatment. The

* [*Editor's Note:* This version of the report replaces the version that was originally published in Resource Material Series No. 105 (Sep. 2018). Since publication, the delegations of Cambodia and Viet Nam have requested minor changes to the report regarding their country presentations, all of which are reflected herein.]

PPA supervises and rehabilitates parolees, pardonees, probationers and first time minor drug offenders in the community, and its three vital responsibilities are investigation, supervision and rehabilitation. Post-sentence investigation into the background of each offender identifies which offenders are suitable for community-based treatment, and those who are suitable are supervised in the community with the support of Volunteer Probation Assistants. Rehabilitation programmes are applied according to a three-pronged approach, including (i) restorative justice, (ii) the Therapeutic Community (TC) Ladderized Program, and (iii) volunteer resource mobilization.

Community-based treatment is a conditional release subject to conditions. While the conditions serve as a substitute to iron bars and prison laws, it is important that conditions are realistic and imposed for the purpose of helping each individual offender conform conduct to a law-abiding lifestyle. In addition to probation and parole, conditional pardons are used as a means to release offenders while maintaining control over their conduct in the community. Control over supervisees in the community is maintained through mandatory and special conditions. Mandatory conditions include the duty to report to probation offices, to reside at the offender's approved residence, and to refrain from committing further offences. Special conditions are designed to encourage offenders to develop as responsible, productive and socially redeemed individuals by requiring them to engage in productive behaviours, *e.g.*, employment, or to refrain from destructive behaviours, *e.g.*, drug use, possession of firearms, or relationships with criminal associates.

If mandatory or special conditions are breached, the PPA may take various actions depending on the nature of the violation. Minor violations of conditions may be addressed by administrative disciplinary protocols, which may include corrective measures imposed at the discretion of Probation and Parole Officers. If a parolee commits another offence while on conditional release, he or she must serve the remaining portion of the original sentence in addition to the term required for the new offence; probationers who reoffend must serve the time for the original and the new offence. Violations of conditions of parole or pardon are evaluated by the Board of Pardons and Parole based on fact-finding and the recommendations of probation officers, and the Board may issue an Order of Arrest and Recommitment to place the offender in custody. At any time during probation, the Court may issue a warrant for the re-arrest of a probationer for violation of any condition. In all cases, it is important to remember that offenders are entitled to the presumption of innocence and other constitutional rights.

In answering the question of whether revocation is a failure of the system, Dr. Co stressed that failure cannot be attributed to the probation officer alone, as each offender is ultimately responsible for his or her own behaviour and faces his or her own family and other problems in the community. The role of probation officers is to serve as gatekeepers of the justice system and to help offenders comply with their conditions. Recalling that the purposes of supervision are to implement conditions, rehabilitate the offender and prevent the commission of further crime, Dr. Co recommended that the participating countries consider the adoption of volunteer probation officer/assistant programmes to enhance offender supervision and rehabilitation through the use of community volunteers and community resources.

Country Presentations

7. Cambodia. Like a number of other countries, Cambodia has adopted legislation that addresses community-based treatment but has faced challenges in implementation. The reported challenges include public resistance to the concept and financial constraints that prevented the commencement of a pilot project. These challenges were raised at the Cambodian MOJ's annual congress, and the MOJ committed to further promotion of community-based treatment by disseminating relevant statues on non-custodial measures to judges, prosecutors and judicial police of various provinces. The Ministry of Interior has established a committee to address these issues, agreeing that the best way to initiate a trial programme would be to focus on the community-based treatment of juvenile delinquents. In 2019, responsibility for juvenile delinquents will be transferred from the Ministry of Interior to the Ministry of Social Affairs, Veterans and Youth Rehabilitation. Under existing law, prosecutors execute the decisions of the court with the assistance of judicial police officers. The delegation plans to raise public awareness of CBT and non-custodial measures though all means possible.

8. Laos. The delegation from Laos reported having gained useful knowledge during the Second Phase of the TCTP, which was reported to the Minister of Justice. The Criminal Procedure Law contains provisions on

re-education without deprivation of liberty, stay of execution of penalty, conditional release, and other CBT-related measures. Currently, however, no ministry has been assigned as the responsible agency for CBT, so offenders are entrusted to local administration authorities (such as village, district, and community police), mass organizations and other state organizations for rehabilitation, reintegration and recidivism prevention. The village administration system, including village mediation committees, are responsible for handling normal cases and non-violent cases, such as stealing property, traffic violations, battery and other cases resulting in minor damage or those that do not affect society. Applicable laws, regulations and policies will be disseminated to local administrations and the other organizations mentioned above to raise public awareness.

9. Myanmar. The delegation reported that there is no specific legal framework for CBT, but a CBT framework is applied in drug cases in which police officers take drug users to medical centres for medical treatment. Drug users who refuse treatment are sent to a rehabilitation centre for six months. This process involves the police, the courts, the Ministry of Home Affairs, the Ministry of Health and Sport, and the Ministry of Social Welfare, Relief and Resettlement (MOSWRR). The MOSWRR implements rehabilitation services by Centre Based Rehabilitation, Semi-Community Based Rehabilitation, and Community-Based Rehabilitation Reports on Activities of Rehabilitation. These processes involve interviewing and recording of the biological data of trainees and making assessments based on the use of drugs. The social work practices being carried out include mental and physical rehabilitation, providing vocational training, preparing for reintegration into society and the provision of after-care services. Myanmar is undertaking efforts to raise public awareness in order to educate the public, change the public mindset, promote the use of community corrections over imprisonment, and prevent recidivism.

10. Viet Nam. The delegation from Viet Nam reported learning about organizational structure, qualified staff, facilities, and professional volunteers during the second phase of the TCTP. Since January 2018, Viet Nam has issued some documents related to guidance on conditional early release and suspended sentence. In Viet Nam, CBT basically includes conditional early release, non-custodial sentences, and suspended sentences. Vietnamese law emphasizes the participation of the community in offender treatment (including inmates, persons serving non-custodial sentences, persons serving suspended sentences, and persons granted conditional early release) through many measures such as education and job training, sport and cultural activities, yearly meetings for families of inmates, agreements with the private sector to support offender rehabilitation, and legal support and psychological counselling. Inmates are eligible for conditional early release if they meet certain requirements. Conditional release decisions are made by provincial people's courts where the inmates are serving the sentence. Offenders serving sentences in the community are subject to management, supervision, education and reporting as well as other requirements, such as vocational training and job-hunting and financial support. To raise awareness of CBT in the community, the delegation recommended measures such as (i) issuing instruction documents, (ii) dissemination of information through the media, especially national television, (iii) conducting national surveys on CBT, (iv) developing mechanisms to reward active participation of people in the community and extending models of funds and clubs for rehabilitation.

Plenary Discussion

11. Professor Hiroyuki Watanabe (UNAFEI) chaired a plenary discussion, during which the participants shared comments and asked questions regarding their respective systems. Noting that Thailand took 22 years to adopt a fully functional CBT system, Mr. Sinthunava (DOP) stressed the importance of setting timelines for the adoption of such systems. Prof. Watanabe raised the issue of dealing with drug crimes in the CLMV countries, whereupon Mr. Nouth (Cambodia) pointed out that there is a difference in the way that drug use and possession is viewed in many countries. While drug *use* is considered a medical problem, drug *possession* is viewed as a crime. In jurisdictions where drug possession is aggressively enforced, the result is that even minor possession cases can result in prosecution, and, thus, prison overcrowding. Additionally, while the public may be more accepting of drug users in medical treatment, the public will be much less sympathetic to those who are labelled as criminals. Dr. Co (Philippines) raised the importance of performing drug dependency examinations prior to making probation decisions in drug cases because drug-dependent offenders cannot be effectively treated in the community (without first completing a drug addiction treatment programme at a rehabilitation centre). Professor Takuya Furuhashi (UNAFEI) enquired into the use of risk assessment in CBT programmes, and it was report that Thailand conducts assessment based on Andrews and Bonta's well-known Risk-Need-Responsivity (RNR)

Model, which assesses each offender's (i) risk of reoffending and (ii) dynamic criminogenic needs that can be supported in various ways by government and community resources. Finally, all participants recognized the need to develop effective strategies to promote public awareness of CBT.

Lectures

12. Mr. Miyake's presentation addressed the topics of probation supervision in Japan and sanctions for bad conduct. Pursuant to the Offenders Rehabilitation Act, the purpose of rehabilitation is to prevent reoffending and juvenile delinquency and to assist offenders as in becoming self-reliant as sound members of society. The primary measures for offender rehabilitation include (i) instruction and supervision, which guide offenders toward pro-social thinking and living, and (ii) guidance and assistance, which connect offenders with social services to facilitate their rehabilitation and reintegration. In Japan, probation supervision can be applied to juvenile and adult probationers and parolees. Supervision is conducted on an individualized basis, taking account of each offender's age, family situation, etc., and efforts are made to apply the most "appropriate" measures to facilitate the offender's rehabilitation and reintegration into society. For example, if a probationer exhibits self-reliance and other pro-social qualities, probation is no longer necessary or "appropriate". On the other hand, if probation is not effective in a particular case and the probationer's attitude or conduct deteriorates, the continuation of probation may not be appropriate. Probationers and parolees are subject to general and special conditions, and when these conditions are violated, action must be taken in response. For example, probationers are required to reside at a specific address that has been reported to the probation office. If the probationer cannot be found or has changed residences without permission, measures may need to be taken to address the probationer's violation of his conditions of probation (*i.e.*, bad conduct). In such cases, the probation officer will submit a report to the regional parole board, which will determine what action should be taken. If a probationer cannot be found, it may be necessary to suspended probation, which means that the probationer will not be given credit for serving probation for the period during which he or she cannot be found. This effectively extends the probationary period by the number of days the probationer was absent without leave. However, in cases where probation is no longer appropriate due to bad conduct, *e.g.* reoffending or violation of special conditions, probation will be revoked unless the regional parole board finds that special circumstances exist that make it reasonable to continue probation. Probation is revoked by the issuance of a warrant of appearance, and a probation officer may serve the warrant on and arrest the probationer. The probationer is then taken to the probation office, where he or she is interviewed and detained pending the final revocation decision of the regional parole board. If a probationer receives suspended execution of sentence and violates the conditions of probation, the public prosecutor must be informed to process the revocation through the courts.

13. Deputy Director Ishihara presented on legislative and practical strategies for the creation of effective CBT systems. Legislation is necessary because CBT is a constituent element of a criminal penalty which restricts the liberty of offenders. Thus, due process protections must be afforded to provide a check on the exercise of state power. Appropriate laws must address, among others, (i) the conditions upon which CBT can be applied, (ii) who may impose CBT, and (iii) which agency is responsible for conducting CBT. At the same time, the application of CBT must remain flexible, diverse and discretionary because the sanction is imposed in the community where offenders are faced with real-life challenges. Accordingly, input from practitioners on developing workable practices is extremely important. Of course, the enactment of legislation alone is insufficient. To carry out the purpose of the law, the following factors must be present when the law enters into force: an implementing agency, adequate resources, detailed procedures, and the support of relevant stakeholders and the general public. This makes it critically important to conduct adequate "market research" to determine an appropriate timeframe for implementation. In this context, market research is a process to gather information to estimate the number of offenders that will be subject to CBT once the system becomes operational. This requires policymakers to frame the scope of CBT by clarifying the major conditions as defined by law, such as the types of crime and penalties eligible for CBT, the degree to which criminal records and family relations are considered and so on. Each country will need to determine whether judges or administrative bodies will be responsible for deciding which offenders are eligible for CBT. If judges, make such decisions, the law should refer to the factors to be considered; if administrative bodies make such decisions, guidelines should be developed and training should be provided. Additionally, reliable statistics are necessary to plan for the implementation of CBT programmes. Such planning should take "market size" into consideration, for example, by recognizing that CBT in an urban setting is likely to face different challenges and require different resources than in

suburban or rural areas. After gathering the information necessary to create a roadmap to implementation, stricter conditions for eligibility and limiting the initial scope of CBT are options for accelerating implementation with the expectation of expanding the programme in the future.

Introduction of the Third Phase of the TCTP

14. Ms. Taruata Klaewkla (DOP) introduced the General Information for the Third Phase of the TCTP, reviewing the application procedures, participant qualifications, and the programme schedule. The programme will take place in Thailand from 10–22 December 2018. The primary objective of the Third Phase is to gain practical experience by working with Thai probation officers in the field.

Presentation on Halfway Houses in Japan

15. Professor Hidenori Ohinata (UNAFEI) delivered a final presentation on halfway houses. Japan currently has 103 halfway houses, which accommodate discharged offenders and provide aid and guidance necessary for offenders' reintegration. Halfway houses are run by persons approved by the Minister of Justice, and the government provides financial support for their operations. These operations include housing, feeding, and the provision of training and other guidance programmes for residents. Probationers, parolees, offenders released from prison after serving their full terms of imprisonment, and persons released from pre-trial detention are eligible to reside in halfway houses. Upon release, roughly 30% of parolees reside in halfway houses, and the average length of a resident's stay is 79.8 days.

Study Visit

16. At the conclusion of the Follow-up Seminar, the participants visited the *Saishukai* Halfway House in Tokyo's Shinjuku Ward.

28 June 2018
Akishima City, Tokyo, Japan

ANNEX

1. List of Participants

2. The Follow-up Seminar Schedule

List of Participants, The Follow-up Seminar on the Third Country Training Programme (TCTP)
for Development of Effective Community-Based Treatment of Offenders in the CLMV Countries
(26 June - 28 June 2018)

(In total 16)

	Country	Name	Title and Organization
1	Cambodia	TY Vichet	Deputy Director Department of Legal Affairs and Statistics in Criminal Matters, General Department of Prosecution and Criminal Affairs Ministry of Justice
2	Cambodia	MONG Monysophea	Judge First Instance of Phnom Penh Municipality
3	Cambodia	Savna NOUTH	Deputy Director General Directorate General of Prisons Ministry of Interior
4	Laos	Khamla SOUVATH	Deputy Director Prison Inspection Department The Office of the Supreme People's Prosecutor
5	Laos	Kitsada DUANGMANY	Official Prison Inspection Department The Office of the Supreme People's Prosecutor
6	Laos	Sacksith SITHINARONGSY	Deputy of Inspection Legislation Division Law Review and Assessment Department Ministry of Justice
7	Myanmar	Hlaing Kyaw Soe	Staff Officer International Affairs Division, General Administration Department (Head Office) Ministry of Home Affairs
8	Myanmar	Aung Maw	Deputy Director Office of the Union Supreme Court
9	Myanmar	Lae Lae Win	Staff Officer Department of Social Welfare Ministry of Social Welfare, Relief and Resettlement
10	Viet Nam	LE Thi Van Anh	Head of Criminal Division Department of Criminal and Administrative Law Ministry of Justice
11	Viet Nam	Dao Thi Vinh	Deputy Head of International Relation Division General Department of Corrections and Judicial Support Ministry of Public Security
12	Viet Nam	VU Minh Tuan	Official Department of Legal Affairs and Administrative–Judicial Reform Ministry of Public Security
13	Thailand	Payont SINTHUNAVA	Deputy Director General Department of Probation Ministry of Justice
14	Thailand	Jiranun PRAMKUN	Probation Officer, Professional Level Phuket Probation Office Department of Probation, Ministry of Justice
15	Thailand	Taruata KLAEWKLA	Probation Officer, Professional Level Innovation and Foreign Affairs Group, Probation Development Bureau, Department of Ministry of Justice
16	Thailand	Anyamanee TANRATTANA	Probation Officer, Practitioner Level Foreign Affairs and Research Group, Probation Development Bureau, Department of Ministry of Justice

Visiting Expert

	Country	Name	Title and Organization
1	Philippines	Manuel Golloso CO	Administrator Parole and Probation Administration Department of Justice

* The capital letters indicate surname.

The Follow-up Seminar of the TCTP (the second phase)

			Seminar (AT UNAFEI)							
	Mon 25-Jun		Tue 26-Jun		Wed 27-Jun		Thu 28-Jun		Fri 29-Jun	
AM	Arrival of Participants Registration Orientation		Opening Remarks by UNAFEI Director Remarks by Department of Probation, Ministry of Justice, Thailand (Break) Lecture (Visiting Expert) Dr. Manuel G. Co (Administrator, Parole and Probation Administration, Department of Justice, Philippines) ***Counter Measures to Supervisees Who Commit Bad Conduct***	10:00-10:10 10:10-10:20 10:40-12:20	Lecture (Ad hoc) Mr. Hitoshi MIYAKE (Principal Examiner of Kanto Regional Parole Board) ***Outline and details of punishment and sanctions imposed on persons released on parole and persons under probation with suspension of execution of the sentence*** (Break) Lecture (UNAFEI) Ms. Kayo ISHIHARA (Deputy Director of UNAFEI) ***Legislative steps for introduction of Community-based Treatment of Offenders (Tentative)***	10:00-11:40 11:50-12:20	Plenary Discussion (Needs and Interests for the third phase of the TCTP) (Break) Feedback Session Lecture and Discussion (UNAFEI) (Halfway House)	10:00-11:00 11:20-11:50 11:50-12:20	Departure of Participants	
	Lunch (UNAFEI)	12:00-	Lunch (UNAFEI)	12:20-	Lunch (UNAFEI)	12:20	Lunch (UNAFEI)	12:20		
PM			Country Presentations Cambodia Laos (Break) Myanmar Viet Nam (Break) Plenary Discussion	 13:30-14:15 14:15-15:00 15:15-16:00 16:00-16:45 17:00-18:00	Lecture continues (Break) Individual Consultations Cambodia Laos (Break) Myanmar Viet Nam	13:30-14:30 14:45-15:30 15:30-16:15 16:30-17:15 17:15-18:00	Leave UNAFEI Field Trip-Halfway House	13:00 14:30-16:30		
					Welcome Reception	18:30-				
	(Stay at UNAFEI)		(Stay at UNAFEI)		(Stay at UNAFEI)		(Stay at UNAFEI)			

APPENDIX

VISITING EXPERTS' PRESENTATIONS & COMMEMORATIVE PHOTOGRAPH

• *169TH INTERNATIONAL TRAINING COURSE*

UNODC
United Nations Office on Drugs and Crime

Global situation of illicit drug cultivation, production and trafficking

UNAFEI's 169th International Training Course

Tokyo, 30th May 2018

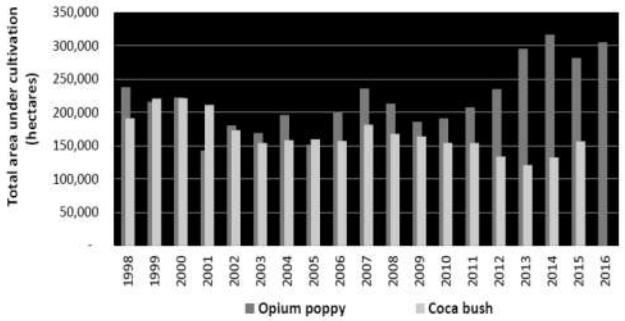
1

UNODC
United Nations Office on Drugs and Crime

UNODC Research

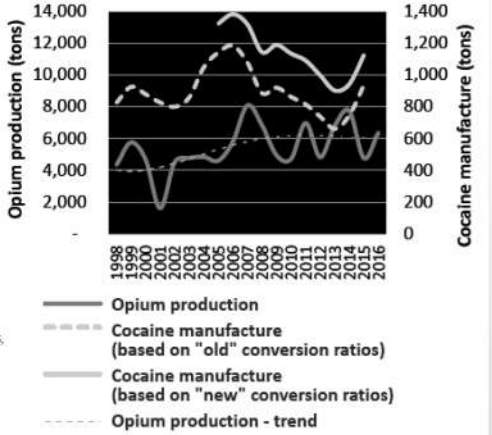
Cultivation and production
coca/cocaine, opium/heroin

Total area under opium poppy and coca bush cultivation



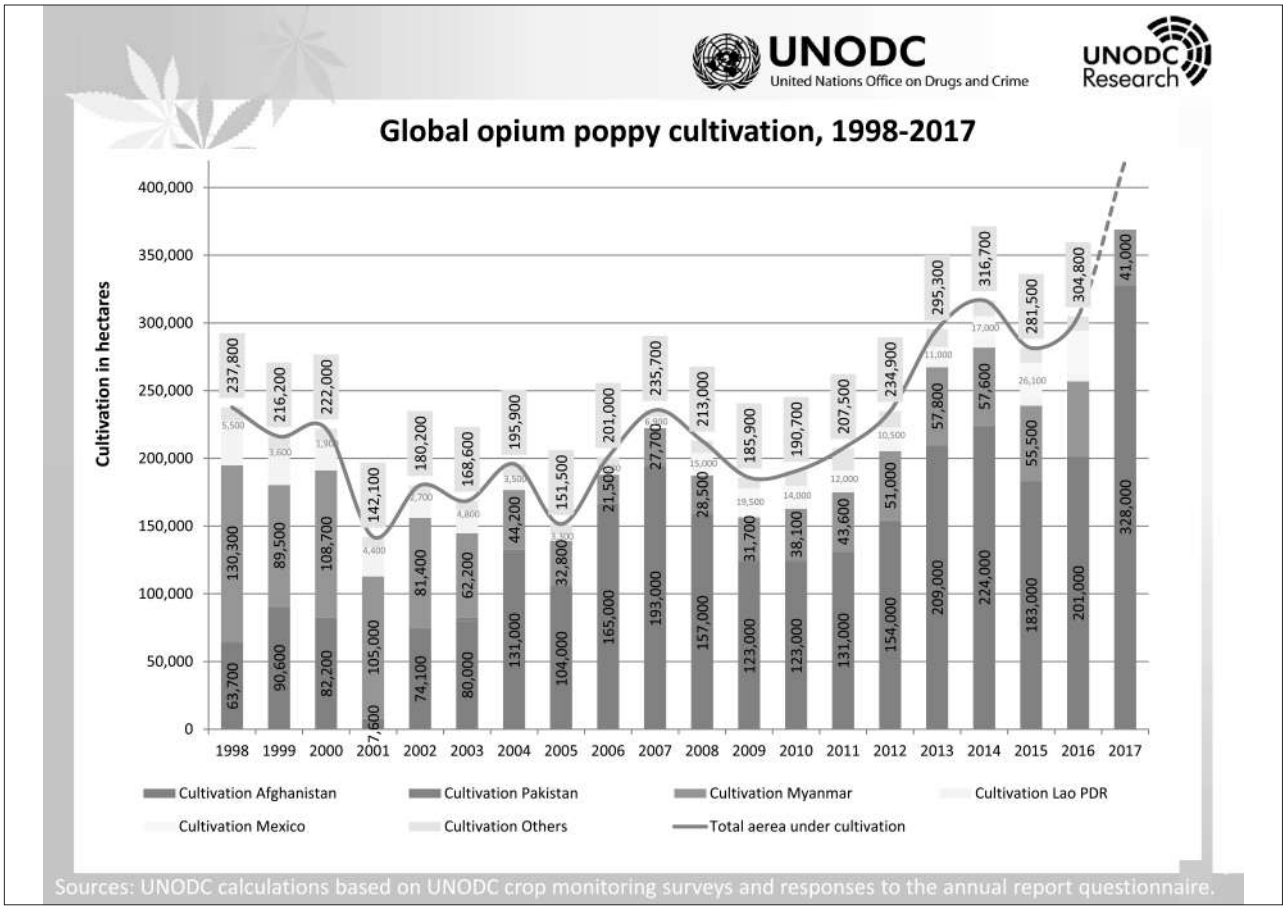
Sources: UNODC coca and opium surveys in various countries; responses to the annual report questionnaire; and United States, Department of State, *International Narcotics Control Strategy Report*, various years.

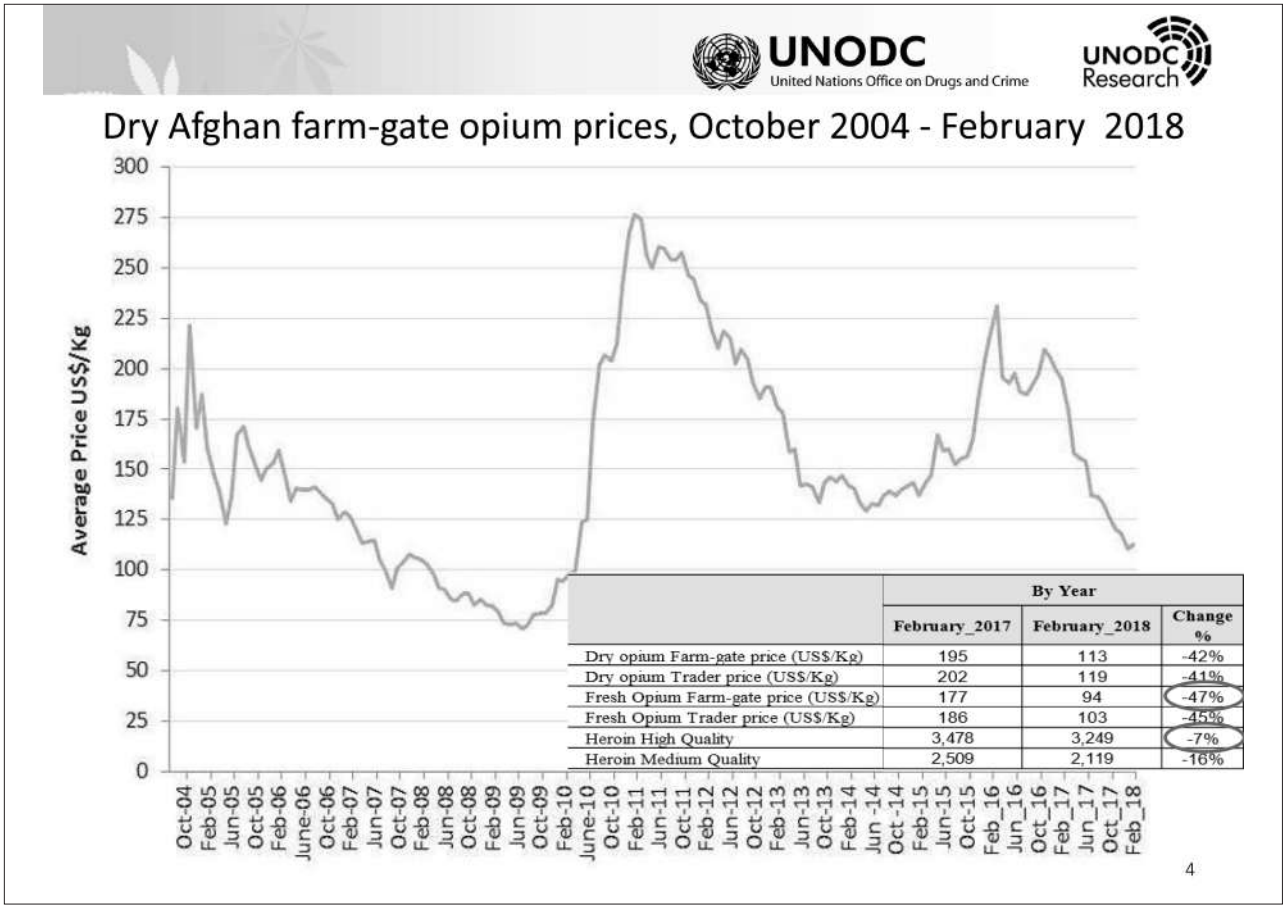
Global potential opium production and cocaine (100 % pure) manufacture



Sources: UNODC coca and opium surveys in various countries; responses to the annual report questionnaire; and United States, Department of State, *International Narcotics Control Strategy Report*, various years.

2



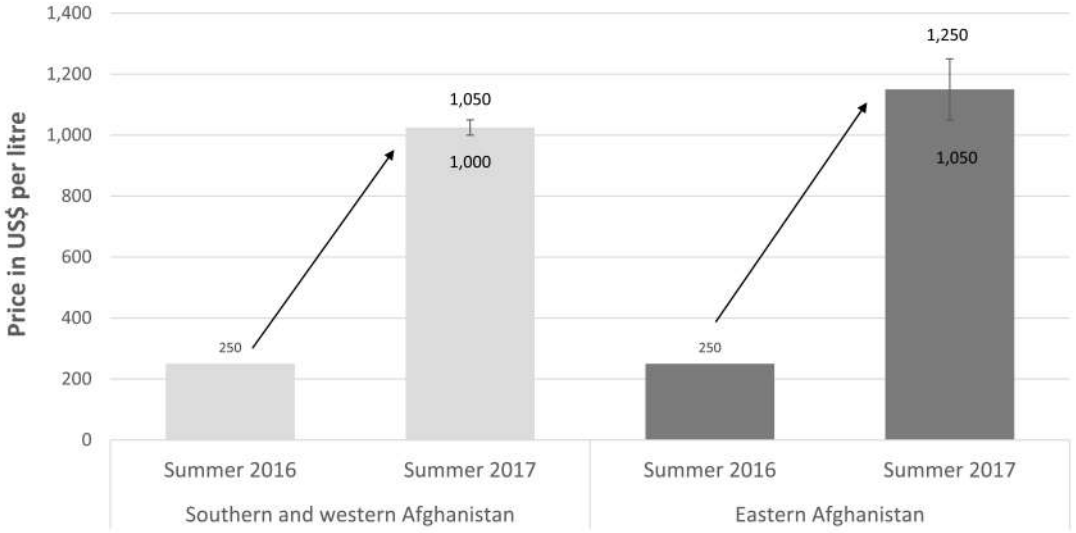


	By Year		
	February_2017	February_2018	Change %
Dry opium Farm-gate price (US$/Kg)	195	113	-42%
Dry opium Trader price (US$/Kg)	202	119	-41%
Fresh Opium Farm-gate price (US$/Kg)	177	94	-47%
Fresh Opium Trader price (US$/Kg)	186	103	-45%
Heroin High Quality	3,478	3,249	-7%
Heroin Medium Quality	2,509	2,119	-16%

UNODC United Nations Office on Drugs and Crime

UNODC Research

Prices of best quality acetic anhydride in southern and western Afghanistan and in eastern Afghanistan, 2016-2017



Source: CNPA (Kabir Khan head of Precursor Unit), based on data collected by CNPA informants; Sept.

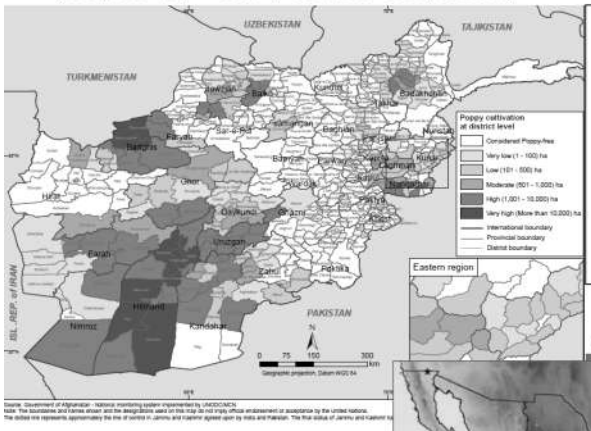
UNODC United Nations Office on Drugs and Crime

UNODC Research

Opium poppy cultivation, 2017

Afghanistan

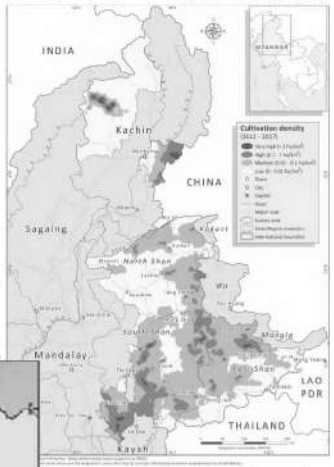
(328,000 ha; +63%*; 301,000-355,000 ha)



Helmand: 144,018; **44%** + 79%
Kandahar: 28,010; 9%; +37%
Badghis: 24,726; 8%; n.a.
Faryab: 22.797 7% n.a.
Uruzgan: 21,541; 7%; +39%
Nangarhar:18.976; 6%; +32%
Farah: 12,846; 4%; +41%
Balkh: 12,016; 4%; +81%
Nimroz: 11,466; 3%; +116%
Badakshan: 9,211 2%

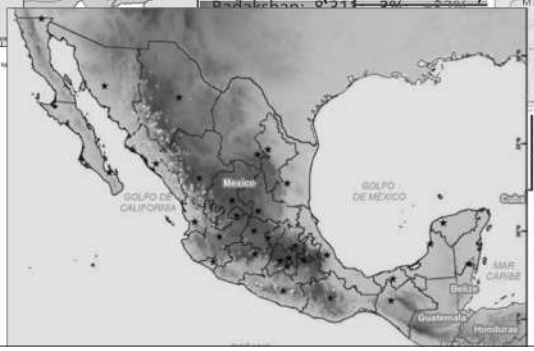
Myanmar

(41,000 ha; -25%**; 30,200-51,900)



Mexico (2015)

26,100 ha (21,500 - 28,100)



Sources: UNODC, Opium Surveys in Afghanistan, Myanmar in 2017 and Mexico 2015.

Opium in Mexico found in states of Sinaloa, Chihuahua, Durango, Nayarit, Jalisco, Michoacán, Guerrero, Oaxaca, Chiapas

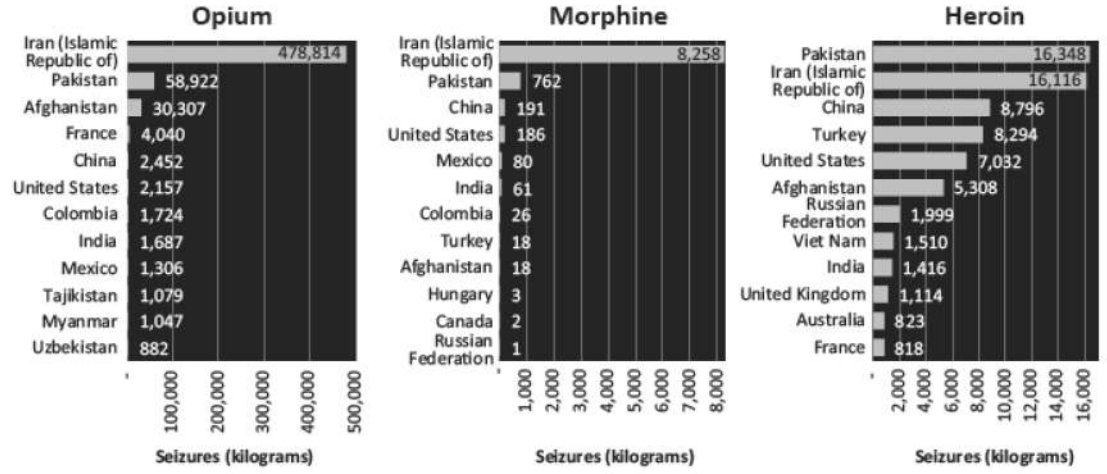
*change as compared to 2016;

6

UNODC United Nations Office on Drugs and Crime

UNODC Research

Countries reporting largest quantities of opiates seized, 2015



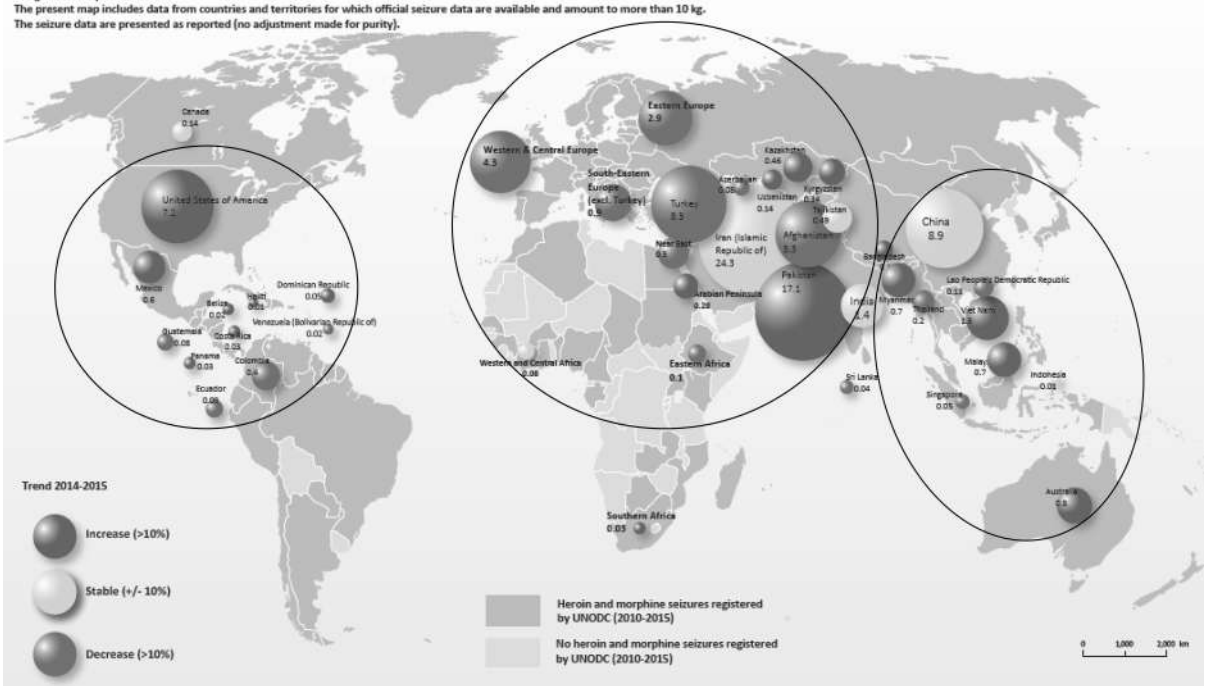
Source: UNODC, responses to the annual report questionnaire.

7

UNODC United Nations Office on Drugs and Crime

UNODC Research

Aggregate seizures of heroin and morphine, 2015
Weight in ton equivalents*.
The present map includes data from countries and territories for which official seizure data are available and amount to more than 10 kg.
The seizure data are presented as reported (no adjustment made for purity).



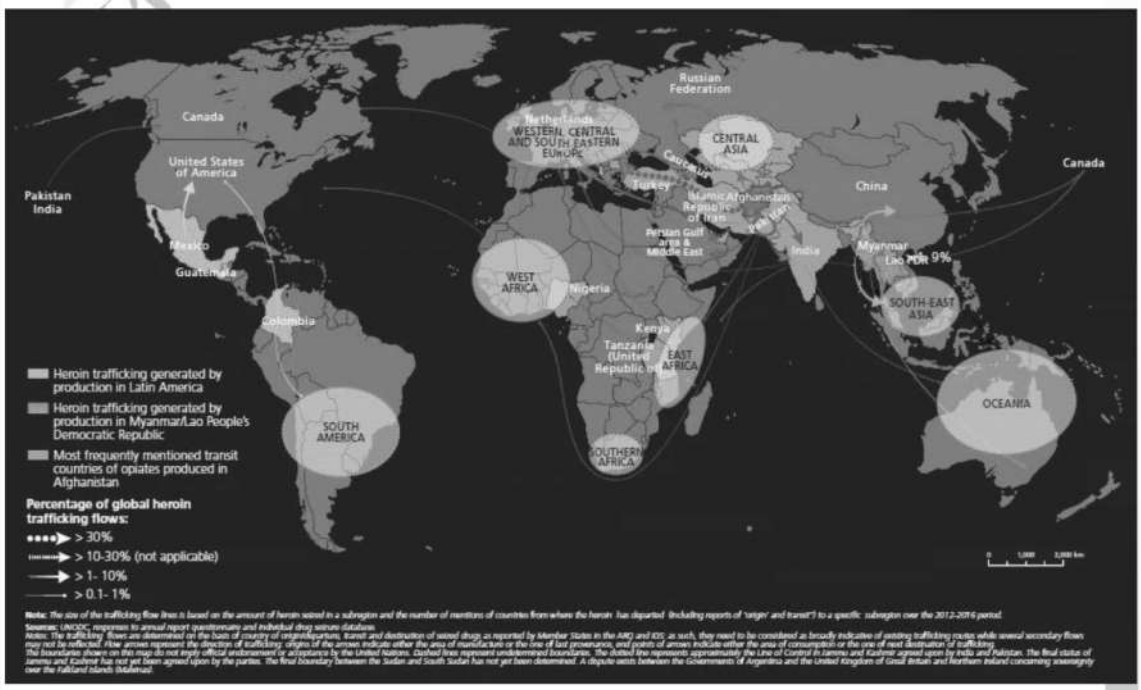
Source: UNODC annual report questionnaire data, supplemented by other official sources.
Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.
Dashed lines represent undetermined boundaries. Dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties.
The final boundary between the Sudan and South Sudan has not yet been determined.
A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).
* The vast majority of seizures of heroin and morphine are reported to UNODC by weight. Whenever the availability of information allows, seizures expressed in other units are converted to weight; in particular 1 litre is assumed to have a weight of 1kg.
For more details please refer to the methodology section of the World Drug Report.

8

UNODC
United Nations Office on Drugs and Crime

UNODC Research

Main opiate trafficking flows, 2012-2016



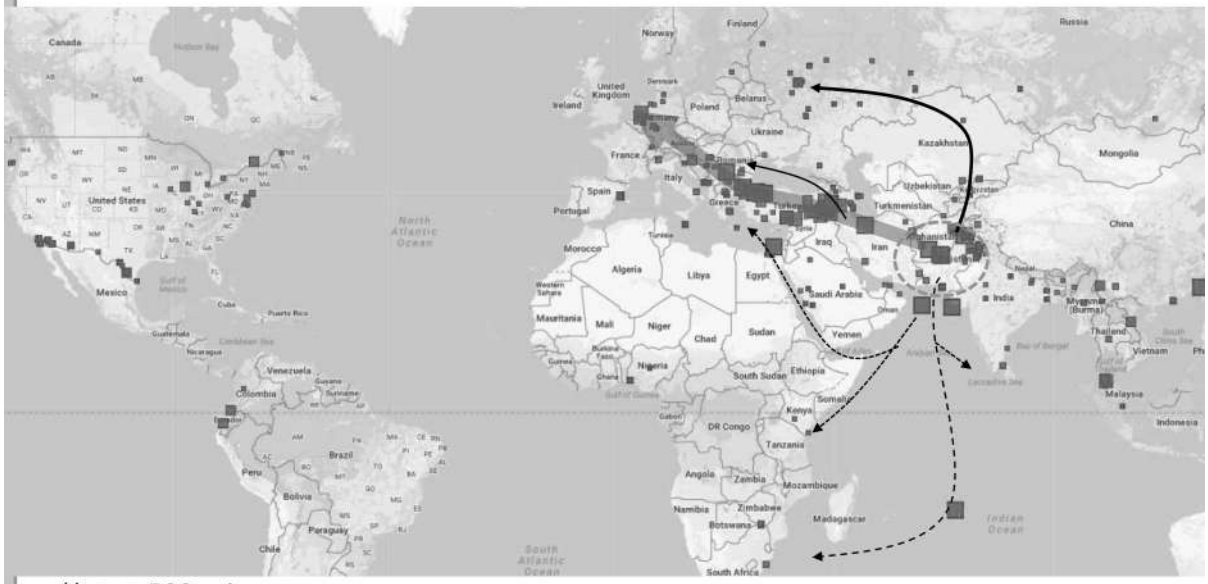
Source: UNODC elaboration based on responses to the annual reports questionnaire and individual drug seizures

9

UNODC
United Nations Office on Drugs and Crime

UNODC Research

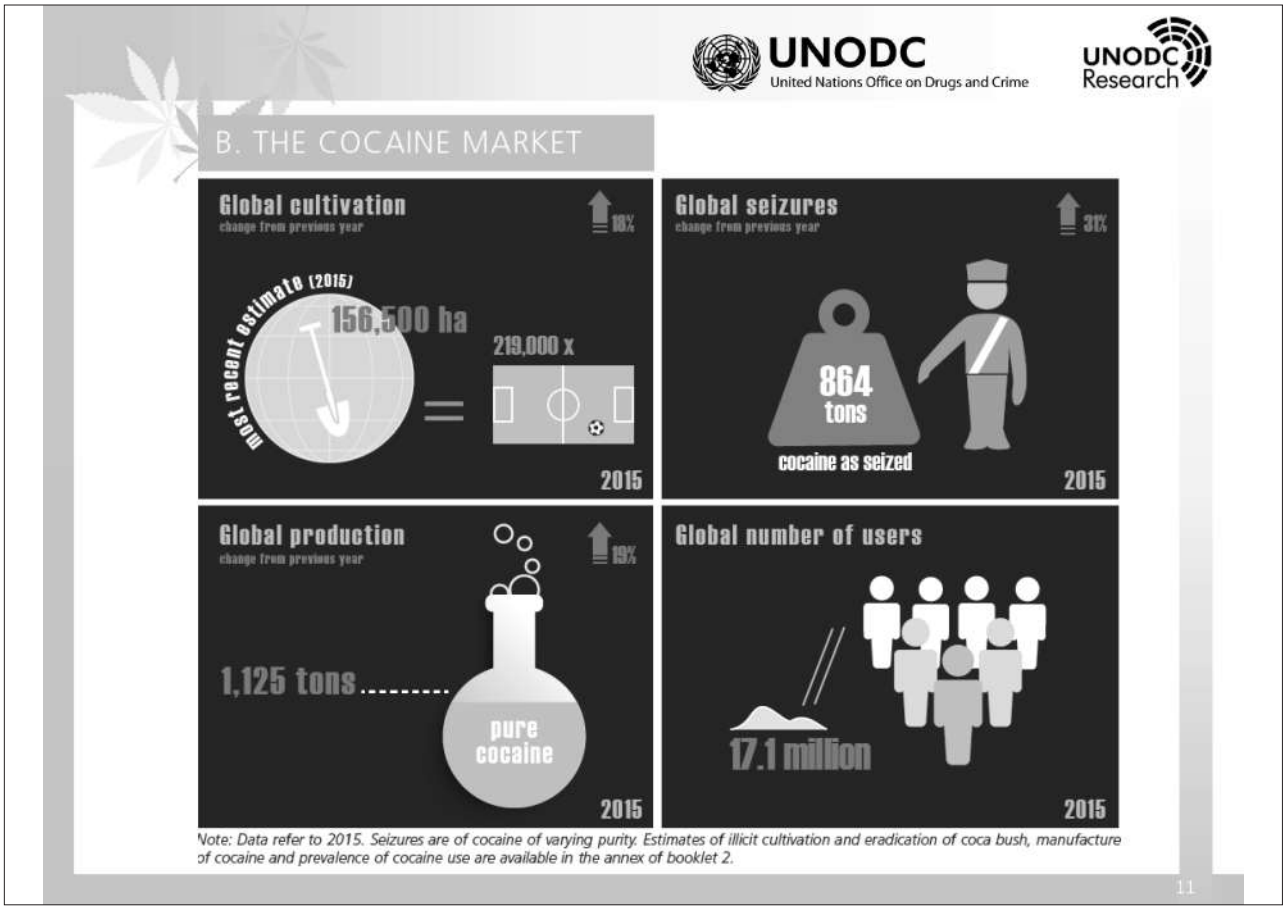
Significant individual heroin seizures, January 2016-December 2017*



*latest 500 seizure cases

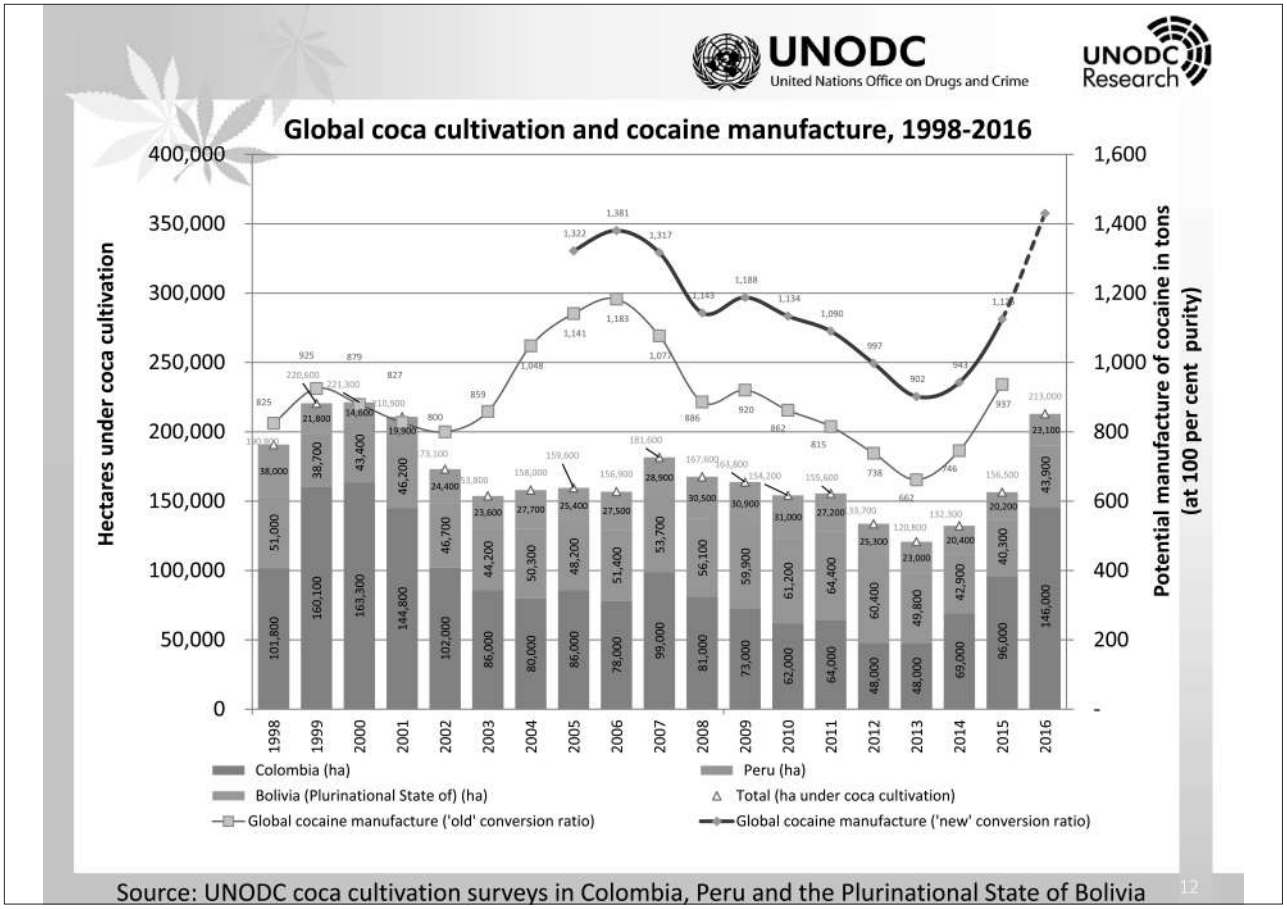
Source: UNODC (AOTP) and Paris Pact, Drugs Monitoring Platform

10



Note: Data refer to 2015. Seizures are of cocaine of varying purity. Estimates of illicit cultivation and eradication of coca bush, manufacture of cocaine and prevalence of cocaine use are available in the annex of booklet 2.

11



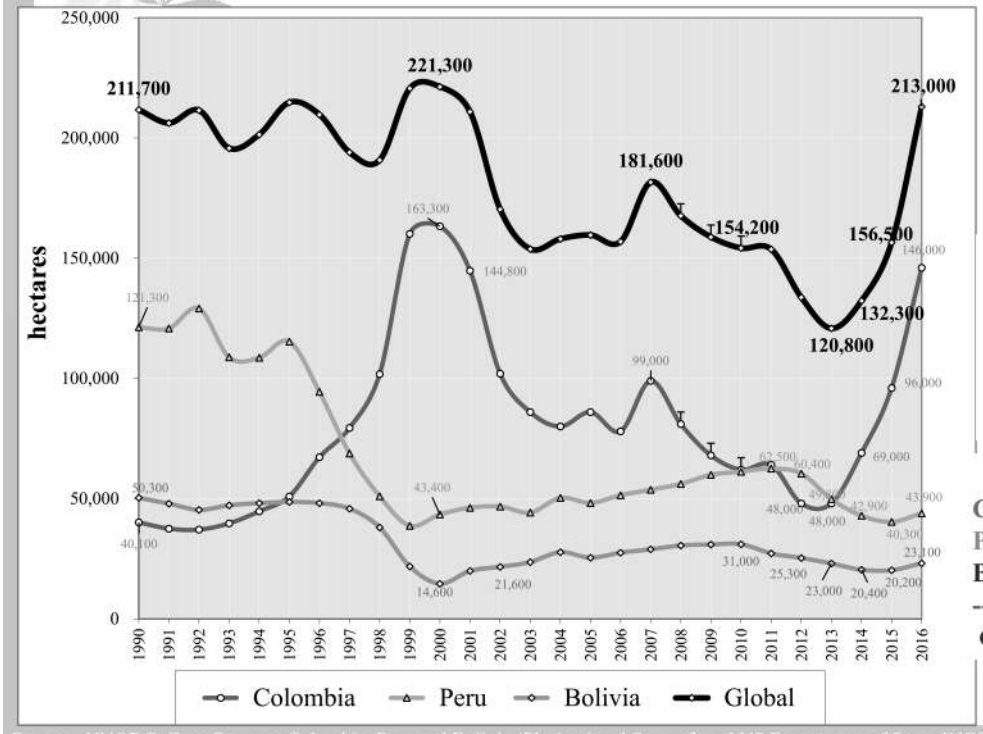
Source: UNODC coca cultivation surveys in Colombia, Peru and the Plurinational State of Bolivia

12

UNODC United Nations Office on Drugs and Crime

UNODC Research

Coca bush cultivation, 1990-2016



2015-2016
Colombia: +52%
Peru: + 9%
Bolivia: +14%
Global: +36%

2013-2016
Colombia: +76%
Peru: -12%
Bolivia: +0.4%
Global: 76%

2000 - 2016
Colombia: - 11%
Peru: +1%
Bolivia: +58%
Global: -4%

13

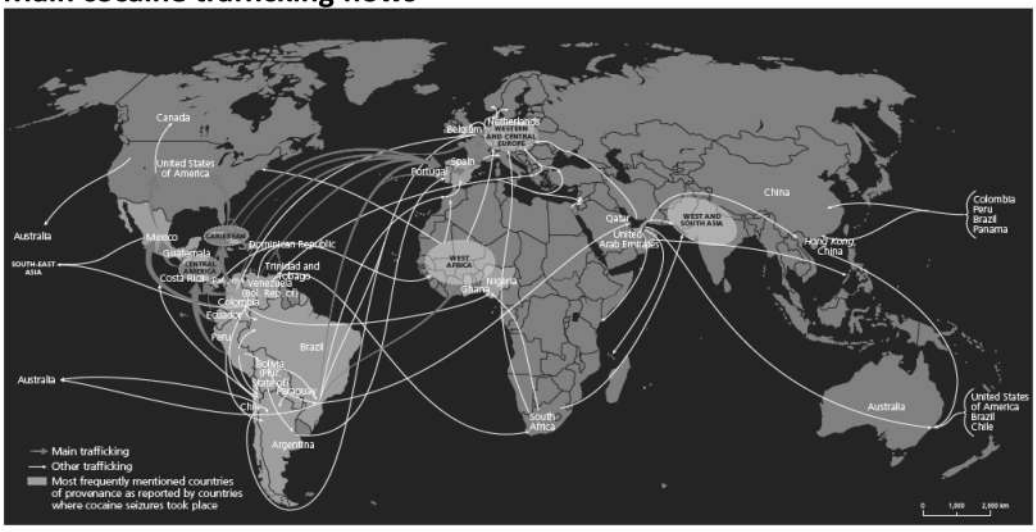
Sources: UNODC, Coca Surveys, Colombia, Peru and Bolivia (Plurinational State of) and US Department of State, INCSR (prior to 2000).

UNODC United Nations Office on Drugs and Crime

UNODC Research

Cocaine trafficking: expanding eastwards

Main cocaine trafficking flows



Source: UNODC elaboration, based on responses to annual report questionnaire and individual drug seizure database.

Notes: The trafficking flows are determined on the basis of country of origin/departure, transit and destination of seized drugs as reported by Member States in the annual report questionnaire and individual drug seizure database: as such, they are to be considered as broadly indicative of existing trafficking routes while several secondary flows may not be reflected. Flow arrows represent the direction of trafficking: origins of the arrows indicate either the area of manufacture or the one of last provenance, and points of arrows indicate either the area of consumption or the one of next destination of trafficking.

The boundaries shown on this map do not imply official endorsement or acceptance by the United Nations. Dashed lines represent undetermined boundaries. The dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties. The final boundary between the Sudan and South Sudan has not yet been determined. A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

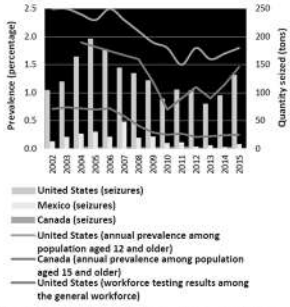
14

UNODC United Nations Office on Drugs and Crime

UNODC Research

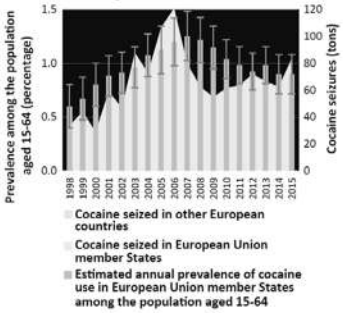
Cocaine market: expansion in North America and possibly in Europe

Quantities of cocaine seized in North America and annual prevalence of cocaine use in the United States and Canada



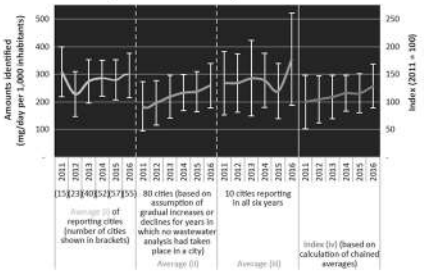
Sources: Responses to the annual reports questionnaire data; the United States National Household Survey on Drug Use and Health; Quest Diagnostics, "Quest Diagnostics Drug Testing Index", full year 2015 tables "(September 2016), and previous years; the Canadian Tobacco, Alcohol and Drugs Survey (CTADS) 2015 and, for previous years, Health Canada, Canadian Alcohol and Drug Monitoring Surveys (CADUM).

Quantities of cocaine seized in Europe and annual prevalence of cocaine use in the European Union



Sources: UNODC calculations based on responses to the UNODC annual report questionnaire; and EMCDDA, Statistical bulletin 2016 and previous years.

Benzoylecgonine (cocaine metabolite) found in wastewater per 1,000 inhabitants in Europe (based on data from 80 European cities)



Source: Calculations based on Sewage Analysis CORE Group Europe (SCORE).

Note: The wastewater analysis took place in 26 countries over the period 2011-2016. All city results have been weighted by the population served by the respective drug treatment plants. The analysis in each city was based on the amounts of benzoylecgonine identified in wastewater over a seven-day period, which allowed for the calculation of a daily average of benzoylecgonine per 1,000 inhabitants living in the area served by the respective wastewater treatment plant. For details of the calculation methods, see the online methodology section of the present report.

15

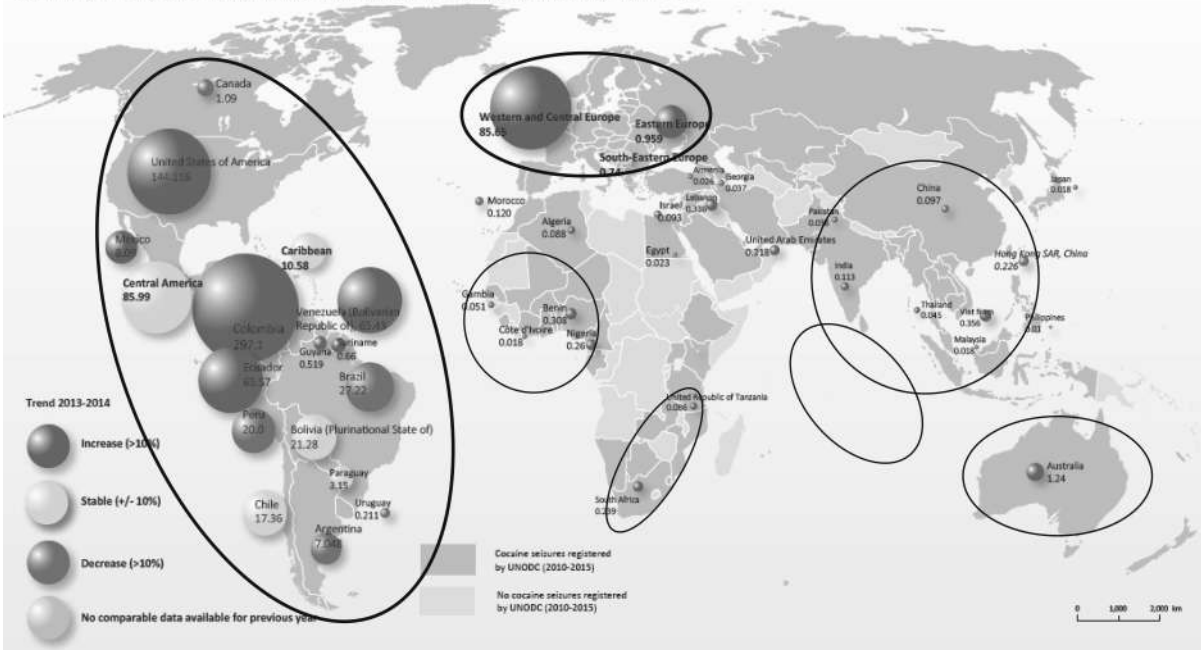
UNODC United Nations Office on Drugs and Crime

UNODC Research

Seizures of cocaine, 2015

Weight in ton equivalents*.

The present map includes data from countries and territories for which official seizure data are available and amount to more than 10 kg.



Source: UNODC annual report questionnaire data, supplemented by other official sources.

Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Dashed lines represent undetermined boundaries. Dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties.

The final boundary between the Sudan and South Sudan has not yet been determined.

A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

* Seizures as reported (no adjustments made for purity). Includes cocaine salts, crack cocaine, coca paste/cocaine base and non-specified cocaine. The vast majority of seizures of cocaine are reported to UNODC by weight. Whenever the availability of information allows, seizures expressed in other units are converted to weight; in particular 1 litre is assumed to have a weight of 1kg. For more details please refer to the methodology section of the World Drug Report.

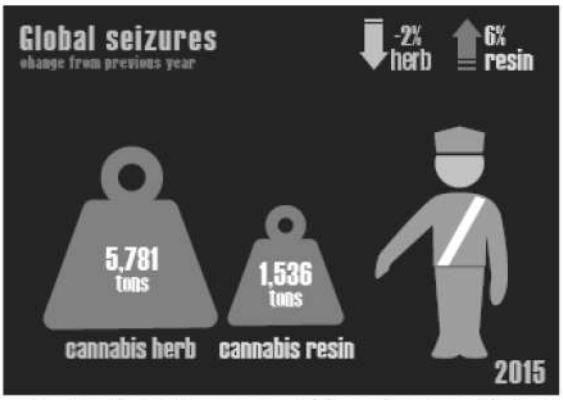
**Available data for 2012 were incomplete and therefore not comparable to 2013 data

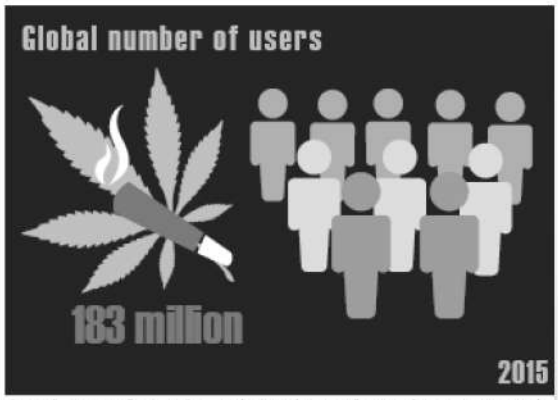
16

UNODC United Nations Office on Drugs and Crime

UNODC Research

C. THE CANNABIS MARKET





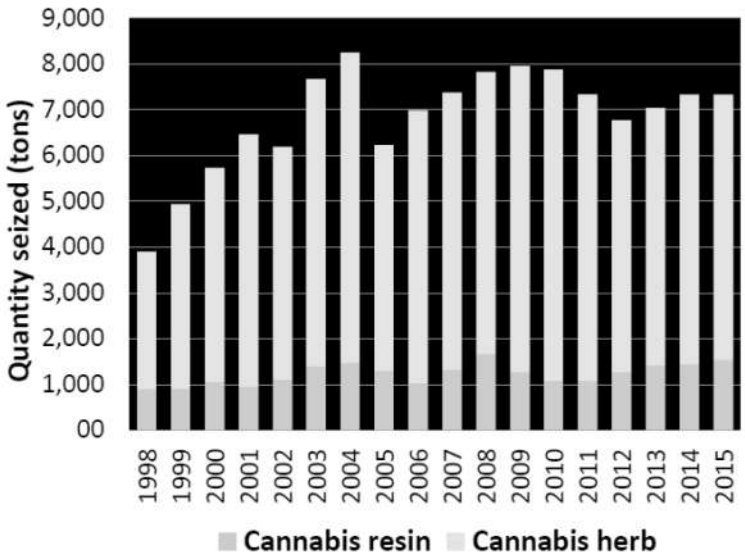
Note: Data refer to 2015. Estimates of illicit cultivation, production and eradication of cannabis and prevalence of cannabis use are available in the annex of booklet 2.

17

UNODC United Nations Office on Drugs and Crime

UNODC Research

Global quantities of cannabis resin and herb seized, 1998-2015



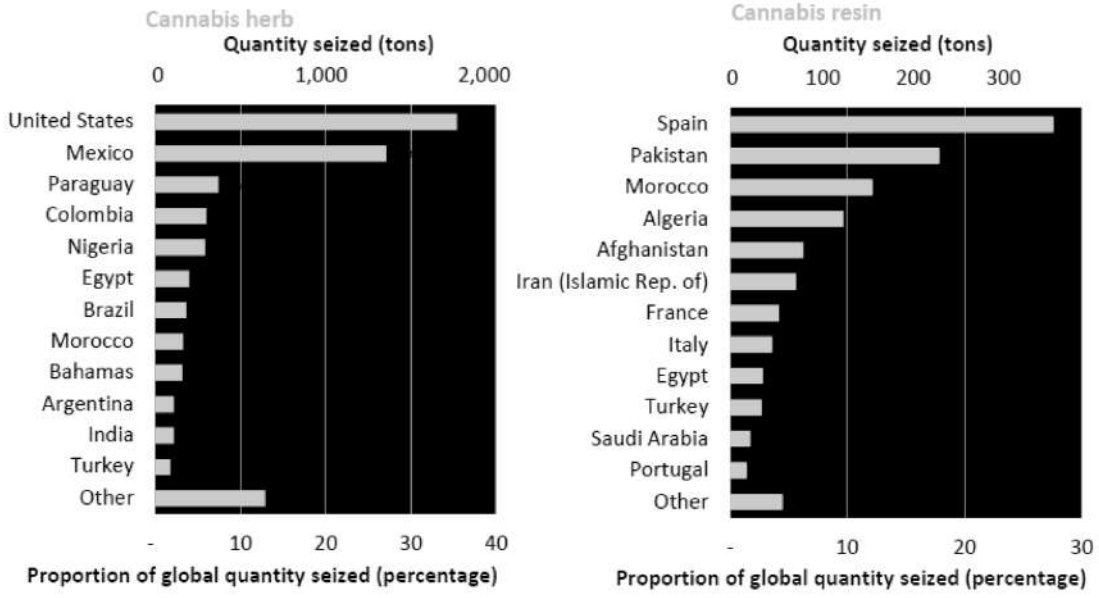
Source: UNODC, based on responses to the annual report questionnaire.

18

UNODC United Nations Office on Drugs and Crime

UNODC Research

Global quantities of cannabis seized, annual average, by product and by country, 2010-2015



Source: UNODC, based on responses to the annual report questionnaire.

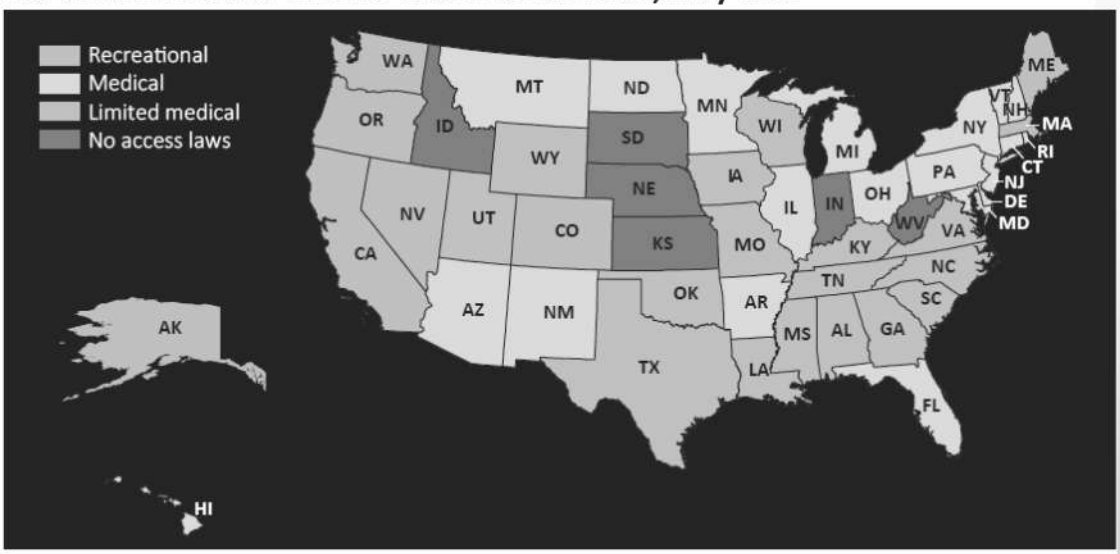
19

UNODC United Nations Office on Drugs and Crime

UNODC Research

Regulations of recreational cannabis use

Jurisdictions in the United States allowing recreational use of cannabis, medical use of cannabis and with no access to cannabis, May 2017



Source: Based on information from the National Conference of State Legislatures (NCSL) as of 12 May 2017.

Notes: The boundaries shown on this map do not imply official endorsement or acceptance by the United Nations.

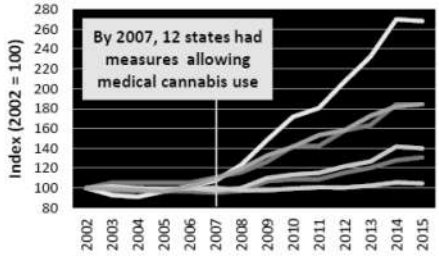
20

UNODC United Nations Office on Drugs and Crime

UNODC Research

Regulations of recreational cannabis use, US

Cannabis use patterns, risk perception, availability, medical cannabis

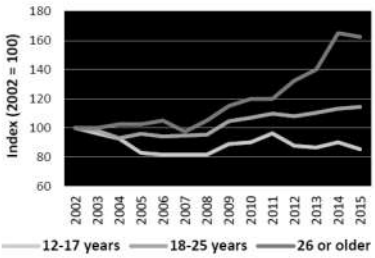


Past-year use
Past-month use
Daily or near daily use
No risk of harm
Availability
People resident in state with medical use legalized

Sources: *Key Substance Use and Mental Health Indicators in the United States: Results from the 2015 National Survey on Drug Use and Health*,
and earlier surveys and adapted from Compton and others, "Marijuana use and use disorders in adults in the USA, 2002-14: analysis of annual cross sectional surveys", Lancet Psychiatry 2016; 3: 954-64.

Note: Compton and others analysed the trends in cannabis use from 2002-2014.

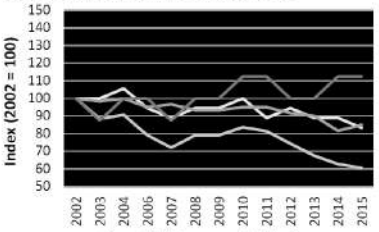
Cannabis use initiation in the past year



12-17 years 18-25 years 26 or older

Source: Elaborated from NSDUH presented in Rachel N. Lipari and others, "Risk and protective factors and estimates of substance use initiation: results from the 2015 National Survey on Drug Use and Health" (SAMHSA, October 2016).

Cannabis use disorders in daily or near-daily users



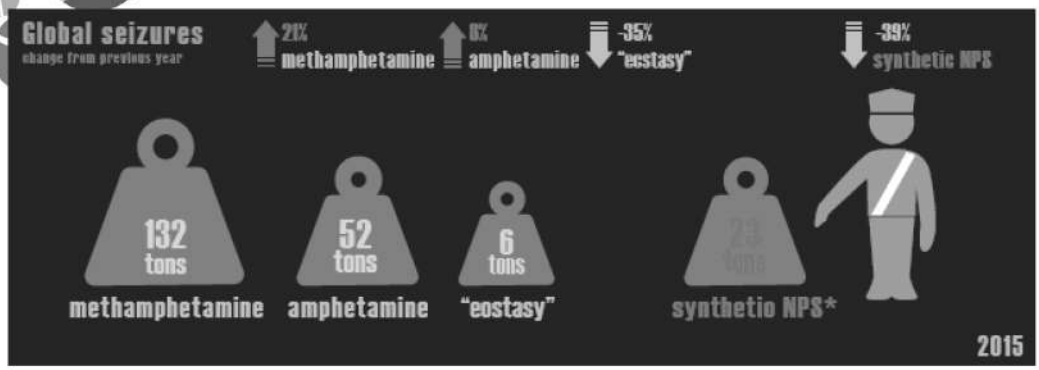
Overall (12 years and older)
12 to 17
18 to 25
26 or older

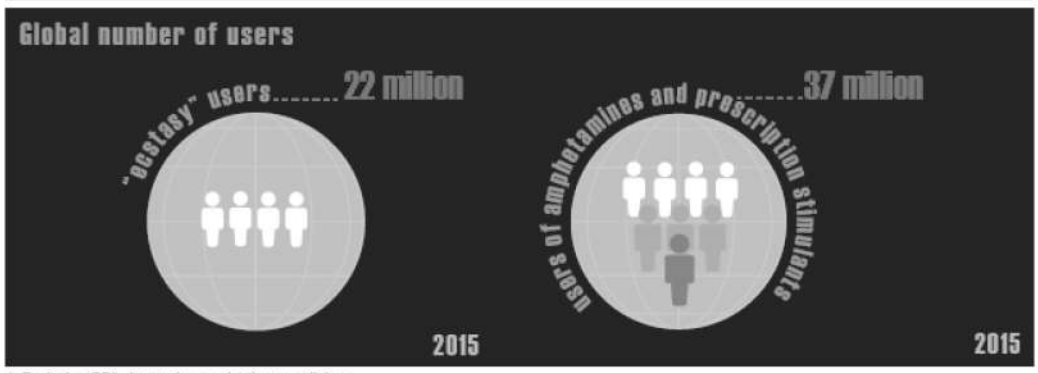
Source: Key Substance Use and Mental Health Indicators in the United States: Results from the 2015 National Survey on Drug Use and Health

21

UNODC United Nations Office on Drugs and Crime

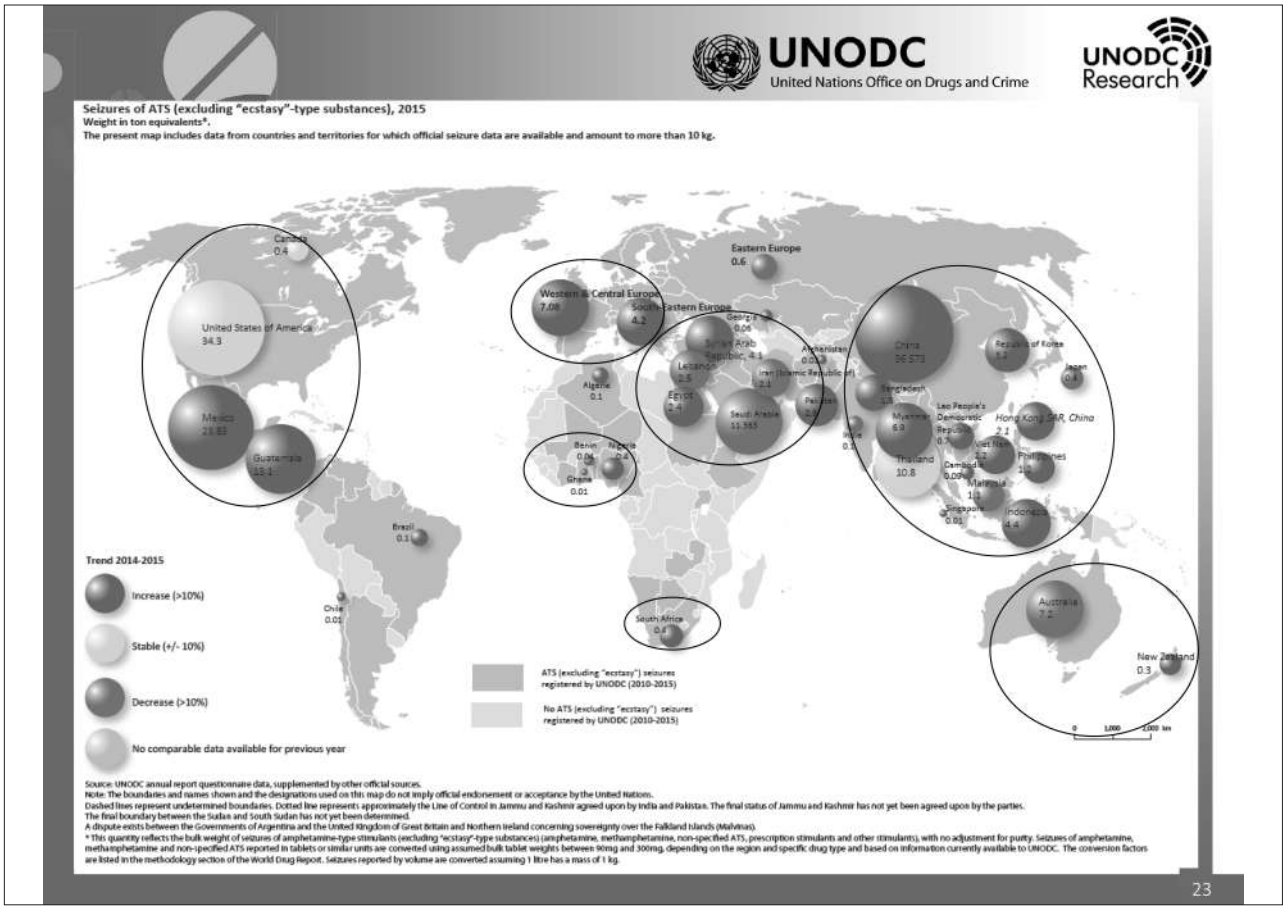
UNODC Research

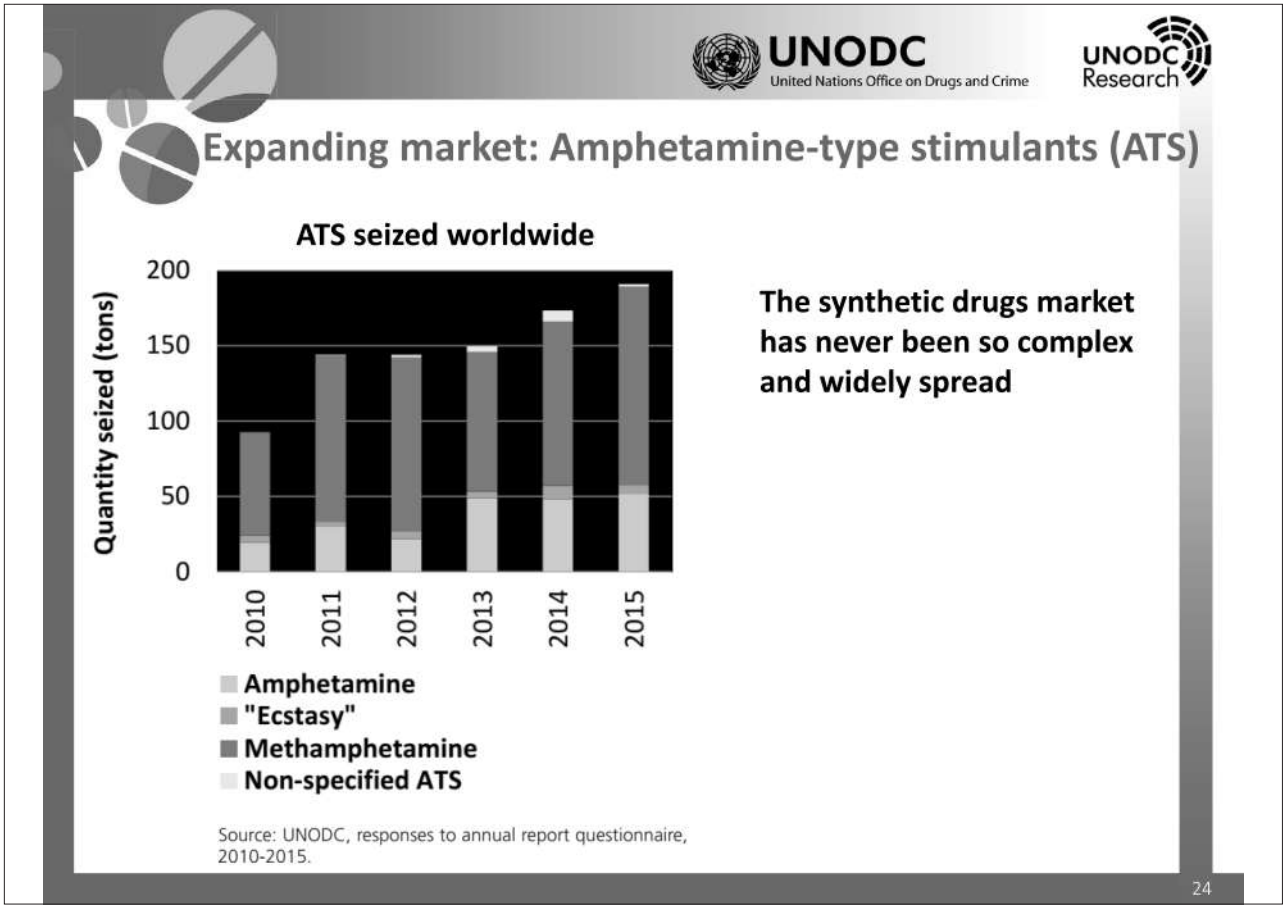


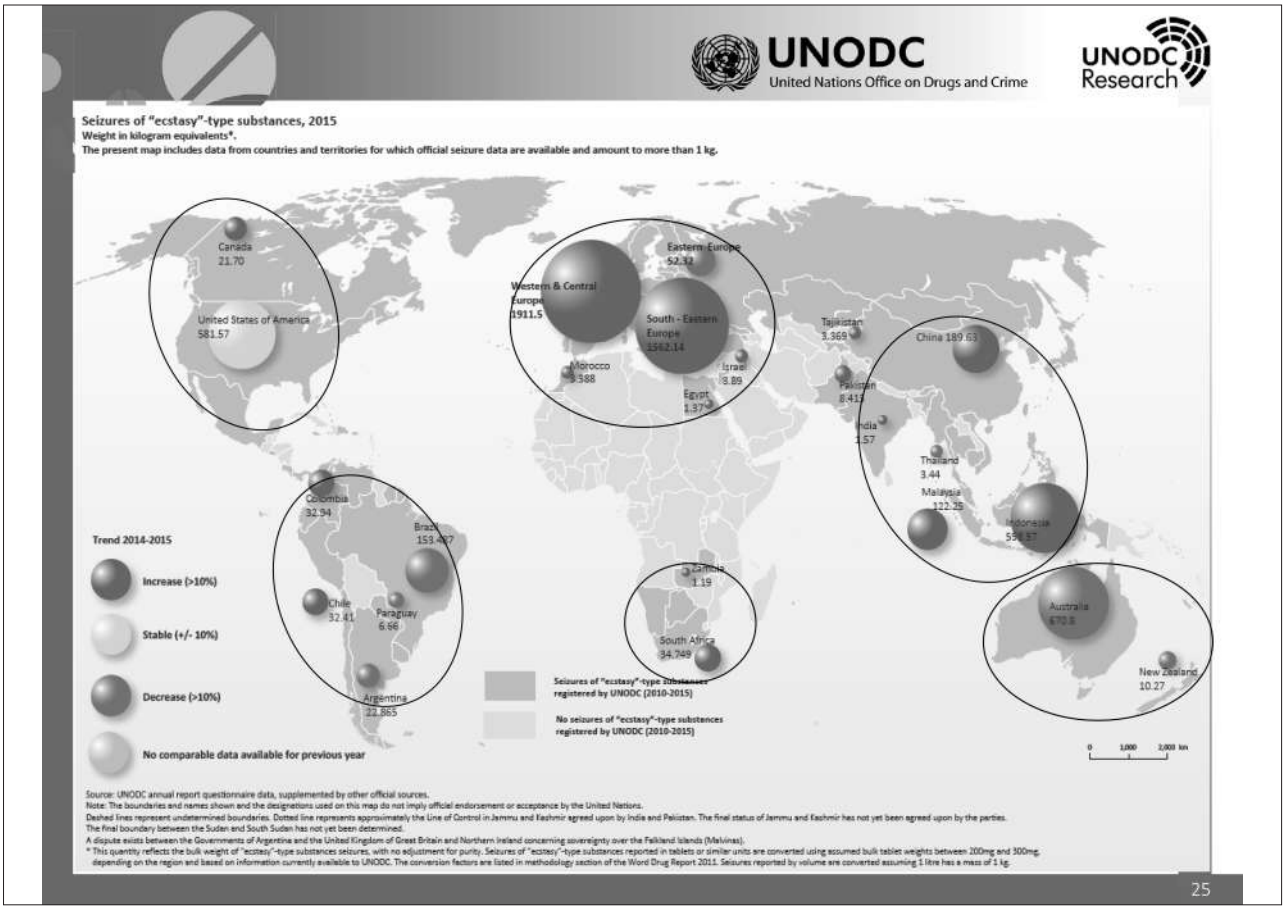


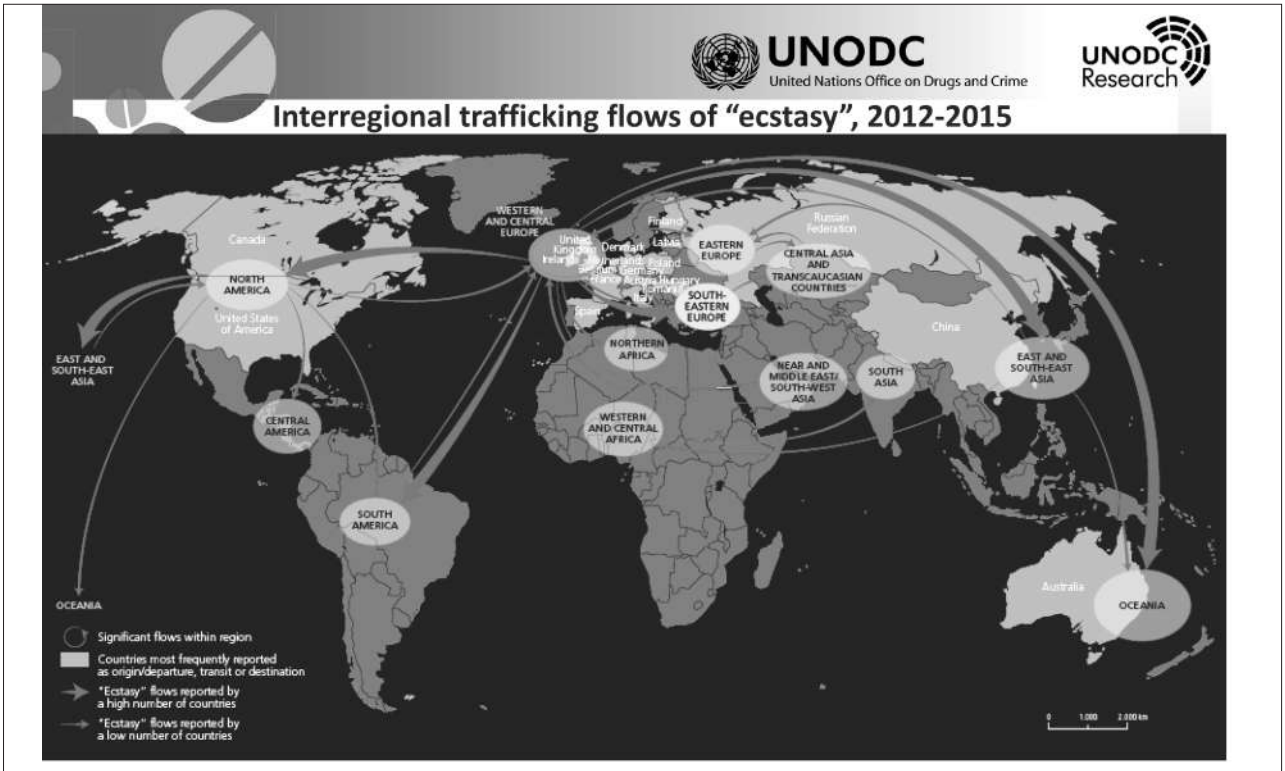
* *Excludes GBL, ketamine and other medicines.*

22


UNODC
United Nations Office on Drugs and Crime
UNODC Research
Seizures of ATS (excluding "ecstasy"-type substances), 2015
Weight in ton equivalents*.
The present map includes data from countries and territories for which official seizure data are available and amount to more than 10 kg.
Trend 2014-2015
Increase (>10%)
Stable (+/- 10%)
Decrease (>10%)
No comparable data available for previous year
ATS (excluding "ecstasy") seizures registered by UNODC (2010-2015)
No ATS (excluding "ecstasy") seizures registered by UNODC (2010-2015)
Source: UNODC annual report questionnaire data, supplemented by other official sources.
Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.
Dashed lines represent undetermined boundaries. Dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties.
The final boundary between the Sudan and South Sudan has not yet been determined.
A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).
* This quantity reflects the bulk weight of seizures of amphetamine-type stimulants (excluding "ecstasy"-type substances) (amphetamine, methamphetamine, non-specified ATS, prescription stimulants and other stimulants), with no adjustment for purity. Seizures of amphetamine, methamphetamine and non-specified ATS reported in tablets or similar units are converted using assumed bulk tablet weights between 90mg and 300mg, depending on the region and specific drug type and based on information currently available to UNODC. The conversion factors are listed in the methodology section of the World Drug Report. Seizures reported by volume are converted assuming 1 litre has a mass of 1 kg.
23


UNODC
United Nations Office on Drugs and Crime
UNODC Research
Expanding market: Amphetamine-type stimulants (ATS)
ATS seized worldwide
Quantity seized (tons)
200
150
100
50
0
2010
2011
2012
2013
2014
2015
Amphetamine
"Ecstasy"
Methamphetamine
Non-specified ATS
The synthetic drugs market has never been so complex and widely spread
Source: UNODC, responses to annual report questionnaire, 2010-2015.
24


UNODC
United Nations Office on Drugs and Crime
UNODC Research
Seizures of "ecstasy"-type substances, 2015
Weight in kilogram equivalents*.
The present map includes data from countries and territories for which official seizure data are available and amount to more than 1 kg.
Canada 21.70
United States of America 581.57
Western & Central Europe 1911.5
Eastern Europe 52.32
South - Eastern Europe 1562.14
Morocco 3.588
Israel 3.89
Egypt 1.374
Tajikistan 3.369
China 189.63
Pakistan 8.413
India 1.57
Thailand 3.44
Malaysia 122.25
Indonesia 556.57
Colombia 32.94
Brazil 153.497
Chile 32.41
Paraguay 6.66
Argentina 32.865
Zambia 1.19
South Africa 34.749
Australia 670.8
New Zealand 10.27
Trend 2014-2015
Increase (>10%)
Stable (+/- 10%)
Decrease (>10%)
No comparable data available for previous year
Seizures of "ecstasy"-type substances registered by UNODC (2010-2015)
No seizures of "ecstasy"-type substances registered by UNODC (2010-2015)
Source: UNODC annual report questionnaire data, supplemented by other official sources.
Note: The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.
Dashed lines represent undetermined boundaries. Dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties.
The final boundary between the Sudan and South Sudan has not yet been determined.
A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).
* This quantity reflects the bulk weight of "ecstasy"-type substances seizures, with no adjustment for purity. Seizures of "ecstasy"-type substances reported in tablets or similar units are converted using assumed bulk tablet weights between 200mg and 300mg, depending on the region and based on information currently available to UNODC. The conversion factors are listed in methodology section of the Word Drug Report 2011. Seizures reported by volume are converted assuming 1 litre has a mass of 1 kg.
25

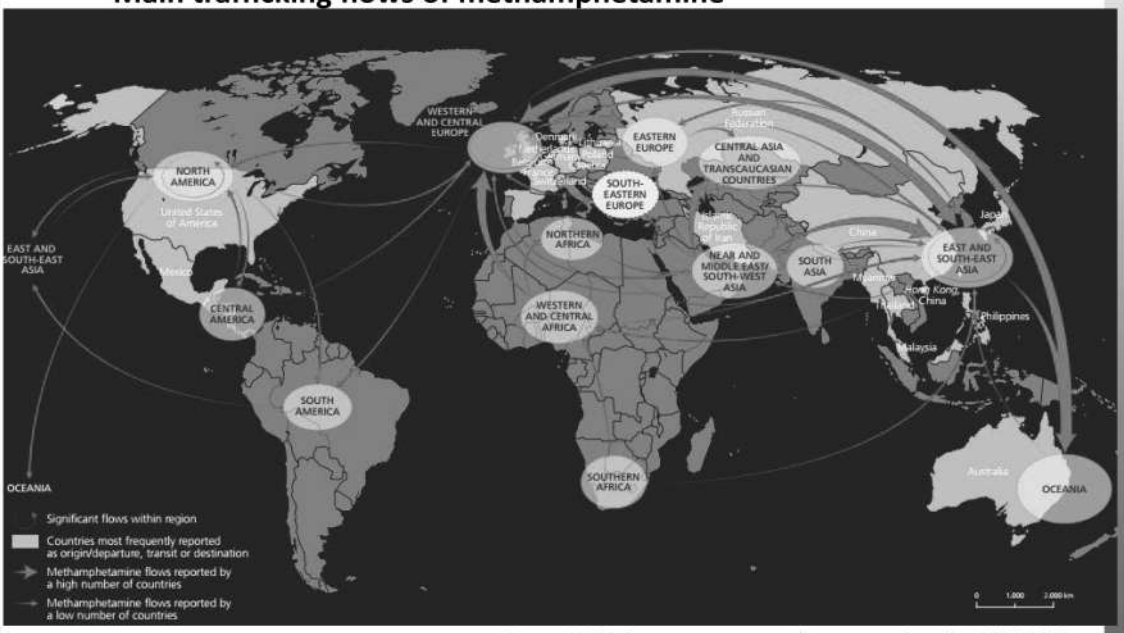

UNODC
United Nations Office on Drugs and Crime
UNODC Research
Interregional trafficking flows of "ecstasy", 2012-2015
WESTERN AND CENTRAL EUROPE
EASTERN EUROPE
Russian Federation
CENTRAL ASIA AND TRANSCAUCASIAN COUNTRIES
SOUTH-EASTERN EUROPE
NORTH AMERICA
Canada
United States of America
China
NORTHERN AFRICA
NEAR AND MIDDLE EAST/ SOUTH-WEST ASIA
SOUTH ASIA
EAST AND SOUTH-EAST ASIA
EAST AND SOUTH-EAST ASIA
CENTRAL AMERICA
WESTERN AND CENTRAL AFRICA
SOUTH AMERICA
Australia
OCEANIA
OCEANIA
Significant flows within region
Countries most frequently reported as origin/departure, transit or destination
"Ecstasy" flows reported by a high number of countries
"Ecstasy" flows reported by a low number of countries
Source: UNODC elaboration, based on responses to annual report questionnaire, 2012-2015.
Note: The origins of the flow arrows do not necessarily indicate the source/manufacture of "ecstasy". Flow arrows represent the direction of "ecstasy" trafficking and are not an indication of the quantity trafficked. The boundaries shown on this map do not imply official endorsement or acceptance by the United Nations. Dashed lines represent undetermined boundaries. The dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties. The final boundary between the Sudan and South Sudan has not yet been determined.
26

UNODC United Nations Office on Drugs and Crime

UNODC Research

Methamphetamine: interregional trafficking flows

Main trafficking flows of methamphetamine



Source: UNODC, responses to annual report questionnaire, 2012-2015.

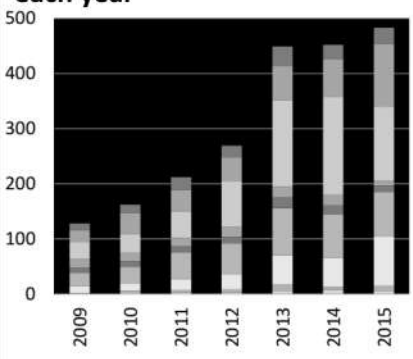
27

UNODC United Nations Office on Drugs and Crime

UNODC Research

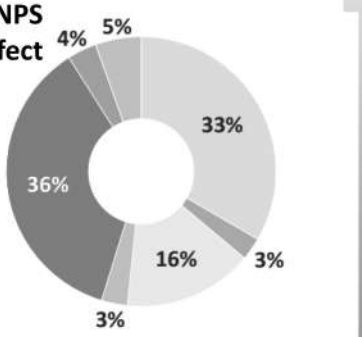
Expanding market: new psychoactive substances

No. of different NPS reported each year



UNODC, early warning advisory on new psychoactive substances.

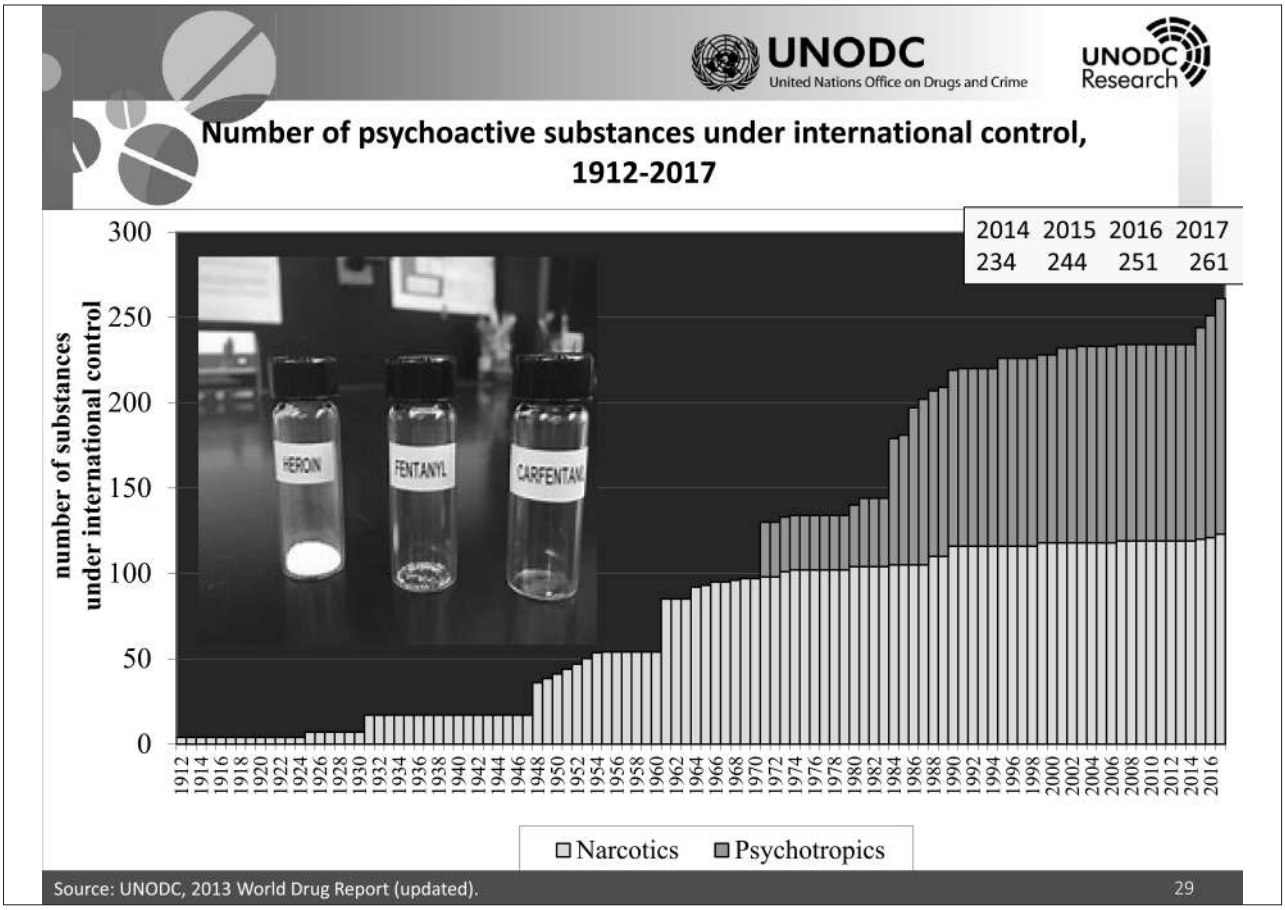
Proportion of NPS reported by effect

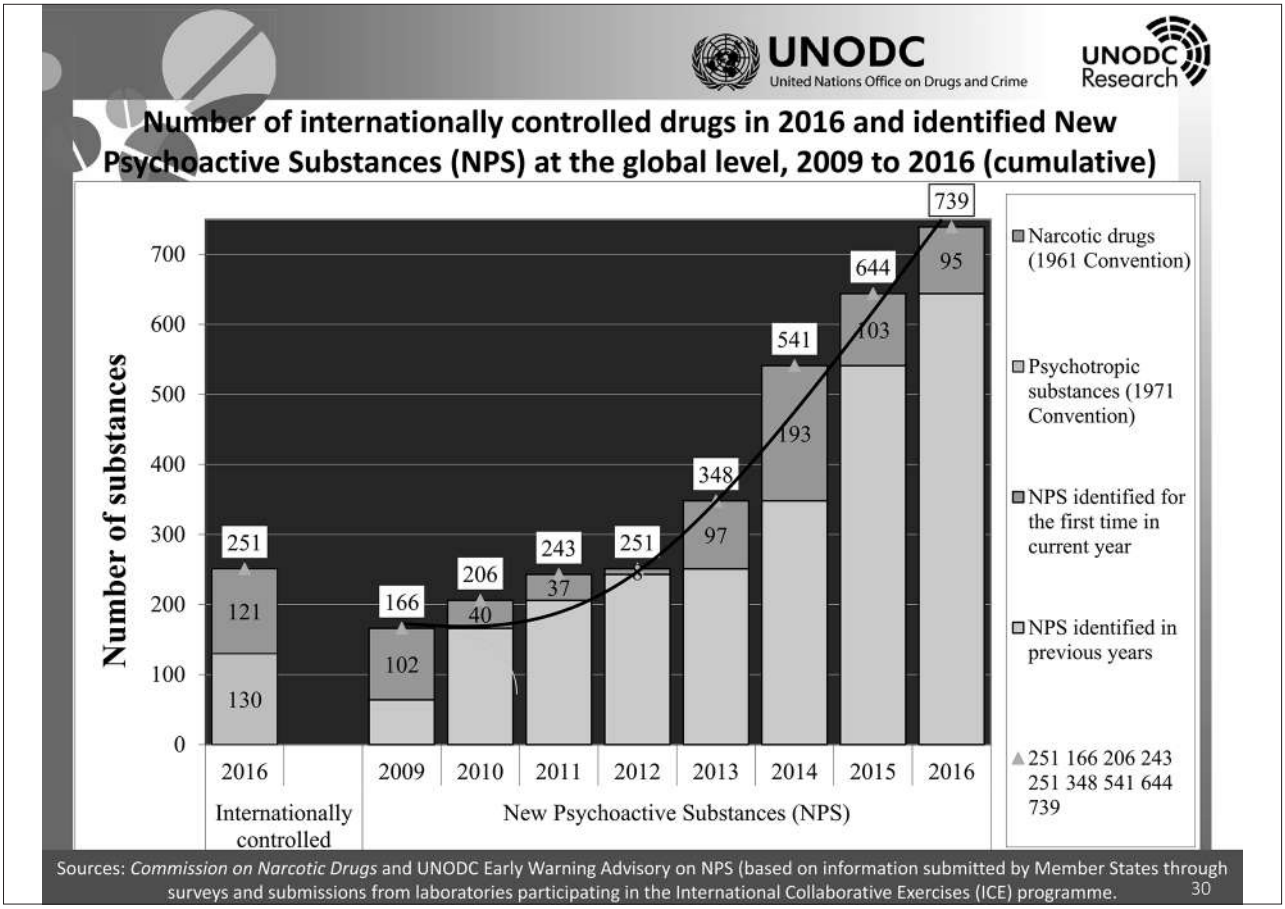


Source: UNODC, early warning advisory on new psychoactive substances. Based on the analysis of 717 NPS.

Note: The analysis of the pharmacological effects comprises NPS registered up to December 2016. Plant-based substances were excluded from the analysis as they usually contain a large number of different substances some of which may not have been known and whose effects and interactions are not fully understood.

28


UNODC
United Nations Office on Drugs and Crime
UNODC Research
Number of psychoactive substances under international control, 1912-2017
2014 2015 2016 2017
234 244 251 261
number of substances under international control
300
250
200
150
100
50
0
HEROIN
FENTANYL
CARFENTANIL
Narcotics
Psychotropics
Source: UNODC, 2013 World Drug Report (updated).
29

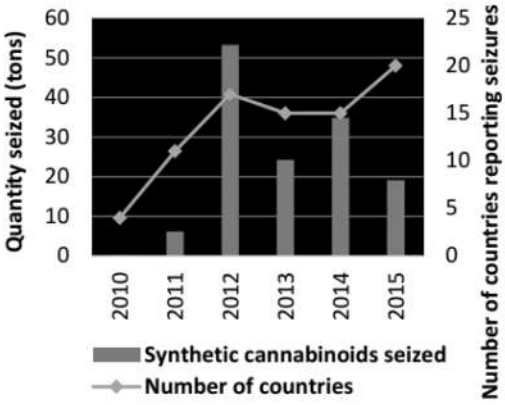

UNODC
United Nations Office on Drugs and Crime
UNODC Research
Number of internationally controlled drugs in 2016 and identified New Psychoactive Substances (NPS) at the global level, 2009 to 2016 (cumulative)
Number of substances
700
600
500
400
300
200
100
0
251
121
130
166
102
206
40
243
37
251
8
348
97
541
193
644
103
739
95
2016
2009
2010
2011
2012
2013
2014
2015
2016
Internationally controlled
New Psychoactive Substances (NPS)
Narcotic drugs (1961 Convention)
Psychotropic substances (1971 Convention)
NPS identified for the first time in current year
NPS identified in previous years
251 166 206 243 251 348 541 644 739
Sources: Commission on Narcotic Drugs and UNODC Early Warning Advisory on NPS (based on information submitted by Member States through surveys and submissions from laboratories participating in the International Collaborative Exercises (ICE) programme.
30

UNODC United Nations Office on Drugs and Crime

UNODC Research

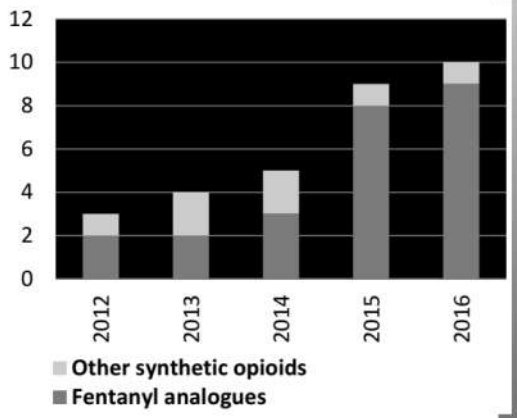
NPS: persistence of synthetic cannabinoids and increase of synthetic opioids

Synthetic cannabinoids seizures worldwide



Source: UNODC, responses to annual report questionnaire, 2010-2015.
Note: Contains seizures in the form of herbal material, as well as powder and liquids.

Annual number of synthetic opioids (NPS) reported to UNODC, 2012-2016



Source: UNODC early warning advisory on new psychoactive substances. Includes only synthetic opioids reported as NPS (i.e., with no current approved medical use). Data for 2016 are preliminary.

31

UNODC United Nations Office on Drugs and Crime

UNODC Research

Drugs and organized crime

Changing business models for drug trafficking and organized crime

European Union

Source: UNODC, adapted from Europol, *SOCTA 2017*.

Branching out to seize new crime opportunities

Continued importance of drugs

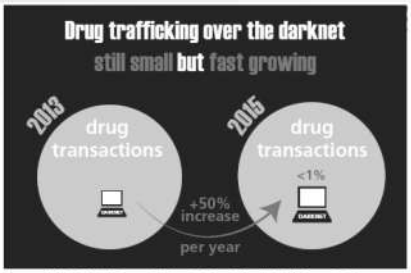
Structural transformations

Technological changes

UNODC United Nations Office on Drugs and Crime

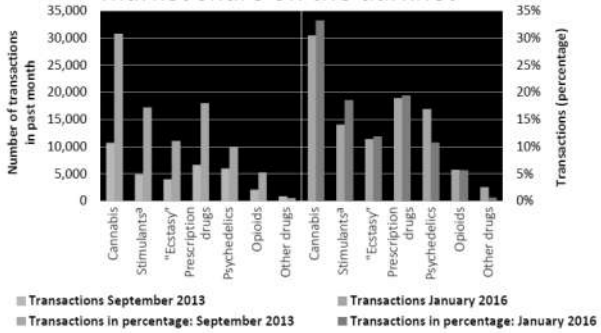
UNODC Research

Drugs on the darknet



Source: Kristy Kruithof and others, *Internet-facilitated Drugs Trade: An Analysis of the Size, Scope and the Role of the Netherlands.*

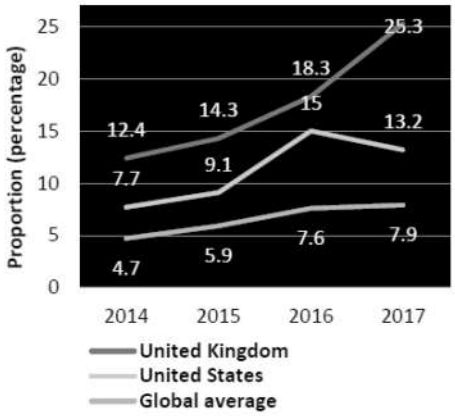
Number of transactions and their market share on the darknet



[a] *Amphetamines and cocaine*

Source: Kruithof and others, *Internet-facilitated Drugs Trade.*

Annual drug users obtaining drugs over the darknet in the past 12 months



Note: Based on annual information from more than 60,000 past-year drug users. In 2014, the question was asked specifically in relation to the Silk Road, the then dominant darknet market, as the survey was conducted just after the Silk Road's closure; from 2015, the question was asked in relation to all darknet markets.

UNODC United Nations Office on Drugs and Crime

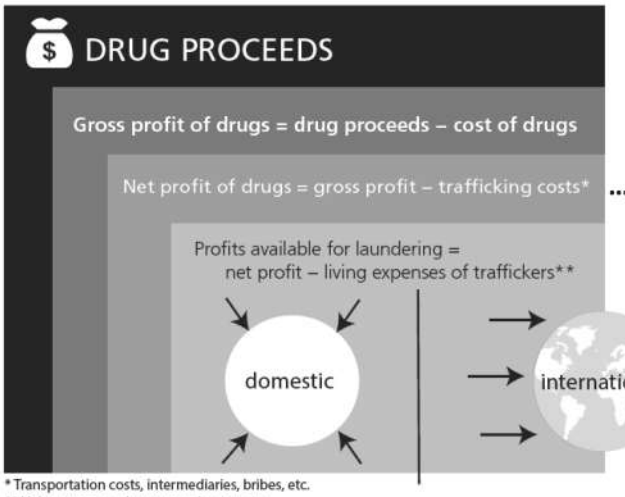
UNODC Research

Drugs and illicit financial flows

Drugs: 1/5-1/3 of the income of transnational organized crime

60-70% of global drug proceeds may be laundered

Measurement concepts



* Transportation costs, intermediaries, bribes, etc.

** Living expenses, luxury goods, cars, etc.

A third of drug proceeds may result in illicit financial flows

Impact of drug proceeds and illicit financial flow may be small in the majority of countries …

… but may be substantial for some drug producing developing countries

Drug proceeds damage economies in the long term

= illicit financial flows related to drugs

UNODC
United Nations Office on Drugs and Crime

UNODC Research

Drugs and corruption

Corruption facilitates illicit drug markets, which fuel corruption

Corruption exists all along the drug supply chain

High-level vs low-level corruption

Corruption and violence

Supply chain	Vulnerable sectors	Actors
DRUG PRODUCTION	• Eradication teams • Alternative development projects • Law enforcement (police, customs, etc.) • Criminal justice system • Chemical companies	• Farmers seek to avoid eradication on their fields • Farmers and communities seek to benefit from alternative development investment • Entrepreneurs seek to sell their products and services • Producers and manufacturers seek to avoid controls, dismantlement of production sites and arrest • Producers and manufacturers seek to avoid sentencing • Manufacturers seek to divert precursor chemicals
DRUG TRAFFICKING	• Law enforcement (police, customs, etc.) • Criminal justice system • Transport companies	• Traffickers seek to avoid controls, dismantlement of groups and arrest • Traffickers seek to avoid sentencing • Traffickers seek to ship drugs by air, sea, land
DRUG CONSUMPTION	• Medical doctors • Pharmacies	Drug users seek to obtain prescriptions for non-medical use of drugs (e.g., opioids, amphetamines, medical cannabis) Drug users seek to obtain medicines without prescription

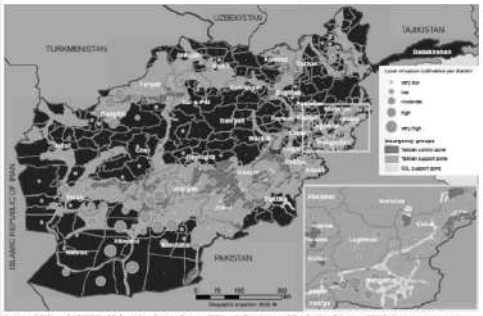
UNODC
United Nations Office on Drugs and Crime

UNODC Research

Drugs and terrorism, insurgency

Entities placed under the consolidated UN Security Council Sanctions list
Insurgent groups and other non-State armed groups

Area under control of insurgent groups and area under opium poppy cultivation in Afghanistan, 2016



Source: MCN and UNODC, *Afghanistan Opium Survey 2016 – Cultivation and Production* (Vienna, 2016). Insurgency groups taken from the Institute for the Study of War, November 2016.

Note: the boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations. Dashed lines represent undetermined boundaries. Dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties. The insurgency groups are mapped with different classes of confidence, which have been merged for the purpose of this map. Geographic projection: WGS 84.

The Taliban involvement in the illicit drug (opiates) trade in Afghanistan is well documented

Also evidence of the involvement of the FARC in Colombia in the coca/cocaine illicit trade, before the Peace Agreement of 2016

But evidence implicating other groups is comparatively thin

Income from drugs is key for some groups

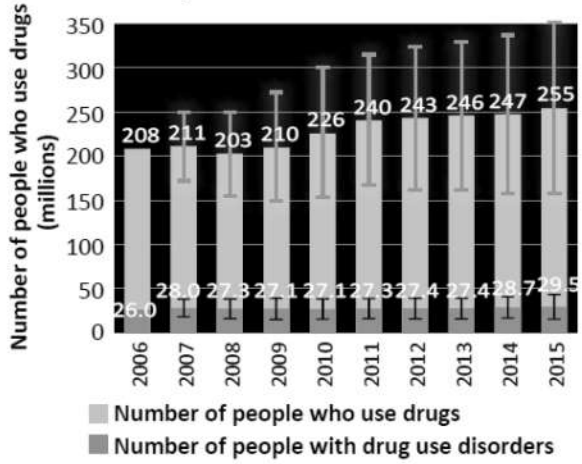
Only one revenue stream of many for most terrorist groups

UNODC United Nations Office on Drugs and Crime

UNODC Research

Drug use

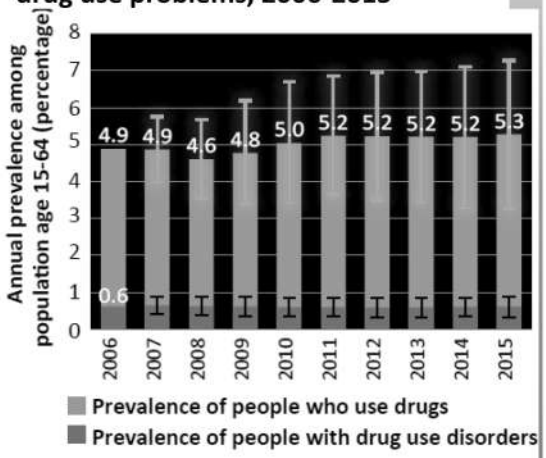
Global trends in estimated number of drug users and people with drug user disorders, 2006-2015



Source: UNODC, responses to annual report questionnaire.

Note: Estimates are for adults (aged 15-64) who used drugs in the past year.

Global trends in the estimated prevalence of drug use and prevalence of people with drug use problems, 2006-2015



Source: UNODC, responses to the annual report questionnaire.

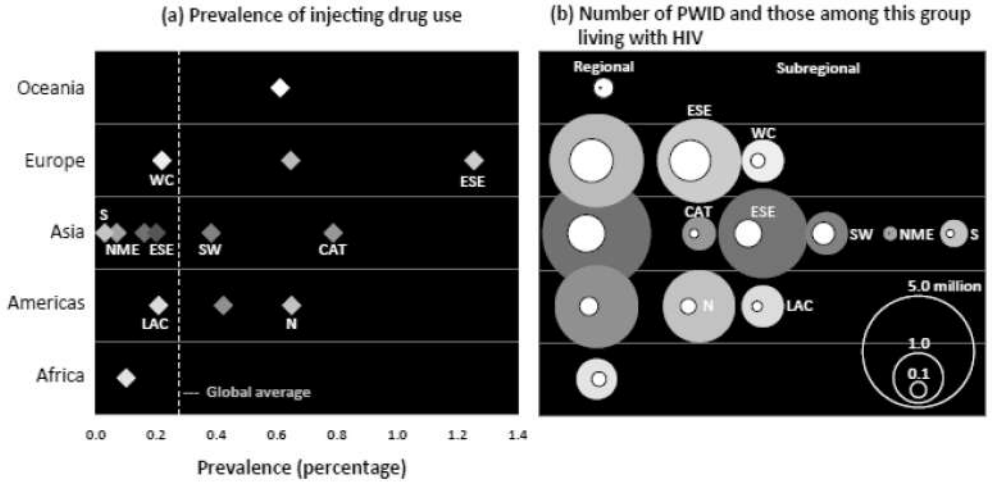
Note: Estimated percentage of adults (aged 15-64) who used drugs in the past year.

37

UNODC United Nations Office on Drugs and Crime

UNODC Research

12 million people inject drugs



Source: Responses to the annual report questionnaire; progress reports of UNAIDS on the global AIDS response (various years); the former Reference Group to the United Nations on HIV and Injecting Drug Use; published peer-reviewed articles and government reports.

Notes: Unlabelled symbols are regional estimates. Subregions are denoted as follows: Europe — Western and Central (WC) and Eastern and South-Eastern (ESE); Asia — Central Asia and Transcaucasia (CAT), East and South-East (ESE), South-West (SW), Near and Middle-East (NME) and South (S); and the Americas — North America (N) and Latin America and the Caribbean (LAC). For Oceania, estimates are based on data from Australia and New Zealand only.
Part (a): Percentage of population aged 15-64 years who inject drugs.
Part (b): Number of PWID (outer circle) and number of PWID living with HIV (inner circle).

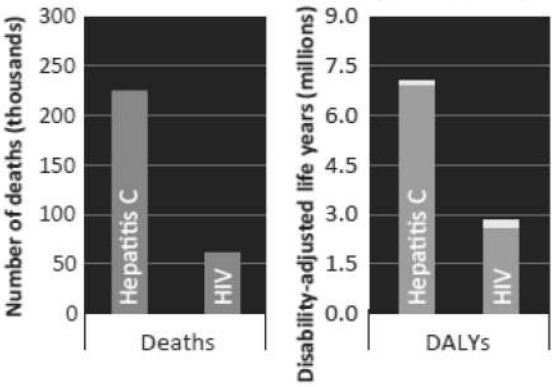
38

UNODC United Nations Office on Drugs and Crime

UNODC Research

Hepatitis C accounts for a great harm

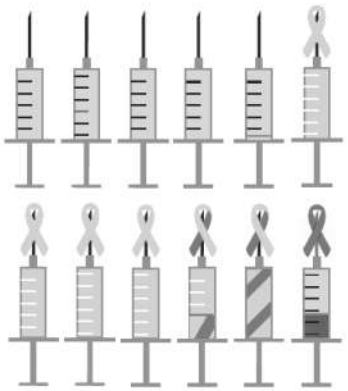
Burden of disease from hepatitis C and HIV from injecting drug use, 2013



Source: Degenhardt and others, "Estimating the burden of disease attributable to injecting drug use as a risk factor for HIV, hepatitis C, and hepatitis B.

Notes: DALYs comprise "healthy" years of life lost as a result of both premature death and years lived with disability.

12 million people inject drugs



1.6 million people who inject drugs are living with HIV

6.1 million are living with hepatitis C

1.3 million are living with both hepatitis C and HIV

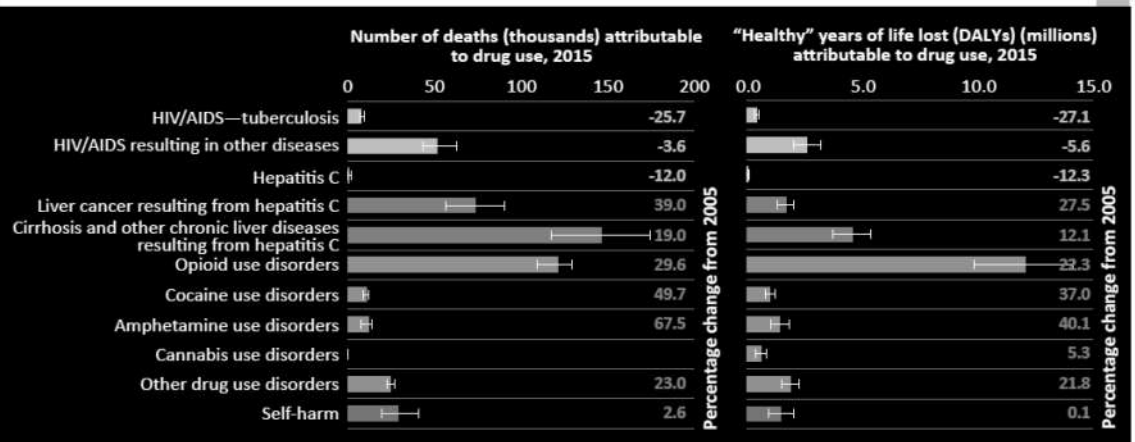
39

UNODC United Nations Office on Drugs and Crime

UNODC Research

Health related harm

Number of deaths and "healthy" years of life lost (DALYs) attributable to drug use, 2015



Source: "Global, regional, and national comparative risk assessment of 79 behavioural, environmental and occupational, and metabolic risks or clusters of risks, 1990-2015: a systematic analysis for the Global Burden of Disease Study 2015".

Notes: Error bars represent uncertainty intervals. Numbers given in charts are percentage changes from 2005.

40

UNODC United Nations Office on Drugs and Crime

UNODC Research

Heroin and synthetic opioids

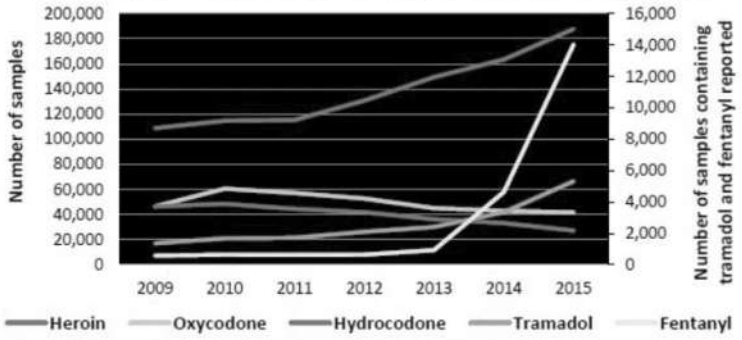
The opioid market is becoming more diversified

Misuse of pharmaceutical drugs

Prescription forgery, diversion, illicit manufacture, counterfeit medicines

***Research opioids* on the market (NPS)**

Number of samples submitted to and analysed by laboratories, by type of drug identified, United States



Source: United States Drug Enforcement Administration, National Forensic Laboratory Information System reports.

41

UNODC United Nations Office on Drugs and Crime

Summary

- Opiates:
  - Poppy cultivation – decreased in 2015 for first time since 2009 but since 2016 upwards trend
  - Heroin – seizures stable since 2008
  - Illicit Morphine and Opium – concentrated in SW Asia
- Cocaine:
  - Coca cultivation and cocaine manufacture – increases
  - Seizures stable since 2010
- Cannabis:
  - Herb – decreasing since 2010 (driven by North America) - stabilisation
  - Resin – increasing since 2011 (driven by North Africa and SW Asia)
- ATS:
  - Amphetamine – continued increasing general trend since 2000
  - Methamphetamine – record levels in 2011, remained stable since
  - Ecstasy – notable increase in 2014 due to multi-ton seizures in Australia – then decrease

42

UNODC
United Nations Office on Drugs and Crime

Main Requirements of the International Drug Control system: focus on drug trafficking

UNAFEI's 169th International Training Course

Tokyo, 1 June 2018

1

UNODC
United Nations Office on Drugs and Crime

Structure

- The international drug control conventions
- Institutional framework
- Main mandatory requirements
- Examples of inter-State cooperation or national level coordination to counter drug trafficking
- Possible topics for consideration

2

UNODC
United Nations Office on Drugs and Crime

A. International drug control system Some historical background

- Surge in opium abuse in China at the end of the XIXth century
- Growing misuse of narcotics in Europe and the United States
- Increasing threat that the related illicit traffic posed to governments' stability

3

UNODC
United Nations Office on Drugs and Crime

A. INTERNATIONAL DRUG CONTROL

1909: Shanghai Conference – Opium Commission: 13 countries

1912: International Opium Convention (The Hague)

Objective: limitation of international shipments of drugs (opium, morphine, cocaine, heroine) for medical purposes; entered into force in 1915; international importance: 1919 peace treaty of Versailles

1920: LEAGUE OF NATIONS

Establishment of 'Advisory Committee on Traffic in Opium and Other Dangerous Drugs' (now Commission on Narcotic Drugs)

1925: Second International Opium Convention

Cannabis under control; statistical control system, import certificates and export authorizations; Permanent Central Narcotics Board (now INCB)

1931: Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs

Creation of the Drug Supervisory Body

1936: Convention for the Suppression of the Illicit Traffic in Dangerous Drugs

4

UNODC
United Nations Office on Drugs and Crime

International Conventions on Drug Control

Promotion and protection of public health

1961 Single Convention on Narcotic Drugs (as amended in 1972)

186 Parties

1971 Convention on Psychotropic Substances

184 Parties

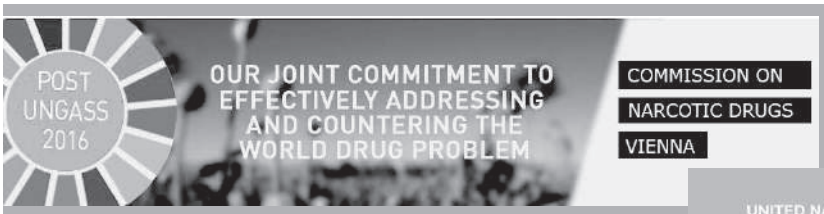
Ensure the availability of controlled substances exclusively for medical and scientific purposes, and prevent their diversion

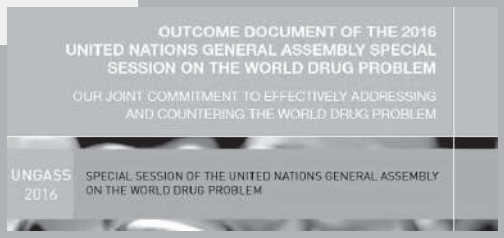
1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

190 Parties

5

UNODC
United Nations Office on Drugs and Crime





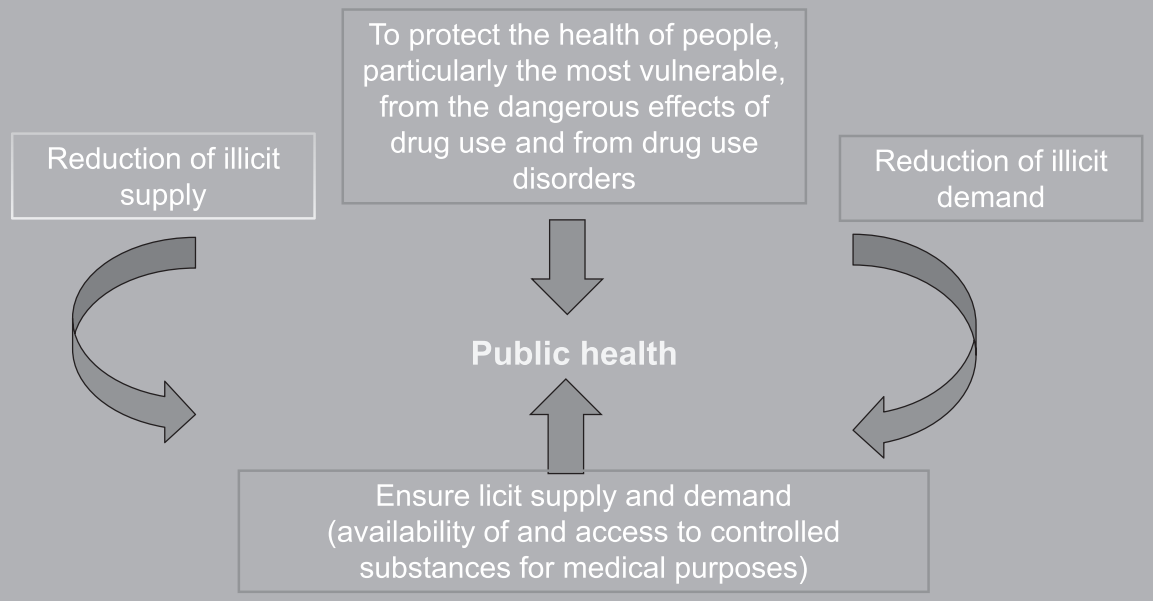
www.unodc.org/ungass2016/

www.unodc.org/postungass2016

6

UNODC
United Nations Office on Drugs and Crime

Health at the centre of the drug control system



7

UNODC
United Nations Office on Drugs and Crime

Which substances are controlled?

Selection of controlled substances is based on scientific assessments (drugs: WHO; precursors: INCB) and ultimately decided by States

8

UNODC
United Nations Office on Drugs and Crime

1961 and 1971 Conventions

- Consolidation of earlier drug control treaties; mainly plant-based drugs ('61)
- Control of cultivation (coca bush and cannabis plant in addition to poppy plant); establishment of national monopolies
- Control of synthetic drugs (ATS, hallucinogens, sedative-hypnotics such as barbiturates and benzodiazepines) ('71)
- 1972 Protocol and 1971 Convention: treatment to drug abusers, to be considered in addition or as alternative to imprisonment
- Creation of the INCB, merging the Permanent Central Board and the Drug Supervisory Body, to ensure balance between supply and demand

9

UNODC
United Nations Office on Drugs and Crime

1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

- Harmonized definition and scope of offences and sanctions

  e.g. : trafficking, money-laundering
- Established a control system for precursor chemicals
- Establishes mechanisms for cooperation
- Legal means to effectively combat illicit trafficking

10

UNODC
United Nations Office on Drugs and Crime

Common goal

To protect public health

Law enforcement and criminal justice efforts are amongst the *means* to achieve that goal

11

UNODC
United Nations Office on Drugs and Crime

UN Convention Against Transnational Organized Crime

- 189 Parties
- Scope of application:
  - (a) **participation in an organized criminal group**
  - (b) **corruption**
  - (c) **money-laundering**
  - (d) **obstruction of justice and**
  - (e) **serious crime**

  which is transnational and involves an organized criminal group

UNODC
United Nations Office on Drugs and Crime

UN Convention Against Transnational Organized Crime

•Organized criminal group: "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit"

•Serious crime- defined as "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty"

13

UNODC
United Nations Office on Drugs and Crime

UN Convention Against Corruption

- Applies to the prevention, investigation and prosecution of, inter alia:
  - active and passive bribery (national and foreign public officials, and in the private sector)
  - Trading in influence, abuse of functions, illicit enrichment
- Array of measures on freezing, seizure, confiscation and return of proceeds of corruption offences
- 184 Parties

14

UNODC
United Nations Office on Drugs and Crime

International Convention for the Suppression of the Financing of Terrorism

- Article 2: Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An Act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

•188 Parties

15

UNODC
United Nations Office on Drugs and Crime

The institutional infrastructure for international drug control

UN Commission on Narcotic Drugs (CND)

- **Central Policy-making Body**
  - **53 member States elected by ECOSOC for 4 Years**
  - **Annuals Sessions**
- **Functions**
  - **monitors global trends**
  - **proposes new concerted measures or agreed policies**
  - **decides on inclusions and changes in the Schedules**
  - **CND reports to the ECOSOC and to the GA**

16

UNODC
United Nations Office on Drugs and Crime

The institutional infrastructure for international drug control

INTERNATIONAL NARCOTIC CONTROL BOARD (INCB)

- **Permanent and Independent Body**
  - 13 members elected for a 5 years term in their personal capacity
- **Functions**
  - Monitors implementation of the conventions
  - Power of sanction
  - Administers the statistical system of drug control
  - Submits an annual report on the world situation.

17

UNODC
United Nations Office on Drugs and Crime

The institutional infrastructure for international drug control

WORLD HEALTH ORGANIZATION (WHO)

- Treaty role on reviewing substances and making recommendations to the CND on scheduling
- Leading entity on global health matters
- MiNDbank online database (www.mindbank.info)

18

UNODC
United Nations Office on Drugs and Crime

The institutional infrastructure for international drug control

UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)

- **Provides technical assistance to States**
- **Assists in efforts to reduce drug problem**
- **World Drug Report**
- **Assists the CND and the INCB in implementing their treaty-based functions**
- **Container Control Programme, Global Programme against Money-Laundering, Legal services, Drug repository, Sherloc database**

19

UNODC
United Nations Office on Drugs and Crime

Main Mandatory Requirements

- **Institutional Infrastructure at national level**
- **Regulation of Trade in Controlled Drugs for Licit Use and in Controlled Chemicals**
- **Demand Reduction**
- **Drug-Related Criminal Justice**
- **International Justice Sector Cooperation**

20

UNODC
United Nations Office on Drugs and Crime

Main Mandatory Requirements

Institutional Infrastructure

- Establish and maintain a special licit drug regulatory administration (1961, 1971 C´n)
- Establish and maintain central offices for international cooperation
  - precursor control (1988 C´n)
  - mutual legal assistance (1988 C´n)
  - maritime cooperation (1988 C´n)

21

UNODC
United Nations Office on Drugs and Crime

Main Mandatory Requirements

Regulation of Trade in Controlled Drugs for Licit Use and in Controlled Chemicals

- Classify each controlled drug and chemical under domestic law to ensure the minimum required Convention controls apply (1961, 1971, 1988 C´n)
- Limit the use of drugs to and ensure their availability for medical and scientific purposes
  (1961, 1971, 1988 C´n)
- Prohibit opium, coca and cannabis cultivation, where "…*prevailing conditions in the country ..render…prohibition ….the most suitable measure in its opinion, for protecting public health and welfare and preventing…diversion".* (1961 C´n)

22

UNODC
United Nations Office on Drugs and Crime

Main Mandatory Requirements

Regulation of Trade in Controlled Drugs for Licit Use and in Controlled Chemicals

- Establish and maintain a national (registration) licensing and permit systems of controlled drugs and chemicals:
  - cultivation (1961 C´n)
  - manufacture/ distribution (1961, 1971, 1988 C´n)
  - import and export (1961, 1971, 1988 C´n)
  - supply by health care professionals (1961, 1971 C´n)

23

UNODC
United Nations Office on Drugs and Crime

Main Mandatory Requirements

Regulation of Trade in Controlled Drugs for Licit Use and in Controlled Chemicals

- Establish and maintain forward estimates and *ex-post* statistics of domestic licit drug demand, communicate them to the INCB and base domestic regulatory action on them to prevent divertable excess stocks (1961, ≈ 1971 C´n)
- Establish and maintain the compliance inspection of regulated persons and enterprises (1961, 1971, 1988 C´n)

24

UNODC
United Nations Office on Drugs and Crime

Main Mandatory Requirements

Demand Reduction

Prevent drug abuse and make treatment and rehabilitation measures available (1961, 1971, 1988 C´n)

Critical to discuss: how the system deals with persons who illicitly use drugs (different models)

25

UNODC
United Nations Office on Drugs and Crime

Main Mandatory Requirements

Drug-related Criminal Justice

- Establish and adequately punish drug trafficking and related conduct, including money-laundering, coordinate law enforcement action and cooperate in law enforcement training, intelligence exchange and operations (1961, 1971, 1988 C´n)
- Establish measures to enable the tracing, freezing, seizure and ultimate confiscation of the proceeds of drug-related crime (1988 C´n)
- Establish possession, purchase or cultivation of drugs for illicit personal consumption as a criminal offence (subject to constitutional principles and basic concepts of legal system), for which treatment, rehabilitation may be provided as alternatives to conviction and punishment or in addition (1961, 1971, 1988 C´n)

26

UNODC
United Nations Office on Drugs and Crime

Main Mandatory Requirements

International Justice Sector Cooperation

- Provide international legal cooperation to other Parties in their serious drug-related casework:
  - extradition (1961, 1971, 1988 C´n)
  - mutual legal assistance (1988 C´n)
  - controlled delivery (1988 C´n)
  - law enforcement cooperation (1988 C´n)
  - maritime coop. against trafficking on the high seas (1988 C´n)
  - use of mail services (1988 C´n)
  - commercial carriers (1988 C´n)

27

UNODC
United Nations Office on Drugs and Crime

Examples of UNODC programmes promoting inter-State cooperation or national level coordination to counter drug trafficking

28

UNODC
United Nations Office on Drugs and Crime

Global Programme Preventing and Combating Organized & Serious Crime

JUDICIAL COOPERATION NETWORKS

29

Informal vs. Formal Judicial Cooperation

- Judicial cooperation is often slow and cumbersome, for example because of:
  - Excessive restrictions on the provision of information;
  - Criminal justice practitioners lack knowledge of the procedural requirements of the requested country and do not consult counterparts abroad before sending MLA requests and/or they do not know who to contact or how.
  - Lack of knowledge about how to use the UN Conventions if no bi-lateral or regional treaty can be used as a legal basis.
  - Language obstacles that impede communications
  - Internal coordination issues, etc.

30

Why Judicial Cooperation Networks?

Informal cooperation is complementary to formal channels and should be used first where possible.

Judicial cooperation networks facilitate informal cooperation.

31

Overview of Judicial Cooperation Networks

- **EJN:** European Judicial Network, the oldest and the inspiring model
- **WACAP:** West African Network of Central Authorities and Prosecutors, addressing all transnational serious crimes
- **CASC:** Network of Prosecutors and Central Authorities from Source, Transit and Destination Countries in response to Transnational Organized Crime in Central Asia and Southern Caucasus
- **GLJCN:** Great Lakes Judicial Cooperation Network, launched but still being operationalized.
- **Sahel Platform:** Judicial Platform for the 5 countries of the Sahel, focusing on terrorism

32

What are Judicial Cooperation Networks?

- Comprised of 2 designated Contact Points per country who can be officials of central authorities in charge of MLA and/or the judicial and prosecuting authorities with responsibilities in the field of international judicial cooperation
- Covering all forms of transnational serious crime (e.g. drug trafficking), including terrorism
- Holding regular meetings of Contact Points, hosting websites and developing information exchange tools, providing advice and training

33

Role of Contact Points

- Facilitate judicial cooperation in criminal matters, in all forms, with other jurisdictions within the region and outside the region
- Assist with establishing direct contacts between competent authorities
- Provide legal and practical information necessary to prepare an effective MLA request or to improve judicial cooperation in general
- Support the organisation of training sessions on judicial cooperation and on different issues pertaining to serious crime
- Make the network known by their national authorities.

34

Results of Judicial Cooperation Networks

✓ Direct contacts within and outside the region resulting in better communication and operational cooperation to overcome obstacles to MLA and extradition

✓ Training and exchange of information & good practices resulting in more efficient processes and more effective requests leading to more successful prosecutions

35

Impact, Impact, Impact!

- Contact points report a greater efficiency in handling incoming and outgoing requests for MLA and extradition
- Action taken upon informal request before the formal request is received to speed up the process
- First requests made between English and French speaking countries & long-standing obstacles settled due to trust/contacts
- Central authorities created or strengthened
- Identification of national coordination issues (between competent authorities)
- Trained investigators, prosecutors and judges

36


International cooperation tools
• MLA Request Writer Tool
• Basic tips for investigators and prosecutors for requesting electronic/digital data/evidence from foreign jurisdictions
http://www.unodc.org/documents/legal-tools/Tip_electronic_evidence_final_Eng_logo.pdf
• Online directory of competent national authorities accessed through the SHERLOC database
• Guides on MLA, Asset Confiscation and Transfer of Sentenced Persons and Best Practice guides
37


UNODC
United Nations Office on Drugs and Crime
A Project funded by European Union
Instrument contributing to Stabiliy and Peace
CRIMJUST Programme
Overview
Strengthening criminal investigation and criminal justice cooperation along the cocaine route in Latin America, the Caribbean and West Africa (2016-2020)
CRIMJUST
Implementing Partners:
INTERPOL
TRANSPARENCY INTERNATIONAL
COCAINE ROUTE PROGRAMME
CRIMJUST
38

UNODC United Nations Office on Drugs and Crime | INTERPOL | TRANSPARENCY INTERNATIONAL

INTERPOL

CRIM JUST

TRANSPARENCY INTERNATIONAL

Funded by the European Union

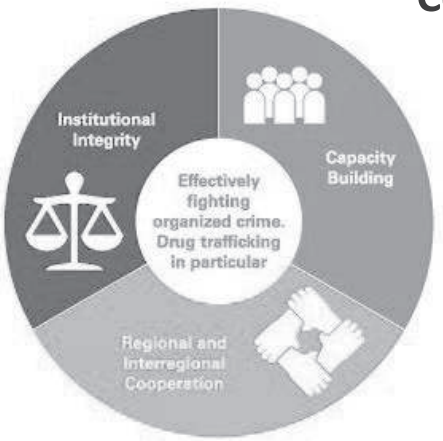
Implemented by UNODC, in partnership with INTERPOL and Transparency International

PROJECT FUNDED BY THE EUROPEAN UNION – COCAINE ROUTE PROGRAMME

39

UNODC United Nations Office on Drugs and Crime | INTERPOL | TRANSPARENCY INTERNATIONAL

Main Pillars and Geographic Coverage



West Africa
Cabo-Verde, Ghana, Guinea-Bissau
Associated Country: Nigeria

Latin America & the Caribbean
Dominican Republic, Panama
Associated Countries: Argentina, Brazil, Bolivia, Colombia, Ecuador, and Peru

PROJECT FUNDED BY THE EUROPEAN UNION – COCAINE ROUTE PROGRAMME

40

UNODC
United Nations Office on Drugs and Crime
INTERPOL
TRANSPARENCY INTERNATIONAL

CRIMJUST Outcomes

OUTCOME 1
• Enhanced capacity of law enforcement to collect evidence for successful prosecutions of OC cases, exchange data and conduct joint investigations to tackle OC on the inter-regional level

OUTCOME 2
• Enhanced capacity of the judiciary to prosecute and adjudicate OC cases and enhanced transnational judicial cooperation

OUTCOME 3
• Enhanced integrity and accountability of law enforcement and the judiciary

OUTCOME 4
• Enhanced capacity of CSOs to identify, monitor and propose measures to address key integrity and accountability challenges in effectively combatting OC in law enforcement and the judiciary

PROJECT FUNDED BY THE EUROPEAN UNION – COCAINE ROUTE PROGRAMME

41

UNODC
United Nations Office on Drugs and Crime

Container Control Programme

A Border Management Strategy for

CARGO

Seaports
Airports
Land borders

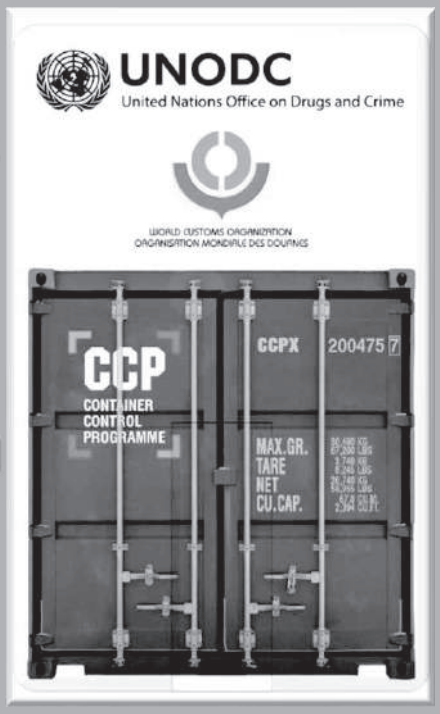
42

UNODC
United Nations Office on Drugs and Crime

What is CCP ?

Joint UNODC / WCO initiative launched in 2004

Aim:
To establish dedicated Container Control Units to identify illicit shipments
(Land – Sea – Air)



OBJECTIVE :
Risk based
- Selection
- Inspection
- Detection

Following WCO - SAFE Framework of Standards to *SECURE* and *FACILITATE* global *TRADE*

43

UNODC
United Nations Office on Drugs and Crime

90 % of world trade transported by sea

650 million TEU movements per annum

Less than 2 % of containers are verified through physical examination

Know your client ?

44

UNODC
United Nations Office on Drugs and Crime

Approach

Air Cargo Unit

Air Waybill

Combined Agency data checks

Decision

45

UNODC
United Nations Office on Drugs and Crime

Afghanistan
Albania
Argentina
Azerbaijan

Bangladesh
Bosnia & Herzegovina
Benin
Brazil

Cambodia
Cuba

Dominican Republic

Ecuador
El Salvador

Georgia
Ghana
Guatemala
Guyana

Honduras

Jamaica
Jordan

Kazakhstan
Kenya
Kyrgyzstan

Malaysia
Maldives
Moldova
Montenegro
Morocco
Myanmar

Oman

Pakistan
Panama
Paraguay
Peru
Philippines

Senegal
Suriname
Sri Lanka

Tajikistan
Tanzania
Thailand
Togo
Tunisia
Turkmenistan
Sri Lanka

Uganda
Ukraine
Uzbekistan

Vietnam

6 funded countries

Chile
Costa Rica
Indonesia
Lao PDR
Mozambique
Yemen

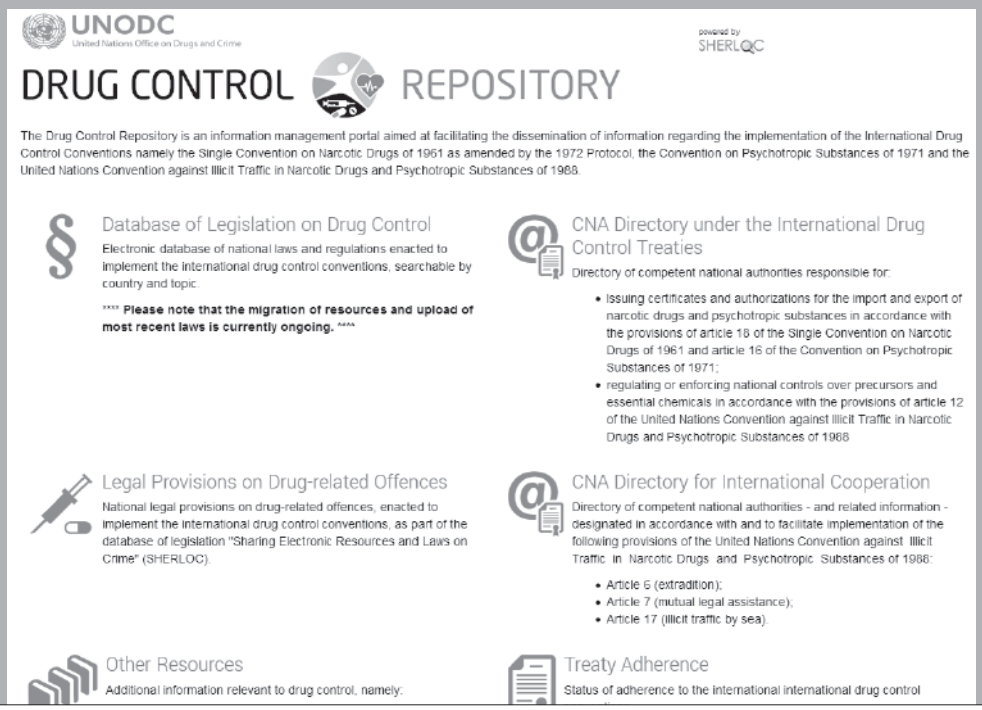
49 operational countries

CONTAINER CONTROL PROGRAMME

46

UNODC
United Nations Office on Drugs and Crime

http://www.drugcontrolrepository.unodc.org



UNODC
United Nations Office on Drugs and Crime

powered by SHERLOC

DRUG CONTROL REPOSITORY

The Drug Control Repository is an information management portal aimed at facilitating the dissemination of information regarding the implementation of the International Drug Control Conventions namely the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

Database of Legislation on Drug Control

Electronic database of national laws and regulations enacted to implement the international drug control conventions, searchable by country and topic.

****** Please note that the migration of resources and upload of most recent laws is currently ongoing. ******

CNA Directory under the International Drug Control Treaties

Directory of competent national authorities responsible for:

- Issuing certificates and authorizations for the import and export of narcotic drugs and psychotropic substances in accordance with the provisions of article 18 of the Single Convention on Narcotic Drugs of 1961 and article 16 of the Convention on Psychotropic Substances of 1971;
- regulating or enforcing national controls over precursors and essential chemicals in accordance with the provisions of article 12 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

Legal Provisions on Drug-related Offences

National legal provisions on drug-related offences, enacted to implement the international drug control conventions, as part of the database of legislation "Sharing Electronic Resources and Laws on Crime" (SHERLOC).

CNA Directory for International Cooperation

Directory of competent national authorities - and related information - designated in accordance with and to facilitate implementation of the following provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988:

- Article 6 (extradition);
- Article 7 (mutual legal assistance);
- Article 17 (illicit traffic by sea).

Other Resources

Additional information relevant to drug control, namely:

Treaty Adherence

Status of adherence to the international international drug control

47

UNODC
United Nations Office on Drugs and Crime

http://sherloc.unodc.org/

UNODC
United Nations Office on Drugs and Crime

SHERLOC SHARING ELECTRONIC RESOURCES AND LAWS ON CRIME

The SHERLOC portal is an initiative to facilitate the dissemination of information regarding the implementation of the UN Convention against Transnational Organized Crime and its three Protocols.

Case Law Database

A comprehensive case law database that allows you to see how Member States are tackling organized crime cases in their courts.

Database of Legislation

An electronic repository of laws relevant to the requirements of the Organized Crime Convention and the Protocols thereto. Most of the legislation included in this database has been enacted specifically to counter the relevant crime type.

CNA Directory

Directory of competent national authorities that have been designated to receive, respond and process requests pertaining to mutual legal assistance, extradition and transfer of sentenced prisoners, smuggling of migrants, trafficking in firearms and trafficking in cultural property.

Bibliographic Database

An annotated bibliography providing synopses of key articles on organized crime, search-able by countries, research methods and keywords.

Legislative guide

The main purpose of the legislative guide contained in the present publication is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime. (English only.)

Treaties

A database containing the ratification status of the Organised Crime Convention and the Protocols thereto and other relevant legal instruments.

Strategies

A database containing strategic instruments on the regional and domestic implementation of the Organised Crime Convention and the Protocols thereto.

48

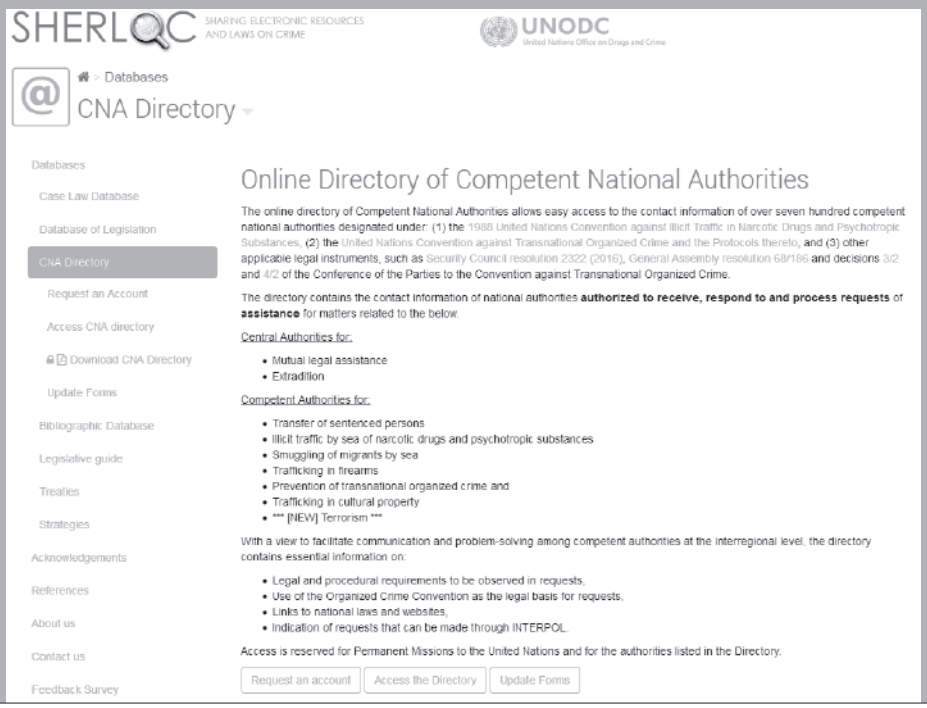
UNODC
United Nations Office on Drugs and Crime

Database of legislation – Search by country or crime type

49

UNODC
United Nations Office on Drugs and Crime

Competent National Authorities



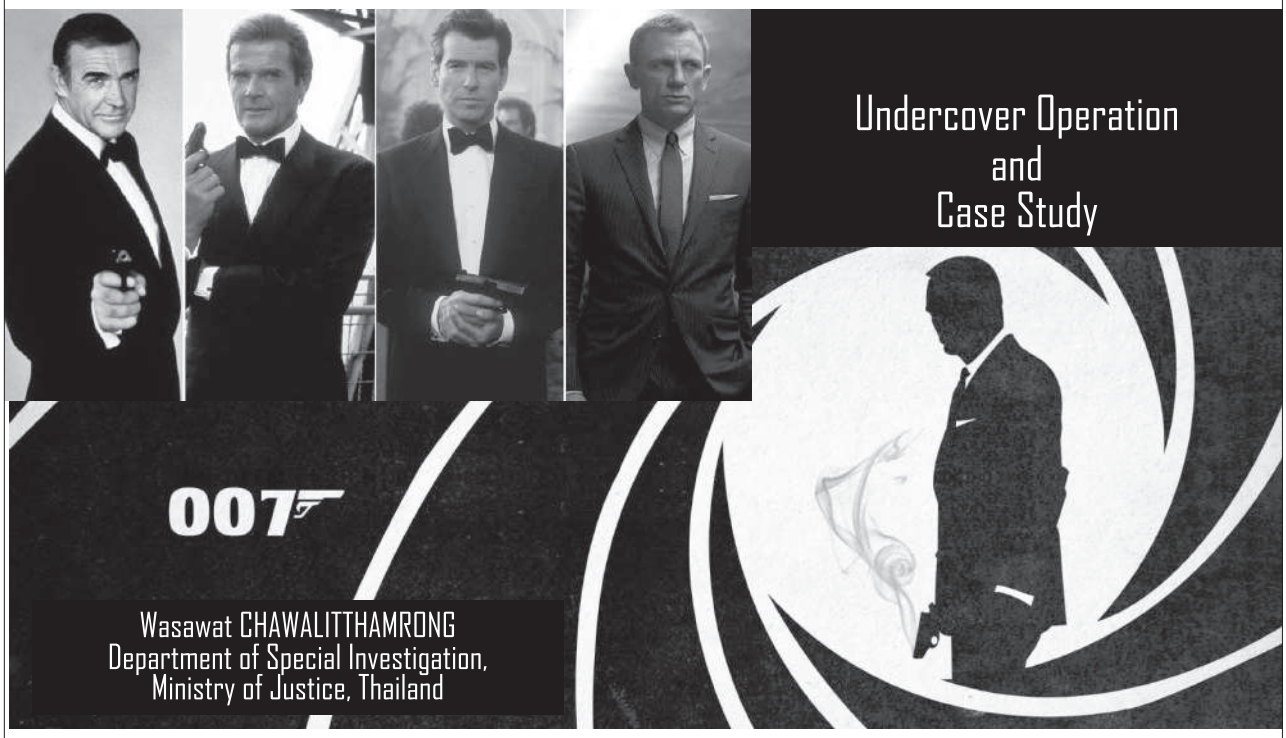
50

UNODC
United Nations Office on Drugs and Crime

Possible topics for consideration

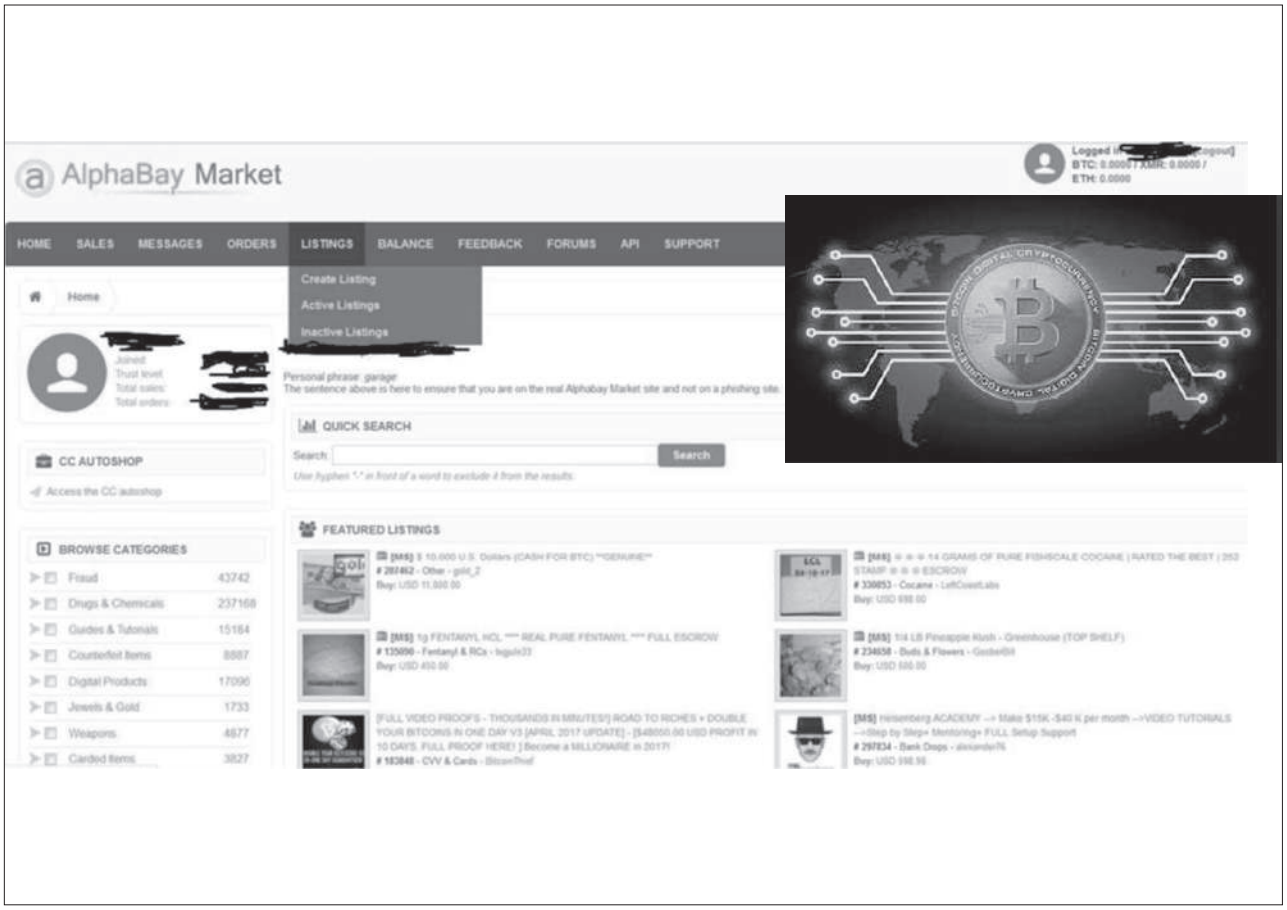
- Role of each agency
- Classification of substances / Quality forensic analyses
- Proportionality of penalties (drug trafficking, consumers) / prison overcrowding in some countries
- Treatment of consumers (Prevention / medical needs of dependent persons / differentiate first time offenders?)
- Determination of intentional elements: threshold amounts or judicial determination?
- Non-medical use and misuse of pharmaceuticals
- Use of the Internet in facilitating drug-related activities

51

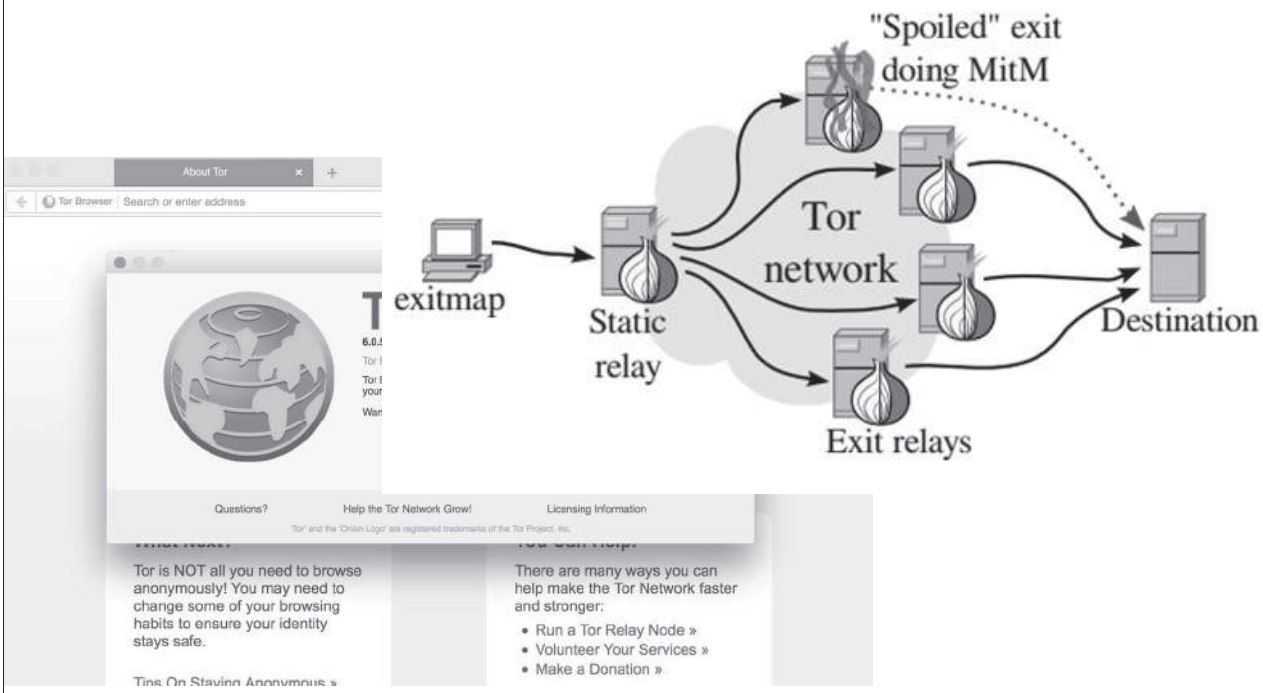

Undercover Operation
and
Case Study
007
Wasawat CHAWALITTHAMRONG
Department of Special Investigation,
Ministry of Justice, Thailand

Criminal Time

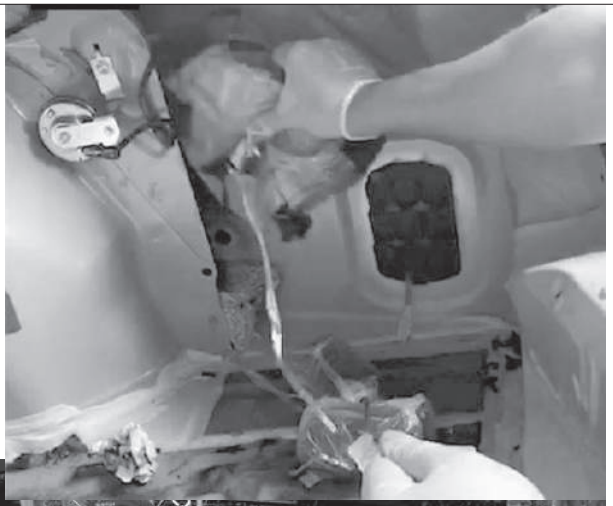
Government Time


AlphaBay Market
HOME
SALES
MESSAGES
ORDERS
LISTINGS
BALANCE
FEEDBACK
FORUMS
API
SUPPORT
Create Listing
Active Listings
Inactive Listings
Home
QUICK SEARCH
Search
CC AUTOSHOP
Access the CC autoshop
BROWSE CATEGORIES
Fraud 43742
Drugs & Chemicals 237168
Guides & Tutorials 15184
Counterfeit Items 8887
Digital Products 17090
Jewels & Gold 1733
Weapons 4677
Carded Items 3827
FEATURED LISTINGS


OPERATION
BAYONET


"Spoiled" exit
doing MitM
Tor
network
exitmap
Static
relay
Destination
Exit relays
About Tor
Tor Browser
Search or enter address
Questions?
Help the Tor Network Grow!
Licensing Information
Tor is NOT all you need to browse anonymously! You may need to change some of your browsing habits to ensure your identity stays safe.
There are many ways you can help make the Tor Network faster and stronger:
• Run a Tor Relay Node »
• Volunteer Your Services »
• Make a Donation »

The drug trafficker modified the vehicle for drug trafficking



Drug Crime

- Big boss only the comı

- They are not associated with any process of drug trafficking

Drug Crime

- Big boss only the commander

- hard to find them guilty and get them to undergo law enforcement due to the separating of actions. Only drug traffickers and sub-drug dealers are arrested

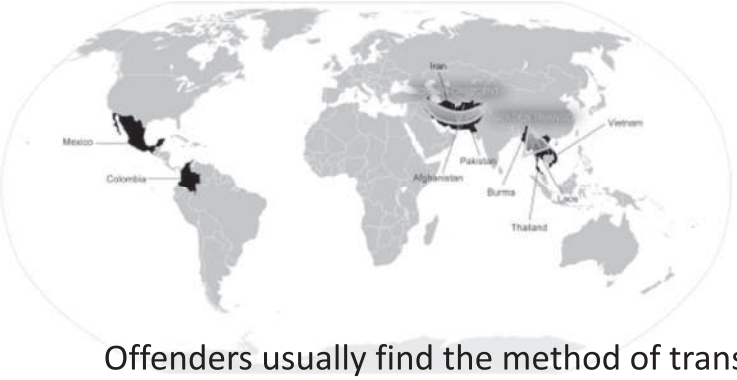
Drug Crime

- High return

✓ Risk for big money
✓ New faces everyday

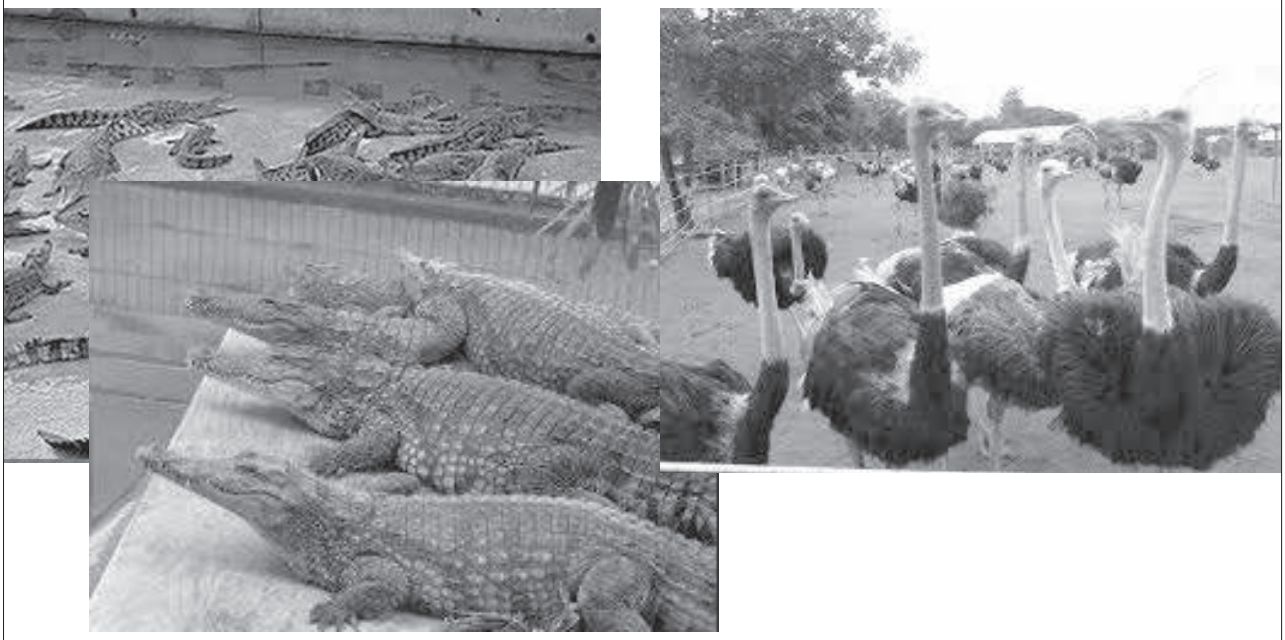
Drug Crime

- Transnational crime



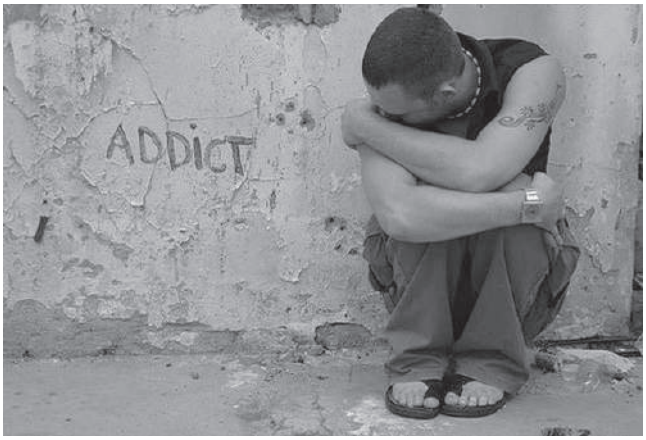
✓Money Laundering
✓Cryptocurrency

Offenders usually find the method of transacting their property so they shall not be caught



Drug Crime

- No victim (Even authorities who possess drugs are considered being illegal)



A drug addict is a drug victim who gets effects from them so the victim becomes an offender.

Even authorities who possess drugs are considered being illegal
so that there is an authority protection measure for them in case of doing undercover operations, sting operations and Controlled Delivery

Drug Crime

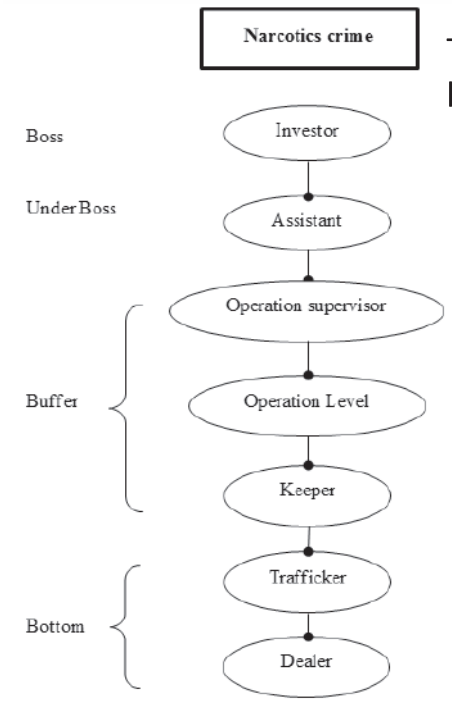
- Big boss only the commander
- High return
- Transitional crimes
- No victim (Even authorities who possess drugs are considered being illegal)

Drug Crime : Hard to investigate

- Secretive
- Hard to join
- Specialized : (Drug crimes in previous)
- Complicated ： Cut out, Need to know and use code
- Organized Crime and Transnational crime

responsible for collecting data of process, report to a chief and follow up command or policy from the chief.

a person who commits offense following the command from the higher position and normally caught easier than the other positions

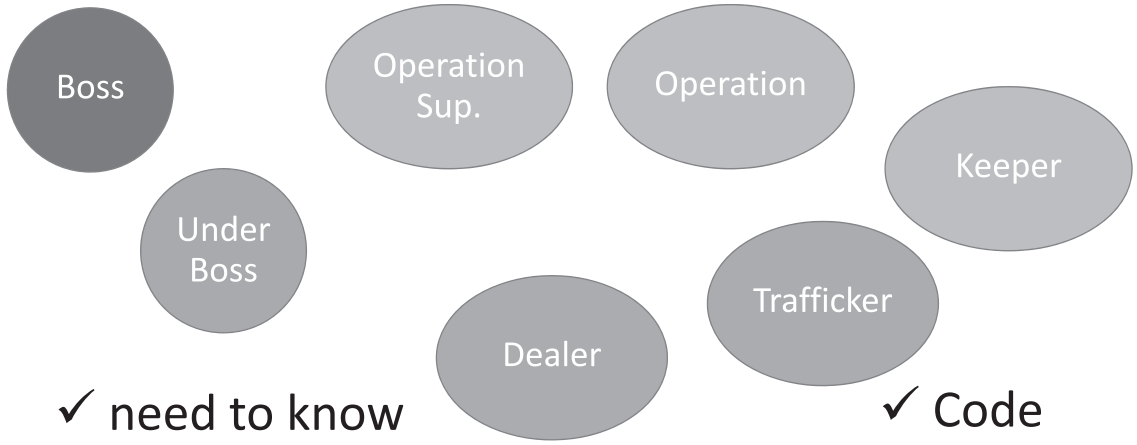


This person always does a legal job for concealing the offense

Buffer is a man between high-level members and low-level members to prevent the high-level positions from investigation

✓ Cut out

They try to limit the relationship of offenders to the most limited to not let evidence of the offense connect to others



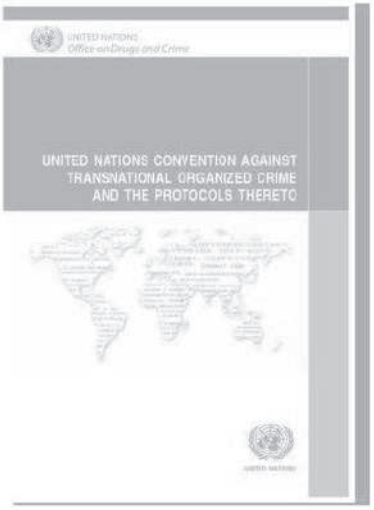
✓ need to know

✓ Code

UNTOC/Palermo Convention 2000

A global, flexible and practical legal instrument with the aim of **promoting cooperation to prevent and combat transnational organized crime more effectively**

(UNTOC, Art.1)



Talitha Kum
ARISE

Drug Crime : Techniques

The United Nations Convention against Transnational Organized Crime (UNTOC) 2000 allows the state parties to use special investigation by adjusting to their domestic laws. Special investigative techniques consist of

- Controlled delivery
- Undercover Operations
- Electronic surveillance

controlled delivery

A controlled delivery is a law enforcement technique that allows the transport of illegal drugs or other contraband, under law enforcement supervision, to those persons who have arranged for the shipment. *It is not concerned as a sting operation* or an offense conducted by competent authorities.

(i) Case of authorities or persons having drugs

(ii) Case of other person having drugs (Informants)

(iii) Case of offenders

This kind needs to be controled strictly to prevent losing the contraband among the process. The spy must be the one that is trusted and accepted to do this process.

Note : 1.In Thailand, the legal proceedings with offenders are not in the provision of any laws

2.CD includes domestic CD.

Undercover Operation

- The last choice of investigation
  - ✓Infiltrate a criminal organization (to gather evidence)
  - ✓Needs carefulness and permission of the court or a person in authority

- The suspect's right
  - ✓ There needs to be proof of the suspect's guilt before the operation begins
  - ✓ Create an opportunity to facilitate the suspect's crime
  - ✓ Undercover operation needs permission with legality

The practice of undercover operation

✓*Undercover agent* >> Intensive training

Undercover agent

Person Undercover

- ✓ Solve problems immediately
- ✓ Have a personal touch in the target area
- ✓ Have knowledge and experience in the subject

Oversight

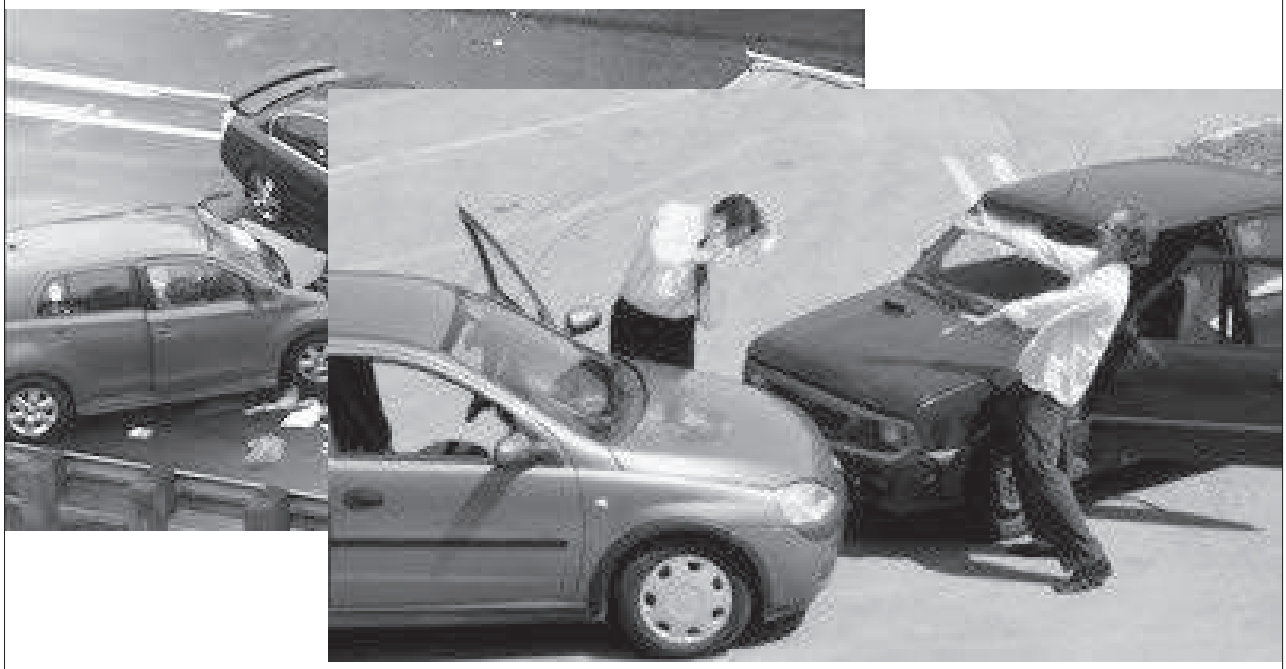
- ✓ Intensive training
- ✓ Sensitive circumstances : Review and oversight by Administrative level or prosecutors.

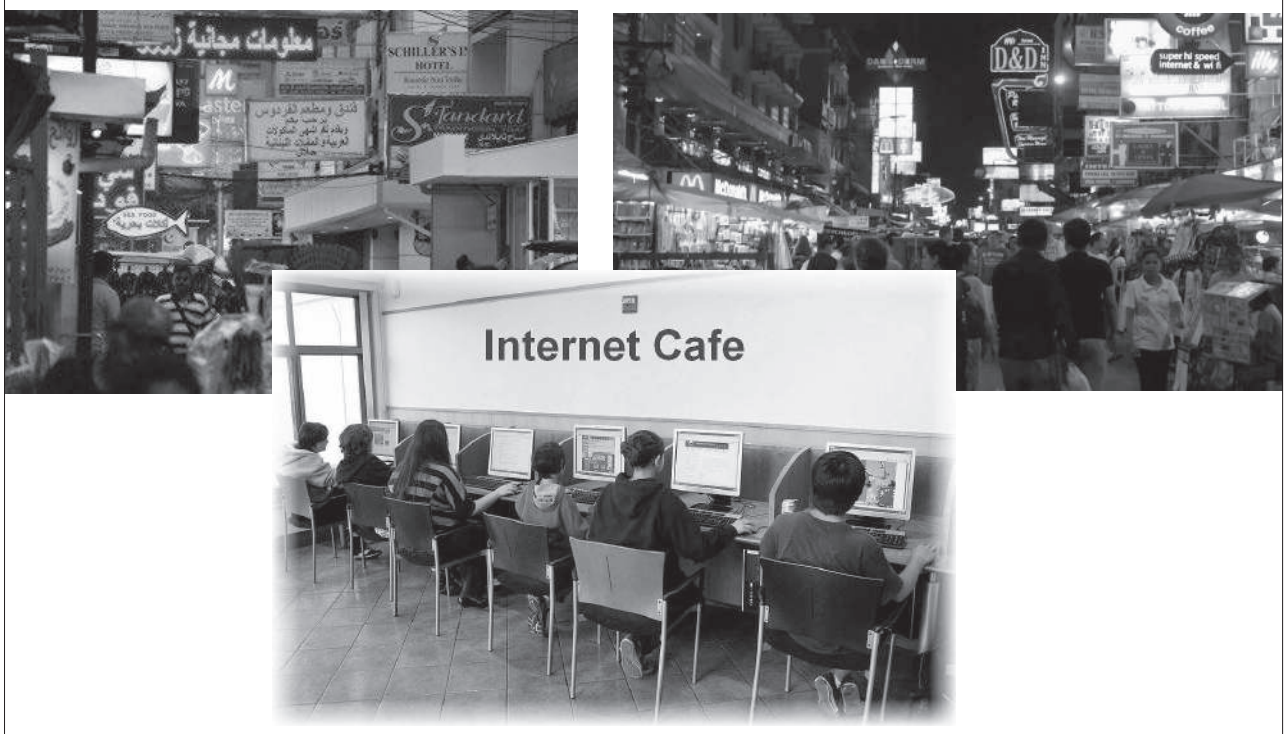
The practice of undercover operation

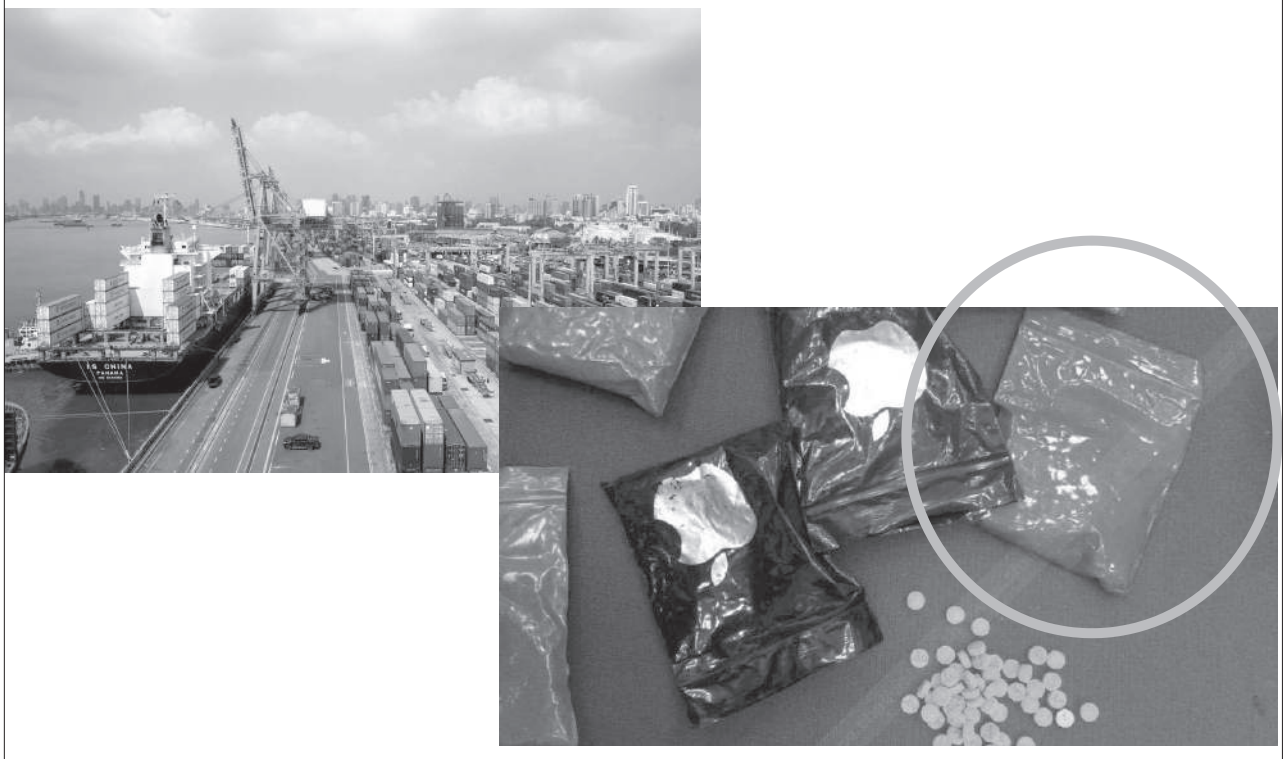
- ✓*Undercover*
- ✓*Document concealment*
- ✓*Vehicle concealment*
- ✓*Situation concealment*
- ✓*Place concealment and Occupation# concealment*


ROBINSON
centralplaza


Pizza Hut
call 1130
www.pizzahut.co.th
Thailand's Best Parcel Delivery Ser
KERRY




معلومات مجانية
SCHILLER'S
HOTEL
Standard
D&D
Internet Cafe



The practice of undercover operation

- ✓*Undercover agent*
- ✓*Document concealment*
- ✓*Vehicle concealment*
- ✓*Place concealment*
- ✓*Situation concealment*
- ✓*Occupation concealment*
- ✓*Information concealment*

Confidential Informants : Why???

- To identify criminal organizations
- To identify the members
- To identify the activities

Confidential Informants : Problems

- They are criminals themseleves
- To lie to curry favor
- Self interest
- May be committing crime

Confidential Informants : How to

- Corroboration
- Supervision
- Consequences

Undercover

Why???

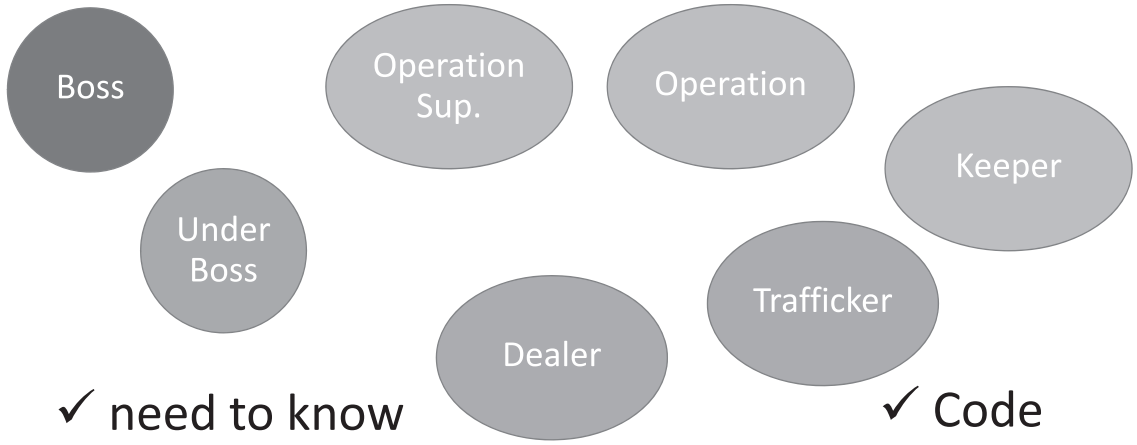
Drug crime is different from other crimes

1. The circle of drug offenses is wide. Each step in the process may or may not be offensive.
2. The offense network is quite complex.
   - ✓ Cut out
   - ✓ Need to know
   - ✓ Code
3. International criminology

   Destroying one place cannot stop the problem,

✓ Cut out

They try to limit the relationship of offenders to the most limited to not let evidence of the offense connect to others



✓ need to know

✓ Code

Undercover Operations

How to disguise???

- ✓ Creating a story to reach the target group harmoniously.
- ✓ To act as if he /she has gone into action or practice
- ✓ Impersonation to enter into a criminal organization.
- ✓ Solving the problem of disguise

Undercover Operations

- Entrapment :
  Must ensure that the activities of the undercover operation do not amount to entrapment
- Third party rights :
  Must ensure that the rights of third parties are not infringed

The process of Undercover Operations in Thailand

How Disguise Can Be Done by The Official?

Long term, Medium term and Short term

Criteria for Applying for Disguise Permit

(i) The requesting officers are the officers under the law on drug trial.

(ii) Authorized commanders are the head of the national police, or delegates, or the secretary-general of the narcotics control board.

The process of Undercover Operations in Thailand

Conditions to Allow Disguise

(i) legal offenses related to narcotics in production, import, export and distribution, distribute drug or conspiracy to support or attempt to commit such offense.

(ii) Get the information or evidence

- ✓ To investigate the seizure of a major drug offender
- ✓ In other ways is difficult or risk of injury or damage
- ✓ For extending the results of the offender's arrest on drugs

The process of Undercover Operations in Thailand

The Camouflage Operation without Prior Permission

Report urgent need to the authorities quickly; not more than three days from the date of commencement of operation

Control and Monitoring Disguise Operations

Law and harm

(i) reported to gather relevant evidence

(ii) Aware of its own state

(iii) Under investigation more than 1 Unit

Sting Operations in practice

(i)The use of persons

1.Informants

2.Undercover agents

(ii) Due process of law

1. Informants

2. The information received from informants

3. Exhibits from the arrest

Electronic surveillance

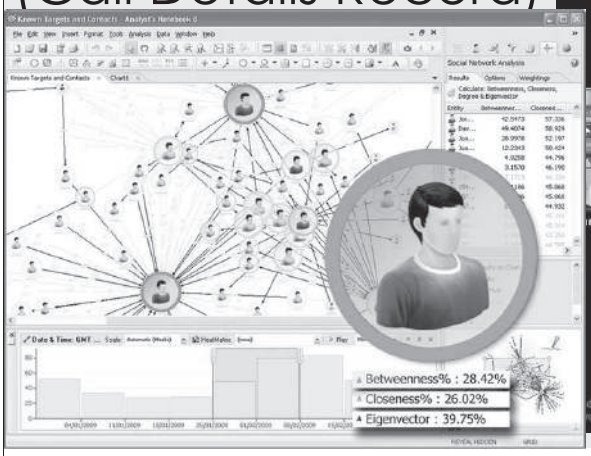
- To gather evidence
- Use in court

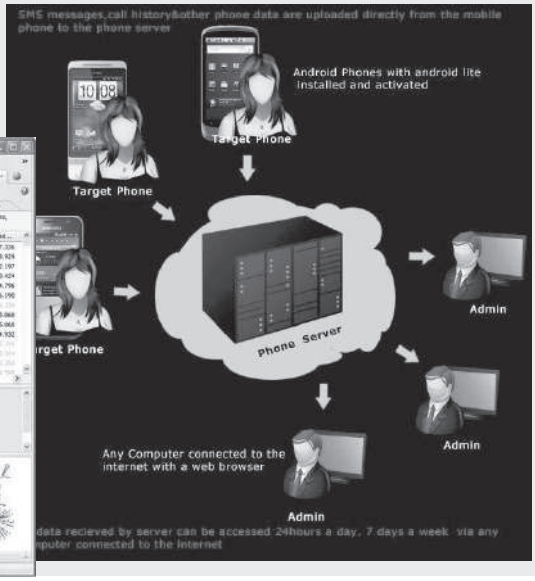
Investigation Techniques

Electronic surveillance

Investigation Techniques

Wiretapping &CDR (Call Details Record)





Thank you

wasawat@dsi.go.th

The 169th International Training Course

The 169th International Training Course (UNAFEI, 9 May - 14 June 2018)

Left to Right:

Above
Mr. Coracini (UNODC)

4th Row
Ms. Iwakata (Librarian), Ms. Odagiri (Chef), Ms. Yamada (Staff), Mr. Hirose (Staff), Ms. Nagahama (Staff), Mr. Elbastawissy (Egypt), Mr. Leite Prado (Brazil), Ms. Oda (Staff), Ms. Kamada (Staff), Mr. Saito (Staff), Ms. Kita (JICA)

3rd Row
Ms. Bernard (Jamaica), Ms. Sada (Japan), Mr. Amayasu (Japan), Mr. Bray (Papua New Guinea), Mr. Sangare (Mali), Mr. Mavlyanov (Uzbekistan), Mr. Hammad (Palestine), Mr. Nakajima (Japan), Mr. Hadsarang (Thailand), Mr. Akima (Japan), Mr. Shmitko (Ukraine), Ms. Abdul Jalil (Malaysia), Ms. Keita (Ivory Coast), Mr. Sacko (Mali), Ms. Iinuma (Staff)

2nd Row
Prof. Yamamoto, Ms. Tshibola (D.R. Congo), Mr. Konishi (Japan), Mr. N'Dri (Ivory Coast), Mr. Ali (Pakistan), Ms. Takeuchi (Japan), Mr. Subramaniam (Malaysia), Mr. Isozoda (Tajikistan), Mr. Ibrohimzoda (Tajikistan), Mr. Gammanpila Imiyage Don (Sri Lanka), Mr. Singappulige (Sri Lanka), Mr. Habib (Egypt), Mr. Fukushima (Japan), Mr. Yaselskyi (Ukraine), Ms. Nolasco (Philippines), Ms. Nkulu (D.R. Congo), Prof. Ohinata, Prof. Kitagawa

1st Row
Mr. Toyoda (Staff), Prof. Otani, Prof. Watanabe, Prof. Furuhashi, Deputy Director Ishihara, Mr. Millard (United States), Director Senta, Mr. Chawalitthamrong (Thailand), Prof. Yamada, Prof. Hirano, Prof. Futagoishi, Mr. Fujita (Staff), Mr. Schmid (LA)

RESOURCE MATERIAL SERIES INDEX			
Vol.	**Training Course Name**	**Course No.**	**Course Dates**
1	Public Participation in Social Defence	25	Sep-Dec 1970
2	Administration of Criminal Justice	26	Jan-Mar 1971
3	[Corrections]	27	Apr-Jul 1971
	[Police, Prosecution and Courts]	28	Sep-Dec 1971
4	Social Defence Planning	29	Feb-Mar 1972
	Treatment of Crime and Delinquency	30	Apr-Jul 1972
5	United Nations Training Course in Human Rights in the Administration of Criminal Justice	n/a	Aug-Sep 1972
	Administration of Criminal Justice	31	Sep-Dec 1972
6	Reform in Criminal Justice	32	Feb-Mar 1973
	Treatment of Offenders	33	Apr-Jul 1973
7	[Administration of Criminal Justice]	34	Sep-Dec 1973
8	Planning and Research for Crime Prevention	35	Feb-Mar 1974
	Administration of Criminal Justice	36	Apr-Jun 1974
9	International Evaluation Seminar	37	Jul 1974
	Treatment of Juvenile Delinquents and Youthful Offenders	38	Sep-Nov 1974
10	The Roles and Functions of the Police in a Changing Society	39	Feb-Mar 1975
	Treatment of Offenders	40	Apr-Jul 1975
	NB: Resource Material Series Index, Nos. 1-10 (p. 139)	n/a	Oct 1975
11	Improvement in the Criminal Justice System	41	Sep-Dec 1975
12	Formation of a Sound Sentencing Structure and Policy	42	Feb-Mar 1976
	Treatment of Offenders	43	Apr-Jul 1976
13	Exploration of Adequate Measures for Abating and Preventing Crimes of Violence	44	Sep-Dec 1976
14	Increase of Community Involvement	45	Feb-Mar 1977
	Treatment of Juvenile Delinquents and Youthful Offenders	46	Apr-Jul 1977
15	Speedy and Fair Administration of Criminal Justice	47	Sep-Dec 1977
	Prevention and Control of Social and Economic Offences	48	Feb-Mar 1978
	Report of United Nations Human Rights Training Course	n/a	Dec 1977
16	Treatment of Offenders	49	Apr-Jul 1978
	Dispositional Decisions in Criminal Justice Process	50	Sep-Dec 1978
17	Treatment of Dangerous or Habitual Offenders	51	Feb-Mar 1979
	Community-Based Corrections	52	Apr-Jul 1979
18	Roles of the Criminal Justice System in Crime Prevention	53	Sep-Dec 1979
19	Arrest and Pre-Trial Detention	54	Feb-Mar 1980
	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
20	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
	Integrated Approach to Effective and Efficient Administration of Criminal Justice	56	Sep-Nov 1980
	NB: Resource Material Series Index, Nos. 1-20 (p. 203)		Mar 1981
21	Crime Prevention and Sound National Development	57	Feb-Mar 1981

	Integrated Approach to Effective Juvenile Justice Administration (including Proposed Guidelines for the Formulation of the Standard Minimum Rules for Juvenile Justice Administration: A draft prepared by UNAFEI on the basis of the reports of the study groups at the 58th International Training Course)	58	May-Jul 1981
22	Contemporary Problems in Securing an Effective, Efficient and Fair Administration of Criminal Justice and Their Solutions	59	Feb-Mar 1982
	Secruing Rational Exercise of Discretionary Powers at Adjudication and Pre-adjudication Stages of Criminal Justice Administration	60	Apr-Jul 1982
23	Improvement of Correctional Programmes for More Effective Rehabilitation of Offenders	61	Sep-Nov 1982
24	Promotion of Innovations for Effective, Efficient and Fair Administration of Criminal Justice	62	Feb-Mar 1983
	Community-Based Corrections	63	Apr-Jul 1983
25	The Quest for a Better System and Administration of Juvenile Justice	64	Sep-Dec 1983
	Documents Produced during the International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice	n/a	Nov 1983
26	International Cooperation in Criminal Justice Administration	65	Feb-Mar 1984
	Promotion of Innovation in the Effective Treatment of Prisoners in Correctional Institutions	66	Apr-Jul 1984
27	An Integrated Approach to Drug Problems	67	Sep-Dec 1984
28	Contemporary Asian Problems in the Field of Crime Prevention and Criminal Justice, and Policy Implications	68	Feb-Mar 1985
	Report of the Fifth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Mar 1985
	Report of the International Workshop on the Role of Youth Organizations in the Prevention of Crime Among Youth	n/a	Jul 1985
	Follow-up Team for Ex-Participants of UNAFEI Courses	n/a	Dec 1985
	Community-Based Corrections	69	Apr-Jul 1985
29	In Pursuit of Greater Effectiveness and Efficiency in the Juvenile Justice System and Its Administration	70	Sep-Dec 1985
30	Promotion of Innovation in Criminal Justice Administration for the Prevention of New Criminality	71	Feb-Mar 1986
	The Quest for Effective and Efficient Treatment of Offenders in Correctional Institutions	72	Apr-Jul 1986
31	Economic Crime: Its Impact on Society and Effective Prevention	73	Sep-Nov 1986
	Report of the International Seminar on Drug Problems in Asia and the Pacific Region	n/a	Aug 1986
32	Advancement of Fair and Humane Treatment of Offenders and Victims in Criminal Justice Administration	74	Feb-Mar 1987
	Non-institutional Treatment of Offenders: Its Role and Improvement for More Effective Programmes	75	Apr-Jun 1987

33	Evaluation of UNAFEI's International Courses on Prevention of Crime and Treatment of Offenders, and Drug Problems in Asia	76	Aug-Sep 1987
	Crime Related to Insurance	77	Oct-Dec 1987
	Report of the Sixth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Sep 1987
	Report of the Workshop on Implementation Modalities for the Twenty-Three Recommendations Adopted by the International Seminar on Drug Problems in Asia and the Pacific Region	n/a	Sep 1987
34	Footprints, Contemporary Achievements and Future Perspectives in Policies for Correction and Rehabilitation of Offenders	78	Feb-Mar 1988
	Search for the Solution of the Momentous and Urgent Issues in Contemporary Corrections	79	Apr-Jul 1988
	Resolution of the Asia and Pacific Regional Experts Meeting	n/a	Mar 1988
	Report of the Meeting of Experts on the United Nations Draft Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)	n/a	Jul 1988
35	Quest for Effective International Countermeasures to Pressing Problems of Transnational Criminality	80	Sep-Nov 1988
36	Advancement of the Integration of Criminal Justice Administration	81	Feb-Mar 1989
	Innovative Measures for Effective and Efficient Administration of Institutional Correctional Treatment of Offenders	82	Apr-Jul 1989
	Report of the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region	n/a	Aug 1989
37	Crime Prevention and Criminal Justice in the Context of Development	83	Sep-Nov 1989
	International Workshop on Victimology and Victim's Rights	n/a	Oct 1989
38	Policy Perspectives on Contemporary Problems in Crime Prevention and Criminal Justice Administration	84	Jan-Mar 1990
	Wider Use and More Effective Implementation of Non-custodial Measures for Offenders	85	Apr-Jun 1990
39	Search for Effective and Appropriate Measures to Deal with the Drug Problem	86	Sep-Dec 1990
40	Development of an Effective International Crime and Justice Programme	87	Jan-Mar 1991
	Institutional Treatment of Offenders in Special Categories	88	Apr-Jul 1991
	NB: Resource Material Series Index, Nos. 21-40 (p. 333)	n/a	n/a
41	Effective and Innovative Countermeasures against Economic Crime	89	Sep-Dec 1991
42	Quest for Solutions of the Pressing Problems of Contemporary Criminal Justice Administration	90	Jan-Feb 1992
	Further Use and Effectual Development of Non-Custodial Measures for Offenders	91	Apr-Jul 1992
43	Quest for Effective Methods of Organized Crime Control	92	Sep-Nov 1992
44	Policy Perspective for Organized Crime Suppression	93	Feb-Mar 1993
	Current Problems in Institutional Treatment and Their Solution	94	Apr-Jul 1993

45	Effective Countermeasures against Crimes Related to Urbanization and Industrialization—Urban Crime, Juvenile Delinquency and Enviromental Crime	95	Sep-Dec 1993
46	Promotion of International Cooperation in Criminal Justice Administration	96	Jan-Mar 1994
	Effective Treatment of Drug Offenders and Juvenile Delinquents	97	Apr-Jul 1994
47	Economic Crime and Effective Countermeasures against It	98	Sep-Dec 1994
48	The Effective Administration of Criminal Justice: Public Participation and the Prevention of Corruption	99	Jan-Mar 1995
	The Institutional Treatment of Offenders: Relationships with Other Criminal Justice Agencies and Current Problems in Administration	100	Apr-Jul 1995
49	The Fair and Efficient Administration of Criminal Justice: The Proper Exercise of Authority and Procedural Justice	101	Sep-Dec 1995
50	Crime Prevention through Effective Firearms Regulation	102	Jan-Mar 1996
51	Improvement of the Treatment of Offenders through the Strengthening of Non-custodial Measures	103	Apr-Jul 1996
	International Cooperation in Criminal Justice Administration	104	Sep-Nov 1996
52	The Effective Administration of Criminal Justice for the Prevention of Corruption by Public Officials	105	Jan-Feb 1997
	The Quest for Effective Juvenile Justice Administration	106	Apr-Jul 1997
53	The Role and Function of Prosecution in Criminal Justice	107	Sep-Nov 1997
	The Ninth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Oct 1997
54	Current Problems in the Combat of Organized Transnational Crime	108	Jan-Feb 1998
	Effective Treatment Measures for Prisoners to Faciliate Their Reintegration into Society	109	Apr-Jul 1998
55	Effective Countermeasures against Economic and Computer Crime	110	Aug-Nov 1998
	The Role of Police, Prosecution and the Judiciary in the Changing Society	111	Jan-Feb 1999
56	Participation of the Public and Victims for More Fair and Effective Criminal Justice	112	Apr-Jul 1999
	The Effective Administration of Criminal Justice for the Prevention of Corrupt Activities by Public Officials	113	Aug-Nov 1999
57	International Cooperation to Combat Transnational Organized Crime—with Special Emphasis on Mutual Legal Assistance and Extradition	114	Jan-Feb 2000
	Current Issues in Correctional Treatement and Effective Countermeasures	115	May-Jun 2000
58	Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes	116	Aug-Nov 2000
	Current Situation and Countermeasures against Money Laundering	117	Jan-Feb 2001
59	Best Practices in the Institutional and Community-Based Treatment of Juvenile Offenders	118	May-Jul 2001

	Current Situation of and Countermeasures against Transnational Organized Crime	119	Sep-Nov 2001
60	Effective Administration of the Police and the Prosecution in Criminal Justice	120	Jan-Feb 2002
61	Enhancement of Community-Based Alternatives to Incarceration at all Stages of the Criminal Justice Process	121	May-Jul 2002
62	The Effective Administration of Criminal Justice to Tackle Trafficking Human Beings and Smuggling of Migrants	122	Sep-Oct 2002
63	The Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process Specifically Considering Restorative Justice Approaches	123	Jan-Feb 2003
64	The Effective Prevention and Enhancement of Treatment for Drug Abusers in the Criminal Justice Process	124	Apr-Jun 2003
65	Effective Countermeasures against Illicit Drug Trafficking and Money Laundering	125	Sep-Oct 2003
	Sixth International Training Course on Corruption Control in Criminal Justice	6th UNCAC	Nov 2003
66	Economic Crime in a Globalizing Society—Its Impact on the Sound Development of the State	126	Jan-Feb 2004
67	Implementing Effective Measures for the Treatment of Offenders after Fifty Years of United Nations Standard Setting in Crime Prevention and Criminal Justice	127	May-Jun 2004
	Measures to Combat Economic Crime, Including Money Laundering	128	Aug-Oct 2004
68	Crime Prevention in the 21st Century—Effective Prevention of Crime Associated with Urbanization Based upon Community Involvement and Prevention of Youth Crime and Juvenile Delinquency	129	Jan-Feb 2005
69	Integrated Strategies to Confront Domestic Violence and Child Abuse	130	May-Jun 2005
	Seventh Special Training Course on Corruption Control in Criminal Justice	7th UNCAC	Oct-Nov 2005
70	The Use and Application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power—Twenty Years after Its Adoption	131	Aug-Oct 2005
71	Strengthening the Legal Regime for Combating Terrorism	132	Jan-Feb 2006
	Eighth International Training Course on Corruption Control in Criminal Justice	8th UNCAC	Oct-Nov 2005
72	Effective Prevention and Enhancement of Treatment for Sexual Offenders	133	May-Jun 2006
73	Challenges in the Investigation, Prosecution and Trial of Transnational Organized Crime	134	Aug-Oct 2006
	Ninth International Training Course on Corruption Control in Criminal Justice	9th UNCAC	Oct-Nov 2006
74	Promoting Public Safety and Controlling Recidivism Using Effective Interventions with Offenders: An Examination of Best Practices	135	Jan-Feb 2007
75	Effective Measures for the Treatment of Juvenile Offenders and their Reintegration into Society	136	May-Jun 2007

76	Corporate Crime and the Criminal Liability of Corporate Entities	137	Sep-Oct 2007
	Tenth International Training Course on the Criminal Justice Response to Corruption	10th UNCAC	Oct-Nov 2007
77	Effective Legal and Practical Measures for Combating Corruption: A Criminal Justice Response	138	Jan-Feb 2008
78	Profiles and Effective Treatment of Serious and Violent Juvenile Offenders	139	May-Jun 2008
79	The Criminal Justice Response to Cybercrime	140	Sep-Oct 2008
	Eleventh International Training Course on the Criminal Justice Response to Corruption	11th UNCAC	Oct-Nov 2008
	The Improvement of the Treatment of Offenders through the Enhancement of Community-Based Alternatives to Incarceration	141	Jan-Feb 2009
80	Effective Countermeasures against Overcrowding of Correctional Facilities	142	May-Jun 2009
	Twelfth International Training Course on the Criminal Justice Response to Corruption	12th UNCAC	Jul-Aug 2009
	Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials	143	Sep-Nov 2009
81	The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process	144	Jan-Feb 2010
82	Effective Resettlement of Offenders by Strengthening "Community Reintegration Factors"	145	May-Jun 2010
83	Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures	146	Aug-Oct 2010
	The 13th International Training Course on the Criminal Justice Response to Corruption	13th UNCAC	Oct-Nov 2010
84	Community Involvement in Offender Treatment	147	Jan-Feb 2011
85	Drug Offender Treatment: New Approaches to an Old Problem	148	May-Jun 2011
86	Securing Protection and Cooperation of Witnesses and Whistle-blowers	149	Aug-Sep 2011
	Effective Legal and Practical Measures against Corruption	14th UNCAC	Oct-Nov 2011
87	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	150	Jan-Feb 2012
88	Evidence-Based Treatment of Offenders	151	May-Jun 2012
89	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	152	Aug-Sep 2012
	Effective Legal and Practical Measures against Corruption	15th UNCAC	Oct-Nov 2012
90	Treatment of Female Offenders	153	Jan-Feb 2013
91	Stress Management of Correctional Personnel—Enhancing the Capacity of Mid-Level Staff	154	May-Jun 2013
92	Effective Collection and Utilization of Evidence in Criminal Cases	155	Aug-Oct 2013
	Effective Measures to Prevent and Combat Corruption and to Encourage Cooperation between the Public and Private Sectors	16th UNCAC	Oct-Nov 2013
93	Protection for Victims of Crime and Use of Restorative Justice Programmes	156	Jan-Feb 2014

94	Assessment and Treatment of Special Needs Offenders	157	May-Jun 2014
95	Measures for Speedy and Efficient Criminal Trials	158	Aug-Sep 2014
	Effective Measures to Prevent and Combat Corruption Focusing on Identifying, Tracing, Freezing, Seizing, Confiscating and Recovering Proceeds of Corrpution	17th UNCAC	Oct-Nov 2014
96	Public Participation in Community Corrections	159	Jan-Feb 2015
97	The State of Cybercrime: Current Issues and Countermeasures	160	May-Jun 2015
98	Staff Training for Correctional Leadership	161	Aug-Sep 2015
	Effective Anti-Corruption Enforcement and Public-Private and International Cooperation	18th UNCAC	Oct-Nov 2015
99	Multi-Agency Cooperation in Community-Based Treatment of Offenders	162	Jan-Feb 2016
100	Children as Victims and Witnesses	163	May-Jun 2016
101	Effective Measures for Treatment, Rehabilitation and Social Reintegration of Juvenile Offenders	164	Aug-Sep 2016
	Effective Anti-Corruption Enforcement (Investiagation and Prosecution) in the Area of Procurement	19th UNCAC	Oct-Nov 2016
102	Juvenile Justice and the United Nations Standards and Norms	165	Jan-Feb 2017
103	Criminal Justice Procedures and Practices to Disrupt Criminal Organizations	166	May-Jun 2017
104	Rehabilitation and Social Reintegration of Organized Crime Members and Terrorists	167	Aug-Sep 2017
	Effective Measures to Investigate the Proceeds of Corruption Crimes	20th UNCAC	Nov-Dec 2017
105	Enhancing the Rule of Law in the Field of Crime Prevention and Criminal Justice: Policies and Practices Based on the United Nations Conventions and Standards and Norms	168	Jan-Feb 2018
106	Criminal Justice Practices against Illicit Drug Trafficking	169	May-Jun 2018

ISSN 0256-5471
ISBN 978-4-87033-325-3

Printed in Japan by TAIHEI PRINTING Co., LTD.