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THE GLOBAL POLITICS OF ILLICIT-DRUG CONTROL

Mandy Bentham

Thesis submitted in fulfilment of the requirements for the Degree of Doctor of
Philosophy in International Relations

Department of Systems Science
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ABSTRACT

The 1980s saw the wider availability and growing consumption of illicit drugs. The increase in drug trafficking and drug use has occurred despite increasing international action to prevent it. In describing the situation as a "drug problem", policy-makers have responded to the concern as if it were a single issue. However, the drug phenomenon is multi-faceted and multi-dimensional. It is the concern of numerous state and non-state actors, it necessitates multi-lateral co-operation among governments, it involves the participation of numerous departments of government and a complex web of issues exists which affect and are affected by the phenomenon. In this sense the "drug problem" clearly demonstrates the characteristics of interdependence.

The undeniable growth of interdependence in the world in the last half-century has caused a rethink of the traditional Realist approach to international relations. Neo-realists were principally responsible for introducing the concept of an *international regime* as a means of revamping the power politics philosophy of Realism. In this approach, international regimes are understood to rise and fall in line with the powers of the state-actors comprising them. An alternative approach to international relations challenges the belief that change in world politics is defined in terms of changes in state power and that the emergence of regimes is similarly defined. The Global Politics approach asserts that agendas are determined by the attempt of actors to allocate values authoritatively on specific issues by forming issue-systems. According to this approach, issue-systems, consisting of all actors for whom a particular issue is salient, can be abstracted from the international system as a whole.

Previously the two concepts of international regimes and the concept of issues forming issue-systems have developed in isolation and have suffered from lack of clarification. In order to develop a theoretical framework for an analysis of the drug phenomenon this research has attempted to clarify and develop the concept of an "issue", central to both concepts, for an understanding of international regimes which gives them an independent impact on world politics. In developing the concept of an issue, an understanding of the nature and role of values and norms in international affairs, lacking development in current regime literature will be seen as central.

ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
BCCI	Bank of Credit and Commerce International
BSA	Bank Secrecy Act
BCP	Burmese Communist Party
CATF	Chemical Action Task Force of the Group of Seven
CCC	Customs Co-operation Council
CIA	Central Intelligence Agency
CMO	Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (See Appendix A)
CND	Commission on Narcotic Drugs of ECOSOC
CORA	Coordinamento Radical Antiproibizionista
CTR	Currency Transaction Report
DIU	Drugs Intelligence Unit of Europol
DND	Division of Narcotic Drugs of the UN Secretariat
DPF	Drug Policy Foundation
DTOA	Drug Trafficking Offences Act
ECOSOC	Economic and Social Council of the United Nations
EDU	European Drugs Unit
EMNDP	European Movement for the Normalization of Cannabis
FAO	Food and Agriculture Organisation of the United Nations
FATF	Financial Action Task Force of the Group of Seven
FOPAC	Fonds proenant des activites criminelles
GATT	General Agreement on Tariffs and Trade
HIV	Human immune deficiency virus
HONLEA	Heads of National Drug Law Enforcement Agencies
ICDAIT	UN Conference on Drug Abuse and Illicit Trafficking
ICAO	International Civil Aviation Organization
ICPO/Interpol	International Criminal Police Organisation
ILO	International Labour Organisation
IMO	International Maritime Organization
MAG	Mutual Assistance Group of the European Community
MLAT	Mutual Legal Assistance Treaty
NATO	North Atlantic Treaty Organization
NORML	National Organisation for the Reform of Marijuana Laws
OECD	Organization for Economic Cooperation and Development
Pompidou	Group Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs
SWIFT	Society for Worldwide Interbank Financial Telecommunications
UNDCP	UN International Drug Control Programme
UNDP	UN Development Programme
UNFDAC	UN Fund for Drug Abuse Control

UNICEF	UN Children's Fund
UNIDO	UN Industrial Development Organisation
UNITAR	UN Institute for Training and Research
UPU	Universal Postal Union
WFP	World Food Programme

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Chapter 1

Keep Off the Grass: The Global Politics of Illicit Drug Control

Introduction

Unprecedented developments in world politics since the 1980s; the dismantling of the Berlin Wall, the ending of the Cold War, the dissolution of the Soviet Union, the ending of apartheid in South Africa and the signing of a Middle East peace agreement, have led to a growing number of other concerns emerging at the forefront of the international political agenda which demonstrate the complexity and interdependence of world politics. Environmental concerns such as global warming, rainforest depletion and pollution; human rights concerns such as increasing numbers of displaced peoples; and the control of disease such as Acquired Immune Deficiency Syndrome (AIDS), have led to increased international action across state boundaries and increased attention to international organisations that handle these concerns. The significance of this for the student of International Relations has been a re-evaluation of the orthodox view of international politics, exemplified by Hans Morgenthau, that the nation-state is the sole, principal actor in the international arena and that the dominant issue in international relations is the struggle for power.¹ This has led to an increasing interest in emerging alternative forms of transnational co-operation by International Relations scholars.

The concept of *international regimes* as "sets of governing arrangements that affect relationships of *interdependence*"² has been developed predominately by the traditional Realist school of International Relations, to combat the challenge of interdependence and to explain the growth in new forms of co-ordination and organisation. However, in this approach, international regimes are created by states to further the state's interests, and are not expected to survive the demise of the hegemon under which they were created.³ States are viewed as the dominant actors in the international system, but co-operation in the form of international regimes may be necessary to secure the optimal outcome under conditions of interdependence in some

situations.⁴ This writer believes that international regimes can and do influence behaviour and outcomes in the international arena independently of the wishes or needs of state actors. As Keohane says, "If international regimes did not exist they would have to be invented"⁵, but in order for the concept to be analytically useful we need to see regimes as having an independent impact on world politics through a synthesis of regime literature with the literature on issues, developed by writers such as Rosenau, Mansbach and Vasquez, and Keohane and Nye, from a more thorough use of the concept of interdependence. As James Rosenau states in his book, *The Study of Global Interdependence*: "Four characteristics seem salient as central features of all the diverse issues of interdependence." They are highly complex and technical phenomena, involve non-governmental actors, have fragmented governmental decision-making, and necessitate multi-lateral co-operation for their management.⁶

The response to the drug phenomenon by those involved at the international, national and grass-roots level has been as if it were a single issue, with constant references to the "drug problem" by policy-makers, the judiciary, the media, educationalists, and health organisations alike. The "drug problem" clearly demonstrates the characteristics of interdependence as outlined above. This research attempts to set the "drug problem", as it has become known, into a theoretical framework which aids our understanding of the phenomenon, by further developing theories of regime creation. In so doing, basic concepts used in regime literature need to be clarified. The literature on international regimes implicitly suggests that a regime must have an issue that it seeks to regulate. The concept of an issue however, suffers from lack of clarification in current International Relations literature. This research will show that the "drug problem" is too multi-faceted and multi-dimensional to be viewed as a single issue, as an analysis of the values and the stakes evoked will demonstrate.

How and why issues come on to the agenda and how and why regimes are created from certain issues and not others will be shown as different stages in the same process of agenda-building. A clearer understanding of values and norms, their evolution and role in international decision-making is needed to give international regimes an independent impact in international relations and is also central for an

alternative understanding of change in world politics. For the traditional Realist school change in world politics is defined in terms of changes in state power, and the emergence of regimes is similarly defined. An alternative approach to the emergence and role of international regimes challenges this established belief by asserting that agendas are determined by the attempt of actors to allocate values authoritatively on specific issues. Therefore new actors can be considered from both above and below the state and we do not just need to consider the state.

This chapter will attempt to set the drug phenomenon into an initial theoretical framework within International Relations theory. The usefulness of what are viewed as the two major competing paradigms to explore the complexity of the multi-faceted and multi-dimensional phenomenon will be examined. The presumption will be that a regime analysis which emphasises the role of norms and values in agenda-formation, rather than concentrating on rules and decision-making procedures, is necessary for an understanding of the drug phenomenon. The rigidity of the Cold War gave the discipline of International Relations an excuse for not taking into account the advances, concepts and methods from alternative disciplines, such as sociology, philosophy, anthropology, and history, with their concepts of identity, values and community. In the study of drug control, these disciplines have obviously a great deal to offer. The connections between these disciplines and the discipline of International Relations needs to be explored in order to understand and respond to the current changes in world politics.

Interdependence: Rosenau's four characteristics

The technological and economic changes that took place during the 1970s saw a swift response from International Relation theorists with the work on the concept of "interdependence", credited to Robert Keohane and Joseph Nye.⁷ However, "complex interdependence" as described in their book *Power and Interdependence*, consisting of multiple channels of communication, the absence of hierarchy among issues, with military force playing a minor role, did not so much rock the foundations of Realist orthodoxy as knock politely on the door. Keohane and Nye restricted the use of the

concept by applying their work to economic issues, only offering "complex interdependence" as an alternative to Realism when it provides greater understanding of the nature of the issue in a particular situation, an area where Realist writers were willing to concede to a development of their ideas to encompass the changing economic realities.

However, as Rosenau suggested in *The Study of Global Interdependence*, the restriction of the concept to economic issues and thereby merely adapting the Realist paradigm to changes in the real-world limits the usefulness of the concept. The concept of interdependence, when followed to its logical theoretical conclusions, giving non-state actors influence in world affairs, is a direct challenge to the Realist paradigm. Furthermore a focus on issues and the interactions between actors, rather than the units themselves, and the idea of multiple issue-based systems rather than a single international system with each system featuring a unique cast of governmental, inter-governmental and non-governmental actors gives a more useful framework for an analysis of regime creation.

Global action on drug control clearly demonstrates the immediate and increasing interdependence of world politics as understood by Rosenau, with the inclusion of non-state actors giving the term interdependence a greater meaning. As stated in the *United Nations Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control*:

"The value of NGOs and governmental agencies working together on complex national and international problems is nowhere more apparent than in the comprehensive long term effort to reduce illicit demand for narcotic drugs and psychotropic substances."⁸

The Geneva International Opium Convention of 1925⁹ created the first international non-governmental body concerned with drug control; The Permanent Central Board.¹⁰

The drug phenomenon involves the participation of not only health, welfare and education groups on a domestic, national and international level, but also private banks

and insurance companies (concerned with drug-money laundering), the church, the mafia, and the drug barons. An indication of the extent of the influence that can be exercised by the drug barons is illustrated by the events following the assassination of the Colombian Justice Minister, Rodrigo Lara Bonilla in 1984. The Colombian government's determination to end the drug-related violence and enforce the 1979 extradition treaty with the United States, forced several important traffickers to move with their financial assets from Colombia to Panama. As a result, the value of the dollar on the black market rose (to 140 pesos compared to the official rate of 100 pesos). In an attempt to negotiate their return to Colombia the traffickers released some of their funds back into the economy, and the dollar value on the black market stabilised.¹¹ Indeed the wealth and influence of the drug barons, particularly in South America, makes them dominant actors in any analysis of the drug phenomenon.

The drug phenomenon is multi-faceted and multi-dimensional. It is the concern of educationalists, sociologists, anthropologists, health workers, social workers, policy-makers, economists, the police and the judiciary. It also involves numerous departments of government, and challenges the orthodox view of the state as a unified and autonomous rational actor. Recent clashes in France between the Health Ministry, supporting improved public health care for French drug addicts, including a needle-exchange programme to reduce the risk of HIV infection, and the Ministry for the Interior pledging to crack down on drugs and apply systematic pressure on street traders and users, has seen addicts collect needles from the needles-exchange programme only to be picked up by the police and have the needles destroyed.¹² A similar complexity exists at the international level, as this study will demonstrate.

The drug phenomenon necessitates multi-lateral co-operation among governments. As with environmental concerns such as air and marine pollution, drug trafficking does not conform to political boundaries and cannot be controlled by a single state acting in isolation. Drug trafficking is now a problem which "most governments can thus neither dismiss nor handle on their own" and is an example of the fourth characteristic of interdependence as described by Rosenau.¹³ The Global

Programme of Action ¹⁴, which was the product of the seventeenth Special Session of the General Assembly of the United Nations on 20th February 1990, stressed the need for collective action in combatting both drug abuse and illicit trafficking, stating that governments were not in a position to deal with this problem individually. The Secretary-General's opening statement to the Special Session said:

"Drug abuse is now right at the top of the list of priorities requiring urgent attention from the international community. It is by its nature truly international; and it demands a co-ordinated international response".¹⁵

With the collapse of international communism, the end of the Cold War and the opening up of the former Soviet Union and the Eastern bloc countries, new markets and transit routes have been exploited by drug traffickers. The previously-denied problem of drug use in communist societies has been recognized, with a steady expansion in drug use in recent years.¹⁶ No one country can hope to isolate itself from such a transnational phenomenon, or hope to solve its domestic "drug problem" independently.

In his work on the structure of interdependence issues, Rosenau states: "Perhaps the most pervasive characteristic of all such issues is the large degree to which they encompass highly complex and technical phenomena."¹⁷ Furthermore, as Rosenau explains, most of the issues "overlap so thoroughly that proposed solutions to any one of them have important ramifications for the others."¹⁸ The drug phenomenon clearly illustrates these two points. As has already been stated, the drug phenomenon is a multi-faceted and multi-dimensional problem and is too complex to be viewed as a single issue. In order to understand the nature of international regimes and the nature of issues, the linkages with other wider issues needs to be understood.

Issue-linkage

The complexity of the drug phenomenon is illustrated by the diversity of the issues linked to drug production and usage. The drug phenomenon is linked to environmental

concerns such as deforestation, pollution, the destruction of eco-systems and the issues of pesticide control. The destruction of the environment caused by modern day coca-growing has earned the plant the title, the "Attila of Tropical Agriculture".¹⁹ In Bolivia the previously sparsely populated Chapare region saw an influx of coca-growers during the eighties which has led to huge environmental degradation. President Paz-Estensoro's Under-Secretary for crop substitution said that it constituted the greatest devastation in Bolivian history.²⁰ In Peru, President Alberto Fujimori has described the drug trade as the "number one enemy" of the Amazon rainforest".²¹ The International Narcotics Control Board Report of 1990 stated that: "Coca bush cultivation threatens to alter the whole ecological balance of vast areas of the country".²² Deforestation has occurred from the slash-and-burn agriculture of the coca-producing peasants for actual coca plantations and also from the planting of subsistence crops such as cassava, bananas and corn for the workers. The estimated amount of land calculated to have been deforested, directly or indirectly, in Peru due to coca production is 700,000 hectares - about 10 per cent of the total deforestation in the Peruvian Amazon region during the twentieth century.²³ The recent expansion of opium poppy cultivation in Latin America and Colombia in particular, has led to the cutting and burning of large areas of virgin cloud forest to plant opium poppies.²⁴ It has been recently reported that, in Colombia, the area under illicit poppy cultivation has expanded to an estimated 18,000 hectares, thereby equalling the size of the area under illicit coca bush cultivation.²⁵

Coca-growers use large quantities of pesticides and herbicides which drain into rivers and cause pollution. However, it is the manufacture of cocaine that utilises the most harmful chemicals. Producers of cocaine in the Upper Huallaga Valley in Peru have polluted the valley's rivers with the kerosene, sulphuric acid, quicklime, carbide, acetone and other dangerous substances used in cocaine processing.²⁶ These rivers now exceed the pollution standards for fresh and inland water established by the World Health Organisation (WHO).²⁷ The pollution of the rivers poses a threat to many species of fish, amphibians, aquatic reptiles, and crustaceans.²⁸

Attempts to eradicate coca crops by law-enforcement agencies has led to the

controversial use of herbicides such as paraquat (used extensively in Mexico and Colombia in the 1970s to eradicate marijuana,) and glyphosphate (used in Colombia in the 1980s). Both paraquat and glyphosphate were found to destroy not only coca but other crops, and cause numerous health problems, such as liver damage to those living in the drug-producing regions. Fears concerning the danger to health of paraquat spraying in Mexico in the 1970s (and particularly its association with birth defects), led to the adoption of the Percy Amendment by the United States Congress which made it illegal to support fumigation programs in other countries.²⁹ Del Olmo suggests however, that the real reason for the temporary ruling (which was annulled in 1981) was concern over the amount of paraquat being ingested by smokers of marijuana in the United States, and not the environmental and health risks to those living in the drug-producing regions in Mexico.³⁰ Despite reports of medical and environmental dangers, the United States government has continued to apply pressure on governments in Latin America to permit aerial spraying in crop-eradication programmes³¹ and during the early 1990s increased the drug-budget proposal for the Agricultural Research Service.³²

In 1988, environmental groups were successful in disrupting the Reagan administration's plans to implement coca-eradication programmes in Peru, using the herbicide tebuthurion (more commonly known as "Spike"). Eli Lilly, the company responsible for Spike, refused to sell it to the Peruvian government for planned eradication programmes.³³ Environmental groups stressed Spikes' effects on the fragile tropical eco-system in Peru; the destruction of endangered plant species, and the draining of chemicals into the Amazon, as well as the dangers to the health of farmers.³⁴ The long-term significance of the use of environmentally unsafe chemicals to fight the drug war is especially serious since the regions which are targeted are often populated by the poorest segments of the population, often totally dependent on the land. According to Fagan, the intensive use of herbicides to eradicate illicit drug production in Latin America in the 1960s and 1970s caused high levels of herbicide poisoning with the accumulation of toxins such as DDT in humans, as well as in livestock and the entire food chain.³⁵

The link between environmental issues and drug control is reflected in the participation of the United Nations International Drug Control Programme (UNDCP) in the United Nations Conference on Environment and Development, held at Rio de Janeiro, Brazil, from 3-14 June 1992. At the Conference, the UNDCP submitted a paper on the linkages between drug issues and environmental concerns, highlighting the cultivation of illicit drugs and the release into water sources of chemical products from cocaine and heroin processing, and pledging its support for Agenda 21.³⁶

The failure of countries to comply with the United States administration's crop-eradication programmes has often resulted in a suspension of US aid to the country concerned. In July 1989, aid was suspended to Bolivia and US troops were sent to "assist" anti-narcotics forces after the Bolivian government objected to chemical spraying.³⁷ The relationship between the use of chemicals in the war on drugs, development and debt is a close one. As Andreas and Bertram note, "US economic aid to the Andean nations is conditioned on co-operation in counter-narcotics efforts; US trade policy and loan approval through multilateral lending institutions are similarly linked to anti-drug objectives".³⁸

The drug phenomenon has been linked with questions of debt, development and the support for a New International Economic Order for countries whose economies are suffocated by the present economic order and who depend on the cultivation of coca and opium for economic survival. Heroin is reportedly funding Afghanistan's reconstruction after the destruction caused by the war, as refugees returning to their devastated villages need money to re-build their farms and homes, and no crop is as financially rewarding as opium.³⁹ In many developing countries, the production and distribution of illicit drugs are major sources of employment and export earnings, as we will see in the next chapter. Latin American leaders have always seen the "drug problem" as fundamentally an economic problem. The Peruvian President Alberto Fujimori, shortly after taking up office in 1990, rejected massive military aid packages from the United States, emphasising the need for an analysis of the "global context" of the drug problem, alternative economic strategies and a political system permitting

peasant participation.⁴⁰

The revenue from drug production has led to increased incomes for peasants in countries such as Bolivia and Peru, and in some cases a strengthening of the position of peasant associations and worker's unions. In many cases the peasant unions are closely tied to the national labour movement. The increasing influence of the peasant agrarian unions (in which coca-growers have taken a prominent role) was reflected in the decision of Peru's then President, Alan Garcia, attempting to introduce a peasant leader to President George Bush at the Drug Summit in Cartagena in February 1992.⁴¹ As LaMond Tullis speculates, this may lead to increasing demand for social restructuring, "illicit drugs may, where other avenues have failed, force the issue of such change before the close of the century".⁴²

As MacDonald states, the lack of economic development is a core element of the Andean cocaine trade and one possible anti-narcotic option would be to combine debt reduction and drug enforcement. MacDonald suggests that an alternative anti-narcotic strategy would be for the United States to purchase portions of a country's debt on the secondary market and give it to them as a form of anti-narcotics assistance. MacDonald uses the example of Mexico as an illustration. If the United States brought \$10 million of Mexican debt on the secondary market, where the value of the debt has an actual worth of under 50 cents for each dollar at face value, then officially \$20 million could be utilised for investment in the country in a conversion of bilateral debt into local currency debt, with annual interest payments to be set aside for use in alternative development.⁴³

Bolivia, approaching the problem as an economic one is considering the industrialisation of the cultivation of the coca bush in order to export coca leaves and particularly coca tea, which they believe could become more profitable than cocaine production and would generate greater revenue than the country's gas exports to Argentina (in 1991 worth \$214 million). In a formal statement at the 22nd assembly of the Organisation of American States in Nassau, Mr Ronald MacLean, the foreign minister called for "the legitimisation, industrialisation and commercialisation of the

sub-products derived from the innocent coca leaf and its protein-rich and medicinal qualities".⁴⁴

A complex web of issues therefore exists which affect and are affected by the drug phenomenon. Questions of debt and development, the need to improve living conditions and prospects for the peasant growers are inextricably caught up in drug control policies in the Americas. As Kempe Hope describes,

"The cardinal aim of rural development is viewed not simply as agricultural and economic growth in the narrow sense, but as balanced social and economic development, including the generation of new employment; the equitable distribution of income; widespread improvement in health, nutrition, and housing; greatly broadened opportunities for all individuals to realize their full potential through education; and a strong voice for all rural people in shaping the decisions and actions that affect their lives".⁴⁵

Concern with the displacement of peoples is also linked to the drug phenomenon and in turn is linked to environmental, and developmental concerns. As has already been suggested, the migration of peasants to drug-producing regions in South-East Asia and Latin America throughout the eighties can be seen as a challenge to the prevailing political and social structure of countries. These migrations often towards remote areas, frontier regions, forests and jungles have partly replaced the earlier movements from rural to urban shanty towns and slums. This transfer of peoples has however resulted in damage to the environment as already described, and has also had effects on food production. The migration of labour to coca-growing areas throughout Latin America, but particularly in Bolivia and Peru, has led to a decline in food production due to increased labour costs, the result of a short-fall in labour and the lack of seasonal labour being available. In Peru, where nutrition data is available, this has led to a rise in the level of malnutrition among the poorest of the population since 1980.⁴⁶

The war on drugs has also had the effect of encouraging large-scale militarisation in Latin America, which can be seen as threatening democratic control by fragile governments. This has led to large-scale violations of human rights and is

closely connected to the growth of the infamous "death squads".⁴⁷ The United States administration has poured funds, training and hardware into co-operating with Latin American governments in the fight against drug trafficking. Most of the resources have been for the police and the military. The United States administration has been accused of assisting repressive right-wing regimes on the pretext of fighting the war against drugs.⁴⁸ Critics of the administration's drug policy see its main aim as the continuation of United States authority in the region as established by the Monroe Doctrine and the "not in my backyard" philosophy of the fight against communist encroachment during the period of the Cold War.

The Colombian military for example, has been closely linked with right-wing death squads and assassinations, torture, disappearances, and sometimes mass murder.⁴⁹ In September 1989 when George Bush, then President of the United States declared an all-out war on drugs, the Andean Commission of Jurists in Lima published a critical report on the Colombian military called *Excesses in the Anti-Drug Effort*.⁵⁰ The strength of the military, due to United States resources, has also assisted other Latin American oligarchies, such as in Peru and Bolivia, in similar erosions of human rights and the repression of opposition groups, trade union and church leaders. In November 1989, the killing of six Jesuit priests, their housekeeper and her daughter, drew attention to the human rights abuses of the Salvadoran military. Despite allegations that top military officers were responsible for the murders, United States funding for the Salvadoran military in the fight against drugs, which had been temporarily decreased by Congress, was restored by George Bush in late 1990.⁵¹

The drug war has created a situation where the military can conveniently blame their own violence on the cartels. The cartels in response have claimed for themselves the role of the defenders of human rights. For example, in February 1991, the Medellin cartel claimed that the killing of the sister of a former presidential aide who had helped plan a large-scale anti-drug crackdown was in retaliation for human rights abuses against the Colombian people by the police.⁵²

The drug war has intensified anti-American sentiment in many developing

countries and has undermined popular support for elected governments whose leaders are forced to co-operate with United States sponsored drug-control operations and to accept increased United States' military aid. This discontent has enabled groups such as the Sendero Luminoso, or Shining Path⁵³ in Peru to gain support among the population as defenders of human rights against the abuses of the government-supported military and United States intervention.

Drug traffickers themselves are also abusers of human rights with drug-related violence affecting the lives of millions of people throughout South-East Asia and Latin America in particular. Because of the large amounts of money involved in drug trafficking, developed and developing countries alike are suffering from the effects of the corruption of officials and institutions by drug traffickers with the threat that this poses to the human rights of its citizens. After taking office in 1990, the Colombian President Cesar Gaviria Trujillo, reaffirmed his government's resolve to fight drug trafficking, but emphasised that his government's highest priority was to end the drug-related violence rather than to combat international drug smuggling.⁵⁴ A United States report depicts the Peruvian dilemma:

"Peru considers drug trafficking its third priority. With a 6,000 per cent inflation, the economy is in shambles. Insurgents control portions of the country...Peruvian politicians have made statements that Peru can live with the narcotics problem for the next fifty years, but may not survive the next two years if the economic and insurgent problems are not dealt with now...The will to deal with the drug issues, when faced with problems that threaten the immediate survival of the country, remains the most difficult issue."⁵⁵

The effect of the drug-related violence and corruption on developing and developed countries alike will be dealt with in the next chapter.

Attempts by law-enforcement agencies to control drug use in developed countries have also found themselves accused of infringing on civil liberties through a broad range of measures, such as random searches based on police suspicions, aimed primarily at young ethnic minorities.⁵⁶ In the UK there has also been a challenge that

the law allowing the government to retrieve the proceeds of drug deals breaches the European Convention on Human Rights. Lawyers have argued that the Drug Trafficking Offence Act of 1986, which allows profits of crimes committed before the act came into force to be confiscated, breaches Article 7 of the convention: that no-one convicted of a crime shall suffer a heavier penalty than was applicable at the time the offence was committed.⁵⁷

Widely quoted in the debate over the infringement of human rights with regard to drug control is the work of the nineteenth-century philosopher, John Stuart Mill. Mill believed that any attempt by the state to restrict the freedom of the individual to choose what he does was an illegitimate interference on the freedom of the individual and

"That the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right."⁵⁸

Many of the participants in the current debate favouring decriminalisation of illicit drugs share Mill's philosophy and their views will be explored in the concluding chapter to this research.

Mill's work was widely quoted during the time of Prohibition in the United States. The rationale for the restriction of alcohol during Prohibition and the current restriction on certain drugs is still central to much of the current debate on drug control, as Chapter Three on the nature of the values and the stakes involved in the drug phenomenon will demonstrate.

The drug phenomenon is also linked to a number of less obvious issues. During the seventies and first half of the eighties, the vast majority of cocaine and marijuana,

and to a lesser extent heroin, was transported to its destinations around the world by ship. Since the transportation of the illicit drugs occurred along the same routes as legitimate trade and recreational vessels, efforts at interdiction have had a profound effect on the evolution of the law of the sea, in negotiation during the same period. As Andrew Anderson states, efforts at international drug control have had a major impact on the renewed salience of the need for consensus on the law of the sea:

"Between the events which have occurred on the high seas and in the courtroom as a result of the interdiction effort and the events of the Third UN Conference on the Law of the Sea, the law of the sea has become an area of law with a new vitality, vibrancy and relevancy.....Principles of the law of the sea such as the right of approach, hot pursuit, freedom of navigation, vessel nationality, law of the flag, and stateless vessels have become as familiar to defense lawyers, prosecutors, and trial judges as to legal scholars and law students".⁵⁹

The above examples of the linkages of other issues with the drug phenomenon serve to illustrate the complex nature of issues and emphasises the necessity of reaching an understanding of issues by exploring the values and stakes involved as the next two chapters will illustrate. The drug phenomenon affects different countries in different ways, since there are different stakes involved for different actors.

The challenge to Realism from interdependence

The Rosenau concept of interdependence as outlined above also challenges the traditional distinction between domestic and international politics in the Morgenthau analysis of international politics. Efforts to control drugs suggest the domestic and the international are inextricably linked. Indeed with the case of the regulation of opium at the turn of the century, international legislation preceded national legislation, challenging another Morgenthau concept, central to the Realist understanding of agenda-building, that of the "national interest". Furthermore, as S D Stein notes, "International considerations still impinge directly on domestic drug-control programmes." According to Stein, the work of international bodies like the United Nations and the World Health Organisation, "institutionalised the processes whereby

the drug-control policies of one country are dictated by considerations that do not emanate from, or have a direct bearing upon, its own domestic situation at the time they are introduced".⁶⁰

The drug phenomenon challenges the Realist response to increasing interdependence and the creation of international regimes that their concerns are of the "low politics" type, ie. issues that do not affect security and diplomatic prestige, do not involve the highest decision-makers in government, do not lead to crises and are not dominated by states, and that a new paradigm to understand and explain international politics is not needed. For the countries of Latin America, the problem of cocaine is intrinsically linked to their very survival:

"The issues that will determine the fate of the region in the 1990s - foreign debt, economic crisis, civilian-military relations, human rights, democratization, and guerilla insurgencies - are being shaped by the politics of cocaine".⁶¹

As the next chapter will demonstrate, a social problem can effect security and prestige, involve the highest decision-makers in government and can lead to crisis. The phenomenon can also help illustrate the irrelevance of the Realist high/low politics distinction to explain agenda-formation and change in international politics.⁶²

The drug phenomenon also challenges the Realist concept of state sovereignty. As has already been stated, the drug phenomenon is such that no one country can deal with this multi-faceted and multi-dimensional phenomenon in isolation. Furthermore, the influence and organization of the Colombian and Bolivian drug cartels have spread to a point where they are described in a United States Department of Justice Report as a state-within-a-state in Colombia and Bolivia, operating openly and with impunity.⁶³ The wealth of the drug barons through their illicit activities has enabled them to offer to pay their countries national debt in exchange for immunity from prosecution⁶⁴ and in many cases the barons have private armies, better equipped than the state's own military.⁶⁵ Drug traffickers therefore have to be viewed as major actors in any analysis of the drug phenomenon.

The Global Politics paradigm

An alternative approach to the traditional Realist school of thought is the paradigm variously known as pluralism, the multi-centric approach, issue-politics, or the term favoured by this writer, the Global Politics paradigm. The Global Politics approach attempts to synthesise the literature on interdependence (already introduced) and international regimes with the literature on foreign policy analysis (developed by Rosenau) and with the literature on transnationalism and international organisations (as developed by Mansbach and Vasquez). In this way the Global Politics approach or Globalism allows for a greater understanding of the dynamics of change in the ever changing area of world politics, whereas mere adaptations to an approach which emphasises anarchy and continuity cannot do so. In the Global Politics approach to international relations, international regimes are central.

The concept of "international regimes" was first introduced into International Relations literature by John Ruggie. In his 1975 article, "International Responses to technology: Concepts and trends", Ruggie defined a regime as "a set of mutual expectations, rules and regulations, plans, organisational energies and financial commitments, which have been accepted by a group of states".⁶⁶ A conference on international regimes held in 1982 led to the emergence of the now-classical definition of international regimes as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actor's expectations converge in a given area of international relations".⁶⁷ Yet despite the almost universal acceptance of this definition, credited to Stephen Krasner, there has been little development on the conceptual ambiguity inherent in the definition, which this research has tried to clarify. Susan Strange's criticism of regime theory a decade ago, as "woolly" and "imprecise", still applies to much of the current regime literature.⁶⁸ Krasner defines the four recognizable characteristics of an international regime as "principles" - beliefs of fact, causation and rectitude; "norms" - standards of behaviour defined in terms of rights and obligations; "rules" - prescriptions or proscriptions for action - and "decision-making procedures" as prevailing practices for making and implementing collective choice. These characteristics however are not clarified and are hard to differentiate

conceptually - "principles" blur values with facts, and "norms" are difficult to distinguish here from "implicit rules". This ambiguity is not helpful in attempting to establish why international collaboration on an issue, in the form of an international regime occurs in some areas and not others. Furthermore, the implicit linking together of rules (prescriptions or proscriptions for action) and decision-making procedures (prevailing practices for making and implementing collective choice) loses valuable information concerning the importance of formal institutions for effective implementation of the regime's norm-regulated rules as Chapter Four will demonstrate.

The Krasner definition suggests that "values" and "norms" are central to an understanding of the evolution of an international regime. As Krasner himself emphasises, "Principles and norms provide the basic defining characteristics of a regime...Changes in rules and decision-making procedures are changes within regimes"⁶⁹ Unfortunately, the concepts suffer from lack of clarification in the literature on regimes and the discipline of International Relations in general. This research will attempt to clarify and develop the reasons for the emergence of issues, values and norms in international politics in order to create a theoretical framework for an analysis of the drug phenomenon.

A similar confusion over terminology and use of concepts can be found within the area of drug control.

The Politics of semantics

"Words are, of course, the most powerful drug used by mankind." Kipling

The basic premise of the drug-control system is that a number of substances, decided by the World Health Organisation, are harmful and dangerous and are therefore prohibited by the international system.⁷⁰ Under the Single Convention there are four schedules of controlled substances: Schedule I includes those substances having

addiction-producing or addiction-sustaining properties greater than those of codeine and more or less comparable to those of morphine; those substances that constitute a risk of abuse greater than codeine or have a liability to abuse comparable to that of cannabis, cannabis resin or cocaine; and those convertible into substances having a liability to abuse comparable to that of cannabis, cannabis resin or cocaine. Schedule II includes substances having addiction-producing or addiction-sustaining properties not greater than those of codeine but at least as great as those of dextropropoxyphene or a substance convertible into a substance that constitutes a risk of abuse not greater than that of codeine. Schedule III contains those substances intended for legitimate medical use, have no, or negligible risk of abuse, and cannot easily be converted into a substance that can. Schedule IV however states that substances under this schedule are those which have strong addiction-producing qualities, or a liability to abuse not offset by therapeutic advantages which cannot be afforded by some other drug; -and/or for which deletion from medical practice is desirable because of the risk to public health. Substances under Schedule IV are therefore also placed under Schedule I.

The categorisation of certain substances as illegal and others as legal (and some drugs as if they were not drugs at all, as in the case of alcohol⁷¹), is however, not simply an objective, scientific exercise based on scientific facts which the above premise implies. Rather it varies from generation to generation and from country to country. Different drugs have been salient to different cultures at different times throughout history. The main concern in England during the late seventeenth and early eighteenth centuries was the "gin epidemic". In the 1950s the problem was seen as heroin use, in the 1960s, particularly in America, the problem drug was LSD, in the late eighties in the United Kingdom glue-sniffing became a dominant concern⁷² and in the late 1980s and early 1990s crack-cocaine is seen by many in America and the United Kingdom as being the dominant problem. This is despite the fact that the "crack epidemic" in the United Kingdom, fore-warned by the American DEA, has failed to materialise.⁷³ In Russia, for the greater part of two centuries, the problem has been defined as the consumption of vodka, in Canada and Australia alcohol and solvent abuse among Native Americans and Aborigines has received widespread attention. In some cases, substances previously regarded as being perfectly harmless have been the

focus for concern. A good example of this is the condition termed chatorpan, found among the Hindi-speaking people of western Uttar Pradesh in northern India. The substances of their "addiction" are sweets and spicy snacks.⁷⁴

Most drugs when first introduced to European society were thought of as negative and harmful to both the individual and to society as a whole and serve to illustrate the changing values and concerns of society, as well as those of the ruling elite. Tobacco, coffee, chocolate and even the potato, when first introduced, faced opposition.⁷⁵ Tobacco, was first smoked in Europe by a colleague of Christopher Columbus (nearly a century before Sir Walter Raleigh introduced tobacco from Virginia to the English court), with the consequence that the Spaniard was tried by the Inquisition and sent to prison, since they believed that the Devil had entered him due to the exhalation of smoke. Soon after however, tobacco became popular in the courts of Europe. But by the seventeenth century, James I of England was denouncing it,⁷⁶ as was the Chinese Emperor. In the Mongul Empire, smokers had their lips cut, and in Russia smokers faced execution. The introduction of coffee from Ethiopia to Egypt in the sixteenth century led to its ban, the burning of stocks, and the arrest of coffee-drinkers. In the seventeenth century in England coffee-houses were treated with suspicion by the government as dens of sedition.⁷⁷ Both tobacco and coffee proceeded to become well-established in European culture and yet the latter half of the twentieth century has again seen a shift in attitudes towards their consumption.

Recent changing attitudes towards alcohol consumption and cigarette smoking in the West emphasise the changing salience of certain drugs for different generations. Thirty years ago smoking could be seen to be integral to adult social life, yet today in public places such as restaurants, cinemas and on public transport, the smoker is now the minority and even the outcaste. In America, particularly on the west-coast, anti-smoking measures now cover vast areas of public life; smoking in all enclosed public places has recently been banned in France; smoking is restricted in public places in Canada and Australia; the British government is considering legislation to outlaw smoking in all public places and in the workplace; and Singapore is aiming to become the first smoke-free city.

The eighties and early nineties have seen a decrease in the potency of legal substances. Motivated in good part by health concerns, smokers are turning increasingly to lower-tar and nicotine tobacco products, alcohol drinkers from spirits to wine and beer, with an increasing number of low-alcohol beers appearing on the market, and even coffee drinkers have turned to decaffeinated coffee in increasing numbers. The dangers to public health from alcohol consumption and cigarette smoking are well-documented. According to Ethan A Nadelmann, a strong supporter for the legalisation of illicit drugs, all of the health costs associated with the abuse of illicit drugs pale in comparison with those resulting from tobacco and alcohol abuse. Griffith Edwards, head of addiction research at the Institute of Psychiatry in London stated that "Only by the most wilful mythologising can we maintain the myth that the dominant problem we are encountering with drugs results from illicit substances".⁷⁸ The total cost of alcohol abuse to American society is disputable, but it has been estimated by Nadelmann to be as high as \$100 billion annually⁷⁹, and in some European countries, at between 5 and 6 per cent of gross national product.⁸⁰ Although alcohol is recognized as "the most widely abused *substance* [emphasis added] in America", by the Office of National Drug Control in their strategy for a "Drug-Free America" it is not viewed as a drug by the report, "because it is not a controlled substance under the law".⁸¹ This dichotomy between alcohol and other drugs is a relatively recent phenomenon and owes little to the lessons of history, such as Prohibition, which treated alcohol as a dangerous drug. The health costs of tobacco use are different but of similar magnitude. Cigarette smoking is the single greatest cause of preventable deaths in dozens of countries, and it is also indisputably linked to the premature deaths of millions of people each year. In the United States alone, an estimated 320,000 people die prematurely each year as a consequence of their consumption of tobacco. For 1984 it was estimated that cigarette smoking cost the United States approximately \$54 billion.⁸² By comparison, the figures associated with deaths from the use of all illegal drugs has been estimated at a fraction of this figure.⁸³ Yet despite this, alcohol and tobacco still remain, for the majority, the acceptable face of drug consumption.

The term "drug" is commonly not defined in academic and policy-making literature. Policy-making literature refers to "drugs", "narcotics", "psychoactive

substances" and "dangerous drugs" with little explanation of the reasons for the various terms. As with the understanding of the concept of an "issue" and the lack of any rigorous academic use, there is great difference between the medical or pharmacological and public perception of the term "drug". For the public the term has negative connotations, encouraged by the description of a "war" on drugs, yet the use of the term is not based on any objective criteria.

The commonly used term "narcotic drug" is defined by the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances as "any substances natural or synthetic in Schedules I and II of the Single Convention on Narcotic Drugs of 1961, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961".⁸⁴ The term "narcotic" in the field of pharmacology, refers to the sedative effects produced by a group of substances, mainly opiates and alcohol. However, the 1961 Convention, (the keystone convention on drug control) considers as "narcotic" such substances as cannabis, cocaine, stimulants and psychedelics, but not alcohol. Terminological confusion is added to by the fact that cannabis and heroin are listed in Schedule IV of the World Health Organisation's classification of controlled substances. The position of cannabis in schedule IV with heroin can be seen to be not because of its dangers, but because of its wide-spread recreational use and the fact that it has no medical use. The term "narcotic drug" therefore is used to define substances according to their legal status as socially disapproved substances rather than by any scientific criteria. All illegal drugs are included, with alcohol and tobacco excluded. Also excluded are the barbiturates and amphetamines and other substances that are frequently obtained both legally and illegally for illegal use.

Other key terms in the prohibition of certain drugs such as "drug addiction" and "drug abuse" elude clarification. In 1975 the WHO itself recognized that the term "abuse" had been used within an arbitrary and non-scientific approach:

"Drug abuse is a term in need of some clarification...The term is really a convenient, but not very precise way of indicating that (1) an unspecified drug is being used in an unspecified manner and

amount..and (2) such use has been judged by some person or group to be wrong (illegal or immoral) and/or harmful to the user or society, or both. What might be called drug abuse by some would not necessarily be considered so by others...For these reasons, the term "drug abuse" is avoided here."⁸⁵

However, WHO publications have used the term ever since. Whenever illegal substances are referred to in either WHO or UN publications, they are always referred to in terms of drugs of "abuse". As the United States' National Commission on Marijuana and Drug Abuse stated in their report entitled *Drug Use in America: Problem in Perspective*, this has the effect of "rallying all parties to a common cause since no one could possibly be *for* abuse of drugs any more than they could be *for* abuse of minorities, power or children".⁸⁶ The term "abuse" then has no functional utility yet discredits the non-medical use of drugs and suggests medical authority in doing so.

The concept of "addiction" has been used to justify strict legal and social control on illegal drugs and yet again there is no agreement on the term by those that use it. Sociologists speak of "assimilation into a special life style of drug taking". Doctors speak of "physical dependence" an alteration in the central nervous system that results in painful symptoms when the drug is withdrawn;"psychological or psychic dependence" an emotional desire, craving or compulsion to obtain and take the drug; and of "tolerance", a physical adjustment to the drug that results in successive doses producing smaller effects and, therefore, in a tendency to increase doses. Statutes speak of habitual use; loss of the power of self-control, and of the effects detrimental to the individual or potentially harmful to the public morals, safety, health or welfare. In 1957, the World Health Organisation classified two types of drug dependence: "addiction", that is qualified by physical dependence and tolerance; and "habituation", qualified by psychic dependence and no tolerance. These terms were replaced in 1965 by a new general definition, which stated that:

"Drug dependence is a state, psychic and sometimes also physical, resulting from the interaction between a living organism and a drug, characterised by behavioral and other responses that always include a

compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effects and sometimes to avoid the discomfort of its absence. Tolerance may or may not be present."⁸⁷

This is so general that almost everything we do, from the regular morning cup of tea to the bedtime cup of cocoa, could be described as an addiction. Nine specific dependencies were listed and discussed: alcohol; amphetamines; barbiturates; cannabis; cocaine; hallucinogens; khat; opiates; and solvents. Yet there was no explanation of the reason for the inclusion of alcohol but the exclusion of tobacco.

Although alcohol was officially included in the WHO classification of dependence-producing drugs, alcohol (and tobacco) have never been mentioned in any of the United Nations' drug control conventions despite universal global acceptance of their dependence-producing nature, and acceptance of the dangers to health associated with them.

The concept of drug addiction, or drug dependence as it is now referred to, suffers from a high degree of conceptual confusion and is indeed "a monstrous tangle of social, psychological and pharmacological issues"⁸⁸, that is difficult for policy-makers to unravel. All types of illegal drug use are seen as equally dangerous and threatening and all levels of use are seen as equally dangerous and threatening, "experimental first use, casual use, regular use, and addiction alike."⁸⁹

There is confusion within the expert community on the three major drugs that authorities seek to control; heroin, cocaine and cannabis. Although the dangers associated with acute and chronic consumption of heroin are on the whole not disputed, a variety of research has shown that although heroin is likely to be addictive it is not automatic. If taken in chemically pure form (unlikely with its present illegal status), consumed occasionally or on a regular basis, there are no adverse side effects other than mild constipation.⁹⁰ On this basis in the early twentieth century in the United States, opiates were used to treat alcoholism, since opiate addiction was seen to be a preferable condition to alcoholism by the medical profession when abstinence was not a realistic option.⁹¹

Similarly, as recently as the later half of the 1970s, cocaine was described as non-addictive and relatively harmless by numerous observers.⁹² Although much of the current literature views cocaine consumption with considerable alarm, addiction to cocaine has been described as uncommon (but possible, particularly when used in "crack" form) and studies have shown that it is rare for moderate use to lead on to heavy use. Among heavy users there is increased likelihood of heart attack, brain haemorrhage, liver damage, psychotic episodes, delusions and violent behaviour, but use when controlled leads to few adverse effects. However, much of the research on cocaine use has concentrated on the crack-cocaine use in urban ghettos, rather than the cocaine use that has been described as analogous to social drinking.⁹³ Grinspoon and Bakalar go as far as to state that many Americans accept cocaine use as a "relatively innocuous stimulant, casually used by those who can afford it to brighten the day or evening".⁹⁴

Perhaps the strongest example of the lack of scientific consensus, however, can be seen with cannabis use. As LaMond Tullis states; "Perhaps more than any other abused drug, cannabis has a diversity of experts whose research and opinion could justify almost any view".⁹⁵ On the one hand, researchers claim that cannabis causes harmful physiological effects,⁹⁶ and on the other hand, researchers claim that cannabis has few harmful effects.⁹⁷

The first reference to the question of the international control of cannabis was at the Hague Conference in 1912, where a resolution was adopted "to study the question of Indian Hemp from the statistical and scientific point of view with the object of regulating its abuse..."⁹⁸ However, it was not until the early 1970s that the Commission on Narcotic Drugs voted for a resolution strengthening control measures for cannabis, while again requesting a study of the medico-social aspects of cannabis use to be carried out by the Division of Narcotic Drugs. The study, according to the French delegate, "would draw attention to the medical and social dangers of cannabis and would explain the reasons for its having been placed under international control by the narcotics treaties".⁹⁹ The decision was made therefore to control cannabis use before scientific studies had been carried out, and based on "preconceived ideas, beliefs

and traditional value judgements imposed on the international bodies".¹⁰⁰

Cannabis was included along with heroin in Schedule IV of the 1961 Single Convention due to its "addictive" nature, defined in terms of the 1957 WHO definition of "physical dependence". However, the addiction-producing properties of cannabis were "not possible to assess" at that time according to a WHO representative speaking at the XIV Session of the UN Commission on Narcotic Drugs, as has already been suggested.¹⁰¹ Furthermore, the 1965 WHO definition of "cannabis-type dependence", (described earlier), stated that there was "little, if any, physical dependence" associated with cannabis use. As Arnao notes: "Paradoxically, the inclusion of cannabis in Schedule IV by the Single Convention was based on a WHO classification, which was latterly disproved by the WHO itself".¹⁰² The inclusion of cannabis in Schedule IV by policy makers can be seen to be due to its wide recreational use and lack of medical use.

However, the use of cannabis for medical purposes has received widespread documentation. Its history as a western medicine lasted from the 1840s to the 1940s, during which period it was extensively used to treat a wide variety of diseases such as depressive mental conditions, and the muscle spasms of tetanus and rabies.¹⁰³ The use of cannabis for medical purposes has recently been the subject of some debate again in the United States and the United Kingdom. Patients suffering from a wide range of serious illnesses such as leukaemia, epilepsy and multiple sclerosis have claimed benefits from taking the drug. It has been claimed that cannabis relieves the nausea associated with radiation and chemotherapy and can alleviate the pain in some victims of multiple sclerosis.¹⁰⁴ The use of the drug for patients suffering from glaucoma has also been the subject of much research. Glaucoma sufferers claim that it can lower the pressure within the eye, so avoiding the onset of blindness.¹⁰⁵ In 1989, the United States administrative law judge of the Drug Enforcement Administration recommended that marijuana could be legally available for such patients in the United States on compassionate grounds, but the DEA rejected the recommendations of its own judge to reclassify marijuana as a Schedule II drug which would have made marijuana available on a prescription basis.¹⁰⁶ Judge Francis Young, called marijuana "one of

the safest therapeutically active substances known to man" and argued: "It would be unreasonable, arbitrary and capricious for [the] DEA to continue to stand between those sufferers and the benefits of this substance in light of the evidence in this record".¹⁰⁷

In order to utilise the possible medical benefits of cannabis, however, cannabis would have to be legalised, since it is unlikely that cannabis could ever be licensed. This is because the stringency of the drug trials and testing procedures would mean that it would be a risky investment for a drug company since the chance of the company securing a license at the end of it would be too small. Cannabis is also not just one drug but a myriad of chemicals which would take years to analyse.¹⁰⁸

As the "drugs problem" needs to be understood not as a single issue, but as an amalgamation of various issues, involving various values and stakes, so too is it important to understand and distinguish between the various illicit drugs because their markets, problems and potential solutions differ. As has been demonstrated, it is not the chemical properties of the substances that policy-makers are interested in. Drug-taking is seen as challenging established values and established social norms. To sum up, drugs that are illicit are the problem; all drugs that are illicit are defined as equally problematic; and drug-taking itself is harmful rather than its harmful consequences. The seemingly scientific categorisation of drugs, and the rationale behind drug control, are based rather on the proscription of substances whose supposed effects on humans are by social norm and by law considered to be wrong. The evolution of these norms and values therefore needs to be explored.

The structure of the research

As has already been emphasised, the "drug problem" can be seen as not a single issue at all, but an amalgamation of a variety of separate issues involving various actors and various stakes in distinct issue-systems, within a similar context of what can be described as drug-related activity. The spread of Acquired Immune Deficiency Syndrome (AIDS) and measures to combat it; increasing use of illicit drugs among

minors; money laundering by criminal organisations; the link of drugs to international terrorism and arms sales; the usurption of government by cocaine barons in Colombia; the corruption of governments, are all concerns which would now appear to have the status of global issues due to their importance on the international agenda and the increased international action over how best to combat them. Conceptually these issues can be seen as separate, but behaviorally these concerns are seen as linked by policy-makers. Exploring the relationship between issue-systems and international regime analysis can help clarify the context under which an issue is regulated. However the concept of regimes and the concept of issues both suffer from lack of clarification in International Relations literature.

Chapter Two of this research will therefore explore the scope and nature of the drug phenomenon and in so doing highlight the complexity of the nature of the issues. The International Relations literature on issues will be reviewed with the aim of understanding why international action on drug control has moved higher up the international agenda during the eighties and early nineteen-nineties. Chapter Three will explore the evolution of the values and stakes involved with international drug control during the nineteenth century in order to understand the nature of values and the evolution of issues on the international political agenda.

Chapter Four in reviewing international co-operation to date on drug control will propose that a single international drug-control regime is not possible due to the multi-issue nature of the drug phenomenon. Furthermore, international consensus over the need to control global drug-trafficking has only produced a weak regime. With a greater understanding of the evolution and nature of issues, a more thorough understanding of regime creation can be attempted in Chapter Four. Chapter Five will show that in order for an issue to become regulated by the creation of an international regime, the process of contention over values must lead those for whom the issue is salient to a high level of consensus over an agreed norm on which the regime can be based. Chapter Five will proceed to identify the norms in the international politics of drugs. Of the norms involved, it is the norm that "Banks should not profit from criminal activity", concerned with the tracing, freezing and confiscation of drug-

traffickers assets that can be seen most clearly to be regulated by a regime. The evolution of this regime will be the focus for Chapter Six of this research. Finally, the current debate concerning the legalisation of illicit drugs will be explored in Chapter Seven in relation to regime formation.

Conclusion

The drug phenomenon is a complex and multi-faceted phenomenon which challenges the traditional Realist approach to International Relations to explain its complexity. This complexity requires precisely the issue-specific approach of international regimes as understood by the Global Politics paradigm. However, the clarification of key terms used in the literature on international regimes is necessary for an understanding of the emergence of international regimes that is not based on Realist hegemonic-power theory.

Within the field of International Relations there has been very little research done on the emergence of issues and the significance of values and norms in international politics. In attempting to understand the values and stakes involved in the drug phenomenon, a greater understanding of the phenomenon can be reached which does not ignore the lessons of history. As Zimring and Hawkins remark in their book, *The Search for Rational Drug Control*, "the immunity to historical evidence that characterizes the contemporary discussion of drugs in the United States is peculiarly pervasive".¹⁰⁹ The same can be said of international drug control. In developing an understanding of value and norm emergence, issue dynamics and regime evolution can be explained.

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7. This is despite the fact that Rosenau's work on interdependence, "Capabilities and Control in an Interdependent World", in *International Security*, Vol. 1, 1976, pp 32-49., pre-dates the Keohane and Nye work. It was not until the reprinting of much of his work with the 1980 publication of *The Study of Global Interdependence*, that Rosenau's theoretical contribution was acknowledged.
8. *Declaration of the International Conference on Drug Abuse and Illicit Trafficking and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control*. Document ST/NAR/14.
9. See S K Chatterjee, "An Overview of the International Drug Conventions" Chapter 1 in *A Guide to the International Drug Conventions*, Commonwealth Secretariat, London, 1988, pp 2-11.
10. V Kusevic, "Drug Abuse Control and International Treaties, *Journal of Drug Issues*, Vol. 7, No. 1, p 36. The designation of this body was later changed through different conventions to the Permanent Central Opium Board, Permanent Central Narcotics Board, and finally to the International Narcotics Control Board. For more information on the INCB see Chapter Four.
11. *Latin American Regional Report, Andean*, 1984, p 4 as cited in S B MacDonald, *Dancing on a Volcano: The Latin American Drug Trade* (Praeger, New York, 1988) p 36.

12. See "French minister campaigns for British way with AIDS control", *The Guardian*, 26.1.93.
13. Rosenau, *op cit.*, p 46.
14. See, the introduction to the Global Programme of Action, in *Political Declaration and Global Programme of Action adopted by the General Assembly at its seventeenth special session, devoted to the question of international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances*, United Nations document, A/RES/S-17/2, 15 March 1990. p 7-8. See Appendix C.
15. *Enhancement of the efficiency of the United Nations structure for drug abuse control. Report of the Secretary-General*, United Nations document A/45/652/Add.1, p 7.
16. See "Cocaine builds a bridge to the East", *The Guardian*, 14.3.92.
17. Rosenau, *op cit.*, p 43.
18. *Ibid.*
19. See E Alvarez, *op cit.*, p 83.
20. See J Maluamud-Goti, "Reinforcing Poverty: The Bolivian War on Cocaine", Chapter Four pp 67-92 in A W McCoy and A Block (Eds), *War on Drugs. Studies in the Failure of U.S. Narcotics Policy* (Westview Press, Oxford, 1992) p 69.
21. "Peruvian president says cocaine blighting Amazon", *The Guardian*, 7.2.91.
22. *Report of the International Narcotics Control Board for 1990*, United Nations document E/INCB/1990/1, para.,190, p 36.
23. M Dourojeanni, "Impactos ambientales del cultivo de coca y la produccion de cocaína en la amazonia peruana", as quoted in E Alvarez, "Coca Production in Peru", Chapter Five, pp 72-87 in P H Smith (ed) *Drug Policy in the Americas* (Westview Press, Oxford 1992). Also S B Macdonald, *Mountain High, White Avalanche. Cocaine and Power in the Andean States and Panama* (Washington Papers, 137, Praeger, New York, 1989) p 65; *Report of the Commission on Narcotic Drugs on its Thirty-Fifth Session*, Vienna, 6 to 15 April 1992. United Nations document, E/CN.7/1992/14., para., 33, p 15.
24. Reported in the annual report of General Rosso Serrano, commander of Colombia's Police Narcotics Brigade, see "Colombian drug barons open new smuggling route", *The Guardian*, 3.1.92; "Why the drug barons are talking green", *The Independent*, 30.3.92.; and Report of the International Control Board for 1992, *op cit.*, para. 327, p 45.

25. *Report of the International Narcotics Control Board for 1992*, United Nations document E/INCB/1992/1, para., 327, p 45.
26. In 1986 the volume of toxic waste dumped into rivers in Peru was estimated at 57 million litres of kerosene, 32 million litres of sulphuric acid, 16 thousand metric tons of lime, 3,200 metric tons of carbide, 16 thousand metric tons of toilet paper, 6.4 million litres of acetone and 6.4 million litres of toluene. See B Marcelo, "Victimas del narcotrafico", *Medio Ambiente* 23 (1987), as quoted in E Alvarez, *op cit.*, p 83.
27. Rivers and streams that have been altered in such a manner that they can no longer be put to their normal uses are designated as polluted or contaminated by the WHO. See E Alvarez *op cit.*, p 83.
28. B Marcelo, "victimas del narcotrafico", *Medio Ambiente* 23, 1987, esp 2,4, as quoted in E Alvarez, *op cit.*, p 83.
29. See R del Olmo, "Aerobiology and the War on Drugs: A Transnational Crime" *Social Justice*, 1987, No. 30, pp 28-4, "Aerobiology and the Paraquat Panic", pp 32-34.
30. *Ibid.*
31. This is despite the fact that neither paraquat nor glyphosphate are used in the United States. Paraquat is banned by the courts and glyphosphate is described as economically unviable. On a visit to Colombia in 1986, the director of the U.S Customs Service argued that aerial spraying in the United States was not profitable because the marijuana fields were too small. See del Olmo, *op cit.* This is despite the fact that marijuana production has been described as the United States' third-largest cash crop, with an estimated value of \$14 billion in 1985. See S Wisotsky, *Breaking the impasse* (Greenwood Press, New York, 1986) in J A Inciardi (ed), *The Drug Legalization Debate*. Studies in Crime, Law and Justice Vol. 7, (Sage Publications, London, 2nd Edition 1991) p 168.
32. The Bush administration in the early 1990s encouraged development of research into a caterpillar (the malumbia) that could defoliate coca plants. The plan was described by the *Washington Post National Weekly Edition* as "dangerous, arrogant and foolish". The administration maintained that "neither troops nor caterpillars will go in [to Latin America] without prior request or consultation". See "U.S. May Enlist Bugs in Drug War", *Montgomery Advertiser*, 2.21.90., as quoted in C J Johns, *Power, Ideology, and the War on Drugs*. Praeger Series in Criminology and Crime Control Policy (Praeger, New York, 1992). p 55.
33. MacDonald suggests that Eli Lilly were not only concerned about the environmental dangers highlighted by the environmental groups, but were concerned about possible lawsuits and also the possibility of assassination attempts on its employees in South America. See Macdonald, *op cit.*, p 66.
34. See "Plan to Curb Drug Trade in Peru Set Back", *The Washington Post* as quoted in Johns, *op cit.*, p 53.

35. R Fagan, *Forging Peace: The Challenge of Central America* (Basil Blackwell, New York, 1987) p 49.
36. See, Commission on Narcotic Drugs, *Activities of the United Nations International Drug Control Programme. Report of the Executive Director*. United Nations document E/CN.7/1993/3, para., 80, p 15.
37. Johns, *op cit.*, p 55.
38. P Andreas and E Bertram, "From Cold War to Drug War" pp 170-185 in C Hartman and P Vilanova (Eds) *Paradigms Lost: The Post Cold War Era* (Pluto Press and TNI, London 1992), p 171.
39. See "Hope that is built on heroin", *The Independent*, 6.6.92.
40. "Peru suggests way out for coca-leaf farmers", *The Financial Times*, 30.10.90.
41. See "A Peruvian Peasant fails to see Bush", *New York Times*, 16.2.1990, as quoted in LaMond Tullis, *Beneficiaries of the Illicit Drug Trade: Political Consequences and International Policy at the Intersection of Supply and Demand*, United Nations Research Institute for Social Development, Discussion Paper 19, Geneva, March 1991. p 11. Bush refused the meeting, which has been described as a diplomatic mistake since the need to deal not just with the drugs but with hundreds of thousands of politicized peasant-growers and their development needs, has since been recognised.
42. LaMond Tullis, *op cit.*, p 13.
43. MacDonald, *op cit.*, p 135. The UNDCP has been working on refining the concept of a "debt-for-alternative-development swap". In July 1992, at the Expert Group Meeting on the Conversion of Official Bilateral Assistance, sponsored by the United Nations Conference on Trade and Development, the UNDCP made a presentation on the concept.
44. Ronald MacLean, Bolivian foreign minister as reported in "Bolivia sees pots of profit in coca cuppa", *Financial Times*, 3.6.92. See also INCB Report, 1992, *op cit.*, Overview, Section B, "Attempts to develop a legal international market for coca products", pp 6-7.
45. K Hope, *Economic Development in the Caribbean* (Praeger Publishing, New York, 1986) pp 62-3.
46. See F LaMond Tullis, "Cocaine and Food: Likely Effects of a Burgeoning Transnational Industry on Food Production in Bolivia and Peru", in W Ladd Hollist and F LaMond Tullis, *Pursuing Food Security. Strategies and Obstacles in Africa, Asia, Latin America, and the Middle East* (Lynne Rienner Publishers, Boulder and London, 1987) Chapter 12, p 247-283.

47. In his article Edward Herman claims that US aid and training to Latin American forces is closely connected to the growth of death squads in Latin America. See E S Herman, "U.S Sponsorship of International Terrorism: An Overview", *Crime and Social Justice*, Nos. 27-28, 1987 pp 1-31.
48. See Johns, *op cit.*, Chapter 5 "Latin American "Democracies in Jeopardy", pp 131-158; also "The Newest War", *Newsweek*, 6.1.92., p 18-23 and B M Bagley, "Myths of Militarisation: Enlisting Armed Forces in the War on Drugs" Chapter 9, p 129-150 in P H Smith, *op cit.*
49. A 1988 international human rights panel headed by a Nobel Peace Prize laureate concluded that Colombian military officers were involved in death-squad activities. See Johns, *op cit.*, p 154.
50. The report begins: "Waving as pretext the measures adopted against drug trafficking, the military have ransacked the headquarters of grass-roots organisations and the homes of political leaders, and ordered many arrests". *Andean Newsletter*, Andean Commission of Jurists, Lima, September 1989, as quoted in N Chomsky, *Deterring Democracy* (Verso, London, 1991) Chapter Four "Problems of Population control" pp 107-137, quote from pp 128-9.
51. See Johns, *op cit.*, p 43.
52. *Ibid.*, p 51.
53. For more on the role of Sendero Luminoso in the drug phenomenon see Chapter Two.
54. President Cesar Gaviria Trujillo as quoted in B M Bagley, "Myths of Militarisation" *op cit.*, p 139.
55. DEA Review, December 1989, p 60-61, as quoted in F LaMond Tullis, "Cocaine and Food: Likely Effects of A Burgeoning Transnational Industry on Food Production in Bolivia and Peru", Chapter 12, pp 247-283 in W Ladd Hollist and F LaMond Tullis, *Pursuing Food Security. Strategies and Obstacles in Africa, Asia, Latin America and the Middle East* (Lynne Rienner Publishers, Boulder and London, 1987) p 248.
56. J Dillin, "Nation's Liberties at Risk?", *Christian Science Monitor*, 2.2.90.
57. "Drug trafficker can challenge UK profits confiscation law", *The Guardian*, 16.1.92.
58. J S Mill, *On Liberty* (Penguin Books, Middlesex, 1986, first pub. 1859), p 28.
59. A W Anderson, "In the wake of the Dauntless: The background and development of maritime interdiction operations" Part 11-41 in T A Clingan, Jr. *The Law of the Sea: What Lies Ahead ?* (The Law of the Sea Institute, William S Richardson School of Law, University of Hawaii, Honolulu, 1988). Proceedings of the 20th Annual Conference of the Law of the Sea Institute, co-sponsored by the University of Miami

School of Law, July 21-24, 1986 Miami, Florida.

60. S D Stein, *International Diplomacy, State Administrators and Narcotic Control. The Origins of a Social Problem* (Gower, Hampshire, 1985) p 5.

61. P R Andreas and K E Sharpe, "Cocaine Politics in the Andes", *Current History*, 91, February 1992, p 74.

62. For a discussion of the high/low politics distinction see the Preface by P Willetts to A Chetley, *The Politics of Baby Food: Successful Challenges to an International Marketing Strategy* (Francis Pinter, London, 1986).

63. The United States Attorneys and Attorney General of the United States, Drug Trafficking, *A Report to the President of the United States*, August 3, 1989, US Department of Justice, Office of the Attorney General, p 19.

64. For details see the next chapter.

65. See Rensselaer W. Lee, III, "Colombia's Cocaine Syndicates", Chapter 5 in A W McCoy and A Block, *War on drugs. Studies in the Failure of U.S. Narcotics Policy* (Westview Press, Oxford, 1992), p 93-124.

66. J G Ruggie, "International responses to technology: Concepts and trends", *International Organisation*, Vol. 29, No.3, Summer 1975, pp 557-583, quote at p 570.

67. The definition is credited to Stephen Krasner and was first published in a special issue of the journal, *International Organization*, on international regimes in Spring 1982 (*International Organization*, 36/2, Spring 1982), which was later published in book form. See Krasner, *op cit.*, p 2 for quotation. All page references in this chapter will be to the book.

68. S Strange, "Cave ! hic dragones: a critique of regime analysis," pp 337-355 in Krasner, *op cit.*

69. Krasner, *op cit.*, p 3.

70. See Article three of the *Single Convention on Narcotic drugs, 1961, done at New York on 30 March 1961*, in Dr S K Chatterjee, *A Guide to the International Drugs Conventions*, *op cit.*, Appendix IV, pp 96-137.

71. Alcohol is referred to in a recent United States document as "the most widely abused *substance* in America", but is not regarded as a drug since "it is not a controlled substance under the law". See *National Drug Control Strategy*, Office of National Drug Control Policy, Washington, DC: U.S. Government Printing Office, 1989, pp 8, 48.

72. Cases of the deliberate inhalation of glues and solvents amongst male teenagers became the subject of a great deal of media reportage during the eighties in the United Kingdom in particular.

73. In 1985 the House of Commons Home Affairs Committee stated: "Unless immediate and effective action is taken, Britain and Europe stand to inherit the American drug problem in less than five years. We see this as the most serious peace time threat to our well being." Home Affairs Committee, *Misuse of Hard Drugs* (Interim Report), House of Commons Paper No. 399, (1985), para. 2.

74. See V P Vatak and S J Vatak, "Chatorpan: A Culturally Defined form of Addiction in North India", *The International Journal of the Addictions*, Vol.2, No.1, Spring 1967, p 103-113.

75. The explorer Carletti (1574-1617) warned that "the Spanish, and every other nation which goes to the Indies, once they have become accustomed to chocolate, its consumption becomes such a vice that they can only with difficulty leave off from drinking it every morning". As quoted in B Whitaker, *The Global Connection: The Crisis of Drug Addiction* (Jonathon Cape, London, 1987) p 88. Whitaker also states, when the potato was introduced to Scotland it was sternly ostracised as unholy, because it was not mentioned in the bible. *Op cit.*, p 8.

76. In 1604 James I published a short extract called, "*A Counterblast to Tobacco*" in which he damned it as a filthy stinking habit which was harmful to the brain and dangerous to the lungs. As quoted in R Rudgley, *The Alchemy of Culture. Intoxicants in Society*. (British Museum Press, London 1993) p 140.

77. Whitaker, *op cit.*, p 8.

78. Professor Edwards speaking at a Ciba Foundation debate on drug addiction in Plymouth, as reported in *The Times*, 27.8.91.

79. This figure does not simply include only alcoholism and alcohol abuse treatment services. In 1986, for example, alcohol was identified as a contributing factor in 10% of work-related injuries, 40% of suicide attempts, and about 40% of the approximately 46,000 annual traffic deaths in 1983 in the United States. An estimated 18 million Americans are reported to be either alcoholics or alcohol abusers. See *Toward a national plan to combat alcohol abuse and alcoholism: A report to the United States Congress* (Department of Health and Human Services, Washington, DC, September 1986) as quoted in E A Nadelmann, "Drug Prohibition in the United States: Costs, Consequences, and Alternatives" *Science*, Vol. 245, 1 September 1989, pp 939-946 at p 943. Another survey by Harwood reached a similarly high figure. Harwood estimated that alcohol abuse cost the United States about \$80 billion in 1980. Of this, about \$10 billion was for treatment services. The balance represented lost future productivity due to premature mortality (\$14.5 billion), reduced productivity and lost employment due to morbidity (\$54.7 billion), and the direct costs of crime (\$42.5 billion), motor vehicle crashes, incarceration etc. See H J Harwood, et al., *Economic Costs to society of alcohol and drug abuse and mental illness: 1980* (Research Triangle Institute, Research Triangle Park, NC, 1984) as quoted in S Jonas, "The US Drug Culture: A Public Health Solution" pp 161-182 in J A Inciardi, *op cit.*

80. Dr Peter Anderson of the WHO speaking at The 36th Congress on Alcohol and Drug Dependency, Glasgow, 17-21 August 1992, as reported in *The Independent*, 18.8.92.
81. Office of National Drug Control, *op cit.*, p 48.
82. Of this amount about \$23 billion was spent for health services, the balance for lost production and premature mortality. Cigarette smoking thus appears to be the most expensive drug in terms of health care costs. See D P Rice, et al., "The economic costs of the health effects of smoking, 1984", *The Millbank Quarterly*, 64, 489, 1986 as quoted in Jonas, *op cit.*, pp 167-168; and P Taylor, *The Smoke Ring: Tobacco, Money and Multinational Politics* (Mentor, New York, 1985). See also Chapter Seven.
83. See Chapter Seven.
84. See Article 1 (n) in *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Adopted in Vienna, on 19 December 1988*, in Dr W Gilmore, *Combating International Drugs Trafficking: The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, Explanatory Documentation, Commonwealth Secretariat, London, 1991, Appendix A, p 59-83.
85. K Kramer and J Cameron (Eds), *A Manual on Drug Dependence* (WHO, Geneva, 1975), p 16.
86. National Commission on Marijuana and Drug Abuse, *Second Report: Drug Use in America: Problem in Perspective*, (U.S. Government Printing Office, Washington DC, 1973) p 11; as quoted in F E Zimring and G Hawkins, *The Search for Rational Drug Control* (Cambridge University Press, Cambridge, 1992) p 26.
87. WHO Bulletin No 32, 1965, quoted in Kramer and Cameron (Eds), *op cit.*, p 17.
88. See L Grinspoon and J Bakalar, *Cocaine: A Drug and Its Social Evolution*, (Basic Books, New York, 1976), p 176.
89. Office of National Drug Control Policy, *op cit.*, p 9.
90. See J Kaplan, *The Hardest Drug: Heroin and Public Policy* (University of Chicago Press, Chicago, 1983); F E Zimring and G Hawkins, *op cit.*, and P Cohen, *Drugs as a Social Construct* (University of Amsterdam, Amsterdam, 1990).
91. E A Nadelmann, "The Case for Legalisation", Chapter 1, pp 17-45, in Inciardi, *op cit.*, p 40.
92. A much cited work is R Ashley, *Cocaine: Its History, Uses, and Effects* (St Martin's Press, New York, 1975). See also, J L Philips and R W Wynne, *Cocaine: The Mystique and the Reality* (Avon Books, New York, 1980).
93. Grinspoon and Bakalar, *op cit.*, p 64.

94. *Ibid.*, p 129.

95. F LaMond Tullis, *Illicit Drug Taking and Prohibition Laws: Public Consequences and the Reform of Public Policy in the United States*, Discussion Paper 21, United Nations Research Institute for Social Development, Geneva, April 1991, p 4.

96. There are many reports about marijuana's effects on the vital systems of the body, on the brain, on immunity and resistance, and on sex and reproduction: See for example, H C Jones and P W Lovinger, *The Marijuana Question* (Dodd, Mead, New York, 1985). The recent debate concerns the damage to the lungs caused by smoking marijuana. See also *Journal of the American Medical Association*, 17.6.88., No 259, p 3384; and "Marijuana more harmful than tobacco", *New Scientist*, 17.12.87. p 15.

97. For a discussion of the "harmless" or "reduced risk" literature on marijuana and other drugs see for example, J Kaplan, "Taking Drugs Seriously", *The Public Interest*, 92, Summer 1988, pp 32-50.

98. P D Lowes, *The Genesis of International Narcotics Control* (Droz, Geneva, 1966) p 173.

99. Statement by the French delegate, UN document E/CN.7/SR 714, 1971 as quoted in V Kusevic, *op cit.*, p 46.

100. *Ibid.*, p 47.

101. D Solomon (ed), *The Marijuana Papers* (Signet, New York) p 87, as quoted in G Arnao, "The Semantics of Prohibition" *The International Journal on Drug Policy*, Vol. 2, No. 1., pp 31-33.

102. Arnao, *op cit.*, p 33.

103. See, D Aitken and T Mikuriya, "The Forgotten Medicine. A Look at the Medical Uses of Cannabis", *Ecologist*, Vol. 10 Nos. 8/9 Oct/Nov. 1980. pp 269-279.

104. "Marijuana: the best medicine?", *The Times*, 4.5.93.

105. See Aitken and Mikuriya, *op cit.*

106. See, *In the Matter of Marijuana Rescheduling Petition*, Docket No. 86-22, 6.9.88, Drug Enforcement Administration, Department of Justice, as quoted in Nadelmann, "Drug Prohibition", *op cit.*, p 942.

107. "US Resists Easing Curb on Marijuana", *New York Times*, 12.31.89, as quoted in Johns, *op cit.*, p 27.

108. Marijuana is made up of the dried leaves and flowering tops of the cannabis sativa plant and contains 426 known chemicals, which are transformed into 2,000 chemicals when burned during the smoking process. Seventy of these chemicals are cannabinoids, substances that are found nowhere else in nature. Recently reports have been made which highlight the possibility of utilising the medical properties of cannabis without

sending the patient to the "highly illegal level of consciousness" currently achieved by cannabis use. This research involves studying cannabis receptors in species such as the puffer fish and the sea urchin. See "Puffer fish hold secret of cannabis as medicine", *The Independent*, 2.9.93 and "Researchers putting cannabis on the right side of the law", *The Guardian*, 2.9.93.

109. Zimring and Hawkins, *op cit.*, p 45.

Chapter 2

The Scope and Nature of the Drug Phenomenon

Introduction

The last decade has seen the wider availability and growing consumption of cheaper and more potent forms of illicit drugs, and increasing concern over how best to combat drug use by the international community. In the 1980s, the cocaine supply increased dramatically. Between 1947 and 1980, 35 metric tons were recorded as having been siezed globally. During the three year period from 1983 to 1985, 94 metric tons were recorded seized in the Andean region alone, the main coca growing area in the world.¹ Due to over-production, cocaine prices were estimated by one United States report, to have dropped by as much as 80% by the end of the decade, and to have reached a level of production to satisfy four times the annual estimated cocaine market.² During the eighties, the media and various international conferences focused on cocaine use, giving the impression that cocaine use was a relatively recent phenomenon.³ That this is not the case is illustrated by the next chapter, which shows how mass cocaine consumption first appeared in the early nineteenth century. The focus on cocaine has been fuelled by the media publicity given to the drug "crack" and its association with inner-city use and increasing crime.⁴

This focus has also blurred the fact that there has also been a increase in heroin and cannabis production and consumption. The world's illicit opium production increased four-fold from 990 tons in 1971, to 4200 tons in 1989.⁵ Illicit opium production in the main producing area of South-East Asia, the Golden Triangle, doubled in 1988/9, from the previous year's production, to some 2000 tonnes, with a corresponding surge in opiate availability.⁶ There has also been a diversification, from cocaine production to opium poppy production in many Latin American countries. Opium production in Colombia has been estimated as equalling the size of the area under illicit coca cultivation.⁷ The purity of heroin at the retail level in the United States for example, has also increased significantly, averaging over 36 per cent compared with less than 10 per cent in the 1970s and early 1980s.⁸ Cannabis is still the most popular illicit drug in Europe, Asia, and Africa.⁹ New technologies for production, have led to increased production and consumption patterns. Hydroponic

equipment facilitates year-round cultivation of cannabis. This technology has also increased the potency level of the drug.¹⁰

Increases in technology have led to new, so called "designer drugs", such as "Adam", "Eve", "China White" and most recently, and with most notoriety, "Ecstasy".¹¹ These synthetic drugs add a worrying new dimension to the drug phenomenon for governments and law enforcers since their production is relatively easy and inexpensive. They are synthesised from readily available chemicals, may be derivatives of pharmaceuticals, are very potent, and in addition are marketed towards youth culture. Little data or research is available on these synthetic drugs, and the international regulatory procedure is not able to respond swiftly enough to the increasing numbers of new substances requiring investigation and possible control. Recent international control efforts have focused on the need to control diversion of precursor chemicals¹² used in the manufacture of these, and other illicit drugs from European manufacturing and exporting countries to illicit channels in parts of Africa and Asia.¹³ Diversions are generally the result of deficiencies in the application of control measures in international trade.

All these developments, have led to increasing concern within the international community over how best to combat illicit drug use, and have led to increased international action. In 1985, the Secretary General of the United Nations, Perez de Cuellar, took the unusual step of calling for a United Nations Conference on Drug Abuse and Illicit Trafficking.¹⁴ This was followed by the creation of the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances initiated by the Government of Venezuela.¹⁵ The Convention, known as the Vienna Convention, was the first United Nations drug control document in 18 years and came into force on the 11th of November, 1990. This was followed in February 1990 by a United Nations General Assembly Special Session, called for by the President of Colombia, which served to emphasise the importance of drug control on the international agenda, with the announcement of a United Nations decade against drugs.¹⁶ In April of the same year, a World Ministerial Summit to Reduce the Demand for Illicit Drugs and to Combat the Cocaine Threat took place in London.¹⁷ The drug phenomenon was also

discussed in a large number of meetings of heads of governments: a summit of the Non-Aligned Movement, the Commonwealth, the Group of Seven industrialised nations, the European Council; and a regional summit where the heads of state of Colombia, Bolivia, Peru and the United States met together at Cartagena de Indias, Colombia, in February 1990, followed by a second meeting in San Antonio in February 1992.¹⁸ This increase in international co-operation on drug control shows how the need to control the illicit use of drugs has increasingly been placed higher on the international political agenda. That this has come about, is not merely due to an increase in drug consumption throughout the 1970's and 1980's, and its serious impact on human health, highlighted by the spread of AIDS, but rather as a reflection of an enhanced understanding of its adverse effects on political and economic dimensions of domestic and international security in an increasing number of countries. The international community has become increasingly aware of the inadequacy of previous multi-lateral treaties to deal with the new developments.

In order to understand why drug control has moved up the international agenda, a greater understanding is needed as to what constitutes an "issue" in international politics. The drug phenomenon is a multi-dimensional and multi-faceted problem and cannot be analysed as a single issue as it often is. This necessitates a re-examination of the issue-centred approach to politics offered by the Globalist paradigm, and inevitably necessitates a new approach to agenda formation, one that is not dominated by hegemonic-power theory. Many Realist writers accept that there are issues on the international agenda other than the issue of power and security, but the significance of these new issues is limited, since they still view the struggle for security, optimised by the pursuit of power as the dominant issue. In this context agenda formation is based on power-as-capabilities determining actor's abilities to put an issue on the agenda. Within the alternative Globalist paradigm a regime approach to understanding the evolution of co-operation in international relations is given a sounder theoretical footing by placing it firmly in an issue-centred paradigm. With this approach, the emergence of issues on the agenda is not dependent on Realist hegemonic-power theories. After the problems associated with drug use and drug trafficking have been outlined, this

chapter will examine what we mean by an issue and how issues arise on the international agenda.

The nature of the drug phenomenon

The drug phenomenon challenges traditional approaches to international relations since a social problem, drug-related activity is seen as a threat to national and international security by many governments. The alliance of terrorist and insurgency movements with drug producers in the eighties has been a significant development for international drug-control efforts. Insurgency groups have used drugs to fund their operations, directly or indirectly. In the coca growing regions of South America, terrorist and insurgency groups have supported the cocaine trade in order to strengthen their political position and acquire funds, even though they may claim to be ideologically opposed to the drug trade itself. According to the United States State Department, during the eighties there were clear connections between left-wing Colombian guerilla groups and drug traffickers despite the fact that many of the drug traffickers were ideologically to the right.¹⁹ The seige of the Palace of Justice in 1985 was seen as linking Colombia's drug barons with communist insurgency groups.²⁰ Press releases on the involvement of terrorist or insurgency groups with drug production have used the key term "narcoguerrilla". It is said to have been introduced in 1984 by the U.S Ambassador to Colombia, Lewis Tambs, who had announced a successful raid on a jungle based drug complex and had claimed that communist rebels had been guarding the facilities.²¹ During the eighties, according to the Peruvian government and United States State Department reports, the Maoist group in Peru, the Sendero Luminoso or Shining Path, established close ties to international narcotic traffickers and received arms and money in return for protection against law-enforcement authorities. One of the motives behind their involvement with drug production could be seen to be the desire to gain peasant support, by campaigning against the United States-backed coca-eradication programme and United States involvement in the domestic affairs of the country.²² Groups in Ecuador, in co-ordination with groups in Colombia and Peru, have also been associated with regional drug traffickers.²³ Throughout the region, there are many more examples of links between terrorist or insurgency groups and drug producers.

In the Golden Triangle of Burma, China, Laos and Thailand, the opium trade has helped finance insurgency groups. In Burma, insurgency groups include those directly involved with the narcotics trade, such as the Shan United Army who are involved for profit motives, to the ideological revolutionaries such as the Burmese Communist Party (BCP), who use drugs to fund their political operations. In the early eighties, three ethnic groups, the Kachins, the Shan and the Karens, were all supported in their fight against the government of Burma by drug money.²⁴ Separatist terrorists in Sri Lanka are said to have become involved in drug trafficking in order to finance their arms and ammunition purchases.²⁵ The United States supported "Contras" in Central America were repeatedly accused of links with drug traffickers, in order to supplement United States funds, with the full knowledge of the United States²⁶. A similar situation emerged in Afghanistan.²⁷ A link is also visible between insurgency groups and the drug traffickers in the Bekka Valley in Lebanon.²⁸ Furthermore, these links between drug traffickers and terrorist or insurgency groups means that the trade in drugs and arms is becoming increasingly connected.²⁹

There are numerous examples of how drug production and the vast profits to be made from drug trafficking have corrupted the governments and the military of many countries throughout the world. In the early 1980s, government and military leaders in Bolivia, were pre-eminent in the drug trade and the international narco-mafia. Drug traffickers provided financial backing for the 1980 "cocaine coup" led by General Garcia Meza.³⁰ Involvement in drug trafficking can also be traced to the highest levels of government in Argentina, Peru, Guatemala, Paraguay and Colombia.³¹ A 1989 United States State Department Report noted that the corruption of the criminal justice system in Colombia was so complete that it was "virtually impossible" to arrest and convict drug dealers or to do serious damage to their organisations.³² The phenomenon is not confined to Central and South America. Drug corruption in Mexico has been described as "endemic" and extending to the highest levels of the Mexican government.³³ In Pakistan, the entire Pakistani Cabinet offered its resignation in December 1986 over riots in Karachi, orchestrated by the drug barons, to disrupt a police operation against powerful drug dealers. Important figures

in the government were implicated as being involved in the drug-smuggling operations and the military was also implicated in the increasing heroin trade. During the eighties Pakistan developed into one of the principal sources, if not the principal source, of high grade heroin in the world's illicit drug market.³⁴ The United States considered the Laotian government to be heavily involved in the production and export of heroin, or at the very least of condoning it during the eighties.³⁵ After repeated allegations, beginning as early as 1983 over the involvement of the government of Cuba (with, or without Castro's blessing) in the smuggling of illicit drugs into the United States, Castro finally acknowledged the problem within his government and had the principals tried and executed.³⁶ The corruption of governments and the state by drug traffickers is clearly illustrated by the case of Panama, where the military and the very highest leaders were implemented in promoting off-shore banking and other facilities for Andean drug traffickers. The role of the Panamanian military in the laundering of what has been termed "narcomoney", has led to the adoption of a new term, the "narcomilitary state".³⁷ Despite the evidence of the participation of top officials in Panama, Haiti, Mexico, Honduras, and the Bahamas in drug trafficking, the Reagan and Bush administrations have protected high-level military officials as long as these leaders supported the administration's agenda, since drug production and trafficking were secondary to their political interests in certain countries. For example, in the case of Honduras, the Honduran military provided support for the Contras, and were protected by the administration despite constant implication in drug trafficking on a huge scale. According to Rosenblum, in the fifteen-month period ending in 1988, "perhaps as much as fifty tons (of cocaine) moved through Honduras - nine tons of which was seized - amounting to half the estimated consumption in the United States".³⁸

The drug phenomenon can be seen as a direct threat to the governments of drug-producing countries. Colombia in particular has experienced what has been called "narco-terrorism",³⁹ with an open war with the Medellin cocaine cartel declared by the drug traffickers. During the latter half of the eighties, several prominent politicians, and over 3000 military and police personnel, have been killed or wounded.⁴⁰ Colombia has been in a state of seige for the greater part of the eighties. The drug

barons threatened the very heart of the Colombian judiciary by systematic threats and corruption which led to the virtual collapse of the judicial system in the latter half of the eighties. The Medellin cartel declared a "total war" against the government of Colombia after the major offensive launched against the cartel by the then President, Virgilio Barco Vargas, following the drug-financed assassination of the presidential candidate, Luis Carlos Gatan, in August 1989.⁴¹ The Colombian extradition treaty with the United States government, agreed in 1979, was overturned in 1987, leading to a nation-wide debate about how best to bring the traffickers, "Los extraditables", to justice.⁴² Government negotiations with the leaders of the cartels, such as Pablo Escobar Gaviria, have been described by senior officials as being akin to a "pact with the devil".⁴³ However, negotiations have led to the surrender of many leading drug barons and Colombia seems to be entering a new stage in its attempts to control drug-related violence.⁴⁴

The influence and organization of the Colombian cocaine cartels during the eighties, had spread to the point where they were described in the United States Department of Justice Report as a state-within-a-state in Colombia, operating openly and with impunity.⁴⁵ As Rensselaer W Lee III states, "Drug barons today are major political forces in countries such as Bolivia, Colombia and Peru, carving out states within states in coca-producing regions."⁴⁶ The estimated world-wide financial transactions in cocaine for 1986 exceeded the reported 1984 gross domestic product of 88 of the world's market economies including Argentina, Belgium, Indonesia, Nigeria, Pakistan, the Philippines and Turkey,⁴⁷ making the drug traffickers very wealthy men. The 1989 Kerry Commission Report estimated that the Colombian drug cartels earn \$8 billion annually, and Forbes magazine listed Colombian cartel leaders Ochoa and Escobar as among the richest men in the world.⁴⁸ The drug barons and traffickers can therefore afford huge, private armies that are often better equipped than many countries' official military forces, as in Colombia.⁴⁹ In Bolivia in the mid-eighties, the armies of the drug barons threatened the very existence of the government and administration itself, and in 1986, Bolivia's President called for, and received United States troops to help restore order. The operation was seen by many within Bolivia as a "violation of sovereignty", the troops were withdrawn, and the cocaine barons

resumed their activities, with an alternative challenge to the concept of "state sovereignty".⁵⁰ The incredible wealth generated by illicit drug trafficking has meant that cocaine barons have even spoken of using their financial power to take-over countries,⁵¹ and have challenged governments to participate in a contest for state power.⁵² In Bolivia in the early eighties, the drug trafficker Roberto Suarez Gomez offered to pay off two-thirds of Bolivia's foreign debt (then at \$3,000,000,000) in cash, in exchange for immunity to run his cocaine business.⁵³ Their wealth has also been used to provide some of the traditional facilities that a government usually provides: hospitals, educational facilities, clinics, and sports plazas, and Escobar had reportedly constructed more public housing in Medellin than the government itself.⁵⁴ In Burma, Khun Sa, one of the opium warlords of the Golden Triangle has held press conferences to boast of his huge wealth.⁵⁵ It is alleged that the Thai government negotiated with Khun Sa to enable the government to import wood from the territory under Khun Sa's control because Thailand has depleted its own forests. In exchange the government have reportedly offered immunity from arrest for Khun Sa while on Thai soil.⁵⁶ This incredible wealth, and the influence it provides, makes the drug barons major political actors in the area of drug control and challenges the Realist concept of "state sovereignty".

A great deal of research has been done on the importance of the drug trade to the economies of many developing countries and for Latin American countries in particular. Cocaine is deeply integrated into the economies of Peru, Bolivia and Colombia. Its production employs thousands and supplies much needed export earnings for the governments. In Peru an estimated 110,000-186,000 of the adult work force is employed directly by the production of the drug.⁵⁷ In Bolivia the figure is estimated at 350,000-400,000 (or approximately 7% of the population)⁵⁸, and in Colombia approximately 300,000 were estimated as employed in drug production in 1988.⁵⁹ The revenue generated by coca production has been estimated at \$1 billion a year in Peru, and approximately \$1.5 billion in Bolivia and Colombia.⁶⁰ Once in the financial system, the huge amounts of money generated from cocaine production can be used to meet many foreign exchange needs, including servicing the countries foreign debt. According to Rensselaer Lee, cocaine provided 20 to 30 per cent of Peru's foreign

exchange and well over 50 per cent for Bolivia in 1989.⁶¹

This challenge to the stability of governments by illicit drugs, is not confined to producer countries, but also effects the traditional consumer countries of the developed world. The demand for drugs has been linked by governments to increasing crime rates, seen as increasingly threatening to the domestic security of developed countries.⁶² However, since the source of illicit drugs is primarily international, their control becomes a part of a government's foreign policy. The threat to security posed by illicit drugs was recognised as long ago as the early seventies. In 1971 Nixon was the first United States President to declare a "War on Drugs". Drug abuse was described as a "national emergency", and drugs as "public enemy number one" needing a "total offensive".⁶³ The effect of Nixon's war, the successful eradication programmes, for example in Turkey, and the destruction of long-established trafficking networks, was to disperse production and consumption around the globe, making control more difficult. Nixon's war can be seen to have had the effect of breaking up the established drug trafficking network between Turkey-Marseilles-New York, into smaller and less detectable pipelines; moving production from established areas to new areas, particularly into the Third World. In this way, First World drug users were connected to Third World producers for the first time. The success of Nixon's war also encouraged the diversification of traffickers into other substances. The cost of drugs such as cocaine and heroin also increased in price in the United States due to the success of Nixon's programmes making the profit margins that much more attractive for traffickers and encouraging further trafficking operations. As McCoy and Block note,

"the international narcotics traffic became a cat's-cradle of smuggling routes far more resistant to suppression than ever before. Thus, America's first attempt at an international solution had, over the long term, compounded the problem."⁶⁴

In October 1982 President Reagan announced the start of the current "War on Drugs" which was taken up by his successor, George Bush. In 1989, William J Bennett, then head of the Office of National Drug Control Policy, declared :

"The source of the most dangerous drugs threatening our nation is principally international. Few foreign threats are more costly to the U.S. economy. None does more damage to our national values and institutions and destroys more American lives. While most international threats are potential, the damage and violence caused by the drug trade are actual and pervasive. Drugs are a major threat to our national security".⁶⁵

Attempts by governments to control the distribution and use of illicit drugs can therefore be seen to destroy another tenet of the Realist approach to international politics, that there is a clear divide between domestic issues and domestic politics, and international issues and international politics. Charles Rangel, Chairman of the House Select Committee on Narcotics Abuse and Control stated that,

"If Colombia falls (to the drug cartels), the other, smaller, less stable nations in the region would become targets. It is conceivable that we would one day find ourselves an island of democracy in a sea of narcopolitical rule, a prospect as bad as being surrounded by communist regimes".⁶⁶

As Lee states, the control of illicit drugs, once an issue far removed from the high politics of government, has become the United States highest diplomatic priority in relations with Colombia in particular, and a vital component of United States relations with Latin America generally.⁶⁷ The United States "War on Drugs" is seen by critics as serving to legitimise continued United States intervention, both politically, economically and militarily, in Latin American in the post-Cold-War period.

The eighties differed from previous attempts to control drugs by the scale of the resources allocated, and by the use of the military. George Bush consistently reaffirmed his commitment to further escalation of the war on drugs throughout the late eighties. Specific mention of drugs in his inaugural address, direct United States military involvement in the invasion of Panama in December 1989, the consideration of plans for a battle fleet off the coast of Colombia, the sending of millions of dollars worth of military equipment,⁶⁸ and the dispatching the Green Berets to Peru, have all confirmed this.⁶⁹ Although Bush's war was initially a war on cocaine, it soon encompassed an attack on heroin, with the indictment of Burma's Khun Sa, in December 1989, on charges of conspiring to import narcotics.⁷⁰ The attempt to bring

Khun Sa to justice was unsuccessful, but General Manuel Noriega was successfully prosecuted for his involvement in drug trafficking (see later).

Deploying the armed forces of the United States to assist drug enforcement operations necessitated in 1981, the repeal of the 1878 Posse Comitatus Act, which restricted military involvement in federal law enforcement.⁷¹ The militarization of the war on drugs deployed not only the armed forces in interdiction exercises, but also the Central Intelligence Agency (CIA) in the supplying of intelligence about foreign drug sources, and National Aeronautics and Space Administration (NASA), in carrying out satellite based surveillance of illicit drugs under cultivation. During the period 1989-1990 there was a steady expansion of the role of the United States military along its borders and overseas, and intensified pressure was put on other governments in the hemisphere to assign a greater role to their own armed forces in combatting drug trafficking.⁷² In mid-September 1989 Secretary of Defence Richard Cheney declared that "detecting and countering the production and trafficking of illegal drugs is a high-priority, national security mission" for his department.⁷³

Despite changes in Eastern Europe and the events in the Persian Gulf, the expenditure by the United States on the drug war in 1992 was approximately \$11 billion, with a projected increase to \$12.7 billion requested for 1993, making it one of the largest government programmes.⁷⁴

The recent political and economic changes in Central and East European countries have resulted in a substantial increase in the movement of peoples, goods, services and capital within and outside Europe. This has resulted in a corresponding increase in drug trafficking and drug use in Europe. With the emergence of free-market economies in the former Eastern bloc, the manufacture, export, import, domestic trade and distribution of pharmaceuticals in Eastern Europe previously monopolised by the state, were now in the hands of hundreds of new manufacturing and trading companies.⁷⁵ The nascent democracies are also experiencing an upsurge of crime and corruption, providing opportunities for well-organised criminal networks, which profit from illicit drug trafficking.⁷⁶ European concerns in the late eighties and early nineties have therefore focused on fully integrating the former USSR and Eastern bloc

countries into the European and international drug control system.

Within Western Europe, the implementation of the Single European Act allows in principle for persons, goods, services and capital, to move more freely within the Community. The signing of the Schengen Convention in 1990 by eight of the Member States of Europe, with Greece signing in 1993, is a move towards the abolition of frontier controls.⁷⁷ However, the United Kingdom, the Irish Republic and Denmark remain outside the Schengen Group. The outside borders of the Community are feared by some as becoming the only barriers for drug traffickers to penetrate. Significantly drug seizures have also increased, suggesting that the amount of trafficking has also increased. In 1992, 4.5 tonnes of heroin was recovered in Europe, as against three tonnes in 1991.⁷⁸ Cocaine seizures increased by 42 per cent in the first half of 1993, and cannabis seizures increased from 80 to 91 tonnes.⁷⁹

The European Community has recently focused its drug-control efforts on combatting drug-money laundering. Close co-operation has been achieved throughout the community with various financial institutions, in efforts to tighten the regulation of financial institutions and to prevent the utilization of the banking system and financial institutions for the purpose of laundering drug money.⁸⁰ The Financial Action Task Force (FATF) was set up in July 1989 in Paris by the Heads of State or Government of the Group of Seven industrialised countries, and the President of the Commission of the European Communities, with the aim of fighting money-laundering.⁸¹ A European Economic Community Directive, adopted in June 1991, obliges all member states to introduce measures against the use of the financial system for money-laundering.⁸² France has made it mandatory for financial institutions to make a declaration whenever they have reason to believe that funds stem from drug trafficking. In Germany, new legislation has been enacted to close the loopholes that have been used by traffickers to re-route into legal channels proceeds from illicit activity. Switzerland has seen the abolition of the traditional anonymous money deposits in Swiss banks. In 1991, the Swiss Criminal Code contained the specific offence of money laundering and a general obligation to identify the customer as well as any

possible beneficial owner of the funds.⁸³ Luxembourg has also amended its laws on money laundering, but only for funds that have been tainted with drug-related activity.⁸⁴ Austria, Italy, Spain and the United Kingdom have also enacted similar legislation.⁸⁵

The scale of crime and public disorder associated with drug use and trafficking has led many European countries dramatically to re-think their attitude to drug control. High-level public officials in several European countries have called for the debate to be opened on the decriminalisation and legalisation of not only marijuana, but also cocaine, heroin and other illicit drugs. In the United Kingdom, senior police officers have spoken out in favour of some form of legalisation, as has a national newspaper, a prestigious magazine, members of the judiciary, and a senior economist.⁸⁶ In Spain, eminent judges and lawyers, including law professors from half of Spain's universities, have been campaigning to legalise the sale of drugs, as part of an alternative approach to Spain's serious problems with drug use and trafficking: Spain is now the major point of entry for cocaine from South America and cannabis products from Northern Africa destined for Europe. Thirty-six per cent of the cannabis and 44 per cent of the cocaine seized in Europe in 1991 were confiscated in Spain.⁸⁷ In Italy in 1993, in an attempt to control the increasing mafia-related crime, one of the eight separate referendums was concerned with de-penalising personal drug use.⁸⁸ Chapter Seven of this work will explore further the current debate on the legalisation of drugs.

The threat posed to European countries is a perceived threat to national stability and security, due to the link of illicit-drug distribution to international criminal networks, such as the Hong Kong Triads and the Japanese Yakuza (see later). In the United Kingdom in 1985 the House of Commons Home Affairs Committee stated:

"Unless immediate and effective action is taken Britain and Europe stand to inherit the American drug problem in less than 5 years. We see this as the most serious peace-time threat to our national well-being".⁸⁹

This increase in crime and instability has led many European countries to begin to re-evaluate their drug control programmes. Switzerland and the Netherlands are frequently cited as archetypal of this alternative approach, providing drug users with their chosen

narcotics in an attempt to drive the criminal traffickers out of business.⁹⁰

The defining of the non-medical use of certain drugs as a criminal act has allowed the growth of the largest criminal enterprise ever seen. Estimates of the annual turnover from the drugs trade vary enormously, from \$76 to \$600 billion a year.⁹¹ The Director-General of the United Nations Office in Vienna stated at the opening of the 1988 Conference that,

"The amount of money involved in illicit drug trafficking is staggering, a single drug, cocaine, was worth billions on the illicit market. Illegal drugs were estimated to have overtaken oil as a source of revenue globally; they were now the world's second biggest trading commodity, next to armaments, and amounted to 9 per cent of international merchandise in value".⁹²

Estimates of the size of the drug trade vary considerably due to problems of collecting data. The wide range of estimates is due to the fact that the financial flows arising from drug trafficking can be estimated in various ways. At the lower end of the estimates, such as in *The Drugs Trade in Latin America Report*, the estimated trade of between \$76-181 billion would involve laundering, at the lower end, the equivalent of all the money spent yearly on lawyers fees in the United States, and at the upper end, the entire domestic turnover of the United States automobile industry.⁹³ Because drugs are illegal, criminals, terrorists or insurgency movements can gain large profits from the various stages of production and marketing. Drugs profits have become by far the largest single source of revenue for organized crime in developed countries.

All the above examples serve to illustrate the fact that the drug phenomenon affects different countries in different ways, highlighting the complexity of the phenomenon. Different governments have different stakes to preserve. In Colombia, the concern for the government is centred on ending the mafia violence or narco-terrorism, "the principal threat against (our) democracy", rather than on ending the cocaine trade itself.⁹⁴ In Peru and Bolivia the dominant issue facing the governments is the threat from the insurgents, often allied with the coca growers. In Peru the alliance of the Sendero Luminoso with the coca growers bestows a difficult dilemma

upon the government. Destroying coca production allies more and more peasants with the guerillas. In 1990, President Fujimori suspended the United-States-supported, anti-cocaine, enforcement programme for fear that it would further strengthen the guerilla insurgency led by Sendero Luminoso.⁹⁵ Similarly, the government of Thailand has also been wary of moving against some of its poppy growing peasants, remembering that it was an earlier destruction of opium fields that allowed communist guerillas to infiltrate and win over many hill tribesmen to an anti-government position.⁹⁶ Competing stakes for the Peruvian government, meant that in March 1990, two separate missions of United States helicopters carrying Peruvian anti-drug police, were fired upon by army soldiers. Similarly, in June 1989, a Bolivian navy detachment shot at helicopters carrying Bolivian anti-drug police and United States Drug Enforcement Agency advisors.

The traditional consumer countries of the developed world see drug trafficking as a threat to their security in relation to the rising cost of crime and social unrest associated with illicit drug use. Furthermore, the increase in the laundering of profits made from the increasing sales of illicit drugs, and recent financial scandals involving drug money, such as the Bank of Credit and Commerce International (BCCI) affair, threaten the economic stability of developed countries, as will be discussed in Chapter Six. In the United States, estimates of the profit to organised crime from narcotics traffic have been put at between \$5-15 billion a year, which is tax-free and mainly channelled abroad.⁹⁷ For the traditional producer countries, drug trafficking currently threatens to undermine political and judicial systems in several countries, and forms an integral destabilising component of the economies of several countries. There is also concern that the drug trafficking/insurgency connection will increasingly enable terrorist groups to force their agendas onto governments. The domestic political reaction therefore can be seen to be due to the problems of stability and security, resulting from increased trafficking and from the link between drugs and crime. The international agenda has subsequently been affected accordingly.

The increase in drug trafficking

From the 1950s onwards there has been a steady increase in international drug

trafficking due to a number of factors, as will be outlined briefly below.

Increasing communications between regions and increased transport links with regular flights, for example between South America and Spanish cities, and the United States and Sicily, have facilitated consumer/producer links. The report of the United Nations International Narcotics Control Board for 1990 cites how new air services linking Angola, Nigeria, and Mozambique with South America have led to an increase in illicit drug trafficking in these countries. Furthermore, the increase in tourism world-wide has spread the problems related to the use of drugs. In Sri Lanka, the increase in tourism has led to an increase in the use of heroin among young people.⁹⁸ Increasing communications have contributed to increased migration flows, with large diasporas of some ethnic groups now residing in strategic parts of the world, whose blood ties have been utilized by traffickers in the formation of illicit networks. The Chinese community is represented in almost every major city in the world, and ethnic Chinese are the dominant importers and wholesale distributors of heroin, with networks from the Golden Triangle through Bangkok and Hong Kong to California. The Turkish Cypriot community are conveniently spread across western Europe; and the southern districts of Florida and central and southern California with their large number of immigrants have been utilized for Colombian and United States operations. Migration to drug producing regions, what Edmundo Morales has called a "white gold rush", particularly in Peru and Bolivia, has also been a developing trend in the eighties.⁹⁹ This has often resulted in widespread deforestation, land erosion, and the poisoning of rivers with the kerosene, sulphuric acid, quicklime, carbide, and acetone used in cocaine processing.

In Viet Nam, changes in its economic system have resulted in an increase in the movement of both peoples and goods, both within the country, and in neighbouring countries. This has led to drug traffickers targeting it as a source of illicit drugs, as a transit route (due to its proximity to the Golden Triangle) and also as a potential market. More recently, the abolition of many of Europe's customs posts (particularly in Germany, Holland, Belgium, Luxembourg, Spain, Portugal, France, Greece and

Italy - the signatories of the Schengen Convention) and the promotion of free-trade has led to increased movement of peoples and an increase in illicit drugs available. Over the last decade, seizures of heroin in the European Community have gone up more than sevenfold from 1.1 tonnes in 1982, to 8.3 tonnes in 1991, and seizures of cocaine are 42 times higher, up from 0.4 tonnes to 16.8 tonnes.¹⁰⁰ Similarly, reports have been made of Colombian drug cartels setting up factories, warehouses and transport companies in Mexico to exploit the flood of cross-border commerce expected under the North American Free Trade Agreement which is awaiting endorsement.¹⁰¹

The increasing migration flows between countries, and the collapse of economic barriers, is often due to increasing economic growth. Economic growth has led to expanding markets in countries such as Japan, Germany and the former Eastern bloc countries, such as Poland. The increase in commerce between China and Hong Kong and Macao has led to increasing movements of heroin across China's southern borders.¹⁰² The opening up of the former Eastern Bloc countries has led to new markets, where non-convertible currencies had previously meant that there was little profit to be made by drug traffickers. Greater freedom of movement and economic growth has allowed Italian mafia groups to buy up sectors of the new economies, in order to launder drug money.¹⁰³ In 1985, the Balkan heroin route from Czechoslovakia, Yugoslavia, Romania and Bulgaria via Turkey, accounted for an estimated quarter of all the heroin reaching Western Europe. It has been estimated to have increased by 70-80 per cent in 1990.¹⁰⁴

One of the most significant factors in the increase in drug trafficking has been the involvement of organised criminal groups, beginning with the mafia in the 1950s in the United States. Since drugs are an illegal activity, vast profits can be made from their distribution, as has been stated. Some large multi-national, illicit drug distribution organizations existed as early as the 1930s. The "French Connection" between refiners, traffickers and producers in Marseille and Turkey supplied heroin to the United States from the 1930s until 1973.¹⁰⁵ Today the main competitors are the Japanese Yakuza¹⁰⁶, the Chinese Triads¹⁰⁷, the Colombian cartels¹⁰⁸, the Mexican mafia¹⁰⁹ and the Sicilian mafia¹¹⁰. With the fall of the Berlin Wall and the collapse

of communism, the former Eastern Bloc has become accessible to Italian and Colombian mafia groups. Mafia groups have also been reported to have been working together in unprecedented co-operation in order to expand their businesses. There have been reports of the Italian mafia signing deals with underworld gangs in the former Soviet Union to set up a global ring in narcotics and nuclear-weapon materials.¹¹¹ South American and western European organisations have used each-other's routes in a joint venture to smuggle cocaine to Europe and heroin to North America. Seizure data also shows linkages being established between South East-Asian traffickers and criminal organisations elsewhere.¹¹² The increase in the use of the western and northern sub-regions of Africa as transit countries for cocaine from South America has seen a corresponding increase in the activities of European and South American criminal organisations in the region.¹¹³

The present international economic order, debt, falling commodity-prices and poverty have helped pave the way for increased drug production in the traditional producer countries of the Third World. According to United Nations analysts:

"The decline of prices for commodities like sugar (by 64 per cent), coffee (30 per cent), cotton (32 per cent) and wheat (17 per cent) between 1980 and 1988 motivated farmers to turn to cash crops like the coca bush and the opium poppy to avoid economic ruin. At the national level the export of illicit drugs often took up the slack of foreign exchange depleted by falling prices for agricultural goods as well as for minerals, including tin (down by 57 per cent in 1980-1988 period), lead (28 per cent), crude oil (53 per cent) and iron ore (17 per cent)."¹¹⁴

In July 1989, the 74-nation International Coffee Organisation's price maintenance system collapsed and coffee prices halved. Coffee is Colombia's largest legal export, and accounted for about one third of Colombia's total exports. Before the collapse of the coffee agreement, Colombia had been producing 10-12m, 60-kilogramme sacks per annum. Until the price collapsed, a Colombian farmer could earn almost as much from growing coffee as from the coca bushes, from which cocaine is manufactured,¹¹⁵ although coca growing is considerably less work (see later). A 1990 United Nations Drug Programme study quotes potential incomes per hectare per year in Peru from

possible coca substitutes such as cocoa (\$1,615), coffee (\$1,114), palm oil (\$833), and rice (\$885), using the best available technologies, compared to \$4,500 per hectare (in 1985) for cultivating coca.¹¹⁶ A similar discrepancy between prices for legal produce and for illegal coca exists all over the Andean region of Latin America.

Throughout the eighties, the economy in Peru was in a serious state of decline with an external debt of approximately \$18 billion by the end of 1988.¹¹⁷ President, Alan Garcia, angered international bankers by limiting debt repayments to 10 per cent of export earnings (no exports, no payments). The country rapidly became capital starved and, since relations with international creditors were poor, money from cocaine production or "narcodollars", provided some relief.¹¹⁸ Garcia stated that those demanding drug control should be aware that "the only raw material that has increased in value is cocaine" and that "the most successful effort to achieve Andean integration has been made by the drug traffickers."¹¹⁹ He challenged the current economic order, and the emphasis of the international community on controlling drug production, by stating "it is an equally grave crime against humanity to raise interest rates, lower the prices of raw materials and squander economic resources on technologies of death while hundreds of millions of human beings live in misery or are driven to violence".¹²⁰

The collapse of cotton prices in 1975 and 1976 had already forced many wealthy farmers in Bolivia to reconsider their options. From 1981 to 1982, the GDP contracted by more than 9 per cent; inflation soared from 123.5 percent in 1982 to 11,750 per cent in 1985; and unemployment tripled to 20% by 1985.¹²¹ Tin, natural gas and to a lesser extent oil, were Bolivia's natural exports. The collapse of the buffer-stock operations of the International Tin Council in October 1985 and the 1986 downturn in oil prices had a dramatic effect on the economy of the country, which was already struggling. By the mid-eighties, a complex matrix of drugs, economic development problems, external debt, and political instability had brought Bolivia to a crisis in its history.¹²² As Flavio Machicado, Bolivia's former finance minister explains, "Bolivia has gone from the economy of tin to the economy of coca. If narcotics were to disappear overnight, we would have rampant unemployment. There

would be open protest and violence."¹²³

Similarly, the expansion of the coca trade into Venezuela, Ecuador and Chile in the late 1980's can be seen to be due to declining economic conditions. The price of oil started to fall in 1982 and by 1983 the GDP growth rate in Venezuela was 5.6%.¹²⁴ It had to re-schedule its external debt and accept austerity measures which led to an increase in unemployment. Venezuela became a transit route for Colombians into North America and Europe. In Ecuador, the economy entered difficulties in 1982. Growth slowed to 1.2%, and in 1983 GNP contracted by approximately 3%. The economy remained erratic throughout the early eighties until 1987, when a combination of natural disasters led to the re-scheduling of its external debt (at \$10.7 bn in 1987) and the introduction of austerity measures. A fall in prices, especially for oil and bananas (the main products), meant a decline in living standards and an increase in unemployment. These economic conditions combined with the crackdown on the drug trade in Colombia and Peru, opened up Ecuador to the drug traffickers. The growing role of Chile as a transit point for cocaine in the eighties and early nineties can also be seen to be due to the prevailing economic conditions.¹²⁵

The relationship between decreasing economic conditions and the increase in drug production is not only illustrated by Latin American countries. The cuts in the United States sugar quota system in the 1980s for example, have been advanced as a key force in pushing farmers in Belize and Jamaica out of sugar and into marijuana cultivation.¹²⁶ There has been also been an increase in drug trafficking in many parts of Africa in recent years with the global economic recession combined with severe drought, famine and civil war as major contributing factors according to an International Narcotics Control Board report.¹²⁷ Large quantities of heroin from South-East and South-West Asia are being routed through African cities for distribution on illicit markets in other parts of the world. Countries in the western and northern sub-regions are increasingly being used as transit countries for cocaine from South America.¹²⁸

For many producer countries in the developing world, the problems associated

with attempts to control drug production are inextricably linked to the problem of economic development and to the question of trade rights. A recent report by the International Narcotic Control Board (1991) stated that "It is axiomatic that if programmes designed to provide alternative income possibilities for growers of narcotic crops are to succeed, marketing opportunities and fair export prices for such alternatives must be established."¹²⁹ The report suggests that other Governments should take note of the actions by the European Economic Community to include Bolivia, Colombia, Ecuador and Peru into its preferential customs system for a number of agricultural and industrial products.¹³⁰

In Bolivia, attempts to promote legal alternatives to coca production by the US Agency for International Development were prevented by United States' farmers agricultural interests. In the late eighties, lobbyists working through the Department of Agriculture succeeded in blocking any aid for the development of citrus and soy crops in the Andes on the grounds that they would compete with US products.¹³¹ The importance of economic interests is also illustrated by what Macdonald refers to as the over-concentration by the United States administration on drug control in Central America during the mid-eighties. The reason for this policy, according to Macdonald, was that the Andean countries had significant trade with the United States and therefore, were not to be disrupted. The United States trade with Costa Rica, Panama, Guatemala and El Salvador equalled a little over \$4 billion in the years 1986 and 1987. In comparison, US trade with Colombia alone in the same period accounted for \$3.3 billion, with US exports accounting for \$1.45 billion, with similar patterns in other Andean countries.¹³² Furthermore, debt repayments for Andean countries were huge (Colombia at \$18 billion - projected year-end 1988) compared to many Central American countries (El Salvador at \$1.6 billion, Nicaragua at \$5 billion) and were they to default it would be of great concern for western financial institutions.¹³³

The increase in illicit drug trafficking since the fifties has come about due to the increasing interdependence of peoples and economies and an increase in economic growth and markets. The development of the current economic order and the involvement of national and international criminal organisations has led to the fact that

trafficking groups have succeeded in making available increasing amounts of illicit drugs, in particular cannabis, cocaine, and heroin, virtually anywhere in the world.

Problems to control

Throughout the latter half of this century drug trafficking has increased, despite increasing international action through the main international control body, the United Nations, and other international institutions to prevent it. The success of United Nations efforts since the 1940s, (12 multi-lateral treaties in all) have been limited in controlling the problem. There are many difficulties involved in attempts by a legal structure to control an illegal activity.

Initial United Nations attempts focused on supply reduction, as emphasised by the keystones in United Nations drug control, the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and the 1971 Convention on Psychotropic Substances.¹³⁴ The combination of crop eradication and crop substitution programmes, financial inducements and punitive measure against growers have met with mixed success. There are many obstacles in attempting to control supply.

Coca leaves, which provide the alkaloids from which cocaine is derived, grow on bushes on a wide range of soils. The coca plant can be grown in virtually any sub-tropical region of the world that receives between 40 and 240 inches of rain per year, where it never freezes and where land is not swampy or waterlogged. In South America, this comes to approximately 2,500,000 square miles, of which less than 700 square miles are currently estimated as being used to grow coca.¹³⁵ In the proper climate therefore, coca bushes will grow on soils so infertile as to be unsuitable for any other cash crop. Coca bushes also mature sufficiently in three years for the leaves to be picked from 3 to 6 times annually, which is an excellent cash cropping pattern. Also, after the bushes have matured, little cultivation is required.¹³⁶ Cannabis can be grown year-round if water resources are sufficient, and hydroponic equipment also

facilitates year-round cultivation and increased potency. Opium can be grown in a wide variety of locations. The opium poppy stores well, does not spoil, can be grown in high terrain, can be grown without fertilizer or much irrigation, and can be harvested without machinery. Now some developing countries also have the technology to do their own refining.¹³⁷

Problems of trying to control supply also involve problems with the identification of illicit cultivation. It is often difficult to locate illicit drugs, especially with regard to coca production in and near the Andean region, in the remote areas and in mountainous terrain. In places the drugs are also grown interspersed with other plants which makes locating and eradicating them more difficult. In 1989 for example, less than 1 per cent of Peruvian and Bolivian coca products were interdicted.¹³⁸ The areas are also difficult to control for law-enforcement agencies. The eradication of illicit drugs, in a small number of cases, poses problems that are not only practical in nature. In some areas, eradicating production would be environmentally damaging. In the Chu valley in Kazakhstan, cannabis is the only plant which grows in the sand. Its immediate eradication would result in an ecological disaster, transforming the valley into a desert.¹³⁹

The drugs phenomenon is protean in form, changing over time. Suppression of one form of production, one form of traffic and one pattern of drug abuse leads to the emergence of others. In the late 1970's, under pressure from the United States government, the relatively successful attempts by the government of Colombia to eradicate marijuana production, led to the expansion of the production in Mexico. When the United States put pressure on Mexico to eradicate production, crop cultivation rapidly increased in the United States, where domestic production now fulfils over one third of demand.¹⁴⁰ When the Turkish authorities clamped down on the illicit cultivation of opium poppies in the 1960s, drug producing organizations shifted production to the Golden Triangle region of South East Asia and to the mountainous regions on both sides of the Afghanistan-Pakistan border. More recently, new growing areas of Ecuador and Brazil, have seen a shift from cocaine to opium and

marijuana production due to successful government programmes aimed at the eradication of cocaine. Illicit opium poppy cultivation is also increasing in Guatemala.¹⁴¹ It has been recently reported that the area under illicit poppy cultivation in Colombia has expanded to an estimated 18,000 hectares, thereby equalling the size of the area under illicit coca bush cultivation.¹⁴² Ironically, the dismantling of the Medellin cartel and the imprisonment of its leaders including Pablo Escobar, handed much of the business over to the competitive Cali cartel, described as "the most powerful criminal organisation in the world", and seen as a greater threat to security by law-enforcement authorities.¹⁴³ Furthermore, drug trafficking activities have dispersed to neighbouring countries, such as Bolivia, and throughout the continent, thereby exacerbating drug control efforts. The flexibility of the drug trade is also highlighted by the example of Panama. Emerging problems in the late eighties in Panama, led to a shift in the money-laundering business from Panama to Paraguay, Antigua, the Bahamas, Barbados and Luxembourg.

Suppression of one pattern of drug abuse and one method of transportation has often simply led to the emergence of other forms. During the eighties, the Colombian government, in an attempt to reduce the amount of illicit cocaine production within its borders, restricted the amount of ether available, which was used by the drug producers for transforming coca paste into cocaine hydrochloride. The result was the diversion of coca paste through Central America and the Caribbean into Southern Florida for conversion. Methods of transporting the drugs from producer to consumer countries are also flexible and difficult for law enforcement agencies to control. The effective implementation of the United States National Air Interdiction Strategy, forced drug traffickers to abandon private aircraft as the favoured mode of transporting cocaine into the United States, and to resort to other, more complex modes of smuggling, such as commercial maritime cargo concealment.¹⁴⁴ Many recent cases of drug smuggling have involved individual "swallowers" who carry the drugs inside their bodies, often in condoms, while travelling on commercial airlines. In this form a "Nigerian Connection" for heroin traffic appeared in the early 1990s and has reportedly taken control of as much as 40 per cent of the heroin market in the United States.¹⁴⁵

Most drug enforcement authorities have focused their efforts on combatting trafficking in heroin and cocaine. Less attention has been given to the worldwide trafficking in psychotropic substances that have similar abuse potential. Increased action is required in this area in the light of evolving seizure data regarding amphetamines, MDMA, and LSD. Trafficking in, and abuse of, stimulants and sedative hypnotics are widely occurring in Africa, Asia, Latin America and also Europe and North America. The diversion of precursor chemicals for illicit drug production, is also increasing. In one recent case, large quantities of a precursor were exported from a European country to a Latin American country where it was used to manufacture MDMA, a Schedule 1 psychotropic substance. The product, in tablet form, was registered in the Ministry of Health as a slimming pill and exported to North America, where it appeared on the illicit market as "Ecstasy". Effective implementation of the provisions of the Vienna Convention to prevent diversion of precursors requires adoption by governments of practical control methods. The establishment of the Chemical Action Task Force (CATF) by the Group of Seven major industrialised countries went some way towards trying to combat the situation.¹⁴⁶

The ever increasing new "designer drugs", referred to at the start of this chapter, such as Ecstasy, are a growing problem for drug control agencies to regulate. Designer drugs are substances intended for recreational use, and have been modified from legitimate pharmaceutical agents in order to circumvent legal restrictions. The legal definitions of drugs on the controlled substances list are often very narrow, both in order to enhance the strength of cases brought in the legal system, and in order not to unduly inhibit or discourage legitimate chemical and pharmacological research. The challenge for regulatory and law enforcement authorities is to keep pace technologically with new screening techniques capable of detecting a wider variety of chemical substances, as well as more sensitive methods that can detect these drugs and their metabolites at the nanogram and picogram level.¹⁴⁷ The production and sale of designer drugs has been estimated to be a million-dollar industry.¹⁴⁸

These new developments emphasise how illicit drug production and consumption patterns cannot be separated. The traditional divide between producer and consumer

countries is no longer valid. Consumer countries now produce illicit substances such as designer drugs, and there has been a steady increase in consumption patterns among the traditional producer countries. The availability and abuse of cocaine is expanding in many traditional producer countries such as in South and Central America. The smoking of coca paste mixed with tobacco or cannabis (basuco and pitillo) is the most frequent form of drug use in countries such as Bolivia, Colombia and Peru. Drug use amongst children has reached alarming proportions in many urban areas, particularly in Brazil.¹⁴⁹ This again emphasises that different countries face different and often changing problems with regard to controlling drug supply. Despite this, the United States administration has continued to emphasise supply reduction policies. Seventy per cent of the 1991 anti-narcotic budgets went on supply-reduction programmes.¹⁵⁰

During the eighties however a new focus emerged, emphasising control of the demand for illicit drugs and a high level of international consensus against drug trafficking. The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the World Ministerial Summit to Reduce the Demand for Illicit Drugs and to Combat the Cocaine Threat, both emphasised the necessity of the need to attack drug trafficking and the vast profits to be made. As has been previously stated, estimates of the annual turnover from the illicit drug trade surpass oil revenues by some estimates and are second only to the annual takings of the arms trade. The United Nations, which has been through the decades at the forefront of drug control, has not the necessary authority to deal with this emphasis on drug trafficking control and the focus on traffickers profits. In its present form it has no authority to implement global enforcement and policing powers, nor has it the authority to deal with banking regulation and traffickers assets. The United Nations drug control bodies are also under-staffed and under-funded to deal with the situation, as we will see in Chapter Four. Drug control in a state setting implies the participation of many branches of governmental machinery; those organs concerned with public health, education and social welfare, the judiciary, law enforcement, economic affairs, and also research and academic bodies and non-governmental organisations. In the United States, only two of the twelve federal government departments do not have a role in the drug war, with at least twenty-five agencies having a mandate and committing

resources. Co-ordinating the activities of these agencies is therefore a difficult task.¹⁵¹ At the international level, similar complexities are faced in efforts at international co-operation, particularly within the United Nations system. International co-operation is dispersed, which creates difficulties for policy co-ordination.

The total annual expenditure of the United Nations, in the drug-control area, was approximately \$37m in 1988-1989 (0.5 per cent of the regular budget) which equals just over 0.007 per cent of the estimated level of the world's illicit trade in 1989 (\$500bn) which is only thirty-nine minutes turnover in the trade.¹⁵² The traffickers are well-financed and are well-resourced. Trafficking syndicates such as the Cali syndicate are thought to possess a large arsenal of automatic weapons (such as AK 47s and Uzis), trained contract assassins, the most modern forms of air transportation and the best of the state-of-the-art communication networks that money can buy.

Lack of success by the United Nations, in combatting the spread of illicit drugs, can be seen to be due to a number of factors. Drugs are the archetypal free-market commodity: as has been discussed, they are easy to produce, easy to transport, easy to conceal and, due to their illegality, have a high added-value at each stage of the trading chain. *The Economist* notes, "The drugs trade is a fine specimen of unrestricted competition, which efficiently brings down prices and pushes up consumption."¹⁵³ In 1987, for instance, the price of coca leaves sufficient to produce one kilogram of cocaine was between \$500-750. As coca paste, it was worth \$500-1000; as cocaine base \$1000-2000. After processing in laboratories, the kilo of cocaine would be worth between \$3000-6000. Once exported to the United States, it would be worth \$14000-21000 at the wholesale level, and more than ten times that price, between \$160,000 and \$240,000, at the retail level (where it would be diluted with other substances).¹⁵⁴ The focus on supply reduction has yielded unimpressive results. In some cases, such as in Latin American countries, efforts have had far-reaching consequences in terms of threatening social order and stability. Efforts to control trafficking routes have led simply to diversification by traffickers, from one method of transportation to another, and from one region to another. Attempts to eliminate patterns of drug use have led to the emergence of new, often more potent and more

dangerous varieties of drugs. The international community has been slow to respond to the advent of these new designer drugs, which help to illustrate how complex differing interests and perspectives are on the phenomenon of drug control. In the past, three clearly identifiable groups have emerged with regard to international co-operation on drug control; consumer countries, producer countries, and transit countries. Today, countries do not fit neatly into any of these categories. Most producer countries are also consumer countries, most consumer countries are also transit countries and most transit countries are also consumer countries. Also, traditional producer countries relate the drug problem to the wider problem of economic development (especially in Latin America), whereas traditional consumer countries are more concerned with the role that illicit drugs play in the increase in domestic crime and international crime, and the increase in money-laundering. Lack of success in combatting the spread of illicit drugs can be seen in part to be due to the conceptualisation of the drug problem as a single issue, as the problem is too disparate to be viewed in this way.

Drug control and issue politics ¹⁵⁵

Attempts to control illicit drugs by the international community date back to 1909,¹⁵⁶ but as has been demonstrated, the drug phenomenon has recently acquired new characteristics. The increase in trafficking and the associated large amounts of money to be made from the activity, have become a threat to the political and economic dimensions of domestic and international security of nearly all the countries of the world. The size and complexity of the international drug phenomenon, involving environmental, health, education, crime and development concerns, as discussed in the introductory chapter to this thesis, means that it must be viewed not as a single issue. Rather, it is an amalgamation of a variety of interconnected, but separate issues. For the purpose of this research, a disaggregation of what is often conceptualised as an "issue" is needed. The current "drugs problem" can be seen not as a single issue at all, but as an amalgamation of variety of a separate issues, involving various actors and various stakes, in distinct issue-systems, within a similar context of what can be described as drug-related activity.

The undeniable growth in transaction flows, the recognition of international actors other than states, the disaggregation of the state, the blurring of borderlines between national and international politics, and the increasingly minor role of military force in the international system since the 1970s, have all been subsumed under the Keohane and Nye concept of *interdependence*.¹⁵⁷ Two key concepts have emerged from this literature:

1. The concept of *international regimes* predominantly explored by Realist writers in the face of the challenge from interdependence.
2. The concept of *issues* forming distinct *issue-systems* governing behaviour within a state of interdependence.

Previously the two concepts have been developed principally in isolation, and have both suffered from lack of clarification. In order to develop a theoretical framework for an analysis of drug-related activity this section will attempt to clarify and develop the concept of an "issue", in order to prepare the way for a more thorough understanding of the emergence of international regimes.

The International Relations literature on issues

For Realists, all issues in international politics are dominated by the struggle for security, which is optimised by the pursuit of power. For Realists, an issue reaches the international agenda through the power of a state putting the issue on the agenda, or through changes in the balance of power transforming the agenda. Despite this emphasis on states and power, Realists have acknowledged the existence of transnational relations in an ever increasing interdependent world and accommodate it within their theory of international relations. Issues are classified into either "high politics" issues or "low politics" issues. Issues of high politics affect security and diplomatic prestige, involve the highest decision-makers in government, may lead to crisis, and are dominated by states. Low politics consists of economic, social, technical or environmental issues, involve government bureaucrats (if they involve governments at all), are handled routinely, and may be dominated by transnational actors.

An alternative view, advocated by the Globalists, is that *all* issues may affect security, involve the highest decision-makers, produce crises' and be dominated by governments.¹⁵⁸ As we have seen, the drugs phenomenon does effect the security, or perceived security, of several countries, involves the highest decision-makers in government and has led to crisis, particularly in the case of several Latin American countries. On the 15th February 1990, the Presidents of Colombia, Bolivia and Peru met with the President of the United States in Cartagena de Indias, Colombia, to review co-operation with respect to drug control. The issue for the United States administration was viewed as important enough for the President himself to attend the meeting.¹⁵⁹ In order to understand the nature of issues and their emergence onto the international agenda without the Realist high/low power politics structure, the concept of issue *salience*, developed by the Global Politics paradigm, will be used.

For the Globalists, debate on interdependence has led to the acceptance that there is not a single international system, as understood by the Realists, but rather, multiple issue-based systems, with each system featuring a unique cast of governmental, intergovernmental and non-governmental actors. The actors in a Globalist system are those for whom the issue is relevant and importance. Stated more formally, "One issue is more salient than another issue, for a specific political actor, if it is perceived by that actor to be of greater priority for the optimisation of the actor's own set of value preferences".¹⁶⁰ Therefore, the salience of an issue will vary from one actor to another and may vary over time. The advantage of the concept is that it does allow for actors other than governments, to be included in an analysis of change in the global system. However, the concept of issues and their formation into issue-systems first needs to be clarified. This involves a clearer understanding of the concept of an issue than is currently the case.

Terminological confusion

The concept of an "issue" is central to the paradigm approach variously known as pluralism, interdependence and transnationalism, the multi-centric approach or, the term favoured here, globalism. Writers such as Rosenau, Mansbach and Vasquez,

Willetts, Keohane and Nye, have all written with the implicit theoretical assumption that we can recognize distinct "issues" on the global agenda. Despite this, an authoritative theoretical literature defining the concept of an issue remains elusive. Indeed, Rosenau's initial work in the area, his article on "pre-theories" (1964) and later, *The Scientific Study of Foreign Policy* (1971) do not even include a definition of what is understood by an "issue".¹⁶¹ Rosenau's work sought to bridge the artificial divide between domestic and international politics, seeing different levels of analysis, (local, national and international politics) as forming horizontal systems, cross-cut vertically by what he termed "issue-areas".

Rosenau, in his work, *The Scientific Study of Foreign Policy* defines an issue-area as consisting of:

"(1) a cluster of values, the allocation or potential allocation of which (2) leads the affected or potentially affected actors to differ so greatly over (a) the way in which the values should be allocated or (b) the horizontal levels at which the allocations should be authorized that (3) they engage in distinctive behaviour designed to mobilise support for the attainment of their particular values".¹⁶²

Rosenau stated that there were only four types of issue-area to be considered: "status area", "human resources area", "territorial area" and "non-human resources area". From this typology, Rosenau hypothesises that conflict over Berlin and conflict in Princeton, New Jersey, since they were both located in the territorial area of his typology, would generate different types of behaviour from the three other types.¹⁶³

The later work on issues by Mansbach and Vasquez, *In Search of Theory*, at first seems entirely compatible with the Rosenau work. Mansbach and Vasquez describe an issue as follows:

"It is the perceptions of contenders concerning the way in which these various proposals about stakes are related that shape issues. Proposals that are seen as related (either because actors consciously claim they are or behave as though they were) are perceived to constitute an issue...stated more formally: *An issue consists of contention among*

actors over proposals for the disposition of stakes among them".¹⁶⁴
(Italics in the original)

However, the two definitions are not compatible. Rosenau clearly states that an issue-area consists of *many* issues. Issue-areas are described as persistent and general, whereas issues may be temporary and situational.¹⁶⁵ Mansbach and Vasquez however, take Rosenau's definition of an issue-area to be a definition of an issue. In fact, Rosenau's description of the differences between actors over the allocation of values leading to mobilisation of support refers to the concept of an issue, and the cluster of values generating distinctive behaviour was the basis for defining how different issues may be categorised into a common issue-area. The concept of an issue-area, as used by Rosenau, is not useful because it encompasses two concepts, the idea of concrete political processes that produce the relationships, as well as the idea of abstract values. However, for a clarification of the term "issue", the idea that there is both an ideological (perception) and behavioral aspect to the term needs to be clarified.

The work of Keohane and Nye writing a decade later, shows how much confusion was generated from the above work. Whereas Rosenau talked about issue-areas as an area to be conceptualised at a high enough level of abstraction to encompass a variety of vertical systems, Keohane and Nye equate issue-areas, from this description, as consisting of aggregations of Rosenau's vertical systems, or the term favoured by this writer - issue-systems. As Keohane and Nye explain in their work, *Power and Interdependence*, "When the governments active on a set of issues see them as closely interdependent and deal with them collectively, we call that set of issues an issue-area."¹⁶⁶

The use of systems analysis in political science was pioneered by David Easton. For Easton a political system is "any set of variables selected for description and explanation".¹⁶⁷ Furthermore, if a system can be conceptualised wherever one can identify interdependence or behaviour modification in a given area of consideration, then this is in line with the Mansbach and Vasquez concept of an issue as "contention among actors over proposals for the disposition of stakes among them". The concept

of issue-systems is more analytically useful than the term, issue-area, because it need not evoke the behavioral processes that Rosenau associated with the term, issue-area. We can instead concentrate attention on the contention over values of the actors concerned. The Keohane and Nye definition of the term issue-area represents common academic usage of the term, issue, in International Relations theory, but it takes little theoretical footing from the original Rosenau work.¹⁶⁸

The much overlooked work of Mansbach and Vasquez, in concluding that Rosenau's typology of issue-areas was not useful, but agreeing with Rosenau's emphasis on the tangibility of issues, can help explain the nature of issues and the formation of issue-systems. In concentrating on the means available for winning support, rather than the tangibility of the ends, Mansbach and Vasquez posed that a substantive typology could be arrived at deductively from the values that are invoked by an issue. This is possible they say, because there are a limited number of values that people pursue, such as physical security, order, freedom/autonomy, peace, status, health, equality, justice, knowledge, beauty, honesty and love.¹⁶⁹ Mansbach and Vasquez return to what they see as the original definition of an issue, offered by Rosenau. Namely, that "an issue consists of a cluster of values that are to be allocated" with an issue consisting of "contention among actors over proposals for the disposition of stakes among them". Mansbach and Vasquez state that since values are abstract and intangible they cannot be obtained directly, therefore they are represented by objects or *stakes* for which actors contend.¹⁷⁰

What needs to be explored, therefore, is how an issue becomes a matter of contention. As Mansbach and Vasquez state, issues come on to the agenda when an actor wishes to bring about some change in the current authoritative allocation of values, by creating new stakes, reviving old ones, or altering the values ascribed to an existing stake.¹⁷¹ The next chapter will explore further the relationship between values and stakes. Furthermore, since values are not stakes, but the criteria by which we choose stakes, the evolution of conceptions of what is to be preferred needs to be explored, with reference to the work on epistemic communities, discussed in the next chapter.

Issues and agenda formation

For the Realist, issues come on to the international agenda through changes in global power. As Kindleberger states,

"Power politics constitutes the principle determinant of collective outcomes in international society in that outcomes flow directly from interactions among autonomous states, each of which is attempting to maximise its own power".¹⁷²

For Kindleberger (1973), as for Keohane (1984) and Krasner (1976, 1983) agenda-building in international politics is dominated by the theory of hegemonic stability. Hegemonic-stability theory was originally presented as an explanation of patterns of international economic co-operation.¹⁷³ A state, acting as a rational actor, possessing sufficient power in terms of capabilities to become the leader on an issue, would control its movement on the international agenda on the basis of a cost and benefit judgment. According to this perspective, state power and "state interests" explain which issues come on to the international agenda and which issues remain on the periphery. However, as we will see in the next chapter, the inclusion of opium regulation on the international agenda in the early part of this century was not through the power of a single dominant power, or hegemon, controlling the issue. The concept of hegemony has been used to explain the evolution of international regimes and will be discussed further in Chapter Five.

An alternative approach to agenda-building is proposed by the work of Mansbach and Vasquez, but is not fully developed. As they state, work on agenda formation is practically non-existent in International Relations literature.¹⁷⁴ This is partly as a result of the Realist emphasis on the anarchy of the global system, rather than viewing world politics as the co-operation and conflict of actors over efforts to allocate values authoritatively in multiple systems. Mansbach and Vasquez suggest that issues influence actors to differing extents at different times, and have different impacts on agenda formation, by using the idea of an issue cycle: "During its life, an issue may be characterised by changes in stakes and variation in the cast of actors that are

contending for them".¹⁷⁵ The key stages they identify through which an issue passes before it may be resolved are crisis, ritualization, dormancy, decision-making and administration. An issue is described as in the "crisis stage" when it creates a sufficient sense of urgency for action, or creates shifts in political order, or threatens accepted norms of behaviour. The next stage of ritualization evolves when the actors affected by this crisis develop "patterned sets of expectations", with tacit sets of rules and procedures between actors as to how to deal with this crisis. Once this has occurred, according to Mansbach and Vasquez, the next stage is for the issue to be removed from the agenda through either direct resolution where a decision will be made, or dormancy. During the dormancy stage, the issue may for a time be relegated to the periphery of public attention, which then may lead directly to the decision-making stage, or the issue may remain unresolved in a state of atrophy. But their analysis is applied only to "issues that dominate the attention and energy of the major actors - critical issues",¹⁷⁶ and therefore does not claim to have general application. There is no accounting for "non-critical" issues in this evolutionary cycle. The analytical use of the concept of salience, as previously described, is a more fundamentally useful theoretical concept for understanding issue formation and evolution, because it shifts the "critical" property from the issue to the actor. Applying this concept allows us to challenge the Realist high/low politics distinction that Mansbach and Vasquez are in effect falling into with their explanation of "critical and non-critical" issues. The threat of an invasion of a country by a foreign army is a threat to the security of a country. However, applying the concept of salience also allows us to consider that the greatest probable security threat to the government of Bangladesh is a major monsoon; in Niger it is drought; for small island states it is the threat caused by global warming; and in Colombia, as has been demonstrated, it is conflict with the drug barons.¹⁷⁷

As we have stated, issue-systems arise because actors seek to generate support for a particular value. Since values are abstract and intangible, actors are in contention over proposals for the disposition of stakes that each actor perceives as being salient to the value under contention. An issue therefore can be seen as contention by a group of actors over a set of related stakes. Therefore we can define an issue-system as a point of contention about concrete stakes involving abstract values. The values evoked

explain the behaviour of the actors and the formation of an issue-system. This alternative view of agenda formation through the salience of values and the attempts to authoritatively allocate them, poses a direct challenge to the heart of the Realist paradigm. The Realist's assertion that values are authoritatively allocated only when it is in the interest of states that they do so, seems to imply that values are somehow unrelated to interest in the Realist approach to international politics. Interests cannot be separated from values as the Realist theory seems to imply, as will be shown in the next chapter.

Regime analysis can help clarify the context under which an issue is regulated. It is possible to conceptualise a link between issues and regimes, since a regime must have an issue that it seeks to regulate. The concept of an issue-area has been widely and broadly used in International Relations literature and the literature on international regimes, to refer to the vertical boundary which encompasses the link of actors, processes and outcomes into one functionally significant whole (Rosenau) or the description of a set of issues that governments see as closely related and deal with collectively (Keohane). However, as has been stated, the term issue-area is not analytically useful because of this confusion. By using the term issue-system we can separate the actors beliefs and values from their behaviour. The actors in each issue-system are in contention over proposals for the disposition of stakes that each actor perceives as being salient for the same value. The extent to which the actors in the issue-system regulate the issue (by authoritatively allocating the values at stake) is variable. An issue-system may or may not form a regime, depending on the success of translating values into the form of an agreed norm, as will be discussed later in this work. Where regulation occurs, based on an agreed norm, the phenomenon of an international regime emerges. Therefore agenda setting, formation of issue-systems, agreement on norms and the creation of international regimes can be seen as different stages in the same process of global change.

Conclusion

The increase in drug trafficking, the threat to the political and economic stability in an

increasing number of countries, and the corruption of the international banking and financial networks as demonstrated by the BCCI scandal, has led to the problem of drug-related activity being placed higher up the international political agenda during the last decade. The size and complexity of the phenomenon means that North and South, East and West are all affected by it. International initiatives throughout the century have proved ineffective, and have in some instances aggravated this multi-faceted and multi-dimensional phenomenon. Efforts to combat drug-related activity clearly demonstrate the increasingly fragmented issue-specific character of contemporary international relations with different actors facing different problems related to drug activity. Governments are faced with a phenomenon that requires more and more international co-operation, which is taking on a greater variety of forms, as traditional bi-lateral diplomacy proves unable to address the concern. This fragmentation requires precisely the issue-specific approach of regime analysis as understood by this research.

The concept of issue-areas has been widely used in International Relations literature. From the literature on issue-areas our understanding of the concept of an issue has evolved, yet an authoritative theoretical literature defining the concept of an issue remains elusive. Rosenau's initial work in the area subsumes both decisions that initiate behaviour and those decisions that implement it. There would however seem to be a very real distinction between issues as understood as the *perceptions* of actors that certain stakes are related and the concrete political *behaviour* involved in an issue entering the policy process. The concept of an issue-system avoids this confusion, by concentrating attention on the contention over values of the actors concerned.

The drugs phenomenon must be viewed as not a single issue, but rather an amalgamation of many issues, such as the corruption of governments, the influence of cocaine barons in Colombia, the link of drugs to international crime and terrorism, the increasing use of drugs among minors, the increase in money laundering and efforts to combat it, the spread of AIDS and measures to combat it, and so forth. Each issue forms a distinct issue-system, with actors participating in the system, if the issue is sufficiently salient for them. The concept of salience has been utilized in contrast to the Realist hegemonic power-theory of agenda-building. The nature of values, and the

stakes that represent them, will be explored in the next chapter, which will attempt to explain the process through which drug use, a legitimate practice in the nineteenth century, was brought onto the international political agenda and delegitimised.

ENDNOTES AND REFERENCES

1. See M E Medina-Mora and M del Carmen Marino "Drug Abuse in Latin America" in P H Smith (ed) *Drug Policy in the Americas* (Westview Press, Oxford 1992) pp 45-56, quote at p 46.
2. Department of State, Office of the Inspector General, "Inspection of the Bureau for International Narcotics Matters", January 1990, p 5.
3. See *Report of the International Conference on Drug Abuse and Illicit Trafficking*, Vienna, 17-26 June 1987, United Nations document, A/CONF.133/12; *Declaration of the World Ministerial Summit to Reduce the Demand for Drugs and to Combat the Cocaine Threat*, held in London from 9-11 April 1990, United Nations document A/45/262.
4. There has been a great deal of literature, both academic and governmental, on this subject. See, for example, D Anglin and G Speckart, "Narcotics use and crime: A multi-method analysis", *Criminology*, 26:2, 1988, pp 197-233; J A Inciardi, *The Drug-Crime Connection*, (Sage, Beverly Hills, 1981). See also J A Inciardi, "Beyond cocaine: basuco, crack, and other coca products", *Contemporary Drug Problems*, Fall 1987, pp 461-493.; The report of the Office of National Drug Control Policy (1989), *National Drug Control Strategy*, Washington, DC: U.S. Government Printing Office. The focus on crack by the authorities, as a new, dangerous drug is shown by the fact that in the United States, the penalty for selling only 5 grams of "crack" worth \$125 dollars face the same mandatory five-year sentence as those handling 500 grams of pure cocaine worth \$50,000. See A McCoy and A Block (Eds), *War on Drugs. Studies in the Failure of U.S. Narcotics Policy* (Westview Press, Oxford, 1992) p 7.
5. See McCoy and Block, *op cit.* p 3.
6. *Report of the International Narcotics Control Board for 1990*, United Nations document, E/INCB/1990/1.
7. See later, endnote 126.
8. *Report of the International Narcotics Control Board for 1992*, United Nations document E/INCB/1992/1, para., 287.
9. *Ibid.*
10. There has been a marked increase in the potency of cannabis on the illicit market in the United States, mainly because of the high tetrahydrocannabinol (THC) content of the cannabis plant varieties cultivated indoors. The average THC content of the normal "commercial-grade" cannabis was 3.1 per cent, but the average THC content of the unpollinated and seedless female (sinsemilla) cannabis was 11.7 per cent. See

INCB Report for 1992., *op cit.*, para. 286, p 40.

11. "Designer drugs" is a term that has been used recently to describe synthetic drugs that have been specifically designed as analogues to controlled substances and yet bypass legal classification. It is not a precise scientific term and has been indiscriminately applied to a variety of contemporary drugs of abuse. One of the most infamous designer drugs is "ecstasy", a combination of synthetic mescaline and amphetamine that has a hallucinogenic effect. Ecstasy is known by chemists as methylenedioxymethamphetamine (MDMA).

12. The term "precursor" is used to indicate any of the substances in Table I or Table II of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic substances of 1988 (E/CONF.82/15 and Corr.2). Such substances are often described as essential chemicals, solvents or precursors, depending on their principal chemical properties. The plenipotentiary conference that adopted the 1988 Convention did not use any one term to describe such substances. Instead, the expression "substances frequently used in the illicit manufacture of narcotic drugs or psychotropic substances" was introduced in the Convention. It has become common practice, however, to refer to all such substances simply as "precursors"; although that term is not technically correct.

13. The INCB Report for 1990 lists numerous psychotropic substances that have been diverted to illicit channels. One such substance was the stimulant pemoline, controlled under Schedule IV. During 1989 and 1990 more than 1000 million tablets of this stimulant were diverted from a number of European countries to Nigeria alone. The Board also noted a number of attempts to divert methaqualone, secobarbital and fenetylline from licit manufacture and trade in Europe to mainly Africa states. See INCB Report 1990, *op cit.*, para., 66, p 17.

14. By its resolution 40/122 of 13 December 1985, the General Assembly decided to convene an International Conference on Drug Abuse and Illicit Trafficking. See *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987*, United Nations document A/CONF.133/12.

15. *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, Vienna, Dec. 19, 1988, United Nations Document E/CONF.82/15, 19 December, 1988. See Appendix B. The Convention was initiated by the government of Venezuela in General Assembly resolution 39/141 of December 1984. For an explanation of the Convention see Dr W C Gilmore, *Combating International Drugs Trafficking: The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, (Commonwealth Secretariat, Marlborough House, London, 1991).

16. The decision to hold a Special Session of the General Assembly was taken in resolution 44/16 of 1st November, 1989 (initiated by the President of Colombia). The Special Session was held in New York from 20 to 23 February 1990. See, *Political Declaration and Global Programme of Action adopted by the General assembly at its seventeenth special session, devoted to the question of international co-operation*

against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, United Nations document A/RES/S-17/2, 15 March 1990.

17. See *Declaration of the World Ministerial Summit to Reduce the Demand for Drugs and to Combat the Cocaine Threat*, held in London from 9-11 April 1990, UN document A/45/262.

18. See the 9th Conference of the Non-Aligned Countries, Belgrade, Yugoslavia, 1989, United Nations document A/44/551; Commonwealth Heads of Government Meeting, Malaysia 18-24 October 1989; also World Ministerial Summit, *op cit.*; *Declaration of Cartagena*, 15 February, 1990, United Nations document A/S-17/8.

19. Testimony of Acting Assistant Secretary of S Clyde D. Taylor in U.S. Senate, August 1984, Committee on Labor and Human Resources, Subcommittee on Alcoholism and Drug Abuse, *Drugs and Terrorism*, 1984 (Hearing Report 98-1046), pp 27-49.

20. S B MacDonald, *Mountain High, White Avalanche. Cocaine and Power in the Andean States and Panama*. (Washington Papers/137 - Praeger, New York, 1989), Chapter 2, Colombia: Where the Avalanche Begins, pp 17-57.

21. B Bullington and A Block, "A Trojan horse: Anti-communism and the war on drugs", *Contemporary Crises* 14: 39-55, 1990, pp 39-55.

22. The Sendero Luminoso entered the Upper Huallaga Valley, Peru's principal coca growing region, as early as 1984 and successfully turned regional opinion against a United states-backed coca eradication programme into a campaign of anti-government violence. By protecting the peasants they facilitate the production of drugs, but they prohibit their use in the areas which they control. See Macdonald, *op cit.*

23. See R Baratta, "Political violence in Ecuador and the AVC", *Terrorism*, 10, 1987, pp 165-174.

24. See "Burmese fighting rebels on four fronts", *Times*, 15.8.80.

25. See D P Kumarasingha, "Drugs: A growing problem in Sri Lanka", *Forensic Science International*, 36, 1988, pp 283-284.

26. The political controversy which erupted over the Contras and links between United States officials and drug traffickers, was explored by Senator Kerry's Senate Subcommittee Report, *Drugs, Law Enforcement and Foreign Policy*. The Kerry Report shows clearly that the United States administration support for the Contras, and their corrupt supporters in Honduran army aided cocaine smuggling operations throughout the first half of the eighties. See P D Scott, "Honduras, the Contra Support Networks, and Cocaine: How the U.S Government Has Augmented America's Drug Crisis" in McCoy and Block, *War on Drugs. Studies in the Failure of U.S. Narcotics Policy*; T Draper, *A Very Thin Line: The Iran-Contra Affairs* (New York: Hill and Wang, 1991). See also US Senate Committee on Foreign Relations. Subcommittee on Terrorism, Narcotics, and International Operations, *Drugs, Law Enforcement, and Foreign Policy*.

Washington D.C: US Government Printing Office, 5 May, 1989.

27. Control of Afghanistan's multi-billion-dollar opium trade was a key factor in the Mujahidim power struggle for Kabul. See "Drugs are central to control of city", *Independent*, 27.4.92.

28. "The Crazy War on Drugs", *The New Internationalist*, No. 224, October 1991.

29. See "Mafia and former Soviet gangs join forces in crime" *Times*, 30.11.92.

30. See R T Naylor, *Hot Money and the Politics of Debt*, (Simon and Schuster, New York, 1987) and "Bolivia: Coke and Black Eagles", *Newsweek*, 23.11.81.

31. In 1988 the political right (very much on the defensive in Argentina) appeared to be financing itself through drug dealing. "Menem beset by in-laws' alleged drug money links" includes allegations of involvement in drug money-laundering by former government top officials, *The Guardian*, 2.5.91.; "Peruvian diplomat jailed 20 years for smuggling cocaine" *The Times*, 18.11.89.; "Cutting down the Mayan world", *The Economist*, 25.9.93; "Paraguay's Leader Denies Ties to Drugs", *New York Times*, 2.27.89.

32. "Drug Production Rising Worldwide", *New York Times*, 3.2.89. as quoted in C J Johns, *Power Ideology and the War on Drugs. Nothing Succeeds Like Failure*, (Praeger Series in Criminology and Crime Control Policy, Praeger, London, 1992) p 48.

33. See C J Jones, *op cit.*; "US frustration as corruption Mexican drug flow", *The Times*, 6.10.87.

34. See "Cabinet offers to resign over heroin revenge riots", *Observer*, 21.12.86 and "Pakistan's Killing Fields", *Observer*, 16.7.89. See also L Lifschultz, "Pakistan: The Empire of Heroin", Chapter 12 in McCoy and Block, *op cit.*, p 319-358.

35. "US says Laos government is deeply involved in drugs", *The New York Times*, 11.5.88.

36. See "Havana's levy on drug runners arms Latin rebels", *The Times*, 21.6.82; "Castro general faces trial on treason charge", *The Times*, 28.6.89; "Fidel's faithless heroes", *The Observer*, 2.7.89.

37. General Manuel Noriega was implicated in drug trafficking from the early 1980s. From being considered an important asset by the Pentagon and the CIA against communist insurgency in the region, he was seized by US forces in a US invasion of Panama and forcibly extradited to the United States to face charges of drug trafficking and money-laundering. See for example "Panamanian chief Noriega faces drug charges", *The Times*, 5.2.88. See "Panama: At the end of the Avalanche" in MacDonald, *op cit.*, p 98- 118; C J Johns, *op cit.*; and P H Smith *op cit.*

38. M Rosenblum, "Hidden Agendas: The Honduran connection Makes Hypocrisy Out of the Hype about Bush's War on Drugs", *Vanity Fair*, March 1990, p 102, 118, 120.

39. Narco-terrorism is the term used to refer to when politically motivated terrorist activities such as assassinations, bombings and kidnappings, become entangled with the narcotics trade.
40. See, *The Fight Against the Drug Traffic in Colombia* (Office of the President of the Republic, November 1989) and B M Bagley, "Colombia and the War on Drugs" *Foreign Affairs*, Fall 1988, No 67105, pp 70-92.
41. Macdonald, *op cit.*, Chapter Two.
42. The cocaine traffickers call themselves *Los extraditables*, because they are wanted by the United States, and mounted a violent campaign to resist extradition.
43. "Colombia about to enter into "pact with devil"", *The Independent*, 9.12.90; "Colombia goes soft on drug gangs", *The Independent*, 10.10.90;
44. See Bagley, *op cit.*; also C Abel, "Colombia and the drug barons: conflict and containment", *The World Today*, May 1993, pp 96-100.
45. The United States Attorneys and the Attorney General of the United States, *Drug Trafficking. A Report to the President of the United States*, August 3, 1989, U.S. Department of Justice, Office of the Attorney General.
46. R W Lee III, "The Latin American Drug Connection", *Foreign Policy* 61, Winter 1985/86, pp 142-143.
47. World Bank, *World Development Report for 1986* (World Bank, Washington DC, 1986) p 184-185.
48. *Forbes* magazine, 7.25.88., p 64 as cited in US Senate. Committee on Foreign Relations. Subcommittee on Terrorism, Narcotics, and International Operations, *Drugs, Law Enforcement, and Foreign Policy*. Washington D.C: US Government Printing Office, 1989, p 29.
49. Pablo Escobar, for example, had a narco-army better equipped than the Colombian military itself, see "Colombia's losing war with drug kings", *The Christian Science Monitor*, 13.5.88.; also R Lee "Colombia's Cocaine Syndicates", Chapter 5 in McCoy and Block, *op cit.*, p 97.
50. See F. LaMond Tullis, "Cocaine and Food: Likely Effects of a Burgeoning Transnational Industry on Food Production in Bolivia and Peru" in W Ladd Hollist and F LaMond Tullis, *Pursuing Food Security. Strategies and Obstacles in Africa, Asia, Latin America and the Middle East*, (Lynne Rienner Publishers. Boulder and London 1987), Chapter 12, p 247-283.
51. "Accused drug king (Carlos Lehder) "spoke of taking over Belize"", *The Independent*, 18.11.87.

52. In the "total war" against the Colombian government, the cocaine cartels invited the government to participate in a contest for state power. See Smith, *op cit.*, p 113.
53. J Malamud-Goti, "Reinforcing Poverty: The Bolivian War on Cocaine" Chapter 4, pp 67-92 in McCoy and Block, *op cit.*, p 73.
54. See R W Lee III, "Why the U.S. cannot stop South American cocaine", *ORBIS, Journal of World Affairs*, Vol 32, part 4 Fall 1988, pp 499-519; *The Independent's* profile on Escobar "In Medellin, walls do not a prison make", 8.8.92; "King Coke", 21.7.90.; and *The Times*, "Taking on El Padrino", 14.9.87. See, for example, "Drug Lords rule over Rio's slums", *The Los Angeles Times*, 16.10.87.
55. "An opium warlords news conference spurs Burma and Thailand to battle him", *The New York Times*, 22.2.87., as quoted in F LaMond Tullis, "*Beneficiaries of the Illicit Drug Trade: Political consequences and international policy at the intersection of supply and demand*", United Nations Research Institute for Social Development, Discussion Paper 19, March 1991, p 6.
56. See N Hopkinson, *Fighting the Drug Problem*, (Wilton Park Papers 15, London HMSO, 1990) p 11.
57. See E Alvarez, "Coca Production in Peru", Chapter 5 in Smith, *op cit.*, p 72-88. An alternative estimate by MacDonald puts the figure as high as 15% of the adult population. See Macdonald, *op cit.*, p 77.
58. See R W Lee "Dimensions of the South American Cocaine Industry", *Journal of Interamerican Studies and World Affairs*, 30, nos. 2-3 (1988), p 89. Also F Machicados, "Coca Production in Bolivia", Chapter 6, in P H Smith, *op cit.*, pp 88-99.
59. McCoy and Block, *op cit.* p 4.
60. McCoy and Block, *op cit.*, p 4 and MacDonald *op cit.*, p 77.
61. Lee, "Dimensions", *op cit.*, p 89.
62. See endnote 6.
63. E Epstein, *Agency of Fear* p 173-179, as quoted in J A Inciardi, *The Drug Legalization Debate* (Sage Publications, London 1991) p 103. Nixon created the DEA as the lead agency in drug enforcement and consolidating other agencies and also built up the size and scope of the federal drug enforcement bureaucracy.
64. McCoy and Block, *op cit.*, p 9.
65. Office of National Drug Control Policy, *National Drug Control Strategy*, 61, as quoted in Smith, *op cit.*, p 7.
66. P Andreas and E Bertram, "From Cold War to Drug War", Chapter 11 in C Hartman and P Vilanova (Eds) *Paradigms Lost: The Post Cold War Era* (Pluto Press, London, 1992) p 170.

67. Lee, "Why the US cannot stop South American cocaine" *op cit.*, p 499.

68. In August 1989 the first consignment of a \$65 million package of military equipment was sent to Colombia to fight the drug barons. The shipment was believed to include T-37 reconnaissance aircraft, "Huey" helicopters, communications equipment, arms and ammunition, medical supplies and an undisclosed number of military instructors. See "US flying arms to Colombia", *Times*, 31.8.89.

69. In 1989 for the first time, United States troops were deployed in "secure" areas of Peru's upper Huallaga valley, a region controlled by the Shining Path guerillas which provided an estimated half of the cocaine consumed in the United States. See "Bush to permit US troop deployment in Peru drug province" *Times*, 11.10.89.

70. See "US Indicts Southeast Asian in Drug Trafficking", *The New York Times*, 26.1.90.

71. See Inciardi, *op cit.*, and P J Rice, "New Laws and Insights Encircle the Posse Comitatus Act" *Military Law Review* 104, Spring 1984, pp 109-138.

72. For the text of the President's speech committing his administration to an increased role in the war on drugs see "Address to the Nation on the National Drug Control Strategy", September 5, 1989, in *Public Papers of the Presidents: George Bush*, vol 2 (Washington, D.C.: U.S. Government Printing Office, 1989) pp 1136-1140. On the Bush administration's increasing emphasis on the role of the military at home and in Latin America see: B Trainor, "Military's Widening Role in the Anti-Drug Effort", *New York Times*, 27.8.89; P Grier, "Pentagon's Support Role Increases", *Christian Science Monitor*, 1.9.89, p 8.

73. Dick Cheney, "DOD and Its Role in the War Against Drugs," *Defense*, Nov-Dec 1989, pp 2-7.

74. See the *National Drug Control Strategy Report*, Office of National Drug Control Policy, Washington DC, Jan. 1991, Jan. 1992 as quoted by J M Van Wert, "International Narcotics Control: Bush's "Other War" - Are We Winning or Losing?" p 21-38 in McCoy and Block, *op cit.*, p 23.

75. INCB Report, 1992., *op cit.* para. 216.

76. See *Report of the International Narcotics Control Board for 1991*, United Nations document E/INCB/1991/1. para., 180, p 34; "Specter in the East", *Time*, 8.2.93.

77. The Schengen Convention drawn up in 1985 by France, Germany, Luxembourg, Holland and Belgium concerned the need for enhanced police co-operation and information exchange when Europe became frontier-free. The nine members of the Schengen free-travel accord have pledged to lift the remaining passport controls from December 1993. Fears however are still expressed, concerning the flow of drugs, by France in particular.

78. See "A fatal fix of freedom", *The Guardian*, 9.3.93, "Customs braced for 1992 drugs battle", *The Guardian*, 16.1.91.
79. See "Cocaine seizures soar in Europe", *Financial Times*, 8.10.93.
80. See Chapter Five for a full analysis of the money-laundering issue.
81. For more detail on the Force see Chapter Five.
82. Council of the European Communities, *Council Directive of 10 June 1991 on Prevention of the Use of the Financial System for Purpose of Money Laundering*, Brussels, Document number 91/308/EEC.
83. See, INCB Report, 1991, *op cit.*, para., 178, p 34; and *the Financial Action Task force on Money Laundering. Report of June 29th, 1993, Paris*, p 15.
84. See "Tax haven cools a bit on hot cash" *The Independent*, 27.4.93.
85. Recent law in the United Kingdom amended the United Kingdom Drug Trafficking Offences Act of 1986 (DTOA) to strengthen the confiscatory powers in respect of the proceeds of drug trafficking. For an overview of this and other developments in UK drug legislation see W C Gilmore, "International Action Against Drug Trafficking: Trends in United Kingdom Law and Practice", *The International Lawyer*, Vol. 24, No.2 Summer 1990.
86. In the United Kingdom several senior police officials have recently made their views known in support of some kind of decriminalisation and the debate has been taken up by major national newspapers. See Chapter Seven for an analysis of the debate.
87. See "Spanish judges campaign to legalise drugs", *The Independent*, 16.2.91. Also INCB Report, 1992, *op cit.*, para., 262.
88. "Italian referendum campaign nears end", *The Financial Times*, 13.4.93.
89. Home Affairs Committee, *Misuse of Hard Drugs*, (Interim Report), House of Commons Paper No. 399, HMSO, 1985, para. 2.
90. See "Swiss-Dutch drug stance: Tolerance", *The New York Times*, 1.12.89; *Fact Sheet on the Netherlands. Drug Policy*, Ministry of Welfare and Cultural Affairs, Fact Sheet-19-E-1989.
91. See Chapter Six, "The International Money-laundering Control Regime" for more details.
92. See United Nations document E/CONF. 82/SR.1, p 3. For a report of the conference see, *United Nations Conference for the Adoption of a Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, Austria, 25 November - 20 December 1988*, United Nations document E/CONF. 82/4. p 3.

93. See *The Drugs Trade in Latin America Report*; Report by Latin American Newsletters, London, 1990.
94. President Cesar Gaviria of Colombia as quoted in McCoy and Block, *op cit.* p 94.
95. M Falco, "Policies and Prospects for Demand Reduction", chapter 15. pp 217-222 in Smith, *op cit.*, p 219.
96. See J MacBeth, "The Opium Laws", *Far Eastern Economic Review*, 29.3.84, pp 40-43.
97. President's Commission on Organised Crime, *The Cash Connection: Organised Crime, Financial Institutions and Money Laundering* (Washington, D.C.: GPO, 1984) as quoted in C Frost, "Drug Trafficking, Organised Crime, and Terrorism: The International Connection, in V Ra'anani, R L Pfaltzgraff and R H Shultz, et al, *Hydra of Carnage*, (Mass: Lexington books, 1986) p. 189-198.
98. See INCB Report, 1992, *op cit.*
99. E Morales, *Cocaine: White Gold Rush in Peru*, (University of Arizona Press, Tucson, 1989) and D A Eastwood and H J Pollard, "The accelerating growth of coca and colonisation in Bolivia", *Geography*, 72, 1987, pp 165-166.
100. "A Fatal Fix of Freedom", *The Guardian*, 9.3.93.
101. "Cocaine traffickers ready for North American free trade treaty", *The Guardian* 25.5.93.
102. See INCB Report 1990, *op cit.* para., 75.
103. See "Cocaine builds bridge to the East", *Guardian*, 14.3.92.
104. See "East's freedom boosts heroin flow to West", *The Independent*, 18.5.93.
105. For more on the "French Connection" see "Is the French Connection really dead?", *Drug Enforcement*, Summer 1981, pp 19-21 and later.
106. See "Japan's gangsters: Honourable mob", *The Economist*, 27.1.90, pp 19-22; I Buruma and J MacBeth, *op cit.*, pp 34-37.
107. The Chinese triads, criminal offshoots of a once vast patriotic organisation to rid China of the Manchu overlords, are based in Hong Kong but exist in almost every sizeable Chinese overseas community. These extremely close-knit brotherhoods are difficult to penetrate and specialize in heroin distribution in Britain, Europe and the United States. See F Robertson, *Triangle of Death: The Inside Story of the Triads - The Chinese Mafia* (Routledge and Kegan Paul, London 1977); F Bresler, *The Trail of the Triads: An Investigation into International Crime*. (Weidenfeld and Nicolson, London 1980) and "Chasing the Triad Dragon" *Observer Magazine*, 5.4.89; I Buruma and J MacBeth, "Asia's organized crime jigsaw and the Western connection: An East side story", *Far Eastern Economic Review*, 27.12.84, pp 34-47.

108. Hundreds of articles and books both journalistic and academic have been written on the Colombian cartels and their leaders. See G Gugliotta, *Kings of Cocaine: Inside the Medellin Cartel* (Simon and Schuster, NY, 1989); G Gugliotta, "The Colombian Cartels and How to Stop Them", Chapter 8 in Smith, *op cit.*, pp 111-129; R Lee, "Colombia's Cocaine Syndicates", Chapter 5 in McCoy and Block, *op cit.*, pp 93-125.

109. Mexican "families" established links with Colombian cartels to use Mexico as a transshipment point for cocaine to the United States and Canada, "Drug trafficking: Mexico and Colombia in comparative perspective", *Journal of International Affairs*, 35: 1, 1981, p 95-115. Now, Colombians have moved to Mexico to take over personally much of the cocaine operations there: "Colombians take over "coke" trade in Mexico", *The Christian Science Monitor*, 9.1.89. p 11. Perhaps the most infamous Mexican organisation was the Caro Quintero Group. Caro Quintero is currently serving a forty year jail sentence but has become an "anti-hero" for Mexico's poor.

110. Despite the eradication of the Sicilian "Pizza Connection" in 1984, the Sicilian mafia controls a world-wide network in the heroin market. See R Blumenthal, *Last Days of the Sicilians* (Times Books, New York, 1988) on the "Pizza Connection", and W Greenhaw, *Flying High: Inside Big Time Drug Smuggling*, (Dodd, Mead, New York, 1984).

111. See "Mafia and former Soviet gangs join forces in crime" *op cit.*

112. INCB Report, 1990, *op cit.*, Overview pp 2-8.

113. INCB Report, 1992, *op cit.*, para. 108, p 19. European and South American criminal organisations have predominantly been utilizing couriers to smuggle cocaine into Europe by air via Ghana, Morocco and Nigeria, and more recently, Cape Verde, the Ivory Coast and Senegal. In Africa as a whole in 1991, the total quantity of cocaine seized represented a six-fold increase on the 1990 figure.

114. United Nations Department of Public Information, January 1990, quoted in A Jamieson, *Global Drug Trafficking* (Conflict Studies 234, Research Institute for the Study of Conflict and Terrorism, 1990) p 3.

115. See "US must save coffee deal to fight cocaine" *Independent*, 15.9.89;

116. See A Salizar, "*Analysis economico de cultivos alternativos a la coca en la region del Alto Huallaga*", Project AD/PER/86/459 OSP-PNUD (Lima; 1990) as quoted in Smith, *op cit.* p 82.

117. Macdonald, *op cit.*, p 65.

118. See Lee, "Why the US cannot stop South America cocaine", *op cit.*, pp 499-519.

119. LaMond Tullis, "Cocaine and Food", *op cit.*, p 247.

120. *Ibid.*

121. See MacDonald, *op cit.*, ; also McCoy and Block, *op cit.*, p 4.
122. R D Craig, "Illicit Drug Traffic: Implications for South American Source Countries", *Journal of Interamerican Studies and World Affairs*, 29, No. 2, Summer 1987, p 23.
123. "The Cocaine Economies", *The Economist*, 8.10.88, p 24.
124. Macdonald, *op cit.*, p 85.
125. See MacDonald, "Venezuela, Ecuador, and Chile: Future Avalanches" in Mountain High, White Avalanche, *op cit* pp 83-97.
126. Macdonald, *op cit*, p 133.
127. See INCB Report, 1992, *op cit.*, para, 95, p 17.
128. *Ibid.*, para., 89-119, pp 17-20.
129. INCB Report, 1991, *op cit.*, p 5. para. 12.
130. See INCB Report, 1992, *op cit.*
131. J Dixon, "Report: USDA Barred Switch from Cocaine", *The Wisconsin State Journal*, 16 November 1991, as quoted in McCoy and Block *op cit*, p 4-5.
132. See MacDonald, *op cit* p 129.
133. *Ibid.*
134. For a more detailed consideration of the United Nations in this period, see Chapter Four.
135. E A Nadelmann, "Drug Prohibition in the United States: Costs, Consequences, and Alternatives" *Science*, Vol. 245, 1 September 1989, pp 939-947.
136. Department of State, Bureau of International Narcotics Matters, "Strategy Report 1985" p 71-111 as quoted in LaMond Tullis, *op cit.* p 247-283.
137. *Report of the International Narcotics Control Board for 1993*, United Nations document, E/INCB/1993/1, Overview.
138. "U.S. Anti-Narcotics Activities in the Andean Region" Home Committee on Government Operations November 1990, as quoted in Harman and Vilanova, *op cit.* p 172.
139. INCB Report, 1992, *op cit.*, para. 238.
140. Smith, *op cit*, p 8.

141. See INCB Report 1990, *op cit.*, p 3.
142. INCB Report, 1992, *op cit.*, para. 327. See also "Drug lords turn attention to poppy triangle", *Financial Times*, 4.12.91.; "Colombia's barons switch to heroin", *The Independent*, 27.2.92; "Colombian heroin "heading this way"", *The Guardian*, 1.5.92.
143. Head of the US Drug Enforcement Administration (DEA) as quoted in "New Kings of Coke", *Time*, 1.7.91. p 29.
144. See INCB Report, 1992, *op cit.*, para., 292, p 41.
145. See "The Nigerian connection: The Newest Link in the Growing Heroin Trade", *Newsweek*, 7.10.91., p 43; also, "Nigerian mafia nets millions in bank fraud and benefit rackets", *Sunday Times*, 10.10.93.
146. The Chemical Action Task force was initiated by the United States and established by the Group of Seven major industrialised countries and the President of the CEC in 1990. The Task force was disbanded in 1993 and follow-up tasks were assumed by the International Narcotics Control Board and by other United Nations bodies.
147. See G L Sternbach, MD., and J Varon, MD. "Designer drugs: recognizing and managing their toxic effects", *Postgraduate Medicine*, Vol 91/ No 8/ June 1992.
148. T A Ziporyn, "A growing industry and menace: makeshift laborator's designer drugs", *JAMA* 1986; 256 (22): 3061-3, as quoted in Sternbach and Varon, *op cit.*
149. INCB Report, 1992., *op cit.*, "South and Central America and the Caribbean", p 42-48.
150. Andreas and Bertram "From Cold War to Drug War" in Hartman and Vilanova, *op cit.*, p 172
151. J M Van Wert, "International Narcotics Control: Bush's Other War - Are We winning or Losing?" pp 21-38 in McCoy and Block, *op cit.*
152. *Enhancement of the efficiency of the United Nations structure for drug abuse control. Report of the Secretary-General.* United Nations document A/45/652/Add 1.
153. See "It doesn't have to be like this", *The Economist*, 2.10.89.
154. US Drug Enforcement Administration, *Intelligence Trends*, vol. 14 (Washington D.C.; USDEA, 1987) p 6, as quoted in Smith, *op cit.*, pp 10-11.
155. This work has been developed within the Transgovernmental Relations Research Group at City University. See "The Issue of Issues in Regime Theory: Use of the concepts of Issues, Issue-Linkages and Policy domains in the Study of International Organisations and International Regimes", by P Willetts with M Bentham, P Hough and D Humphreys. Unpublished paper presented at the British International Studies Association, Global Environmental Change Group, City University, 17 July 1992.

156. For details on the 1909 Shanghai Conference and the International Opium Convention of 1912 that followed, see the next chapter.
157. R O Keohane and J S Nye (Eds), *Transnational Relations and World Politics*, (Cambridge, Mass: Harvard University Press, 1972), and *Power and Interdependence: World Politics in Transition*, (Little Brown, Boston, 1977). Although Keohane and Nye were not the first to use the concept of interdependence (Rosenau wrote about interdependence before Keohane and Nye) they have been credited with the concept. Please refer back to the introduction for more explanation on the significance of the concept.
158. P Willetts, *Transnational Actors and Changing World Order* (Occasional Papers Series No. 17, PRIME, International Peace Research Institute, Meigaku, Japan 1993), pp 18-19.
159. See, *Letter dated 20 February 1990 from the Permanent Representatives of Bolivia, Colombia, Peru and the United States of America to the United Nations addressed to the Secretary-General*. UN document A/S-17/8.
160. Willetts, *Transnational Actors and Changing World Order*, *op cit.*, p 19.
161. See "Pre-theories and Theories of Foreign Policy", first published in R B Farell (ed.), *Approaches to Comparative and International Politics*, (Northwestern University Press, Evanston, 1966) pp 27-92 and reprinted in J N Rosenau, *The Scientific Study of Foreign Policy*, (New York: The Free Press, 1971), pp 95-149.
162. Rosenau, *The Scientific Study of Foreign Policy*, *op cit.*, p 141.
163. *Ibid.*
164. R Mansbach and J A Vasquez, *In Search of Theory. A New Paradigm for Global Politics*, (Columbia University Press, NY, 1981) p 59.
165. Rosenau, *The Scientific Study of Foreign Policy*, *op cit.*, p 138
166. R O Keohane and J S Nye, *Power and Interdependence*, (Boston: Little, Brown and Company, 1977 and 1989), p 65.
167. D Easton, *A Framework for Political Analysis* (Prentice-Hall, Inc, Englewood Cliffs N.J, 1965) p 30.
168. See P Willetts, "Transactions, Networks and Systems" in A J R Groom and P Taylor (Eds.), *Frameworks for International Cooperation*, (London: Pinter Publishers, 1990), p 255-284; C Jonsson, *International Aviation and the Politics of Regime Change*, (London: Pinter Publishers, 1987) ; and V Rittberger, *International Regimes in East-West Politics*, (London: Pinter Publishers, 1990). The work of Krasner, and Puchala and Hopkins in S D Krasner (ed), *International Regimes* (Ithaca: Cornell University Press, 1983), which will be referred to in greater detail later, also uses this approach to issue-areas.

169. "From the Issue of Power to the Power of Issues", Chapter 2 of Mansbach and Vasquez, *op cit.*, p 58.

170. Mansbach and Vasquez, *op cit.* pp 56-57.

171. *Ibid.* p 90.

172. C P Kindleberger, "Hierarchy versus inertial cooperation", *International Organisation*, 40, 1986, p 841-847.

173. See C P Kindleberger, *The World in Depression, 1929-1939* (University of California Press, Berkeley, 1973).

174. Mansbach and Vasquez, *op cit.*, Chapter 4, Agenda Politics, p 87. Mansbach and Vasquez refer to the work of Cobb and Elder as the best analysis of agenda building in the literature, but say their work is incomplete.

175. Mansbach and Vasquez, *op cit.*, p 113.

176. *Ibid.*, p 114.

177. See the Preface by P Willetts to A Chetley, *The Politics of Baby Food: Successful Challenges to an International Marketing Strategy* (Francis Pinter, London, 1986) for a discussion of the high/low politics distinction. The illustrations on different types of security threats come from lectures given by Peter Willetts at City University.

Chapter 3

A History of Drug Use: The Dynamics of Change

Introduction

This chapter is concerned with the changing attitudes towards drug use in the nineteenth century. Prior to the twentieth century opium, and to a lesser extent cocaine and cannabis, was widely available and on open sale in Britain and the United States for non-medical as well as medical use and no global patterns were discernible in the values and legal sanctions governing their use. Yet the latter half of the nineteenth century saw the establishment of changing values concerning drug use, with the subsequent definition of drug taking as a "problem" requiring international legislation. The 1909 Shanghai Conference and the Opium Convention of 1912 launched an anti-drugs diplomacy followed by a specific mention in the Covenant of the League of Nations and eight decades of further restrictive legislation by the international community.¹

Although the drug phenomenon today bears little resemblance in complexity and scale to its nineteenth-century predecessor, sociologists, historians and policy-makers have frequently drawn parallels. It can be said that the growth of toxicology as a science in the nineteenth century, with new drugs creating new problems, parallels today's concerns with "designer drugs"; that "infant doping" of the previous century has some parallels to the vast prescribing in the United States of drugs to the "overactive child"; and that nineteenth-century fears of opium as a "stimulant", with the working classes as the focus of society's concerns, parallels twentieth century fear of the pleasure-seeking youth culture. The purpose of this chapter, however, is not to draw historical analogies which can be misleading. An historical perspective instead will focus on the factors responsible for the emergence of restrictions on the sale and use of opiates and, to a lesser extent of other substances, in order to explain why values towards opium use changed; how practices were delegitimized; and also for considering why states develop mechanisms for co-ordinating policies on particular activities and not on others.

During the nineteenth century an active temperance movement was gaining momentum in both Britain and the United States.² As with the anti-opium campaign

during the later stages of the century, reform efforts concentrated on the damaging effects to the individual and society. Both campaigns began with high expectations and both were failures. And in the United States both generated criminally-organized black markets. Many of the activists concerned with the problems of alcohol were also involved in the anti-opium movement. But the extent to which the two movements came together was limited. Alcohol prohibition was abandoned in America (and alcohol never reached the position of a prohibited substance in Britain), while the issue barely surfaced at the international level during the first decades of the twentieth century, when drug restrictions were internationalised. Attempts to introduce a global alcohol control programme by the League of Nations in the 1920's were a failure.³

It is impossible within the scope of a single chapter to detail the historical factors involved in the changing attitudes towards drug use. Furthermore, it is also beyond the current discipline of International Relations to analyse in depth the social dimensions, the predominant concern of sociology, which led to such a fundamental change in the attitudes of people towards drug use and more widely to a world-wide change in attitudes and international co-operation and control legislation, before national legislation in the majority of countries was achieved. Traditionally predominant approaches to change in international relations have failed to take into account the advances, concepts and methods from alternative disciplines, such as sociology, philosophy or history, to our understanding of change.⁴ The connections between the various disciplines lack coherence and a coherent theoretical relationship needs to be developed. With the example of drug control, these disciplines have obviously a great deal to offer. There is a need to move away from an analysis of change, which is focused on states and their power capabilities. Likewise we need to avoid the criticism by Susan Strange of current regime analysis, as "overemphasizing the static and underemphasizing the dynamic element of change in world politics"⁵, by moving towards more of an understanding of social change, making obsolete the traditional approaches, which focus on power capabilities and differentiate between national and international politics. An emphasis on values as the means for understanding regime creation also avoids the criticism of the regime approach, by writers such as Stein that it has nothing new to add that current theory cannot deal with, and by Strange, that the concept of

regime is actually negative in its influence.⁶ For as Krasner states, "It is the infusion of behavior with principles and norms that distinguishes regime-governed activity in the international system from more conventional activity."⁷ This chapter will present an overview of the history of drug use through to the nineteenth century when the significant developments led to changing attitudes towards drug use and the theoretical implications behind this change.

The cultural tradition

The use of drugs for medical and non-medical purposes (with no clear distinction) can be traced back to man's early history.⁸ As Aldous Huxley said, "Pharmacology is older than agriculture".⁹ Coca is the oldest stimulant known to man and chewing the dried leaf to extract the alkaloids it contains has been utilised by the people in the Andes since prehistoric times. Coca chewing increased physical endurance against tiredness and hunger, but also made breathing easier in the thin oxygen at the extreme altitudes where the Indians lived.¹⁰ A recent discovery of the drug in a mummified South American Indian is the earliest scientific confirmation of coca use.¹¹ In Peru, gourds containing coca leaves have been unearthed from burial middens dating back to 2100 BC. In Colombia, some of the idols standing in San Agustin's mysterious Valley of the Statues, dating back to 600 BC display the characteristic distended cheek of the coca chewer. The coca shrub, the basis for cocaine, enjoyed a key position in the Inca empire: prized far above the riches of silver and gold. Coca consumption was, and still is bound up with religious ceremonies and was regarded as the sacred, living manifestation of divinity, brought from heaven by the first Inca emperor, Manco Capac, and buried with the dead to help them on their journey to another world. Coca was at the centre of the Inca religious and social system. It was the gift that Peruvian Indians gave to the parents of a prospective bride; it was the talisman put under the cornerstone of new houses. The right to chew it was a sovereign gift, bestowed upon priests, doctors, young warriors, the relay runners who travelled miles a day to deliver messages, and the scholars who kept the emperors accounts. The Spanish conquistadors in the sixteenth century noted that priests and supplicants were allowed to approach the Altar of the Inca, only if they had coca leaf in their mouths.¹² If coca was the last

thing a dying man tasted, he went to heaven. Today the people in the Altiplano region still measure time and distance in "cocado": how far a man can travel while chewing one wad of coca leaf.¹³ Throughout South America, an estimated eight million people chew coca leaves, and millions more drink "mate de coca" (coca tea), which is sold in almost every supermarket.¹⁴

Cannabis sativa, known as hemp, marijuana, hashish, bhang or ganja was brought to Europe with opium by the Moorish invaders of Spain and employed from early times as a pain-killer and tranquillizer. Cannabis has many derivatives and various names as demonstrated. The variety of alternative terms is testimony to the drug's established place in the culture of many Eastern countries. In India, Persia, Turkey and Egypt it was in common use for centuries. It had been known to the Chinese several thousand years before Christ and the ancient Greeks and Romans used it for both medical and social purposes. Cannabis was known in Europe well before the nineteenth century. Its use as an intoxicant, medicine and even its fibre for clothing is widely documented. But it was in 1839 on the publication of a monograph by WB O'Shaughnessy "On the Preparation of the Indian Hemp, or Gunjah" that hemp was introduced into conventional nineteenth century western medicine and described in 1890 as "one of the most valuable medicines we possess" by the President of the Royal College of Physicians.¹⁵

Greek archaeological discoveries of seeds and capsules found in ancient pots, and clay tablets describing the cultivation and preparation of the white poppy, *Papaver Somniferum*, date back to 5000 BC. Classical references dating back to Homer's *Odyssey* describe opium as a drug that will "lull all pain and anger, and bring forgetfulness of every sorrow".¹⁶ Its healing properties were first detailed in the work of the Greek physician Hippocrates (466-377 BC) and later explored by the Roman physician Galen (130-200 AD). Aristotle, Virgil, as well as ancient writings from Egypt, India, Persia and China all give opium an honoured place in ancient medicine. For many centuries opium use was mainly restricted to the Middle and Far East. It was brought to India by Arab merchants and from there to Europe. Ironically, in Europe people used opiates because they regarded them as a sedative, whereas in the East they

were valued as a stimulant often used by soldiers before battle.¹⁷ This emphasises the confusion surrounding the properties of the various drugs described in Chapter One.

Trading in opium by Europeans began with the Portuguese traders in the 16th century but the modern era for the opium trade began in 1773 when the British East India Company took control of the export of Indian opium to China. Warren Hastings, the new Governor General of Bengal established a colonial monopoly on the production and sale of opium. As the company expanded production, opium became India's main export through the company's Calcutta offices to China. Exports of Bengal opium to China increased dramatically over the next seventy-five years, from 13 tons in 1729, to 148 tons in 1789, and 2,558 tons in 1839, with opium becoming "the world's most valuable single commodity trade of the nineteenth century".¹⁸ Opium became a major global commodity of the same proportions as coffee, tea and cocoa, which distinguished it from its earlier forms as a folk pharmacopoeia or luxury item.

In both Europe and the United States by the first half of the nineteenth century opium was distributed in a wide variety of forms; as lozenges, pills, plasters, enemas, and in drinks such as beer and tea, for a large and diverse range of medical uses ranging from treating masturbation, photophobia, nymphomania and violent hiccoughs, to dulling pain, inducing sleep, controlling insanity, alleviating coughs, controlling diarrhoea, and for "treating" a wide range of incurable diseases including malaria, smallpox, syphilis and tuberculosis.¹⁹ In both Britain and the United States consumption of opium, and numerous preparations containing it was for non-medical as well as medical use. Opium, and preparations containing it, were on legal sale throughout the century, conveniently and at low prices, with the price of the drug comparable to the price of aspirin today.²⁰ Physicians dispensed opiates directly to patients, or wrote prescriptions for them. Pharmacists sold opiates over the counter to customers without a prescription. Corner shops and general stores stocked and sold opiates. Opiates could be ordered by mail from newspaper advertisements and catalogue sales and in the United States from the medicine show-wagons as they travelled throughout rural and urban America.

Opium used in Britain at this time was legally imported as just another commodity. There were also small-scale attempts at domestic cultivation of the drug. Berridge and Edwards note that opium played a small part in the moves towards the agricultural improvements of output and productivity in Britain and the establishment of a capitalist agricultural structure paralleling that of industry at the turn of the nineteenth century:

"Opium's inclusion with turnips and rhubarb in the agricultural discussions of the period was one sidelight on the content of agricultural innovation. It was an indication, too, of the drug's acceptability; the "home-grown" product bore witness to the place of opium in society at the time".²¹

Increasing opium cultivation was also seen as a possible means of rejuvenating Irish economic life and even providing a solution to "the Irish problem".²²

Most of the opium consumed in the United States during the same period was also legally imported and opium poppies were also legally grown within the United States. In 1871 a Massachusetts official reported:

"There are so many channels through which the drug may be brought into the State, that I suppose it would be almost impossible to determine how much foreign opium is used here; but it may easily be shown that the home production increases every year. Opium has been recently made from white poppies, cultivated for the purpose, in Vermont, New Hampshire, and Connecticut, the annual production being estimated by hundreds of pounds, and this has generally been absorbed in the communities where it is made. It has been brought here from Florida and Louisiana, while comparatively large quantities are regularly sent east from California and Arizona, where its cultivation is becoming an important branch of industry.....".²³

Opium use was therefore not regarded as a social menace or problem for a large part of the nineteenth century. Among those who are known to have consumed opiates including morphine are; Elizabeth Barrett Browning, King George IV, Florence Nightingale, Byron, Shelley, Keats, Scott, Darwin, Ruskin, Rossetti. Coleridge, Dickens, William Wilberforce, and Disraeli, who made his famous record breaking budget speech on a mixture of brandy and opium. Opium consumption was revered for

expanding the consciousness and giving access to greater creativity by artists and writers of the period particularly. Opium could be legally purchased without a prescription and there was little demand for prohibition in the United Kingdom or in the United States. Unlike the communal activity of ancient times drug consumption was seen as a private affair.

In the United States drug consumption was clearly associated with alcohol consumption. With the prohibition movement came an increase in demand for drug based elixirs such as Coca-kola (later Coca-Cola) which came out in 1886 when Atlanta went dry. Coca-kola was originally sold as a quasi-medicinal stimulant and contained cocaine. In addition to Coca-kola there were hundreds of other similar substances on the market. Vin Mariani's Coca wine contained fresh coca leaves and was consumed by such luminaries as then President William McKinley, inventor Thomas Edison, and Pope Leo XIII.²⁴ This link between alcohol and drug consumption emphasised the ambiguity between health and pleasure, the blurring of the medical with the non-medical use of drugs, which was the basis for the emerging challenge to nineteenth century drug consumption.

The dynamics of change

For the purposes of this chapter, the focus is on the consumption and use of opium. Cocaine and cannabis use was not as prevalent as that of opium in the nineteenth century and they played quite a minor medical role in comparison. Unlike opium, coca never became popular in Europe and it was not until the mid-nineteenth century when cocaine, the principal alkaloid in the coca leaf, was successfully isolated that it began to compete with opium in terms of popularity particularly in the United States.²⁵ However both cannabis and cocaine played a part in altering the perceptions of drug use in a negative sense and were associated with opium in discussions on the medicalisation of addiction. Cannabis was seen to have little medical use and was associated only with pleasure during a time when the medical and non-medical use of drugs was being separated, and the discovery of cocaine illustrated the increasing dangers of new, more potent drugs. At the beginning of the nineteenth century there

was no formal regulation of opium use. As Berridge and Edwards forcibly state "drug use was embedded in culture and was no more legislated or formally controlled than is at present the eating of peas".²⁶ However changes during the century radically altered the position of opium, and other drugs in society.

During the nineteenth century moves towards industrialisation led to shifts in populations from country to towns looking for work. This necessitated a change in diet accommodating what was available, coupled with the need to increase the nutritional quality to keep pace with the demands of the new industries. An increase in global trade had made foods high in protein such as eggs and beef, stimulants such as tea and coffee, and sugar, available for this new diet.²⁷ The modern factory worker would use the proteins, stimulants and glucose to accelerate the body's rhythms to those of the machinery, often for very long hours. The role of narcotics would be to soothe and relax the body and mind artificially during the short hours of rest. In the mid-to late-1800's patent medicine manufacturers produced drugs to induce any desired state. As McCoy states, "the growth of mass narcotics abuse seems part of the transformation of daily living in the 1800s."²⁸

Increase in perceived use among the new working classes led to changing attitudes and the first attempts to control. Throughout the century there was a shift from middle-class use to working-class use. The situation in the United States was slightly different, but shows a similar change in users. Early nineteenth-century opiate users were from the middle-classes (often women) and also aged between 25 and 45, so that opium use was described as the "vice of middle-life"²⁹. Throughout the nineteenth century it was considered "unseemly" for women to drink. According to David Courtwright in his study, *Dark Paradise. Opiate Addiction in America before 1940*, use of opium or morphine by women was a substitute for alcohol.³⁰ However, in the latter half of the century attention was focused on opium use by immigrant Chinese labourers and their opium-smoking in the dock areas of San Francisco.³¹ In England the emphasis was on working class use, but as Berridge notes, working-class opium use may have been exaggerated for political purposes: opium was a narcotic and yet increasingly working-class use of the drug was viewed as "dangerous", and opium

was discussed as if it was a "stimulant" (as it was then wrongly classified) like alcohol³². It is significant that opium use among the working classes was associated with use for euphoric or experimental purposes, whereas middle-class users were seen as using the drug for medical, rather than non-medical purposes. The belief in working class "stimulant" use of opium in England helped justify the first restriction on the drug in the 1868 Pharmacy Act (see later). The emphasis here of the growing contemporary concern is not on the drug itself, but on the user and the uses, that is a separation of the medical and non-medical uses, not previously emphasised.

The nineteenth century saw rapid and fundamental changes in socio-economic structures due to the process of industrialisation, which led to emerging class tensions and instability.³³ This period of time was also concerned with the problems of the role of the individual and society, which was undergoing fundamental changes and was of great concern to writers and thinkers of the time, for example with the work of John Stuart Mill. The question of drug use was becoming associated with the type of user and therefore linked to social control. This led to a shift from informal to formal controls.

Another significant change to observe in the changing attitudes towards drug use was changes in medicine itself and the medical profession. The beginning of the nineteenth century saw medical practice as still rudimentary, an era of self-medication. Western medicine was "locked into a long transition from the eighteenth century's heroic remedies of bleeding and blistering to the genuine therapeutic remedies that first appeared in the early twentieth century".³⁴ Doctors were impatient to transfer into the fields of biology and medicine the scientific revolution that had remade physics and astronomy and became disillusioned, when biological research seemed not to lead to universal laws but only to more complications and greater confusion.

"Anxious to get their single explanations for all disease, they did so by neglecting the scientific method, or by following it only a short way. They built vast theoretical medical schemes by speculative logic. The 18th century was a time of system-making."³⁵

Many of the new systems were a continuation of ancient lores dating as far back as the second century AD to the Greek physician, Galen. Galen's ideas on the nature of disease resulting in an imbalance of the four liquids in the body - blood, phlegm, choler (yellow bile), and melancholy (black bile) - were the dominant force in medical thinking in the nineteenth century. Treatments held the dictum that the worst a medicine tasted the greater its curative power: urine, dung and most of the substances commonly used as fertilizers of the soil were common. Dried horses hooves and wood lice was dispensed by three London hospitals in the eighteenth century. In this period of great change medical doctors were the most enthusiastic advocates of opium treatment. As historian Terry Parssinen explains, opium was the Victorian's aspirin, lomotil, valium and nyquil. At a time when Marx claimed that religion was the opium of the people it was easily and cheaply available.³⁶

There was little special training or diagnostic ability needed to dose patients with opium or cocaine for their complaints and still produce satisfied customers, who might come back for more indefinitely. The widespread habit of self-medication, particularly amongst the poor also detracted from the desire of the medical profession to exercise its authority. In order to exert influence the medical profession needed to become more professional; to differentiate themselves from the various chemists, druggists, apothecaries and herbalists and others then practising. In addition, there needed to be more professional controls over the availability of drugs. The nineteenth century saw the emergence of numerous separate "professions" and corresponding organisations in many areas such as accountancy and surveying. There were also moves to establish the medical and pharmaceutical professions as separate, self-regulating bodies. This marked a significant stage in changing attitudes towards drug use in the second half of the century.

In 1841 the Pharmaceutical Society was established in Britain with the initial objective to limit the title of chemist to those who had passed its own examinations as well as gradually to raise the status and quality of chemists already in practice and eventually to achieve a monopoly of practice for its own members. This however was incompatible at the time with the dominant free-market values (contradicting the

international values later displayed in relation to monopolies and trade with China) and no restrictions on sales were imposed. The society had yet to establish itself as the controlling body of the profession. The establishment of the General Medical Council followed, under the 1858 Medical Act, to represent the newly emerging profession of general practitioner. The Council even attempted to include pharmacy under the ambit of the medical profession. In 1860 the United Society of Chemists and Druggists was formed, to represent the non-members of the Pharmaceutical Society unhappy about the body's perceived failure to secure their interests. The societies all had conflicting interests and positions.

The conflict between medical and pharmaceutical interests was shown by the struggle in the British parliament over the 1868 Pharmacy Act to control dangerous substances. Doctors, and those concerned with public health, wanted opium included in the Act and for its availability to be severely restricted. The pharmacists wanted limited control of the drug to protect their commercial interests. Their concern could be seen to be primarily with the availability of opium rather than its use. The passage of the Bill illustrates the competing influences of the groups on parliament. On first reading all mention of opium in the Bill had been dropped due to strong protests from pharmacists throughout the country who compelled the Pharmacy Bill Committee "against interfering with their [the pharmacists] business". Opium, they stated, was one of their "chief articles of trade".³⁷ However despite this argument, the medical lobby triumphed and "opium and all preparations of opium or of poppies" was added to the schedule as commodities that could not be sold without being labelled "poison".³⁸ However, the power and influence of the Pharmaceutical Society remained, since the act failed to restrict patent medicines containing opium such as Dover's Powder, Daffy's Elixir, Godfrey's Cordial (for children) and many others, by "preparations of opium" being distinguished from "preparations containing opium".

Opium control in the nineteenth century was still seen by many as a matter of voluntary self-regulation rather than a matter for state legislation. In the United States, the largely un-organised medical and pharmaceutical industries were not viewed as an appropriate area for central government legislation. The United States free-enterprise

system positively discouraged controls on sales of opiates and later cocaine. Federalism, which gave the power of regulation to individual states, allowed for the repeal of medical licensing laws, adopted in earlier days, by state after state in the first half of the nineteenth century. Any form of licensing that might lead to a monopoly by the educated elites was seen as a violation of democratic principles.

The 1868 Pharmacy Act had little effect in reducing the availability of opium or of medicines containing opium in Britain. However in the area of patent medicines it was becoming increasingly clear to both doctors and pharmacists that they had little influence and that their authority was being challenged. The number of vendors applying for licences to sell patent medicines increased from over twelve thousand in 1874 to twenty thousand in 1895 to meet the increasing demand from the consumer.³⁹ The increase in vendors was to some extent due to the provisions of the 1868 Act which had made ordinary opium preparations more difficult to obtain. Furthermore, in 1875 an Act had reduced the medicine licence duty, leading to an increase in vendors. Therefore there began in the 1880s a new professional campaign against open sale, concentrating on the issue of patent medicines. Patent medicines dealers were the largest newspaper advertisers in the United Kingdom and Australia, and the press consequently had an interest in not publicizing information detrimental to sales. This was significant in limiting the spread of information concerning the harmful effects of drug use. In the United States, legislation was slower to materialise, but again came about due to an uneasy alliance between the medical profession and pharmacists. From 1895 to 1915 most states and many municipalities passed laws limiting the sale of opiates.

An initial shift in values therefore came about due to the growing awareness among an emerging medical profession of the need to increase its influence in the field of opiate use, in competition with the increasing number of non-professional outlets supplying opiates and a newly emerging and competitive pharmaceutical profession which had hardly existed at all before the 1840s.

A major trend throughout the history of drug use is the increased hazards associated with the use of more potent drugs, either purified plant materials or the new synthetic drugs, such as lysergic acid diethylamide (LSD) and "China White", as has occurred in the last two decades. Until the nineteenth century drugs came from two sources - unrefined plants and animal products and were usually taken orally. Eating crude plant material offered a certain safety margin, since biologically active components are usually present in small amounts and overdosing was physically difficult. In the mid-1800s morphine was isolated from opium: in the early 1900s cocaine was isolated from coca leaf and heroin was synthesised from morphine. The emergence of these new, more-potent drugs, which were the product of the pharmaceutical industry, in combination with the hypodermic syringe in the 1860s, spurred both consumption and a gradual increasing concern about their dangers which led to changing attitudes concerning domestic consumption.

The invention of the hypodermic syringe was a significant breakthrough for medical science. A more accurate and exclusive means of treating disease was being sought by the medical profession, to separate themselves from the mass of apothecaries, chemists, herbalists, patent medicine vendors and manufacturers, and others then practising. The hypodermic method, and its use with morphine in particular, was hailed as a major breakthrough in treatment with a more immediate effect obtained, smaller doses needed, and safety assured with none of the unpleasant gastric side effects of opiates administered orally. Enthusiasm for hypodermic morphine was generally accompanied by a denigration of popular opium, and self-medication. In the United States the hypodermic method was first introduced in 1856. Between 1860 and 1880, along with the scores of wounded veterans given injections to alleviate their injuries during the Civil War, a massive increase in morphine addiction was triggered. Promoters of the syringe played upon professional insecurities and implied that those who did not use it would fall behind in their profession. The percentage of American physicians using hypodermic medication grew dramatically, to the extent that by 1881 virtually every American physician had one. The use of hypodermic morphine medication became widespread at a time when opiate consumption could be seen to be in decline. As Courtwright comments, its popularity amongst doctors and patients was

obvious, since for the first time in history near instantaneous relief was possible for a wide range of disease.⁴⁰ Administration was also controlled by the medical profession, increasing their influence. Organic drugs, such as cannabis, were non-soluble and therefore could not be administered in the more "scientific" way of intravenous injection and their medical use therefore declined. Towards the end of the century cannabis began to be seen as a dangerous, purely-recreational drug, described at the time as the major cause of insanity in both India and China.⁴¹

The enthusiastic advocacy of the new treatment among the profession failed to establish true scientific facts and it was not long before this myopic support led to increased levels of addiction. The attention of the profession then focused on the "problem", it had in effect created, rather than the majority of consumers taking oral opium.

"The quite small numbers of morphine addicts who happened to be obvious to the profession assumed the dimensions of a pressing problem - at a time when, as general consumption and mortality data indicate, usage and addiction to opium in general was tending to decline, not increase."⁴²

The medical profession had created a new problem when there was some evidence that opiate use was declining.

Towards the end of the nineteenth century specific disease agents for illnesses such as typhoid and cholera were isolated. The desire for scientific discoveries encouraged progress in trying to understand less definable conditions, such as that of opium addiction (a term not in widespread usage until the first decade of the twentieth century). Much of the work in this area was an offshoot of research into alcoholism. This led to the re-classification of illnesses with a large social or economic element in them on strictly biological lines:

"From one point of view, disease theories were part of late Victorian "progress", a step forward from the moral condemnation of opium eating to the scientific elaboration of disease views. But such views were never, however, scientifically autonomous. Their putative objectivity disguised class and moral

concerns which precluded a wider understanding of the social and cultural roots of opium use."⁴³

For example in the United States, calls for restricting cocaine use were propelled by the increasing awareness of the medical dangers of cocaine and its association with respiratory failure, combined with widely publicised accounts of "coke-crazed negroes raping white women", which were endorsed by writings and reports from such respected bodies as the American Pharmaceutical Association.⁴⁴

Earlier in the nineteenth century, at a time of wide opiate use for self-medication at all levels of society, regular opium use at worst was regarded as a bad habit, or minor form of moral failing. But in the later stages of the century, when overall use was in decline, the regular user became more noticeable. Along with these new developments in toxicology and bacteriology came a growing awareness of the dependency-producing nature of opium and morphine use among the medical profession.⁴⁵ As has already been stated, the medical profession itself was more organised and eager to develop theories of "morphinism" and "morphiomania" to further their own goals. Disease theories of addiction were seen as individually orientated (the addict was responsible, rather than the physical or mental condition) but this was nevertheless seen as a proper area for medical intervention. Opium eating was medicalized, but failure to achieve a cure was a failure of personal responsibility, not of medical science. Morality and medical science should have been at odds with each other, but disease theory was very much a mixture of the two.

By the last half of the nineteenth century, the emergence of toxicology as a science and also the elaboration of a "germ theory of disease" began to lead to less of a dependency on the use of opium as a treatment for all conditions. Advances in bacteriology led to public health measures, which reduced the incidence of gastrointestinal disorders, such as diarrhoea and dysentery, for which opium and morphine had been freely given. Vaccination, against typhoid fever (1896), and chemotherapy against syphilis (1909), began to provide effective alternatives to opium and morphine for a few diseases. The achievement of greater diagnostic precision, made possible by

the discovery and classification of pathogenic micro-organisms and by the development of new techniques, such as X-radiation, discouraged simply prescribing opiates for all ailments. Furthermore, these developments led to a host of new and less dangerous anodynes becoming available. The introduction of milder analgesics, the salicyclates and aniline and pyrazolone derivatives, constituted another major reason for the decline in opium and morphine prescribing.⁴⁶ The discovery of the analgesic properties of aspirin in 1899 and its subsequent role in the household as a general non-addictive pain killer marked a decisive break with the drug-taking of the past and probably prevented thousands from becoming addicted to opium or morphine.⁴⁷

By the end of the century the alliance between the government and the medical profession in Britain over the control of drugs had been established. The laissez-faire model of drug use had gradually evolved into a model of governmental responsibility for health policy incorporating the medical profession.⁴⁸ In England the Registrar General's Office, established as early as 1837 was one of the first central government agencies. Throughout the second half of the century it provided the statistics on which the medical and public health case, against the use of opium, were based.⁴⁹ Narcotic legislation was seen as a form of social control of lower class and criminal usage, by the governing elite concerned about class tensions, which had emphasised working class use of opium. For the medical profession, narcotic policy served as a form of professional self-affirmation. The emerging organisations and institutions and the movement for control complemented and paralleled society's concern with public health and led to the creation of new values with a progressive medical dominance in society's way of thinking about and responding to drug use. More restrictive attitudes were appearing towards opium users, who were seen as deviating from the norms of society. However, although domestic concerns about the dangers of drug use were changing in both Britain and the United States the impetus for more fundamental change came from an international source, England's relationship with China. International developments were seen to impinge on domestic developments towards the turn of the century and finally establish society's attitude towards drug use.

The Eastern dimension and changing attitudes

The contemporary "War on Drugs" as described in the last chapter was preceded by a very different kind of drug war. In 1839 and again in 1856 the British government declared war on China in an attempt to open China's markets for its merchants. It is not within the scope of this chapter to go into great detail on the Opium Wars (1839-1842, and 1856-1858) but rather, to illustrate why values were slower to shift, with regard to opium use and the emerging medical dangers associated with drug use, in Britain than in the United States. This can be seen to be due to Britain's involvement in the opium trade from the end of the eighteenth century.⁵⁰ The 1842 Treaty of Nanking after the First Opium War opened five Chinese ports (including Hong Kong) to British merchants, and established British control over Chinese customs, allowing the import of opium without restraint. The British East India Company had begun to export opium from British India to China in the eighteenth century, as a convenient exchange for tea and silk, commodities at that time much valued in the West. Their monopoly over the China trade lasted until 1834, when the new reform parliament cancelled it. Opium exported from India had to be smuggled into China, since the Imperial authorities had repeatedly issued edicts prohibiting its importation and consumption. However, opium was seen as a legitimate international commodity by the British, European and American traders and an integral part of the international financial system:

"Opium was considered the Chinese whiskey and as legitimate a commercial product as alcohol, tea, or coffee; it was a product from which "the maximum revenue from the minimum consumption" should be derived".⁵¹

The aim of the Opium Wars after the ban on opium by the Imperial government of China were to force China to accept British rules and values of free trade and diplomacy. The 1858 Treaty of Tientsin after the Second Opium War forced the Chinese to accept the British imposition of the legalization of opium imports to China. The Opium Wars of the middle of the century, had effects in the latter half of the century with an anti-opium movement emerging in the 1870s opposing England's

participation in the opium trade with China, changing perceptions of domestic opium use even though its primary focus was on the Far East.

The early anti-opium movement was a loose alliance between British protestants, western missionaries, and Chinese imperial officials. As with the anti-slavery movement in the eighteenth century, Quakers emerged as the leaders of the anti-opium campaign and founded in 1874 the Anglo-Oriental Society for the Suppression of the Opium Trade.⁵² The British Quakers were strong moral reformers. They were committed to changing what they saw as the social wrongs of the world. There was also support for the anti-opium movement from the alcohol temperance movement. Throughout the Victorian era, the alcohol temperance movement was very active. Many leading churchmen and much of the middle class were members of temperance organisations. The anti-opiumists believed that opium physically, and morally destroyed the user and was in itself, evil. Furthermore, the anti-opiumists believed that opium was to blame for retarding the progress of Christianity, since the Chinese could not be expected to distinguish between the white missionary and the white opium peddler. As Brown writes, "The Society, with its heavy evangelical commitment, had few reservations as to the wisdom of missionary activity within China".⁵³

The early aims of the Society were the abolition of the government monopoly of opium in India and a withdrawal of unfair pressure on the Chinese government to admit Indian opium, by the creation of an educated public opinion and parliamentary pressure. For thirty years England's missionaries and moralists fought a relentless campaign through meetings and petitions to change public opinion towards Britain's opium trade.

"The anti-opiumist cause was a public issue in this period as it was not to be again until the 1900's. The Society's public activity expanded at an unprecedented rate. In 1880, election year, the Society placarded its election address which stressed commercial as well as moral arguments..."⁵⁴

Despite its denunciations of British involvement in the opium trade, the Society supported British involvement in China. They believed that termination of the trade would make British imperialism more efficient and that drug addiction had retarded "legitimate trade" in China and India.

Domestic pressure by the anti-opium movement in the United Kingdom was helped by the election of a reform-minded Liberal government in 1906, which led eventually to moves to end the trade. In 1907 Britain and China signed an agreement to reduce the shipment of opium from India by 10% (see later). However since the 1890s British civil servants and politicians had been increasingly aware that the opium trade was forming a declining proportion of the Indian revenue. During the period of the 1860s and 1880s, British trade with China had hardly increased. China's own cheaper production of the drug was increasing and by 1885 China was probably producing as much opium as it was importing.⁵⁵ The opium trade was also strangling other forms of commerce.⁵⁶ The Chinese were too poor to buy British goods due to their dependency on opium smoking. An estimated 27% of the population were opium smokers at the height of the problem, with a level of addiction never equated by any country before or since.⁵⁷ England needed to improve its relations with China, by abandoning the opium trade, in order to enhance prospects for other forms of trade. As Berridge states, "Humanitarianism and economic self-interest coincided".⁵⁸ The promotion of opium control in China resulted from considerations essentially separate from the issue of drug use.

The British anti-slavery and anti-opium agitations had much in common. But unlike its role in the anti-slavery campaign, the principal impetus for a multi-national approach to opium control came not from the British, but from the Americans, initially from missionaries returning from the Far East. As Arnold Taylor states, the role of the missionaries in the anti-opium campaign "might quite appropriately be referred to as a missionary movement, or better still, as missionary diplomacy".⁵⁹ Towards the end of the century, growing awareness of the public health aspect of narcotics addiction and a growing temperance movement made the issue of opium control increasingly popular among reformers. Furthermore the United States had taken control of the Philippines

following the Spanish-American war of 1898, which produced strategic and economic interests in the Pacific region. The Spanish had previously held the opium monopoly to supply the Chinese in the Philippines and missionaries in Manila and the United States lobbied hard for the repeal of the trade. The Philippines came under the direct control of the United States federal government, bringing the issue of opium consumption for non-medical purposes to the direct attention of Congress. The Civil Governor, William Howard Taft set up an Opium Investigating Committee, to consider the Philippine opium question. The Committee's investigation lasted five months and was the first multi-nation survey on opium use. It concluded that the opium situation was one of the gravest, if not the gravest, of problems in the Far East and acknowledged the position of opium as a major source of revenue for significant governments. The Committee also stressed the international dimensions to the problem stating that opium could not be controlled by the Philippines alone, without international co-operation, since the use of opium in surrounding territories would make opium control in the Philippines unworkable.⁶⁰

The lead taken by the United States government however was due to a number of factors other than moral indignation. United States companies had themselves been involved in opium traffic to China since the beginning of the nineteenth century, as conveyors of Turkish opium to the Far East. After 1805 they had held a virtual monopoly, due to the policy of the East India Company. The Company barred its own ships from carrying opium and at the same time prevented private English shipping from trading between Europe and China (until the ending of its monopoly in 1834). The American trade with China in Turkish opium was sufficient to cause the Chinese commissioner at Canton in 1839 to think that Turkey was an American possession.⁶¹ After the 1839 Opium War the US companies temporarily withdrew from the trade, but participated again in aiding the smuggling of opium into China, by supplying receiving ships or storeships anchored in waters around the islands near to the Chinese mainland, for carriers from India, Persia and Turkey.⁶² The United States was experiencing a period of rapid industrialisation and urbanisation in the later half of the century with corresponding social and economic transformation and increasing social unrest. In the United States, government links were perceived between working class criminal users

and foreign users of opium. Immigrant Chinese opium-smoking labourers in the west coast docks, brought in to help build the railways, were seen as a threat to society. Smoking opium began to be imported in significant quantities in the mid-1850s, when the first wave of Chinese immigrants arrived in California. Prior to July 1862, crude opium and smoking opium were reported together. The Smoking Opium Exclusion Act focused attention away from white, middle-class female crude opium users and onto a new "subculture" of users.⁶³

The economic interests of the United States government can also be seen to have played a vital role. After 1858 and the legalization of the opium trade with China, the American ships that had been used to help smuggle opium into China were no longer needed. This, combined with a general decline in United States shipping companies during and after the Civil War, meant that United States companies participation in the drug traffic with China had dwindled to insignificant levels and led to the changing attitude of the United States government to the issue. The change in attitude can be seen to have come about due to the recognition by the American merchants that the opium trade was damaging legitimate business with the Chinese, in restricting Chinese purchasing power and jeopardizing relations with the Chinese government. Unlike for the British, direct financial benefits for the Americans of trading in opium rarely accounted for more than one-tenth of the total American trade to China in any one year.⁶⁴ The United States administration wished to pursue an Open Door policy with regard to China but their treatment of Chinese immigrants in the United States led to a widespread boycott of United States goods in China in 1905. David Musto describes advisors suggesting to President Roosevelt that:

"a humanitarian movement to ease the burden of opium in China would help his long-range goals: to mollify Chinese resentment against America, put the British in a less favourable light, and support Chinese antagonism against European entrenchment".⁶⁵

The United States government, as William O Walker states, consciously sought to perpetuate the myth of a special relationship with China, supporting China in its anti-opium position with American trade interests as their objective.⁶⁶ The United States

therefore took the lead in organizing an international conference to discuss the international control of narcotics.

The Shanghai Opium Commission met in 1909. At this time the United States had no federal laws proscribing the opium traffic, nor any reliable statistics on its own opium "problem". There were no restrictions on the import of opium to the United States, other than a small tariff. The United States did not export manufactured opiates, not on moral grounds, but because its products were not competitively priced with Europe's. United States per. capita import of opium was declining, having peaked in 1896 and other substances were entering the market in competition to opium. In order to present something at the Conference, but to avoid offending the medical profession and drug manufacturers, they instituted in 1909 a ban on the import of opium for smoking. The 1909 Conference produced a number of resolutions. The Conference called for all governments to ban opium smoking; the ban (United States position) or careful regulation (Britain's position) of opium use; and a call for strict international agreements to control the traffic in and use of morphine (United States position). Britain insisted that the responsibility for control should be assumed by the governments concerned within their own territories and commitments. These positions reflected fundamental disagreements among participants, especially between the United States and Britain. There was simply no consensus "that the use of opium for other than medical purposes was evil and immoral."⁶⁷

Developments in the nineteenth century outlined above reflect the dynamics that established international regulation of opium use. For the British and American governments, the dominant value in the nineteenth century was free trade. In the nineteenth century Britain was the supplier and China the consumer, and drug control was treated as an economic question, an important element in overcoming Britain's trade deficit with China. In the 1840's Britain waged war on China in order to re-open Chinese markets to the East India Company's opium exports. In the mid-nineteenth century there was no consensus on knowledge that drug use was damaging to the individual. Domestic consumption was not seen as a problem that could not be controlled, despite the latter half of the century seeing an increase in consumption

amongst the lower classes and an increase in medical knowledge of the dangers of consumption. Despite this, and despite the British hegemonic position, the United States government was able to put drug control on the international agenda where it has remained firmly ever since. The nineteenth century clearly reflects the mixture of social and technological change, competing domestic interests, changing religious values and competing trade interests all reflecting changing values and norms about drug use leading to its control. The nature of these dynamics will be explored further in the next section.

Values and agenda formation: From the value of power to the power of values

Hans Morgenthau, one of the fathers of the Realist school of political thought, advanced a theory of international politics founded on the concept of the national interest. In *Politics Among Nations* he states that "Interest is the perennial standard by which political action must be judged and directed"⁶⁸, and therefore the "objective of foreign policy must be defined in terms of the national interest".⁶⁹ He goes on to expand on what constitutes the national interest by defining interest in terms of *power*:

"The main signpost that helps political realism to find its way through the landscape of international politics is the concept of interest defined as power."⁷⁰

For the orthodox school of International Relations in its heyday from the 1940s to the 1960s, *the* issue in international relations was the acquisition, maintenance and exercise of power. However, during the 1970s, several writers challenged by developments around them introduced a "transnationalist" critique to explain a changing international system⁷¹. But its challenge to Realist international theory has not been fully developed, with for example, Keohane and Nye's work in the area being seen as only modifying Realism while remaining loyal to the classic formulation of Morgenthau and Thompson that international relations is concerned with international politics, and that the subject of international politics is "the struggle for power among sovereign states."⁷² The traditional analysis of change for the Realist in the international system is of change in global power: the traditional unit of change is the state, the replacement

of one hegemonic state by another with states pursuing self-interest understood in terms of power maximisation.

Realist orthodoxy has also dominated in the disciplines of international history and sociology. A state-centred approach in international history dates back to the early 1930s⁷³ and many present-day historians continue to describe their field as diplomatic history.⁷⁴ As with Realist international theory, international history has also concerned itself with "crises in the politics of power and the officials who wield such power."⁷⁵ Recent studies of the international by various mainstream sociologists have also shown a pre-occupation with Realist concepts of state and power, seeing social systems as national societies/states and all other interaction patterns as being sub-systemic in character.⁷⁶ Although interactions between the disciplines of International Relations and Sociology have been intermittent since the 1930s, the 1970s saw a more systematic attempt to draw on the discipline. Attempts were made to analyse the growth of an international consciousness, the advent of global norms, the sociology of international law and the sociology of world conflict with the work of Brucan, Pettman and Banks, developing Burton's "world society" conceptions of the subject matter of International Relations, where relations between individuals were seen as important as relations between states.⁷⁷

The concept of an international regime was introduced by the neo-Realists in the same period, as a means of combatting the challenges to the power politics approach of a changing world and in the face of what many considered new global problems, such as environmental degradation, resource depletion, and pollution. Krasner's authoritative definition of an international regime implicitly contains the concept of "values" with the explanation of "principles" as "beliefs of rectitude" and the notion of "implicit norms". Krasner suggests that "values" are basic "causal variables" along with interests and power but does not expand on this. He emphasises norms and principles in defining regimes and regime change by stating that "Changes in principles and norms are changes of the regime itself", and that "Changes in rules and decision-making procedures are changes within regimes".⁷⁸ But for Krasner regimes were understood to rise and fall in terms of the power of the state actors

comprising them. Writing in the introduction to *International Regimes* he asserts that, "The prevailing explanation for the existence of international regimes is egoistic self-interest".⁷⁹ Puchala and Hopkins in the same volume state that regimes are "closely linked to two classical political concepts - power and interest"⁸⁰. Furthermore the Keohane concept of hegemonic stability, the most widely employed explanation of regime formation in the Krasner work, also emphasises the role of dominant states utilizing power capabilities for regime creation.⁸¹ This concentration on states denies regimes independent impact seeing them as merely reflecting the overall structure of power in the international system as it is perceived by the Realists under the challenge of interdependence, making the concept of an international regime virtually redundant.

A clearer understanding of values and norms, their evolution and role is needed to give international regimes an impact in international relations and is also central for an alternative understanding of the international system where regimes have an independent role. As Mansbach and Vasquez state:

"The belief that the struggle for power is the dominant issue fails to accommodate the multiplicity of values and stakes for which actors both cooperate and compete".⁸²

Rosenau, describing the limitations to a Realist theory of international politics, questions the Realist belief that "a nation's power has an objective existence and thus values need not enter into a determination of its national interest".⁸³ For this school of thought power is the dominant value and is the basis for ranking some values as preferable to others. However, at the turn of the century, the United States was not then a military power on a par with the global empires but they were able to put the question of drug control onto the international agenda. The United States, unable to compete with the interest of the hegemon, linked the free trade challenge to a moral value - drugs were immoral. Britain, as the hegemon, was forced to accept international legislation that could be seen as going against the national interest from a Realist perspective, as well as facing a domestic value challenge. In 1906 the newly elected Liberal government, pressurised by the increasing disquiet regarding the opium

trade among the population and politicians, reached an agreement with China phasing out the opium trade between India and China. India's opium production would be gradually reduced by 10 per cent per year in the first instance, in order to prevent Turkey, Persia, or domestic producers from stepping in to replace the supply, and so protecting Britain's commercial interests.⁸⁴ Values within Britain had changed; ten years earlier the report of the Royal Opium Commission had declared the consumption of opium was not harmful and that "opium was more like the Westerner's liquor than a substance to be feared and abhorred."⁸⁵ How much the British government's change of attitude was due to market decline as previously mentioned rather than the influence of the new morality of the nation and the work of the missionaries is difficult to say. However, by their later delaying tactics and lack of co-operation with the international opium legislation, remaining the world's main manufacturer and exporter of opium until as late as the 1930's, it can be suggested that the missionaries made a successful value challenge forcing a change in official policy, challenging the Realist position on value change in the international system.

To sum up, central to an understanding of the concept of issues and central to an alternative understanding of the concept of change in the international system to that of the Realists is a re-evaluation of the concept of power as the sole variable for change. The emergence of control on drugs by the international system shows how the dynamics for change came not simply from a powerful state imposing its will, but from changing values and value-linkages. The simplicity of the Realist position on change can be contrasted with the much more complex reality of nineteenth-century drug use. The complex mix of social and technological change and competing domestic interests, changing religious values and competing trade interests all were shown to have promoted a value shift in attitudes towards drug use. Power relationships can be seen to have changed by a shift in values whereas for the Realists change is perceived as the other way round with the practice of states determining values. Also contrary to Realist understanding, the dynamics of drug control at the turn of the century is an example of international values impinging on national values, since fundamental international legislation came before national legislation.

A different approach to politics that identifies the source and role of values as central is needed. The approach of an alternative school of thought is centred around the work of Rosenau, Nye and Keohane, Mansbach and Willetts. All five writers in their work make reference to the ideas of the American political scientist David Easton. David Easton, writing about American political science in *A Framework For Political Analysis* defined politics as "the authoritative allocation of values".⁸⁶ This can be seen as a denial of the Realist's understanding of politics as the struggle for power. Little attention has been paid to the significance of these two quite separate definitions of the fundamentals of politics for understanding the essence of the international system. As Mansbach and Vasquez emphasise,

"The Eastonian definition moves the analysis of global politics away from conceptions of power and security and toward the assumption that demands for value satisfaction through global decision making must be at the heart of any theory, and must be the central process that awaits explanation."⁸⁷

However, writers following Easton's work have not established an authoritative theoretical literature defining the concept of a "value" or expanding methodically on Easton's work in an international context. James Rosenau in his seminal work on "pretheories" defines issue-areas as a "cluster of values" but does little to expand on the fundamental nature of those values or where they come from.⁸⁸ In, *In Search of Theory. A New Paradigm for Global Politics*, Mansbach and Vasquez attempt to expand on the work of Rosenau, (as outlined in the previous chapter) in attempting a more thorough analysis of issues and values and their role in the international system. This sadly neglected work will be the focus for elaborating on a clearer understanding of the role of values in the international system as an explanation of the dynamics of change.

The nature of values

The problem again, as with "issue", is that "value" is common terminology in a number of disciplines, obscuring the absence of a common understanding. For economists, the term refers to "utility generating property" or "valuation revealed in

a preferential choice". For sociologists, the term denotes some kind of "world view" or "taken for granted belief or normative standard by which human beings are influenced in their choice among the alternative courses of action which they perceive".⁸⁹ Sociologists emphasise the criteria governing evaluation (why we choose what we choose is based on our values), economists are concerned with the valuations themselves.

An authoritative literature on the source and role of values in the discipline of International Relations is lacking. Analysis of values is central to the discipline of sociology concerned as it is with social transformations, but has traditionally been approached on a national rather than international level. However, a concern for the international aspects of social transformations was shown, as early as the first half of the nineteenth century, in the work of Saint-Simon, Comte, de Tocqueville, Marx and Spencer.⁹⁰ Attention to world affairs developed during the 1920s and 1930s to the extent that a sociologist could claim that "Sociology... could legitimately compete with political science in studying international relations".⁹¹ In the 1960s there was revival of interest in international politics by writers such as Talcott Parsons, Amitai Etzioni, and Johan Galtung.⁹² Work on international social relations as opposed to inter-state politics increased from the late sixties onwards. However research progressed in isolation from other disciplines.

Mansbach and Vasquez describe values as "subjective constructs that express human aspirations for improving their existence".⁹³ They suggest that there are a limited number of values that people pursue: "some of which have been identified and sought through time and across space are wealth, physical security, order, freedom/autonomy, peace, status, health, equality, justice, knowledge, beauty, honesty and love."⁹⁴ Values, according to Mansbach and Vasquez serve *intrinsic* needs - that is they are sought for themselves, but they also say that satisfaction of one value, in order to satisfy another, can also be seen as *instrumental*, that is serving an end.⁹⁵ Mansbach and Vasquez recognise this difference as central to understanding the political stances of different actors by means of the nature of the values that they are aiming to satisfy.

To return to the definition of politics by David Easton in *Frameworks*, politics is described as the authoritative allocation of values, "the authoritative allocations distribute valued *things* among persons or groups".⁹⁶ (italics by current author) As Mansbach and Vasquez expand,

"Politics involves efforts to allocate values. Since values are abstract and intangible ends, they cannot be attained directly and must be sought through access to and acquisition of, objects that are seen as possessing or representing values. These objects are then regarded as stakes for which actors contend".⁹⁷

That is values are abstract and intangible and are represented by objects or stakes representing the values. Mansbach and Vasquez make a distinction between *concrete* and *transcendental* stakes. Concrete stakes represent a means of directly satisfying a value since "the value is inseparable from the object itself", whereas transcendental stakes are, "entirely abstract and nonspecific, and which concern beliefs, prescriptions, or norms about how people should live or behave."⁹⁸ Mansbach and Vasquez also describe stakes in terms of their *intrinsic* or *instrumental* value, that is, valuable for their own sake, for the values they represent, or necessary for acquiring other values that are actually associated with other stakes.⁹⁹

The work of Mansbach and Vasquez on values is unnecessarily confusing. They talk about both intrinsic and instrumental values and intrinsic and instrumental stakes, suggesting there is a corresponding relationship between them. Nevertheless it is clear that since values are abstract and cannot be attained directly of themselves, all values must be intrinsic. When satisfaction of one value enhances the prospects for satisfying another, preferred value, then a stake must be involved. Stakes are not values, but the concrete goals of action based on the values being allocated. It follows therefore, since stakes are the objects with which value satisfaction can be achieved, that all stakes are instrumental: a way of satisfying value preferences. Values can be seen to belong in a hierarchy, so it is possible to make choices among stakes embodying different values. Some stakes are pursued directly for the values they embody, whereas others are pursued in order to obtain other stakes. In this way, "self-interest" can still be understood as value-guided behaviour, contrary to the traditional Realist approach to

international politics. The United States government supported the public health and morality campaigns against opium use, because opium control represented a stake for the achievement of free trade. The missionaries and Quaker groups support for the anti-opium campaign can be seen to have derived from the desire to avoid human suffering.

In this way the terminology of Mansbach and Vasquez is simplified and clarified and aids in the redefining of power. All values are intrinsic, as and of themselves. No distinction is needed therefore between power as capability and power as interest. Power, another central tenet of the Realist approach to International Relations, can be understood as instrumental and not intrinsic, contrary to Realist assertions. Interests can be seen as a particular type of value. Furthermore since all stakes are instrumental this lends itself to the "power as influence" concept central to the Global Politics paradigm.

In the nineteenth century, drug control was seen as a stake for acquiring free trade. This is emphasised by the attempts to include cocaine and morphine on the international regulation agenda. The second meeting dealing with opium control, the Hague Conference, was called in 1911 by the United States, which was by then preparing its list of demands on China (eg currency reform), in repayment for all the help the United States had provided on the opium issue. Britain's introduction of cocaine into the regulation discussions of the second meeting reflected its interests, not in curbing cocaine use, but in delaying international control over opium and protecting its trade monopoly with China. The necessity of acquiring statistics on the drugs would delay further measures on the restriction of opium. This action produced conflict with Germany, which was the leading drug manufacturer at the time. The German pharmaceutical company Bayer introduced the diamorphine alkaloid, (later to be given the brand name "Heroin", from the German word heroisch - of supernatural power) into the United States and Britain in 1898: the same company also manufactured cocaine. The German government supported Bayer, opposed the control of cocaine and engineered a unique ratification procedure, which required unanimous ratification by all forty-six states in the system ensuring that control became fully international.¹⁰⁰ Therefore, implementation was successfully delayed until after the First World War when countries which ratified the Versailles Treaty automatically became parties to the

Hague Convention. The Hague Convention therefore established drug control on a truly global dimension. Germany was able to protect its economic interests against the interests of Britain and the United States, so that later, as the British delegates reported; "it (the Convention) has, for the first time, laid down as a principle of international morality that the various countries concerned cannot stand alone in these measures" .¹⁰¹

After the First World War the newly established League of Nations was given "general supervision over agreements with regard to the traffic in opium and other dangerous drugs".¹⁰² Its Advisory Committee on Traffic in Opium and Other Dangerous Substances created to carry out these responsibilities was dominated by the colonial powers with their opium monopolies in their Far Eastern colonies, and the drug manufacturing countries. The Committee was nicknamed "The Old Opium Bloc".¹⁰³ There was no agreement on the value that drugs were immoral, evil and dangerous, but the stake of drug control was used to achieve free trade; therefore the Committee acquired the value - drugs are immoral, evil and dangerous in order to satisfy the stake of free trade with China.

One of the dominant questions for international regime theorists is why we have regimes in some areas and not in others. To answer why opium and cocaine were controlled, and not other substances, such as alcohol and tobacco, we are again back to stakes.

"Stakes that are initially beyond anyone's control are likely to reach the agenda, because this may be the only acceptable manner to allocate them. Conversely, when a stake is initially under some actor's control, that actor will oppose its inclusion on the agenda, unless its loss appears inevitable." ¹⁰⁴

This is clearly applicable to nineteenth century drug control and aids understanding of why, amongst other factors substances such as tobacco and alcohol were not treated in the same way as opium. The stake of trade in tobacco and alcohol was not contested

and there was no consensus on the value that tobacco and alcohol use was immoral, evil and dangerous. As Easton also states writing nearly two decades earlier:

"Briefly, authoritative allocations distribute valued things among persons or groups in one or more of three possible ways. An allocation may deprive a person of a valued thing already possessed; it may obstruct the attainment of values which would otherwise have been obtained; or it may give some person access to values and deny them to others." ¹⁰⁵

The concept of salience, as explained in the previous chapter can explain why actors rank values and stakes in the way that they do. The salience of an issue to an actor can be due either to its direct or indirect potential for value satisfaction.

Since values are not stakes, but the criteria by which we choose stakes, the evolution of conceptions of the preferable, which is why we have certain expectations and not others, needs to be explored. According to Emanuel Adler and Peter Haas, expectations in international politics come from interpretive processes, involving political and cultural structures, as well as from institutions "dedicated to defining and modifying values and the meaning of action." ¹⁰⁶

Epistemic Communities

John Ruggie introduced the term *epistemic communities* in his 1975 article "International Responses to Technology", in which epistemic communities were described by Ruggie as "interrelated roles which grow up around an episteme".¹⁰⁷ The sociological term *epistemes* referred to "a dominant way of looking at social reality, a set of shared symbols and references, mutual expectations and a mutual predictability of intention".¹⁰⁸ In his article Ruggie differentiated three levels of what he termed "institutionalization", that is as the sociologists define it, the co-ordination and patterning of behavior, setting the boundaries which channel behavior in one direction as against another.¹⁰⁹ Ruggie saw epistemic communities as the first level of institutionalisation - as the purely cognitive level. Ruggie described international regimes as the second level of institutionalization "consisting of sets of mutual

expectations, generally agreed to rules, regulations and plans, in accordance with which organizational energies and financial commitments are allocated".¹¹⁰ The third level Ruggie refers to is that of international organizations.

A special issue on international regimes was published in 1982 by the journal *International Organisation*, followed a decade later by a special issue edited by Peter Haas, exploring the development of interest in the concept of epistemic communities.¹¹¹ However a volume analysing the relationship between the two concepts is still lacking. The inter-relationship between the first two levels of institutionalisation can be understood by utilising the role of values and norm evolution in international relations. Ruggie's introduction of the concept of epistemic communities and international regimes can be seen as an attempt to go beyond institutions or organisations and the behavior typically analysed by Realist theorists, to explain international co-operation and conflict with a focus on the actual dynamics of change.

An understanding of epistemic communities is necessary for understanding what Krasner calls actor's converging expectations.¹¹² Although Haas goes into great detail about the nature of epistemic communities in the introduction to the 1992 volume, it is in an earlier work on epistemic communities that we have what is seen as the authoritative definition of the concept:

"Epistemic communities are transnational networks of knowledge based communities that are both politically empowered through their claims to exercise authoritative knowledge and motivated by shared causal and principled beliefs."¹¹³

The fact that epistemic communities are described as (1) politically empowered through their claims to exercise authoritative knowledge, and (2) motivated by shared causal and principled beliefs is illustrated in Chapter Six with the work of the Basle Committee on Banking Regulations and Supervisory Practices.

The normative aspects to international relations, lacking development in the rule-orientated, state-centred work on international regimes, is emphasised in the literature on epistemic communities. The literature on epistemic communities focuses on "shared causal and principled beliefs", which affect the decision-making procedures around which actors expectations converge, which is not fully developed by Krasner.¹¹⁴ As with the literature on regimes however, much of the later work on epistemic communities has concentrated on states as the actors in the system and has been restricted to "helping states identify their interests"¹¹⁵. But the epistemic community literature does not equate interests solely with power. The literature suggests that it is possible to perceive interests in terms of values, rather than in terms of power as it is currently understood. The concept of change therefore, unlike in much of the work on international regimes, has not been limited to changes in state power. As Haas explains, epistemic communities identify "a dynamic for persistent co-operation independent of the distribution of international power."¹¹⁶ The literature on epistemic communities also emphasises that there is no distinction between domestic and international politics, a point that is significant for an understanding of the drug phenomenon. As Adler and Haas state,

"to study the ideas of epistemic communities and their impact on policy making is to immerse oneself in the inner world of international relations theory and to erase the artificial boundaries between international and domestic politics so that the dynamic between structure and choice can be illuminated."¹¹⁷

Epistemic communities help define and modify values in a society by their claim to authoritative knowledge and can be one way of identifying where expectations come from in international politics. Both beliefs and values contribute to the epistemic community in an attempt by its members to establish a consensus of knowledge or norm. Since epistemic communities are set in a social context and not divorced from society, there is a danger of beliefs being established as authoritative knowledge, as has been previously stated in the case of nineteenth-century drug control, where "moral judgements were given some form of spurious scientific respectability, simply by being transferred to a medical context".¹¹⁸ Furthermore by helping to define and modify values epistemic communities also develop the context for establishing norms and

creating a climate "favourable to the further acceptance and diffusion of [their] beliefs".¹¹⁹ This can aid in an understanding of why some substances and not others are controlled by the international community. That is, epistemic communities institutionalise values by evolving norms.

The epistemic communities literature highlights the relationship between the role of experts and the providers of knowledge and the role of political actors. The literature focuses attention on the process by which consensus is reached in international politics and directs our attention to the impact this consensual knowledge (norms) has on the evolution of international regimes as will be explored in Chapter Five.

Conclusion

To conclude, drug control became a question on the international agenda at the beginning of the twentieth century due to the value of free trade coming under contention. The Far-Eastern focus of the Shanghai meeting widened, to produce a world-wide system of control at the Hague Conferences (see next chapter). Although attitudes were changing regarding the dangers being associated with domestic opium use in the United Kingdom and the United States, and particularly the more potent derivatives, heroin and morphine, and moral questions were being raised by the missionaries returning from the Far East, the question generated conflict only when the parties involved began to disagree on the distribution of the benefits of trade and commerce with China. It was necessary to regulate their interdependence, if they wished to continue collaborating despite the conflict. As Haas states "an international issue arises when the terms of interdependence are questioned".¹²⁰

A global drug-prohibition regime was set up as a weak regime in the first half of the nineteenth century, because it was based on the stake of trade with China rather than an anti-drugs value. During this period there were two values under contention, namely the value of free trade and the value that drugs were evil, immoral and dangerous, represented by the two stakes of trade in opium with China and general

trade in other commodities. The value of free trade was more salient than the anti-drugs value for governments, merchants and pharmaceutical companies, but the same stake was under contention: general trade with China (whether supporting the status quo or opening up to a free market) was instrumental in achieving both value preferences. Supporters of the free trade value made a value-linkage to the anti-drug position in order to achieve their objectives. Hostility to drugs and support for the free trade position were both satisfied. In this way, the goal of the end of the opium trade with China was achieved. The drugs trade was not controlled due to the support of the value that drugs were evil, immoral and dangerous but due to the salience of the free trade value for the actors concerned and the fact that the same allocation of stakes - suppression of opium trade and opening up general trade was necessary for the satisfaction of both values. A strong regime however needs to be based on an intrinsic value which can be *authoritatively allocated*. Therefore, a regime can be seen to have emerged to control the licit trade in drugs, based on the free trade value, as the next chapter will explore further, but only a weak regime emerged to control drug use.

The concept of an international regime focuses our attention on the source and role of values in international relations. However, the limiting straight-jacket of the dominant hegemonic power-theory of regime creation, change and decline has denied the concept any independent impact on change in international relations. The creation and maintenance of international regimes is described as dependent on the rules and decision-making procedures of powerful states. In this sense current regime analysis over-emphasises the static, as Susan Strange criticises, rather than emphasising the dynamic nature of international relations.¹²¹ By focusing on changing values however, as illustrated by the complex value shifts in nineteenth-century drug control, and understanding where "convergent expectations" come from, regime analysis can be seen to challenge this criticism.

A greater understanding of values and norm evolution by international relations scholars is needed in order to better understand regime creation, the dynamics of change, and more significantly, the role of regimes in the current international system. Focusing on international regimes will also give us a greater understanding of values

and norm creation. Fundamental problems facing the world today, such as ozone depletion, deforestation and pollution, are global in nature and need just such a focus. Furthermore there is agreement on the fact that something has to be done by the global community, but the contemporary debate is on what must be done. The question of "Why collaborate" posed by Ernst Haas in his 1980 study of international regimes therefore is superseded by the question of how to collaborate. By adopting an alternative approach to change in the international system with a focus on values, norms and international regimes, and releasing regimes from their current theoretical straightjacket, this question can be answered.

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16. Whitaker, *op cit*, p 4.
17. *Ibid.* p 12.
18. See D E Owen, *British Opium Policy in China and India*, (Yale University Press, New Haven, 1934) p. 52; J Rowntree, *The Imperial Drug Trade* (Methuen and Co., London, 1905) pp 284-286.
19. See D T Courtwright, *Dark Paradise. Opiate addiction in America before 1840*, (Harvard University Press, London 1982) and C E Terry and M Pellens, *The Opium Problem* (Patterson Smith, London, 1970).
20. V Berridge and G Edwards, *Opium and the People. Opiate Use in Nineteenth-Century England* (Yale University Press, New Haven and London 1987) p 11.
21. Berridge and Edwards *op cit*, Chapter 2, "The cultivation of Opium in Britain, 1790-1820", p 11.
22. Berridge and Edwards, *op cit*,. p 15.
23. Brecher, *op cit*,. p 4 ref 9.
24. See Whitaker, *op cit*, p 25.
25. Between 1884 and 1887, Sigmund Freud conducted a series of experiments with cocaine on a colleague and also on himself and published three enthusiastic articles praising its beneficial effects. Freud claimed that cocaine could cure morphine and alcohol addiction and that cocaine was non-addictive. He reversed his initial findings when his colleague administered cocaine to help with his morphine addiction and became psychotic, imagining snakes crawling under his skin. For details of Freud's experiments with cocaine, see Brecher, *op cit*, Chapter 35, Cocaine.
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27. During the nineteenth century the low energy grain diet was replaced by one containing proteins, stimulants and glucose. The average Englishman's annual consumption of sugar, a quick energy source, increased by fourfold from 20 pounds per person in 1850 to 80 pounds per person by the turn of the century. Per capita consumption of tea increased threefold from 2 to 6 pounds. See E J Hobsbawm, *Industry and Empire: The Making of Modern English Society* (Pantheon, New York, 1968), pp 15, 55-56, 119. A similar pattern emerged in the United States.

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30. *Ibid.*
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32. Berridge and Edwards, *op cit*. pp 446-448.
33. There are parallels with industrialisation taking place now in Eastern Europe and the associated drug problems. See "Shooting up Under A Red Star" *Time Magazine*, 19.1.87; "Moscow Finds Organised Crime is Taking A Hold " *New York Times*, 14.6.89; "Cocaine Builds A Bridge To the East" *The Guardian* 14.3.92 . A similar situation can be studied in many developing countries in relation to alcohol. See G Edwards, *Alcohol Problems in the Developing Countries*, (Mimeograph WHO, Geneva 1978).
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41. D Aitken and T Mikuriya, *op cit*. p 271.
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43. *Ibid.* p 150.
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45. Courtwright, *op cit*. p 43.

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Chapter 4

The United Nations and International Drug Control

Introduction

This chapter will consider the fact that despite eight decades of international co-operation on drug control, firstly by the League of Nations and then by its successor, the United Nations, the production, distribution and demand for illicit drugs has increased dramatically in the last decade and shows no sign of decreasing. Furthermore, the threat to domestic and international security brought about by drug-related activity, as explained in Chapter Two, has forced the concern to the forefront of the international political agenda. This chapter will look at the history of drug control this century, beginning with the League of Nations. The central part played by the United Nations in the establishment of various bodies and organs with the mandate to control drugs, and the formation of rules and decision-making procedures with regard to global drug control will be discussed. The preoccupation of the United Nations with the development of rules and decision-making procedures will be seen to be ineffective, both in controlling illicit drug use, and in understanding the nature of the phenomenon.

Regime theory emphasizes the subjective nature of international politics lacking in much of the state-centric, rule-orientated work on international organisations. However, the preoccupation of much of the literature on international regimes with rules and structures, repeats the path taken by those writing on international organisations and therefore has similar limitations, as the second part of this chapter will demonstrate. A theory of international regimes encompassing an understanding of international organisations and formal rules and decision-making procedures, but also emphasizing an understanding of the nature of issues, value consensus and norm emergence is necessary for understanding the drug phenomenon.

An understanding of the values and the norms evoked by issues explains why international drug control to date has been unsuccessful and why no single regime to regulate drug use is possible. As the last chapter has demonstrated, the values evoked by nineteenth century drug use, were dominated by the value of free trade. This can

be seen to have continued into the twentieth century and the establishment of the League of Nations.

The League of Nations period

As the last chapter has demonstrated, international action on drug control began as early as the 1909 Shanghai Conference.¹ The Shanghai Conference in turn led to the Hague Conference and the drafting of the 1912 International Opium Convention; the first international agreement to regulate trade in, and abuse of, opium and other related substances, including cocaine². The Convention provided for the control of the export and import of raw opium, but did not prepare for any preventative action to restrict it, with the responsibility mainly given to customs officials.³ The trade in prepared opium was to be suppressed gradually, but the responsibility for this lay with the states party to the Convention.⁴ They were free to decide as to how to take action towards the gradual suppression of the manufacture, internal trade in, and use of prepared opium. The Covenant of the League of Nations empowered the League to control both licit and illicit manufacture of, and trade and traffic in opium and other dangerous drugs, with the League Assembly establishing at its first session in 1920 an Advisory Committee on Traffic in Opium and Other Dangerous Drugs (later replaced by the Commission on Narcotic Drugs), to carry out these responsibilities.⁵ During the League period, three Conventions were completed focusing on control of the trade in licit and illicit substances: the International Opium Convention of 1925, the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 1931; and the Convention for the Suppression of Illicit Traffic in Dangerous Drugs of 1936. These Conventions established various procedures and bodies, and also established various values and principles which were carried over into the United Nations period, and are therefore worth noting.

The 1925 Convention devised the procedure for establishing whether or not a drug should be categorised as a dangerous drug for international control. This would be the responsibility of the Health Committee of the League in consultation with the Permanent Committee of the Office International d'Hygiene Publique in Paris.⁶ Under

the Convention, coca leaves, crude cocaine and Indian hemp, substances not covered by the Hague Convention, were brought under control. The Convention also established an intricate system of import and export certificates to control the international trade in drugs. The Permanent Control Board, the forerunner of the International Narcotics Control Board (see later), was set up to receive and disseminate information concerning the trade. The Board had no power to prevent the accumulation of excessive quantities of drugs, but Article 24 of the Convention authorised the Board to report to the Secretary-General of the League if any country was accumulating a controlled drug. If the Secretary-General received no adequate response from the country concerned on inquiry, the Board could recommend to the Contracting Parties to the Convention and the Council of the League that no further Convention substances should be made available to the country concerned. The Board was composed of eight experts, independent of their governments, elected on the basis of their impartiality, competence and disinterestedness. Although established by Treaty, the Board's status lay somewhere between an inter-governmental organisation and a non-governmental organisation.

The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 1931 was unique from a legal point of view in that "it applied the principles of a controlled economy to a group of commodities by international agreement".⁷ As its title describes, the Convention's aim was to limit the manufacture and trade in narcotic drugs and to regulate their distribution by a system of estimates in order to limit manufacture to the requirements of medicine and science. One of the special features of the Convention was with regard to Non-Contracting Parties. They were also expected to provide estimates of their drug requirements. A Supervisory Board, created by the Convention to monitor the operations of the estimates system, would, in the absence of any estimate from a Non-Contracting Party, submit an estimate for that country to the Permanent Control Board, established by the 1925 Convention.⁸

Neither the 1925 Convention, nor the 1931 Convention directly defined traffic in illicit drugs as being a criminal offence. The Convention for the Suppression of

Illicit Traffic in Dangerous Drugs of 1936 was the first international convention to make the offence punishable.⁹ Unfortunately, the conditions necessary for strengthening "the measures intended to penalise offences" were not existent at the time the Convention was concluded. Although some of the contemporary international conventions dealt with criminal offences, such as the Convention on the Suppression of the Traffic in Women and Children of 1921, the Convention on the Suppression of the Traffic in Obscene Publications of 1923, the Slavery Convention of 1926, and the Convention on the Suppression of Counterfeiting Currency of 1929, the Contracting States abstained from incurring obligations which went beyond what was seen as "the necessities of the situation".¹⁰ However, in attempting to encourage closer co-operation in respect of drug offences between the police authorities of different countries the Convention raised issues to do with international enforcement and drug trafficking, which remain just as pertinent to international drug control today (indeed the initiative to conclude the Convention was taken by the International Criminal Police Commission which later changed its name to the International Criminal Police Organisation - Interpol).¹¹ Despite this, the concerns with trafficking, for all intents and purposes, remained dormant until the eighties, as the United Nations focused on supply-reduction programmes. The 1936 Convention's direct recognition of illicit traffic as a criminal offence would not be the focus of United Nations drug-control policy again until the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. We will return to this question later in this chapter.

As has already been illustrated in the previous chapter, the concern of the inter-war period, as in the late nineteenth-century, was in the economic benefits to be achieved through free trade. The conventions concluded during the League period were generally "promotive" to licit trade rather than "preventive" against illicit trade. This was also to be the focus of the work of the United Nations, until recent developments, with the International Opium Convention of 1925 and the International Convention of 1931 forming the basis to a considerable extent, of the Single Convention on Narcotic Drugs three decades later.

The United Nations period

In 1946 the United Nations took over the functions of the League of Nations in the narcotics field. In the pre-war years, the number of products considered to be a danger and therefore subject to control, were largely limited to those relating to the opium poppy, the coca bush, and the cannabis plant. The period just before the Second World War saw many other compounds being synthesized. A desire to control those substances led to emerging new problems for international control. By 1960 six different drug control treaties, plus three amending protocols, were in force.¹² The main impact of the 1961 Single Convention on Narcotic Drugs¹³, (hereinafter, the Single Convention), was to consolidate the nine instruments into a single one, thereby simplifying and strengthening United Nations drug-control activities. As was the focus of much of the work of the League, the initial work of the United Nations in the field of drug control, focused primarily on limiting the supply of narcotic drugs and psychotropic substances to amounts required by states for scientific and medical purposes, so as to prevent their diversion into illicit traffic. Article 4 of the Convention states the general obligation "to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use, and possession of drugs".¹⁴

The United Nation's bodies, and the conventions ratified, had little effect on controlling illicit drug-use during the first two decades of drug-control activities, and no international regime to regulate the recreational use of illicit drugs or to deal with the problem of addiction can be seen to have emerged. The work of the League and the work of the various United Nation's bodies had focused on limiting the supply of narcotic drugs and psychotropic substances. The dominant stake for the actors for whom drug control was salient was the importance of controlling effective trade of licit drugs for medical and scientific purposes. The importance of the "medical use of narcotic drugs ... for the relief of pain and suffering"¹⁵ was the value utilised to allow for the effective trade to continue, and superseded the value that drug use and drug addiction was evil and immoral. Therefore no regime to control illicit drug-use can be seen to have emerged. The value position that drugs were evil and immoral was not represented by a salient stake. Instead an international regime for the control of the licit

manufacture and trade in dangerous drugs for scientific and medical purposes can be seen to have emerged, centred around the International Narcotics Control Board.

The lack of salience of the concerns surrounding illicit drug-use to the actors participating in the drug control regime was emphasised by the lack of attention given to drug addicts or drug abuse in the Single Convention. Despite the reference, in the preamble to the convention, to the dangers of drug addiction, the article in the convention concerned with the treatment and after-care of addicts was one of the briefest. Article 38 of the 1961 Single Convention requires that parties "give special attention to the provision of facilities for the medical treatment, care, and rehabilitation of drug addicts" and that if its "economic resources permit, it is desirable that it establish adequate facilities for the effective treatment of drug addicts".¹⁶ No further detail was given, emphasising the point made by Stein that "much of the history of national and international narcotics control can be written without reference to addicts or addiction".¹⁷

Drug use and addiction were seen as a social problem for national, and not international, concern during this period. Furthermore, the level of drug use and addiction were seen as relatively minor and unimportant in this period before the arrival of the "sixties drug culture". The belief that drugs were evil and dangerous was also not salient to actors in producer countries, as was emphasised in Chapter Two. The trade in licit drugs was seen as an inter-state concern, addiction an internal social problem, and therefore there was no possibility of a global regime emerging to control drugs in its supply, distribution and demand side.

Structure for UN Drug Control Activities, Pre-Special Session

Until the recent restructuring of United Nations drug-control activities, initiated by a Special Session of the General Assembly in 1990 (see later), there were five United Nations organs concerned wholly with drugs. They were two committee bodies and three Secretariat units: the Commission on Narcotic Drugs (CND), a functional commission of the Economic and Social Council (ECOSOC); the International

Narcotics Control Board (INCB), an autonomous body of independent experts; and three units staffed by members of the Secretariat, the Division of Narcotic Drugs (DND), the secretariat to the INCB, and the United Nations Fund for Drug Abuse Control (UNFDAC). There were furthermore numerous other programmes, agencies and entities which took part in drug-control activities. (See Figure 1.)

The Commission on Narcotic Drugs (CND) is one of the six functional commissions of the Economic and Social Council, and was established in 1946.¹⁸ It is the successor of the Advisory Committee on the Traffic in Opium and Other Dangerous Drugs, which was set up by the first Assembly of the League of Nations. The Commission is the central policy-making body in the United Nations system for drug control. The main functions of the Commission are defined in the Single Convention, the 1971 Convention on Psychotropic Substances, and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (see later)¹⁹. The Commission assists the Economic and Social Council in supervising the application of international drug conventions; prepares drafts for international conventions; considers changes to the existing machinery for international control and receives recommendations from the World Health Organisation for changes in the substances under control.²⁰ The Commission meets annually and its members are elected by ECOSOC. The sessions are also attended by many observer Governments (including states not members of the United Nations such as the Holy See and the Republic of Korea), specialized agencies (such as the ILO, UNESCO and the WHO), intergovernmental organisations (such as the Commission of the European Communities, the Commonwealth Secretariat, the Council of Europe, the Customs Cooperation Council and Interpol) and non-governmental organisations in consultative status with the Economic and Social Council for example, the International Alliance of Women, the International Pharmaceutical Federation, the International Catholic Child Bureau, the International Road Transport Union, the Association for the Study of the World Refugee Problem and the International Union for Health Education²¹. Membership of the Commission was enlarged in February 1992 from 40 to 53 representatives of Member States.²²

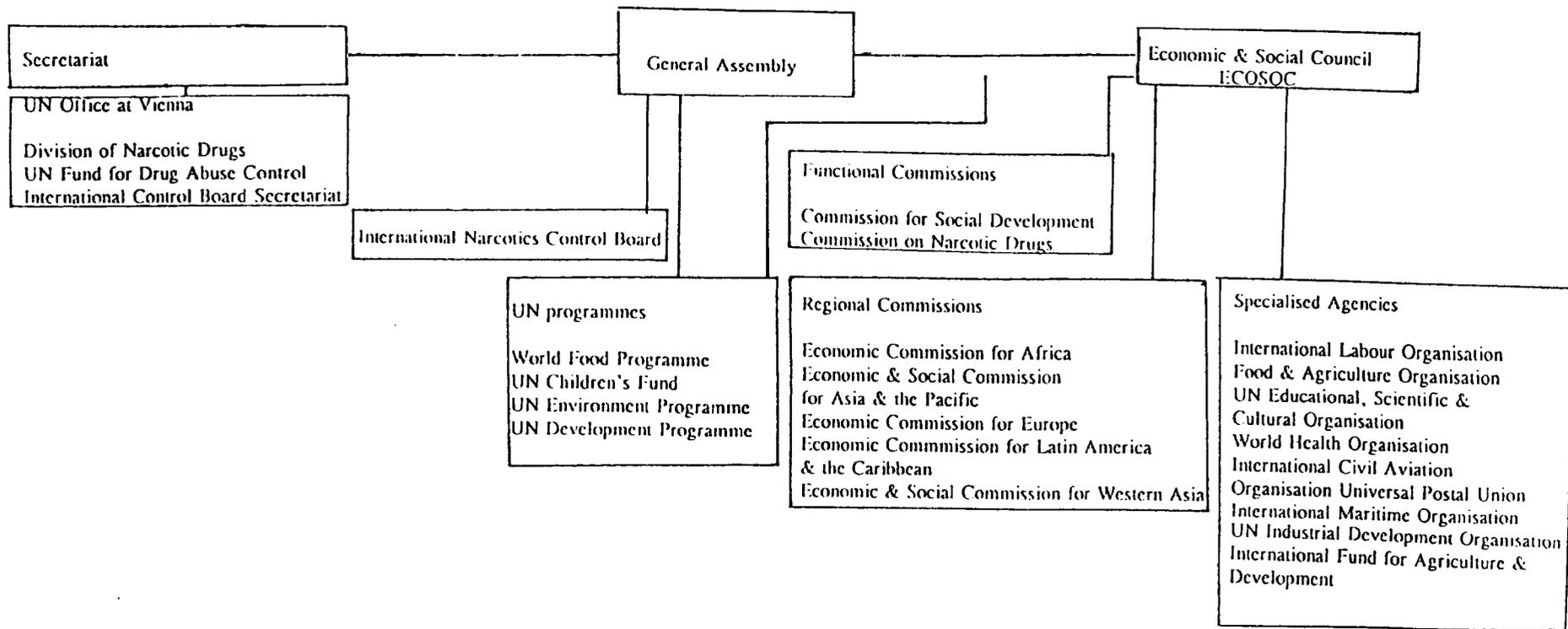


FIGURE 1 United Nations Drug Control, Pre-Special Session

The Commission has established subsidiary bodies to co-ordinate the mechanisms for drug law enforcement at the regional level: The Sub-Commission on Illicit Traffic and Related Matters in the Near and Middle East, and regional meetings of the operational Heads of National Drug Law Enforcement Agencies (HONLEA). The Asian and Pacific HONLEA dates back to the 1970s; the Latin America and the Caribbean, and the African HONLEA were both established in 1987.²³ More recently, there have been two inter-regional meetings in 1986 and 1989,²⁴ with the latter recommending the setting up of a European HONLEA, which was established in 1990.²⁵

The International Narcotics Control Board was established by the Single Convention of 1961 to help simplify and unify international narcotics regulation by the merger of the various supervisory mechanisms into a unified body.²⁶ The Board replaced the Permanent Control Board. The most important functions of the Board (outlined in Articles 12, 13, 14, 19 and 20 of the Single Convention, Article 2 of the 1972 Protocol which amended Article 9 of the Single Convention, and Article 19 of the 1971 Convention on Psychotropic Substances) are to administer the estimates system and a statistical returns system for the monitoring of international licit trade in drugs; and to take measures to ensure the execution of the conventions. The Board consists of 13 members who are elected for a period of five years by the Economic and Social Council. Three are elected from candidates nominated by the World Health Organisation and ten from a list of persons nominated by members of the United Nations and by non-member States Parties to the 1961 Convention.²⁷ These members serve in their personal capacity rather than as representatives of their governments and are "persons who, by their competence, impartiality and disinterestedness, will command general confidence".²⁸ Furthermore, as Article 9 (3) states, ECOSOC "shall give consideration to the importance of including on the Board, in equitable proportion, persons possessing a knowledge of the drug situation in the producing, manufacturing, and consuming countries, and connected with such countries."²⁹

In order to ensure the maintenance of the "technical independence" of the Board as specified in Article 9(2) of the Single Convention, the Board, like its predecessor

body, has a separate staff responsible exclusively to the Board. This stems from the responsibilities assigned by the international drug-control treaties, including "quasi-judicial functions" as described above. However, the Board's Secretary and secretariat (described below) were an integral part of the Secretariat of the United Nations and were under the full administrative control of the Secretary-General, confusing the position of the Board in the United Nations drug-control structure. Being primarily responsible for supervising the licit supply of drugs for legitimate medical and scientific uses, and in so doing preventing the diversion of licit drugs into illicit channels, the Board has a very limited mandate in the control of illicit drugs.

As already mentioned, previous to the restructuring of United Nations drug-control activities, there were three secretarial units concerned wholly with drug control. The Division of Narcotic Drugs (DND) served as secretariat to the Commission on Narcotic Drugs. The functions of the DND were specified by the international drug-control treaties and specific mandates of the General Assembly, ECOSOC and the Commission. The Division advised and assisted governments and the specialised agencies on the application of the international drug-control treaties and provided governments with information on supply and demand reduction. It collected data and reported on the extent, patterns and trends of drug abuse world-wide. It analysed and published data on illicit-drug traffic, seizures, counter measures and trends. In addition, the Division organised training seminars and workshops for expert groups on technical subjects such as the use of drug-scenting dogs, detecting illicit cultivation through satellite remote sensing and aerial photography, and environmentally sound methods to eradicate drug crops. The Division was also the technical centre of the drug-control bodies and provided a variety of technical services to developing countries such as the provision of laboratory equipment, the training of personnel and the transfer of technical knowledge through various projects. The Divisions' drug laboratory, the United Nations Narcotics Laboratory, carried out and co-ordinated international chemical research on drugs, identifying and analyzing substances of abuse. Its *Manual of Staff Skill Requirements and Basic Equipment for Narcotics Laboratories* was a fundamental document for drug laboratories throughout the world. The laboratory produced a portable drug identification kit, a rapid and simple colour-test to identify

the most commonly confiscated drugs, to assist customs and law-enforcement officers. The work of the Division was therefore extremely varied and overlaps inevitably occurred with the other two secretariat units. For example, the collection of statistical data, monitoring the trade in narcotic drugs and psychotropic substances, was also collected by the INCB secretariat.

The second secretariat unit, the INCB secretariat, took its instructions exclusively from the International Control Board itself on substantive matters. However, on administrative matters and those concerning overall co-ordination of the United Nations drug-control activities the INCB secretariat reported directly to the chief executive designated by the Secretary-General, being an integral part of the United Nations Secretariat. Its work was carried out under five sub-programmes: the Office of the Secretary of the Board; the Narcotics Control Unit; the Estimates Unit; the Psychotropic Control Unit; and the Precursors Control Unit. The secretariat represented the Board at meetings of United Nations organs, specialised agencies and international, regional or intergovernmental bodies.

Finally, the United Nations Fund for Drug Abuse Control was established in 1971 by General Assembly Resolution 2719 (XXV) on the initiative of the Secretary General. The specific primary purpose of the Fund was to finance actions in developing countries in order to ensure their full participation in the global drug-control effort. Funded entirely from voluntary contributions, and headed by an Executive Director it reported directly to the United Nations Secretary-General. During its first decade UNFDAC concentrated on giving technical assistance to producer developing-countries. Pilot projects in Myanmar (formerly Burma), Pakistan, Thailand and Turkey mobilised national resources for drug-control activities. UNFDAC was the principal "operational arm" of United Nations drug-control activities, most clearly illustrated in the "master plan" projects. In 1982, the Fund developed its country and regional "master plans", which were a key element in the organisation of its activities, thoroughly analyzing the drug problems within a country or region and implementing cohesive, integrated projects. In Colombia, the country where the Fund was most involved, there were 20 projects in operation in 1990. These projects included four rural development

programmes featuring crop substitution; education and public information programmes through the mass media; two training programmes for educators; and special programmes on AIDS and for street children in Bogota.

The ad hoc emergence of bodies, and the development of the bodies established by the League of Nations to deal with the evolving new concerns of unprecedented scale, complexity and gravity, has been a significant problem in effective, co-ordinated international control. The diversity and multiplicity of United Nations drug-control mechanisms has handicapped effective action. In addition, most of them were established at a time when international action was principally concerned with the control of licit drugs for medical and scientific purposes. The diverse origins of the two main bodies, the CND and the INCB, and the ad hoc way in which their responsibilities have evolved, adds to the complexity of co-ordinating international drug control, which the 1988 Vienna Convention confused further (see later). The complex, overlapping structure of the United Nations drug-control secretariat further complicated the decision-making and co-ordinating process. Confusion over overlapping mandates and lines of reporting led to calls for restructuring. Before the restructuring of the drug-control units, the three Secretariats were each responsible to the United Nations Secretary-General. However, they had markedly different structures and lines of reporting. The Director of the Division of Narcotic Drugs was immediately responsible to the Director-General of the United Nations Office in Vienna (who was in turn responsible to the Secretary-General). The Secretary of the INCB reported on administrative matters to the chief executive for drug-control activities as designated by the Secretary-General and on policy questions to the Board itself. The Executive Director of the United Nations Fund for Drug Abuse Control reported directly to the Secretary-General. This led to problems of co-ordination. Recognition of the problem of co-ordination led to the Secretary-General transferring co-ordination to the Director-General of the United Nations Office at Vienna in 1987 from the previous co-ordinator, the Under-Secretary-General for Political and General Assembly Affairs (appointed in 1984) who had to travel back and forth to Vienna for meetings.

The number of United Nations bodies, programmes and agencies which took

part in drug-control activities before the restructuring illustrated the complexity involved in co-ordinating activities. In the field of prevention and reduction of the illicit demand for narcotic drugs, the Centre for Social Development and Humanitarian Affairs through its committee of experts, the Committee on Crime Prevention and Control, considered various issues relating to drug trafficking and drug control. Activities carried out included the formulation of technical co-operation projects in co-operation with UNFDAC, focusing on measures against organized crime, with emphasis on drug trafficking, and the treatment of HIV-infected prisoners. Drug-control activities carried out by the International Labour Organisation (ILO) related to the question of employment and the well-being of workers, focusing on drug-related problems in the workplace and on the areas of vocational rehabilitation and social reintegration of drug-dependent persons. Drug-control projects were often carried out with the assistance and/or funding of the WHO, UNFDAC, and the United Nations Development Programme (UNDP). From 1987 the United Nations Development Programme and UNFDAC operated under a co-operative agreement in which UNDP provided administrative and liaison services and field support and monitoring of UNFDAC projects. UNDP however spent very little money on drug-control efforts, less than a quarter of a million dollars in 1988-89.³⁰ The United Nations Educational, Scientific and Cultural Organisation (UNESCO) was involved with the prevention of drug abuse through public education and awareness programmes. It also became increasingly active in professional training programmes. The United Nations Children's Fund (UNICEF) was involved with drug abuse as it related to the estimated 100 million "street children" worldwide.

The Food and Agriculture Organisation of the United Nations (FAO), and the United Nations Industrial Development Organization (UNIDO) were both involved in the elimination of the supply of drugs from illicit sources. The FAO was principally involved in the identification, formulation and execution of field activities in crop substitution. In this capacity it collaborated with UNFDAC, before the restructuring, and also collaborated with the DND in the use of remote sensing techniques and satellite imagery in the detection of illicit crops. UNIDO worked with United Nations drug bodies to ensure that its industry-promoting technical co-operation projects, such

as upgrading technology for the manufacture of drug products for medical and scientific use, were consistent with the requirements of the international drug control treaties. UNIDO also implemented various UNFDAC-funded agro-industrial projects aimed at providing alternative sources of income for coca farmers.³¹ The World Food Programme (WFP) was involved with drug-control programmes through integrated rural development schemes aimed at substituting other agricultural products for illicitly-grown opium poppy. It also provided food assistance for farmers and their families in areas where crop substitution was under way.

United Nations entities involved in the suppression of illicit drug-traffic besides the DND and the INCB included the Centre for Social Development and Humanitarian Affairs, the United Nations Interregional Crime and Justice Research Institute, the International Civil Aviation Organization (ICAO), the Universal Postal Union (UPU) and the International Maritime Organization (IMO). A major concern of the IMO related to the increasing amounts of illicit drugs being transported by ship.³² The IMO Convention on Facilitation of International Maritime Traffic, 1965, was amended on 3 May 1990 to take into account the threat to international shipping posed by illicit drug-trafficking and terrorism. In October 1989 the twenty-seventh session of the Assembly of the ICAO adopted resolution A27-12 which urged the Council of ICAO to elaborate with a high degree of priority concrete measures in order to prevent and to eliminate possible use of illicit drugs and abuse of other drugs or substances by all staff and also to continue its work to prevent illicit transport of narcotic drugs and psychotropic substances by air.³³

An examination of international co-operation in the drugs field shows clearly the multiplicity of functions and responsibilities and also the diversity of their origins. The ad hoc way in which organs and mandates evolved emphasised the lack of co-ordination of the United Nations structures for drug control. An understanding of this complexity, as well as an understanding of the need to reconsider the supply-reduction focus, led to the recent reforms and restructuring of United Nations drug-control activities which will be looked at in the next sections. As we have seen, for the greater part of this century drug legislation focused primarily on controlling the manufacture

and movement of licit drugs and in preventing their diversion into illicit channels, thereby curtailing the supply of illicit drugs. During the eighties, an opposing view emerged that drug control efforts should concentrate equally on demand reduction and on controlling the movement of illicit drugs.

Drug control in the eighties

The increasing complexity of the drug phenomenon throughout the eighties was mirrored by the increasing complexity of the evolving drug-control structures and activities. Three major UN events during the eighties emphasised this expanded approach to drug control by the United Nations: the 1987 International Conference on Drug Abuse and Illicit Trafficking, the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the 1990 Seventeenth Special Session of the General Assembly, devoted to the question of international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances.

Initial calls for a specialised conference to focus on the fight against drug trafficking began as early as December 1984 in para. 9 of resolution 39/143, in which the General Assembly requested the Economic and Social Council, through the Commission on Narcotic Drugs, to consider the possibility of convening a specialised conference. Mr Javier Perez de Cuellar, then Secretary-General of the United Nations, on his own initiative, proposed to the Economic and Social Council in May 1985 that a world conference at the ministerial level to deal with all aspects of drug abuse should be held in 1987.³⁴

The International Conference on Drug Abuse and Illicit Trafficking (ICDAIT), held in Vienna in June 1987, led to the adoption of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (CMO).³⁵ As the title suggests, the document introduced a major expansion in focus of United Nations drug-control activities. The CMO states that both the supply *and* demand for illicit drugs should be reduced, and that action must be taken to break the link between

them:

"For the purpose of dealing with the totality of the problems posed by drug abuse and illicit trafficking, both the supply of and the demand for drugs should be reduced and action should be taken to break the link between demand and supply, that is, the illicit traffic."³⁶

The CMO contains four chapters, dealing with preventing and reducing illicit demand, controlling supply, illicit trafficking, and treatment and rehabilitation. The four chapters contain 35 targets which are meant as recommendations to governments and to non-governmental organisations suggesting practical measures, "realistically attainable" over the next 10-15 years, which can contribute to the fight against drug trafficking (the targets are listed in Appendix A of this work). The role of NGOs is specifically emphasised in paragraph 24 of the document which states:

"The value of non-governmental organisations and government agencies working together on complex national and international problems is nowhere more apparent than in the comprehensive long-term effort to reduce illicit demand for narcotic drugs and psychotropic substances."³⁷

The document also disaggregates the state into numerous branches involved with drug control such as; legislative organs; the authorities concerned with public health, education, social welfare; the judiciary; law enforcement; and economic affairs.³⁸

As the opening paragraph of the document notes "it is not and was not designed to be a formal legal instrument".³⁹ The significance of the CMO was that it was a move away from the treaty-based supply-side approach to international drug control, inherited from the League and pursued during the first three and a half decades of United Nations involvement in international drug control. The CMO entails no binding legal commitments of states, but was a move towards recognizing the complexity and multi-faceted nature of the phenomenon and a move towards consensus building. However, the CMO was followed instead by the adoption of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and a return to the treaty-based approach to international co-operation.

The CMO, adopted by the ICDAIT, recognized the importance of effective international co-operation on law enforcement:

"....it is necessary to ensure vigorous enforcement of the law in order to reduce the illicit availability of drugs, deter drug related crime, and contribute to drug abuse prevention by creating an environment favourable to efforts for reducing illicit supply and demand...Co-ordination of activities and co-operation among national agencies within each country and between countries are vital for the achievement of the objective".⁴⁰

The two pillars of international drug control, the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances, were seen as inadequate to deal with modern international drug trafficking. While these Conventions "focused primarily on controlling the production of licit drugs and the prevention of their diversion into the illicit market place"⁴¹, they made little provision for effective law enforcement.

United Nations General Assembly resolution 39/141 in December 1984, following an initiative from the government of Venezuela, expressed the conviction that the wide scope of illicit drug-trafficking and its consequences made it necessary to prepare a convention which considered the various aspects of the problem as a whole, and in particular, those not envisaged in existing international instruments. The Commission on Narcotic Drugs was requested by the Economic and Social Council to initiate the preparation of a draft convention. Acting pursuant to that mandate the Commission adopted by consensus on the 14th February 1986 a resolution in which it identified 14 elements for inclusion in a draft convention, which after discussion, debate and consultation, including four two-week open-ended experts' meetings, culminated in the holding of the United Nations Plenipotentiary Conference for the Adoption of a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in Vienna from 25 November to the 20 December, 1988.⁴² The Conference was attended by 106 countries and a variety of observers and adopted, again by consensus, a treaty text of 34 articles and one annex. The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was

adopted on December 19th, 1988 (hereinafter the Vienna Convention).⁴³ (See Appendix B) The next day, ninety-six states signed the Convention's Final Act, forty-four of which signed the Convention itself. The adoption of the convention marked only a two-year negotiation process. The speed of which emphasises that the drug phenomenon, as understood by Chapter Two of this research, had achieved "a certain level of opprobrium in the commonly shared values of mankind".⁴⁴

The preamble to the Vienna Convention explicitly recognises illicit trafficking as "an international criminal activity" and calls upon party states to take specific law enforcement measures to improve their ability to identify, arrest, prosecute and convict drug traffickers. The Vienna Convention attempts to give force to the illicit trafficking recommendations of the CMO in recognition of the changing nature of the drug phenomenon and the increase in trafficking since the 1970s. It requires that signatory states establish as criminal offences under their domestic law a comprehensive list of activities, involved in or related to international drug trafficking, such as the production, manufacture, distribution or sale of any narcotic drug or psychotropic substance, money laundering, and the trade in chemicals, materials and equipment used in the manufacture of controlled substances. However, although the Convention "cannot be read to permit Parties to escape their obligations... by arguing that they are inconsistent with domestic law"⁴⁵ (as Article 36(2) of the Single Convention as amended, does allow), the principle of state sovereignty as defined by international law remains.

Although David Stewart states that "The Convention is one of the most detailed and far-reaching instruments ever adopted in the field of international criminal law, and if widely adopted and effectively implemented, will be a major force in harmonizing national laws and enforcement actions around the world"⁴⁶, there is little of great innovation in its provisions for policy makers in North America and Western Europe. Efforts to address the problems associated with the extremely large profits generated by illicit traffickers by the "confiscation" (ie freezing, seizing and forfeiting) of traffickers' assets provided for in Article 5 of the Convention are familiar to European and American policy makers. United States law already permits the forfeiture of

property located in the United States "which represents the proceeds of an offence against a foreign nation involving the manufacture, importation, sale or distribution of a controlled substance", if such offences would have been punishable by imprisonment for one year or more had it occurred in the United States.⁴⁷ In reference to Article 6 concerning the extradition of narcotics traffickers, the Vienna Convention simply supplements older bilateral treaties already established, but which did not cover drug offences. In the area of mutual legal assistance covered by Article 7, assistance was already provided for on a regional basis in Europe and on a bilateral basis in the United States through "MLATs"(mutual legal assistance treaties).⁴⁸ In addition to the mutual legal assistance provided for by Article 7, states party to the Convention are required by Article 9 to provide other, less formal types of law-enforcement assistance, co-operation and training. These less formal activities are, however, already provided for to a great extent by the work of the International Criminal Police Organisation (Interpol). Under Article 11, states party are required to take the necessary measures to allow for "controlled delivery", widely used by United States authorities, to monitor the passage of an illicit consignment without arrest or seizure in order to trace the further movement of the consignment and to identify higher levels of the trafficking organisation. Furthermore, the insertion of safeguard clauses in many articles, and the weakness of monitoring and supervisory mechanisms, allows for parties to avoid obligations under the convention with relative impunity. A further criticism of the Vienna Convention and of the law-making treaties of the United Nations in general, is that they often reflect the lowest common denominator of consensus, since if they were more, states could simply refuse to ratify them.

The growing complexity of the nature of the drug phenomenon and the increasing recognition of its threat to international order and stability during the eighties, paralleled a period of increasing activity in United Nations drug-control activities, as has been described. However developments, necessitated by the more comprehensive understanding of the nature of the phenomenon emphasised by the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (see Appendix A), can be seen to have complicated an already complex structure, rather than to have achieved the aim of greater co-ordination among the various United

Nations bodies, units and programmes involved in drug control. Confusion over mandates in drug-control activities was added to by the Vienna Convention. The Vienna Convention partly blurred the legislative and policy-making functions entrusted to the Commission and the technical supervisory and control functions entrusted to the International Narcotics Control Board. Comparison of the articles of the Vienna Convention on the respective functions of the Commission and the Board with the corresponding articles of the previous treaties reveals that the supervision of the application of some provisions of the 1988 Convention were entrusted to the Commission instead of the Board.⁴⁹ At the same time, the responsibility for the control of the implementation of the provisions on precursors and chemicals used for the manufacture of illicit drugs described in Articles 12, 13 and 16, rests with the INCB.⁵⁰

As has already been referred to, problems of co-ordination of the drug-control units at Vienna led to the appointment in 1984 of the Under-Secretary-General for Political and General Assembly Affairs to act as overall co-ordinator. However the Under-Secretary-General being based in New York, complicated co-ordination, rather than promoted co-ordination. In 1987, the Director-General of the United Nations Office at Vienna became co-ordinator for the drug programmes. This decision was not so much based on the necessity of having those involved in drug control in the same location, but rather in the context of budget reform and rationalization. However, the responsibilities of the Director-General of the United Nations Office at Vienna were already substantial and had increased further in the eighties. The need of the drug units was not so much for co-ordination, but for direction and integration, which was not achieved.

Throughout the eighties, the issues involved in drug control had been discussed in a large number of meetings of heads of government, for example, the 1989 summit of the Non-Aligned Movement, the Group of Seven industrialised nations, the European Council and the Commonwealth. In order for the United Nations to remain the focus for multi-lateral action in view of the changing nature of the drug phenomenon, a Special Session of the General Assembly was called.

The restructuring process

The Seventeenth Special Session of the General Assembly was held in New York in February 1990, to enhance the role of the United Nations in the field of drug control. The decision to hold a Special Session of the General Assembly was taken in resolution 44/16 of 1st November 1989 (initiated by the President of Colombia), in response to the issues involved receiving increasing attention in other international meetings of heads of governments, and to growing official concern over the expanding dimension of the drug phenomenon reflected in a number of United Nations intergovernmental forums, including the Second Interregional Meeting of Heads of National Drug Law Enforcement Agencies (Vienna, 11-15 September 1989)⁵¹, and the Forty-Fourth session of the General Assembly (New York, September to December 1989). A Political Declaration and Global Programme of Action were adopted in an acknowledgment of the importance of the changing nature of the drug phenomenon, recognized not only as a threat to health, but as a "grave and persistent threat....to the stability of nations, [and] the political, economic, social and cultural structures of all societies"⁵² (See Appendix C of this work) The Global Programme of Action emphasises demand reduction with the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (outlined above) as its reference. The emphasis on demand reduction is stressed as being necessary to break the distribution link between supply and demand, and in so doing to diminish the increasing financial power of the drug traffickers that the previous focus on supply had failed to achieve. The Political Declaration affirms the need for

"...strategies that are comprehensive and multidisciplinary in scope and that comprise measures to eliminate illicit demand for narcotic drugs and psychotropic substances, cultivation of illicit crops and illicit drug trafficking, to prevent the misuse of the financial and banking systems and to promote effective treatment, rehabilitation and social reintegration".⁵³

The Programme of Action calls for states to enhance the role of the United Nations as an "advisory centre" for collecting, analyzing and disseminating information on drug control.⁵⁴ It also outlines specific efforts to address the treatment,

rehabilitation and social reintegration of drug addicts, the strengthening of judicial and legal systems, measures to be taken against the diversion of arms and explosives, and additional resources for United Nations drug-control units as well as the measures outlined above.

The emphasis on demand reduction during the Special Session reaffirmed the change in United Nations' focus from the previous supply reduction focus, and an expanded conceptualisation of the drug problem. As the representative from Colombia stated:

"We are witnessing an evolution towards a comprehensive, concerted, and joint confrontation of the problem, with recognition of the effects of demand and consumer abuse as the determining factors in this complex area".⁵⁵

Despite these optimistic words and the fact that the Political Declaration did recognize the importance of "viable alternative income schemes" for developing countries, implementation was not forthcoming.⁵⁶ Instead the Special Session decided to investigate restructuring options. Paragraph 94(a) of the Global Programme of Action expresses the need for coherence of activities within the drug-related units, co-ordination, complementarity, and non-duplication of all drug-related activities across the United Nations system.⁵⁷ A Group of Experts was established to investigate the efficiency of the United Nations structure for drug abuse control.⁵⁸

The United Nations International Drug Control Programme

A group of fifteen experts selected by the Secretary-General from both developed and developing countries, was set up to develop a plan to integrate and upgrade the drug-control activities of the Vienna-based drug-control secretariats. The Group held a number of meetings during three sessions at Vienna in May, June and July 1990 and submitted their report to the Secretary-General. In December 1990 the General Assembly approved the recommendation for a United Nations International Drug

Control Programme (UNDCP) to replace the drug control organs described above.⁵⁹

The United Nations International Drug Control Programme integrates the structures and the functions of the three main secretariat bodies, the International Narcotics Control Board's Secretariat, the Division of Narcotic Drugs and the United Nations Fund for Drug Abuse Control, with the objective of enhancing the effectiveness and efficiency of drug-control activities. The Programme is headed by an Executive-Director at the level of Under-Secretary-General with the exclusive responsibility for co-ordinating and providing effective leadership for drug-control activities, appointed by the Secretary-General and reporting directly to the Secretary-General. The Programme provides secretariat services to the Commission on Narcotic Drugs and the International Narcotics Control Board. Despite the recommendation of the expert group that the Commission be given a greater policy-making role, the roles of both the Commission and the Board remain unchanged by the creation of a drug control programme.⁶⁰

In respect of the secretariat, a unified unit has been created at Vienna with responsibilities for (a) treaty implementation; (b) policy implementation and research; (c) operational activities. The unit is headed by an Assistant Secretary-General. As regards treaty implementation there are two services: the secretariat of the INCB and the secretariat of the CND. The secretariat of the INCB continues to be responsible to the INCB for substantive matters in order to ensure the full technical independence of the INCB, as described earlier. (See Figure 2)

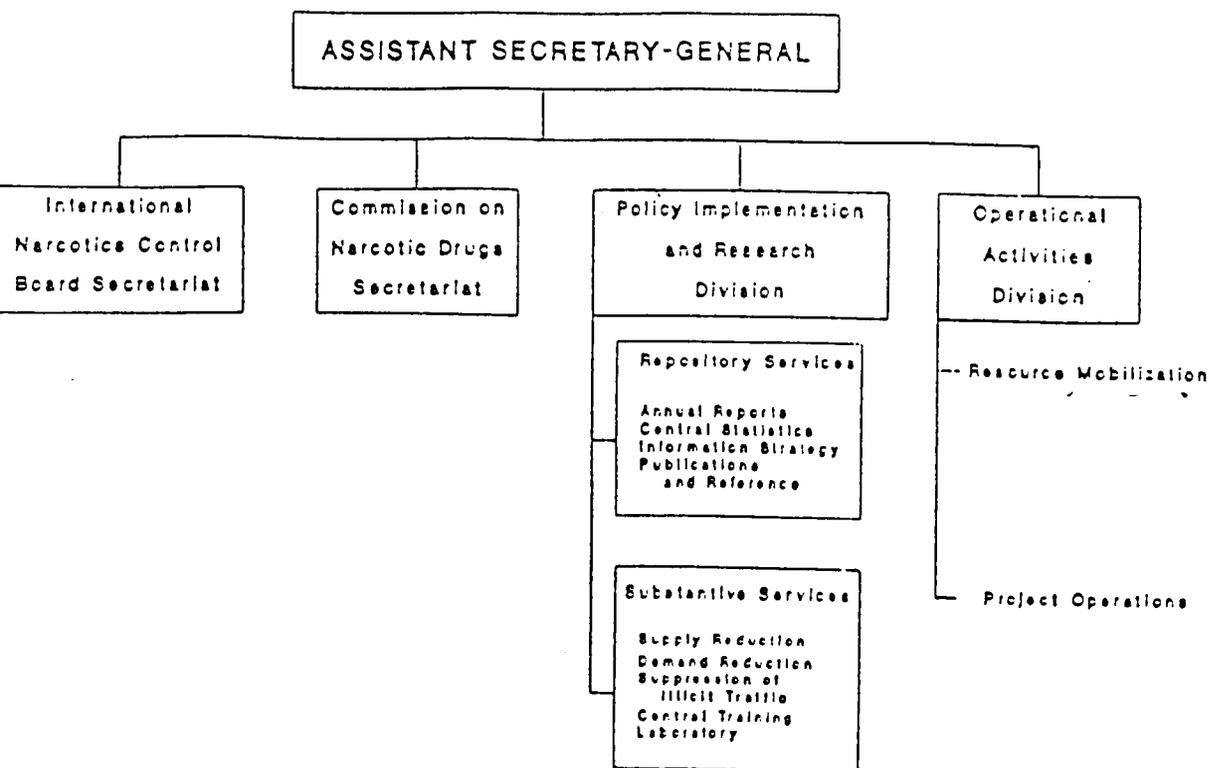


FIGURE 2 United Nations International Drug Control Programme

Source: *Enhancement of the efficiency of the United Nations structure for drug abuse control. Report of the Secretary General, 23 October, 1990.* United Nations document A/45/652, Annex, p 6.

The United Nations International Drug Control Programme is an organizational unit within the United Nations Secretariat, accountable to the Secretary-General. The Programme's work covers a wide range of activities, including demand reduction, suppression of illicit traffic, integrated rural development and crop substitution, law

enforcement, legal assistance, treatment and rehabilitation and social re-integration of drug addicts in its role of carrying out the mandates and recommendations of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control and the Global Programme of Action.⁶¹ The Programme's financial resources come from two sources: the United Nation's regular budget and voluntary contributions. In the latter respect it is supported by the Fund of the United Nations International Drug Control Programme, established by the General Assembly in 1992.⁶² The budget for UNDCP in 1992 and 1993 totalled \$183 million.⁶³ The Fund is the successor to the United Nations Fund for Drug Abuse Control: like its predecessor it is supported entirely from voluntary contributions of member governments and private organisations and is responsible for financing operational activities mainly in developing countries.⁶⁴

In addition to co-ordinating UN drug-related activities, UNDCP has encouraged parties outside the UN, especially financial institutions such as the World Bank, to include the drug dimension in their own policies and programmes. The World Bank has recently incorporated drug-related considerations in reports on Bolivia and Peru.⁶⁵ The more structured approach of the programme in its co-operation with organisations such as Interpol and the Customs Cooperation Council has the aim of avoiding overlap and duplication of work.

Significantly however the restructuring of United Nations drug-related activities has seen minimal change to the role of the two committee bodies, the Commission on Narcotic Drugs and the International Narcotics Control Board.

The future role of the UN in international drug control

The problems associated with the United Nations drug control structure reflect the problems associated with the expansion in scope, range and volume of work of the United Nations in the last 40 years. The increase in the number of issues that are truly global in nature on the international agenda has led to an increase in inter-governmental machinery, a growth in institutions, subsequent overlap of agendas and duplication of work in the United Nations itself and its affiliated bodies and Specialised Agencies.

The United Nations structures have become too complex, leading to dispersion of responsibility and a diffusion of lines of authority, accountability and communication. Furthermore the emergence of other organisations with terms of reference compatible with its own has led to an inefficient tangle of duplicated work. This is particularly illustrated by drug-control efforts.

On the question of law-enforcement and policing there was unnecessary overlap in Europe between the work of the DND, and now the work of the UNDCP and the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (the Pompidou Group), the Trevi Group of EC Ministers of the Interior and Justice (Terrorism, Radicalism, Extremism and International Violence⁶⁶) and the International Criminal Police Organisation ICPO/Interpol, where the work of the Drugs Intelligence Unit of the DND came close to police operations. Member countries reported drug seizures to the DND and exactly the same information went to Interpol. The DND also sponsored meetings of the Heads of National Law Enforcement Agencies (HONLEA). The DND was here involved in an activity in which Interpol has long specialised. Since the creation of the Drugs Sub-Division in 1930 Interpol has concerned itself with controlling drug trafficking, first working with the League of Nations and later with the United Nations drug control bodies. This cooperation culminated in Resolution 1579 (L) adopted in 1971 by the United Nations Economic and Social Council, which made it obligatory for the Secretariats of the two organisations to exchange information and documents concerning matters of mutual interest, to consult each other, and to set up a system of technical co-operation for independent projects. Furthermore, following a meeting of Trevi ministers in The Hague on 2-3 December 1991 to discuss the 1992 Programme of Action, a formal agreement was made to establish a European Police Organisation or "Europol", whose purpose is to collect and analyse information on cross-border crime, including crime that extends beyond the Community. The first stage in this process was the establishment of a European Drugs Unit (EDU).⁶⁷ Title VI of the Maastricht Treaty for the first time brought "combatting drug addiction" and "preventing and combatting unlawful drug trafficking" within the scope of the Council of Ministers, the Commission and the European Parliament. This and other work of the Trevi Group still remains outside the European Community but is part of the wider

European Union.⁶⁸ The work of the United Nations, in many areas can be seen to be superseded by numerous other multi-national and regional initiatives.

The importance of achieving direction and integration of the drug programme reflects the same problems facing the United Nations system in general, as numerous inquiries into the need for reform of the United Nations have pointed out. Various calls for reform of the United Nations system such as the 1969 Jackson Report⁶⁹, the 1975 Report of the Secretary General's Experts⁷⁰, the 1985 Bertrand Report⁷¹ and the 1986 Report of Committee of Eighteen⁷² have each emphasised different areas for reform, whether managerial, structural or financial, but have added more sub-headings to the agenda of reform rather than improving and streamlining the system itself. According to Maurice Bertrand this has led to a pre-occupation in the way in which the mill operates becoming more important than the quality of the flour it produces. In his report on the managerial and structural shortcomings of the United Nations, he states that:

"The vagueness of the terms of reference, the similarity of jurisdiction between organs and the number and repetition of "general debates" preceding the examination of the agenda items repeated in committee after committee whose relative status is not clearly defined, have created in the UN particularly a state of confusion which in spite of countless efforts has been difficult to remedy."⁷³

The decade-old Bertrand Report, often quoted by scholars writing about the United Nations, still reads as a relevant critique of the system today and the major criticisms made are particularly relevant to United Nations drug-control activities and structures. Bertrand criticizes the United Nations for its "sectoral functionalism" especially with regard to the Specialised Agencies, and for the "remote control by staff members living in the great capitals" and the subsequent "lack of co-ordination between the heads of various bodies", which had become, "altogether inappropriate for a problem which calls for an integrated approach and organised co-operation by all parties concerned."⁷⁴ The structural complexity leads to lack of co-ordination and definition of priorities. Bertrand comments on the universal nature of the contents of United Nations programmes, which adds to the organisations complexity, as with the

drug control programme which covers all aspects of the phenomenon as an integrated whole. The ad hoc emergence of bodies and programmes reflects the development of drug control activities as the organisation fought to keep up with events in the outside world. Indeed this sectoralisation and fragmentation of the United Nations has meant that the Specialised Agencies have become, in various respects, detached from the real world, and are not therefore able to identify global problems properly.⁷⁵

The view that the United Nations should have the capacity to deal with global problems, co-ordinating the international response, was emphasised by the Roundtable on "The Future Role of the United Nations in an Interdependent World" held in Moscow in September 1988 on the initiative of the United Nations Institute for Training and Research (UNITAR) and the USSR United Nations Association.⁷⁶ A new structure for the United Nations was called for in order to enable it to deal with what were termed "global watch issues"; issues on which convergence of interests exists. It was suggested that global watch would be appropriate for such issues as natural disasters, the global biosphere, international debt, disease control (such as AIDS), refugees, illegal capital flight and international narcotics trafficking. However, the inability of the United Nations drug control bodies to control the expansion in the production, distribution and demand for illicit drugs, can be seen to reflect its limitations as a formal organisation to manage the new global concerns on the international agenda.

The restructuring and reorganisation of the Secretariat units called for by the Global Programme of Action, unless the roles of the Commission and the Board are also clearly defined, are not sufficient to have an effect on the United Nations' impact on global drug control. It is the involvement of the Specialised Agencies and other United Nations programmes whose activities were numerous but lacked co-ordination, which requires fundamental and far-reaching analysis. The United Nations International Drug Control Programme is still at a relatively early stage in "generating the necessary momentum for a globally coordinated drug effort".⁷⁷ The UNDCP has begun the process of developing effective co-ordination and co-operation arrangements not only with other United Nations entities, but with those outside the United Nations system

as well.⁷⁸ However, as shown by Chapter Two, the phenomenon is too complex and multi-faceted to be viewed as a single issue, despite the expanded conceptualisation of the drug phenomenon by the UNDCP. The creation of a drug control programme perpetuates the view of the phenomenon as a single issue. The structural approach adopted by international organisations is alone, incapable of understanding the nature of the drug phenomenon. International regimes, in encompassing an understanding of international organisations and formal rules and decision-making procedures, but also in encompassing an understanding of the nature of issues, values and norms, can more clearly explain the phenomenon.

International collaboration and international regimes

The study of international organisations has declined since the Second World War (see Figure 3) as scholars have shifted their focus away from the study of formal international institutions and the perspective that international governance was whatever international organisations did, towards interest in broader forms of international institutionalized behaviour and renewed inquiry into the problem of international governance.⁷⁹

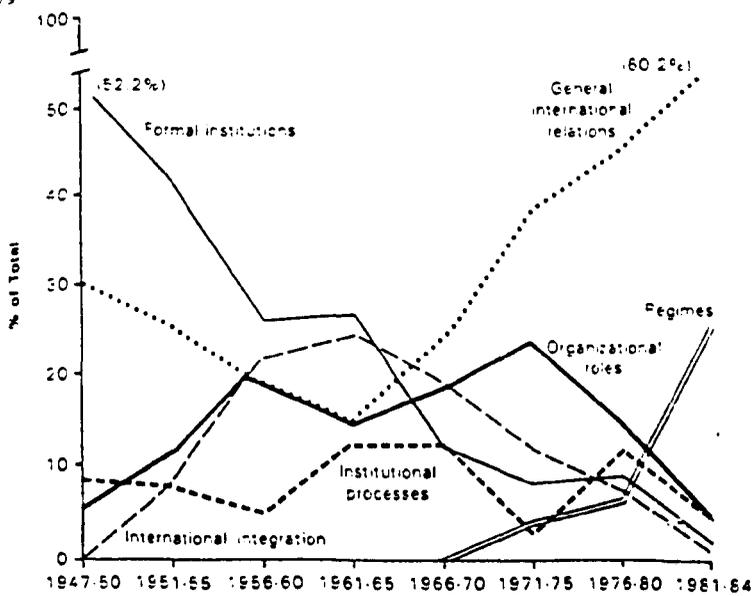


FIGURE 3 Analytical foci of contributions to International Organization, 1947-1984. Source: Friedrich Kratochwil and John Gerald Ruggie, "International organization: a state of the art on an art of the state", *International Organization*, Vol. 40, No. 4, Autumn 1986, p 761.

As Kratochwil and Ruggie state,

"When the presumed identity between international organizations and international governance was explicitly rejected, the precise roles of organizations *in* international governance became a central concern".⁸⁰

This has led to increasing interest in the concept of international regimes, as expressing "the parameters and the perimeters of international governance"⁸¹, which can be seen to have culminated in the 1982 conference on international regimes in the United States, and a more recent European conference in Tübingen, Germany in 1991.⁸²

However, concern with the nature of international governance, the role of international organisations, and the role of international regimes, has not been developed in any systematic fashion, so as to lead to an enhancement of our understanding of the nature of the relationship between international organisations, such as the United Nations and its drug-control activities and the possible evolution of an international drug-control regime. This is because to date, the dominant work on international regimes, as with international organisations, has concentrated on structural models to explain the nature of both regimes and international organisations, within a Realist hegemonic framework.

In the introduction to his book, Krasner identifies three distinct models for understanding international regimes: structuralist or Realist, modified structuralist or modified Realist, and Grotian. The structuralist model assumes a world of unitary state actors engaged in power maximisation. According to this model, the concept of international regimes is useless since they have no independent impact on international outcomes, and as Kenneth Waltz states can be seen as only one small step removed from the underlying power capabilities that sustain them.⁸³ It was the work of Keohane and Nye, already mentioned in earlier chapters that first linked regime emergence and decline with rise and fall of the power of a hegemon. They proposed a more disaggregated structural model, or "issue-structural" model⁸⁴, that emphasised states as the dominant actors in international affairs, but that in certain restrictive conditions, accepted states may have to give up a certain degree of independence in order to reach the optimum outcome. In this situation they say, regimes may arise.⁸⁵

For modified structuralists, regimes "constitute the general obligations and rights that are a guide to states' behaviour" must be viewed as "something more than temporary arrangements that change with every shift in power or interests".⁸⁶ The above approach, which has been labelled "conventional structuralism", and its modification, "modified structuralism" both emphasise "states" as the dominant actors, and inter-state behaviour as the dominant concern for study. In this way international regimes can have no independent impact on global change and are therefore not analytically useful. Structural models of regimes however, are not useful in understanding behavioral processes underlying international co-operation in the form of an international regime, concentrating instead on rules and decision-making procedures. However the Krasner definition stresses the normative dimension to international politics, by emphasising change to rules and decision-making procedures as change within a regime, but change in principles and norms as changes to the regime itself.⁸⁷

Although the structural approach has dominated much of the work on international regimes to date, an alternative, what has been termed "Grotian approach", has been offered by writers such as Donald Puchala, Raymond Hopkins and Oran Young, which emphasises the existence of regimes in "every substantive issue-area where there is discernibly patterned behaviour".⁸⁸ Indeed Oran Young begins one of his articles, "We live in a world of international regimes".⁸⁹ The Grotian approach to international regimes is in contrast to both conventional and modified structuralism, in accepting regimes as a fundamental part of the international system. The international system is not seen as composed only of sovereign states with the only issue being one of power and security. The concept of state sovereignty is challenged by this approach. The ability of states to maintain dominance over all aspects of the system is seen as limited, as is the use of force. For Puchala and Hopkins, elites are the "practical actors" in international regimes: "bureaucratic units or individuals who operate as parts of the "government" of an international subsystem by creating, enforcing or otherwise acting in compliance with norms".⁹⁰ In this approach a regime is defined as "a set of principles, norms, rules, and procedures around which actors' expectations converge. These serve to channel political action within a system and give it meaning".⁹¹

The Grotian approach has been criticised by writers such as Arthur Stein for being so broad "as to constitute either all international relations or all interactions within a given issue-area", and that "Such use of the term regime does no more than signify a disaggregated issue-area approach to the study of international relations".⁹² And as such, as Jack Donnelly comments, "regime" means little more than "issue-area or political subsystem" and "pointlessly adds to our already overstocked store of jargon".⁹³ However, Stein also criticises current regime analysis for the other extreme, in that "regimes are defined as international institutions. In this sense, they equal the formal rules of behaviour specified by charters of such institutions...This formulation reduces the new international political economy to the old study of international organizations..."⁹⁴

The Puchala and Hopkins definition of an international regime, outlined above, draws upon the work of David Easton.⁹⁵ Indeed, this explanation of the nature of international regimes can be seen as synonymous with David Easton's definition of a political system as "any set of variables selected for description and explanation".⁹⁶ However an exploration of the relationship between regimes and systems can lead to a more satisfactory explanation of regime dynamics. As has already been stated in Chapter Two, two key concepts emerged from the literature of interdependence: the concept of regimes, and the concept of issues forming distinct issue-systems governing behaviour within a state of interdependence. Chapter Two has already looked at the nature of issues in international politics and Chapter Three developed a theory of the emergence of issues onto the international agenda through a focus on values. The emphasis on understanding the nature of issues through an understanding of values is central to systems analysis and gives a firmer theoretical footing for exploring the normative nature of international regimes which is lacking in the dominant structural approach to regime creation.

The linking of systems theory with regime theory is not divorced from the intellectual progression of the discipline as described earlier. Indeed in David Easton's 1965 volume of political theory, *A Systems Analysis of Political Life*, his description of a regime as an "object of support" between a constitutional order and a political

community, introduces concepts utilised by the later regime theorists.⁹⁷ A regime is described as a set of constraints on political interaction which can be broken down into three components: values (described as goals and principles), norms, and structures of authority. The values are described as "broad limits with regard to what can be taken for granted in the guidance of day-to-day policy without violating deep feelings of important segments of the community"; norms are described specifying "the kinds of procedures that are expected and acceptable in the processing and implementation of demands"; and the structures of authority "designate the formal and informal patterns in which power is distributed and organized with regard to the authoritative making and implementing of decisions - the roles and their relationships through which authority is distributed and exercised."⁹⁸ Easton goes on to say that "The regime also includes, however, those parts of the established expectations in political life that may seldom be envisaged as part of a constitution.....".⁹⁹ The work of Easton parallels the later Krasner definition of a regime as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actor's expectations converge in a given area of international relations".¹⁰⁰

Although critics of regimes believe that regime theory is simply a new disguise for systems theory¹⁰¹ this research claims that international regimes and issue-systems can be seen as different stages in the same process of agenda formation.

As already explained in Chapter Two, an issue-system is a set of actors for whom a single issue is salient. The extent to which the actors in the issue-system regulate the issue, by authoritatively allocating the values at stake (Easton) is variable. Where regulation occurs the phenomenon of an international regime emerges. A regime can be seen as a sub-set of an issue-system (See Figure 4).

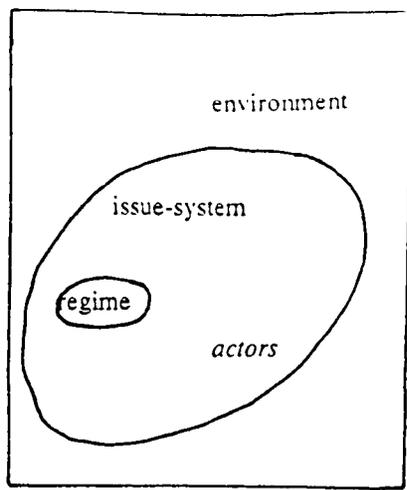


FIGURE 4 Regimes and issue-systems

Regulation occurs when the values under contention lead to the acceptance of a norm on which the regime is based. A focus on norms as more specific values, can explain the relationship between issue-systems and regimes. Issue-systems form norms through the process of contention over values leading to consensus around a norm, and regimes enforce and regulate norms in the policy-system.

Despite the criticisms of regime theory as a "passing fad...an American academic fashion" by Susan Strange¹⁰², as we have seen, regime theory is part of the intellectual progression of the discipline of International Relations. Another criticism of regimes levied by Susan Strange in her article is that regimes were invented by social scientists. On the contrary, the concept of regimes have a long history in international law which the next chapter on the norms of international drug control will explore further.

Conclusion

This chapter has attempted to show how despite eight decades of international action by the League of Nations and the United Nations in the field of international drug control the problems associated with all aspects of the drug phenomenon, as described in Chapters One and Two, have increased. The ineffectiveness of the United Nations in this area can be seen to be due to the fact that the structural approach to global

change adopted by international organisations that concentrates on bargaining and negotiating procedures and legal rules, has not allowed the United Nations to recognize the diversity of issues involved. Therefore there has been no movement towards consensus on the issues and no agreement on norms by consensus. As Bertrand stated in his 1985 report, the United Nations needs to return to the aims of its Charter as a focus for international consensus-building. The drug phenomenon reflects this necessity. As the Executive Summary of the report on the "Enhancement of the efficiency of the United Nations structure for drug abuse control" states, the drug problem "involves the use that Governments wish to make of the United Nations and how they wish to confront a challenge that endangers the survival of human civilisation".¹⁰³ The recent changes to United Nations drug-control activities, as well as the numerous efforts at reforming the United Nations system, have concentrated on administrative and co-ordination changes. Consensus-building on the issues involved in the drug phenomenon has taken second place.

During the eighties, however, consensus was reached on the need to "break the link between demand and supply, that is, the illicit traffic."¹⁰⁴ The adoption by consensus in Vienna in December 1988 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances can be seen to be an example of the willingness of states to attempt to control an activity which had "attained a certain level of opprobrium in the commonly shared values of mankind."¹⁰⁵ However, this focus on trafficking by the United Nations cannot be seen to have produced an effective global regime to control the activity. Implementation of the norm has proved to be impossible due to the nature of the drugs themselves and the ease with which they can be transported, as outlined in Chapter Two. Furthermore, the drug-control bodies of the United Nations, despite the restructuring, have not clearly evolved into an authoritative decision-making focus, necessary for regime creation and norm implementation. Whether the United Nations International Drug Control Programme can evolve into a global decision-making focus remains to be seen. The regionalisation of trafficking control, as demonstrated by the work of the European Community suggests not. Attempts to control drug trafficking can be seen to have led at best to the emergence of a "declaratory regime" to use Donnelly's regime

classification.¹⁰⁶ This will be discussed further in Chapter Seven.

The drug phenomenon is not a single issue, as often conceptualised, but is in fact a multi-faceted and multi-dimensional phenomenon requiring precisely the issue-specific focus of regime analysis as understood by this research. Since the issues involved in the drug phenomenon are conceptually linked but behaviourally different, no single international regime to regulate drug control is possible. As has already been mentioned, the expansion of illicit drug-production, trafficking and consumption has outpaced the United Nation's efforts to contain it. Furthermore, some of the economic, political and social developments that have occurred throughout the early nineties can be seen as potential harbingers of crisis for countries that have so far been relatively free of drug-related problems. Alternative forms of co-operation, such as the creation of several different international regimes, for the various drug-related problems, is urgently needed.

ENDNOTES AND REFERENCES

1. The 1909 Shanghai Conference called for a ban on opium smoking, but clearly demonstrated fundamental disagreements on the degree of opium control required, especially between Britain and the United States. See previous chapter.
2. The reasons and motivations for the inclusion of cocaine in international control were described in the previous chapter.
3. Dr S K Chatterjee, *A Guide to International Drug Conventions: Explanatory materials for the preparation of legislation in the implementation of the major international drug conventions*, (Commonwealth Secretariat, London, 1988) Chapter Two: "An Overview of the International Drug Conventions", p 3.
4. Raw opium, according to the Convention, is the spontaneously coagulated juice obtained from the capsules of the *Papaver Somniferum*, which has been submitted only to the necessary manipulations for packaging and transport. Prepared opium is the product of raw opium obtained by a series of special operations, by dissolving, boiling, heating and fermentation, which transforms the substance into an extract suitable for consumption. Developed countries were therefore far more willing to reach agreement on raw opium than on prepared opium, as they traded the latter.
5. Chatterjee, *op cit.*, pp 3-4.
6. *Ibid.*, p 5.
7. See B Inglis, *The Forbidden Game. A Social History of Drugs* (Hodder and Stoughton, London, 1975) pp 174-175.
8. Chatterjee, *op cit.*, pp 7-9.
9. *Ibid.*, pp 9-10.
10. See J G Starke, "The 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs", *American Journal of International Law*, 31, 1937, p 3.
11. This was not the first initiative of its kind. The Convention for the Suppression of Counterfeiting Currency of 1929 already mentioned operated as a model for the 1936 Convention.
12. The six different drug-control treaties and three amending protocols are: The Hague Opium Convention of 1912; The "1925 Agreement"; The Geneva International Opium Convention, 1925; The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1931; The "1931 Agreement"; The Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 1936; and the "1946 Protocol"; the "1948 Protocol"; and the "1953 Protocol" amending these Conventions and Agreements. For details see Chatterjee, *op cit.*

13. See *The Single Convention on Narcotic Drugs, 1961, done at New York on 30 March 1961*, Appendix IV in Chatterjee, *op cit.*
14. Single Convention, *op cit.*, p 108.
15. *Ibid.*, Preamble, p 11.
16. *Ibid.*, Article 38, p 125.
17. S D Stein, *International Diplomacy, State Administrators and Narcotics Control. The Origins of a Social Problem* (Gower, London, 1985) p 5.
18. The Commission was set up pursuant to Article 68 of the United Nations Charter.
19. For the functions of the Commission, see Articles 3 and 8 in the Single Convention, *op cit.*; Articles 2, 3 and 17 of the Convention on Psychotropic Substances 1971; and Articles 12, 20,21 and 22 of the *1988 Convention Against Illicit Traffic in Narcotic drugs and Psychotropic Substances* (see later).
20. See Article 3 of the Single Convention, *op cit.*, for details of the relationship between the CND and WHO. See also Chapter One.
21. For a complete list of participants see the annual reports of the Commission on Narcotic Drugs published by the Economic and Social Council.
22. The following states were members of the Commission before the enlargement: Australia, Bahamas, Belgium, Bolivia, Brazil, Bulgaria, Canada, China, Colombia, Ivory Coast, Denmark, Ecuador, Egypt, France, Gambia, Ghana, Federal Republic of Germany, Hungary, India, Indonesia, Italy, Japan, Lebanon, Libya, Madagascar, Malaysia, Mexico, Netherlands, Pakistan, Peru, Poland, Senegal, Spain, Sweden, Switzerland, Thailand, USSR, United Kingdom, United States and Yugoslavia. In addition 56 States participated as observers. The distribution of the 13 new seats was as follows: 4 seats for the African Group; 3 seats for the Asian Group; 3 for the Latin American and Caribbean Group; 1 for the Eastern European Group; 1 for the Western European and Others Group; and 1 to rotate between the Asian Group and Latin American and the Caribbean Group every four years.
23. For details of the work of HONLEA, Africa, see *Report of the Third Meeting of Heads of National Drug Law Enforcement Agencies (HONLEA), Africa, held at Cairo from 4 to 8 June 1990*. See United Nations document E/CN.7/1991/2.
24. See *Report of the Second Interregional Meeting of Heads of National Drug Law Enforcement Agencies (Interregional HONLEA), convened at Vienna from 11-15 September, 1989*. United Nations document, E/CN.7/1990/2.
25. At its 1042nd meeting, the Commission on Narcotic Drugs approved for adoption by the Economic and Social Council, a draft resolution on the establishment of a meeting of heads of national law enforcement agencies in Europe. See United Nations document, E/CN.7/1990/L.7.

26. The International Narcotics Control Board was established by ECOSOC Resolution 1106 (XL) of March 2, 1968, pursuant to the Single Convention, Article 45 (2).

27. See Article 9 of the Single Convention, "Composition of the Board" as amended by Article 2 of the 1972 Protocol which increases the total number of members from 11 to thirteen.

28. Article 9 (2)(3) of the Single Convention, *op cit.*

29. Article 9(3) of the Single Convention, *op cit.*

30. See *Report of the Economic and Social Council, International Action to Combat Drug Abuse and Illicit Trafficking: International co-operation in drug abuse control. Report of the Secretary-General.* United Nations document, A/45/542, 23 October, 1990, paras., 180-182, p 38.

31. A UNIDO preparatory assistance mission to assess the potential production and processing of medicinal and aromatic plants in the Yungas and Chapare area in Bolivia in 1989, found that cultivation and processing of selected medicinal and aromatic plants can generate an income to the farmers equivalent to that of coca growing and that it might therefore help to reduce the coca-growing areas. The mission recommended the utilization of Bolivia's rich, indigenous flora, and the introduction of new crops for the production of new products with high export value or for the food/beverage, cosmetic or pharmaceutical industry for import substitution. See, *Report of the Economic and Social Council, International Action to Combat Drug Abuse.., op cit., para., 145, p 32.*

32. See IMO document, "Prevention of drug smuggling on ships engaged in international traffic: guidelines for use by shipowners, seafarers and others closely involved with the operation of ships", of 26 November 1987, as quoted in *Report of the Commission on Narcotic Drugs on its thirty-fifth Session, Vienna, 6-15 April 1992.* United Nations document E/CN.7/1992/14, Resolution 8(XXXV).

33. See *Report of the Economic and Social Council, International Action to Combat Drug Abuse.., op cit., paras., 174-176, p 37.*

34. See General Assembly Resolution 40/122 of December 13, 1985. For details of the Conference participation see, *Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987,* United Nations document A/CONF.133/12. Chapter III "Attendance and Organization of Work" pp 97-100.

35. The *Comprehensive Outline of Future Activities in Drug Abuse Control* is included as part A of the report of the conference. See *Report of the International Conference on Drug Abuse and Illicit Trafficking, op cit.*

36. See, *Report of the International Conference on Drug Abuse and Illicit Trafficking, op cit., Section 1, "Prevention and Reduction of the Illicit Demand for Narcotic Drugs and Psychotropic Substances", para., 21, p 12.*

37. *Ibid.*, para., 24, p 13.
38. *Ibid.*, para., 14, p 9.
39. *Ibid.*, para., 1, p 1, Introduction.
40. *Ibid.*, para., 225, p 51, Chapter III, Suppression of Illicit Traffic.
41. *The UN Draft Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances: A Report on the Status of the Draft Convention, the US Negotiating Position, and Issues for the Senate, 100th Congress, 1st Session*, as quoted in Dr W Gilmore, *Combating International Drugs Trafficking: The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (Commonwealth Secretariat, London, 1991) p 1.
42. See *United Nations Conference for the Adoption of a Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, Austria, 25 November - 20 December 1988*, United Nations document E/CONF.82/4.
43. *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, United Nations Document E/CONF. 82/15 and Rev. 1, December 19, 1988. See Appendix B.
44. See M C Bassiouni (ed), talking about why states undertake international criminal law commitments in *International Criminal Law*, Vol. 1, Crimes, 507, 1986, as quoted in D W Sproule and P St-Denis, "The UN Drug Trafficking Convention: An Ambitious Step", *The Canadian Yearbook of International Law*, 1989, pp 263-293, quote at p 264.
45. D Stewart, "Internationalizing The War on Drugs: The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", *Denver Journal of International Law and Policy*, Vol. 18, 3, pp 387-404, quote at p 388.
46. Stewart, *op cit.*, p 388.
47. See 18 U.S.C. 981 (a) (1) (B) as quoted in Stewart, *op cit.*, p 396.
48. Stewart, *op cit.*, p 398.
49. See Article 20 and 21, Vienna Convention, *op cit.*
50. Article 1(b) Vienna Convention, *op cit.*
51. *Report of the Second Interregional Meeting of Heads of National Drug Law Enforcement Agencies, Vienna, 11-15 September, 1989*, United Nations document, E/CN.7/1990/2.
52. See *Political Declaration and Global Programme of Action adopted by the General Assembly at its seventeenth special session, devoted to the question of international co-operation against illicit production, supply, demand, trafficking and distribution of*

- narcotic drugs and psychotropic substances*, United Nations document A/RES/S-17/2.
53. See Political Declaration, *op cit.*, para., 6, p 5.
54. See Global Programme of Action, *op cit.*, Section II, "Activities of the Global Programme of Action", para., 12.
55. United Nations document, A/S-17/PV.1, 27, as quoted in J Donnelly, "The United Nations and the Global Drug Control Regime", pp 282-305 in PH Smith (ed), *Drug Policy in the Americas* (Westview Press, Boulder, 1992), quote at p 292.
56. See Political Declaration, *op cit.*, para., 13, p 5.
57. Global Programme of Action, *op cit.*, Section H, "Resources and structure", para., 94(a), p 21.
58. The mandate for the establishment of the Group of Experts to investigate the efficiency of the United Nations structure for drug abuse control originates from paragraph 4 of General Assembly Resolution 44/141 of 15th December 1989. The Global Programme of Action endorsed the convening of the group, adding details of what was required. See Global Programme of Action, *op cit.*, para.; 93 and 94.
59. In its resolution 45/179 of 21 December 1990, the General Assembly requested the Secretary-General to create a single drug control programme.
60. See *Report of the Group of Experts to advise and assist the Secretary-General on the enhancement of the efficiency of the United Nations structure for drug abuse control: Drugs and the United Nations; Meeting the Challenge*. Annex to *International Action to Combat Drug Abuse and Illicit Trafficking. Programme for the Biennium 1990-1991: Enhancement of the efficiency of the United Nations structure for drug abuse control. Report of the Secretary-General*. United Nations document A/45/652/Add.1., 24 October 1990, *op cit.*
61. See, *Activities of the United Nations International Drug Control Programme. Report of the Executive Director*. United Nations document, E/CN.7/1993/3, 8 February, 1993.
62. The Fund of the UNDCP was established by General Assembly Resolution 46/185 C XV1 as of 1 January 1992.
63. *Report of the International Narcotics Control Board for 1992*, United Nations document, E/INCB/1992/1, Overview, para., 2, p 1.
64. For details on the work of the Fund see: *Fund of the United Nations International Drug Control Programme: Proposed Revision of the Programme Budget for the Biennium 1992-1993 and Proposed Outline for the Biennium 1994-1995. Report of the Executive Director*. United Nations document, E/CN.7/1993/5.

65. World Bank, "Bolivia: agricultural sector review", report No. 9882-BO, April 6, 1992; "Bolivia: updating economic memorandum", report No. 11123-BO, October 8, 1992; and "Peru: agricultural policies for economic efficiency", No. 10605-PE, September 11, 1992.

66. The Trevi Group was established following a United Kingdom initiative in 1975. Although primarily set up to deal with anti-terrorism matters, its working groups cover particular aspects such as police equipment, public order matters (such as football hooliganism) and serious crime, including drug trafficking.

67. Europol's role is by no means clear: some European countries, like Germany, want it to become a fully operational European style FBI. For the present it is restricted to providing analysis to police narcotic squads.

68. See Title VI and Declaration 32 of the Final Act of the Maastricht Treaty in, *The Unseen Treaty on European Union. Maastricht 1992*, (David Pollard Publishing, Oxford, 1992) p 3.

69. See, R G A Jackson, *A Study of the Capacity of the United Nations Development System*, Geneva 1969, United Nations document DP/5 1969.

70. *A New United Nations Structure for Global Economic Cooperation: Report of the Group of Experts on the Structure of the United Nations System*, E/AC. 62/9, United Nations, New York.

71. Joint Inspection Unit, *Some Reflections on Reform of the United Nations*, prepared by M Bertrand, JIU/REP/85/9, Geneva, 1985.

72. See *Report of the Group of High-Level Intergovernmental Experts to Review the Efficiency of the Administrative and Financial functioning of the United Nations*, General Assembly Official Records; Forty-First Session, Supplement No. 49 (A/41/49), New York 1986.

73. M Bertrand, "Some reflections on reform of the United Nations", reproduced as Chapter 12 in P Taylor and A J R Groom (Eds), *International Institutions at Work* (Pinter Publishers, London, 1988) p 195.

74. Bertrand, *op cit.*, p 210.

75. *Ibid.*, p 218.

76. Papers presented at the Moscow Roundtable are reproduced in J P Renninger, *The Future Role of the United Nations in an Interdependent World* (Martinus Nijhoff Publishers, London, 1989).

77. Activities of the United Nations International Drug Control Programme, *op cit.*, para., 20, p 5.

78. See UN document E/CN.7/1993/3, *op cit.*

79. See I Claude, *Swords into Ploughshares* (Random House, New York, 1959) as the landmark text which emphasised the actual and potential roles of international organizations in a more broadly conceived process of international governance.

80. F Kratochwil and J G Ruggie, "International organization: a state of the art on an art of the state", *International Organization* Vol. 40, 4, Autumn 1986, pp 753-775.

81. J G Ruggie, "International responses to technology: Concepts and trends", *International Organization*, Vol. 29, No. 3, Summer 1975, p 570.

82. See Chapter Two for reference to the 82 conference; and "The Study of Regimes in International Relations - State of the Art and Perspectives" held in Tubingen, Germany, 14-18 July 1991. Selected papers presented at the conference were published in the volume, *Regime Theory and International Relations*, edited by V Rittberger, with the assistance of P Mayer (Clarendon Press, Oxford, 1993).

83. K Waltz, *Theory of International Relations* (Addison-Wesley, Reading, Mass., 1979), especially Chapters Five and Six.

84. See S Haggard and B Simmons, "Theories of international regimes" *International Organization*, Vol. 41, No. 3, Summer 1987, p 500.

85. See especially A Stein, "Coordination and collaboration: Regimes in an anarchic world", pp 115-141 in S D Krasner (ed), *International Regimes* (Cornell University Press, Ithaca, New York, 4th Ed. 1986, first pub. 1983) and in the same volume, R Keohane, "The Demand for International Regimes", pp 141-171.

86. Krasner, "Structural causes and regime consequences: regimes as intervening variables", *op cit.*, pp 1-21.

87. Krasner *op cit.*, p 4.

88. D J Puchala and R F Hopkins, "International regimes: lessons from inductive analysis", pp 61-91 in Krasner *op cit.*, quote from p 63; and O Young, "Regime dynamics: the rise and fall of international regimes", pp 93-113 in Krasner, *op cit.*

89. O Young, "International Regimes: Problems of Concept Formation", *World Politics* 32, April 1980, pp 331-56.

90. Puchala and Hopkins, *op cit.*, p 63.

91. *Ibid.*, p 62.

92. Stein, *op cit.*, pp 312-313.

93. J Donnelly, "International human rights: a regime analysis", *International Organization*, Vol. 40, No. 3, Summer 1986, pp 599-642, quote at p 602.

94. Stein, *op cit.*, pp 312-313.

95. Puchala and Hopkins, *op cit.*, p 62, Footnote 2: D Easton, "An Approach to the Analysis of Political Systems," *World Politics*, April 1957, pp 383-400.
96. D Easton, *A Framework for Political Analysis* (Prentice Hall, London, 1965) p 30.
97. D Easton, *A Systems Analysis of Political Life* (The University of Chicago Press, Chicago and London, 1979, first pub. 1965). Chapter 12 "Objects of Support: The Regime", pp 190-212.
98. *Ibid.*, p 193.
99. *Ibid.*
100. Krasner, *op cit.*, p 2.
101. Donnelly, "International human rights", *op cit.*, p 602.
102. Strange, "Cave! hic dragones: a critique of regime analysis" pp 337-355 in Krasner, *op cit.*, quote at p 338. For a discussion of her criticisms see Chapter One.
103. Report of the Group of Experts, *op cit.*, p 4.
104. See Report of the International Conference on Drug Abuse and Illicit Trafficking, *op cit.*, para., 21, p 12.
105. Bassiouni, *op cit.*
106. Donnelly, "International human rights", *op cit.*, p 603.

Chapter 5

Norms and International Relations

Introduction

The commonly accepted definition of an international regime as "implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations", emphasises the subjective nature of international politics¹. Krasner includes principles (described as beliefs of fact, causation and rectitude) and norms (standards of behaviour in terms of rights and obligations) as defining characteristics of a regime². Change of a regime is characterised by the alteration of principles and norms, whereas changes in rules and decision-making procedures are referred to as changes only within regimes³. The inclusion of norms and principles in Krasner's definition emphasises one of the earlier attractions of regime theory in that it included patterns of co-operation that were not embodied in specific sets of legal rules or international organisations and so highlighted the normative area for exploration by regime theorists. Yet despite this, as the previous chapter has emphasised, structural explanations of regime dynamics, with a concentration on the rules and decision-making procedures of regimes, have predominated. The concept of hegemony, with powerful actors writing the rules in their own interests, has been used to explain both regime creation, change and decline. However, as Donald Puchala and Raymond Hopkins write, international regimes "exist primarily as participants' understandings, expectations or convictions about *legitimate, appropriate or moral* behaviour"⁴ (emphasis by current author) which suggests that state-centric power theory cannot alone adequately explain regime creation. Despite the obvious need therefore to understand the nature and role of norms in regime analysis, very little work has been done in this area.

One reason why regime norms have been neglected is due to the dominance of American literature on regime theory with its preoccupation with the concept of hegemonic stability and until recently, the lack of development of regime theory within a European context and its broader tradition of thought on the role of the individual, the state, and the existence of various conceptions of an "international society". One of the few International Relations scholars to have focused on the importance of norms in international affairs, Friedrich Kratochwil, talks about the "premature fascination"

of regime scholars with regime change as failing to develop criteria by which regime adaptation (changes to rules and decision-making procedures) can be distinguished from regime change itself (changes to norms and principles) or from regime decline, since regime change was originally identified with regime decay and associated with reflections of hegemonic power.⁵ If regimes are simply to be associated with notions of hegemonic power then they can have no independent impact on international affairs and so the answer to Stephen Haggard and Beth Simmons cry, in their 1987 overview of regime literature, "Do regimes "matter"?" would have to be a negative one.⁶ As Oran Young states, one of the most surprising features of the emerging literature on regimes is the relative absence of sustained discussions of the significance of regimes as determinants of collective outcomes at the international level. Indeed as Young asks, why bother to study regimes, if you give them no impact on institutional behaviour? But as Young states, the proposition that regimes do matter and effect behaviour "is relegated to the realm of assumptions rather than brought to the forefront as a focus for analytical and empirical investigations".⁷ Whether regimes matter depends on the role allotted to norms in international affairs. Many analysts agree that norms are a central feature of international regimes. However, recent regime literature can be seen to have moved even further away from an understanding of the importance of norms and principles in regime creation. A recent description of regimes by Robert Keohane as "institutions with explicit rules, agreed upon by governments, which pertain to particular sets of issues in International Relations"⁸, makes no reference to norms. In this he makes little distinction between regime theory and work on international institutions. With such an approach, as Arthur Stein amongst others have pointed out, in criticism on much of the work on international regimes, the concept adds little to our understanding of global politics.⁹

Krasner states that norms and principles, and not rules and decision-making procedures are fundamental for understanding regime change and therefore by implication regime creation and decline. In this sense the phenomenon of regime continuation after the removal of hegemonic support (of interest to several regime theorists¹⁰) can be explained. But the Krasner volume fails to develop this side of the definition and to explain the nature of norms, with "norms" and "rules" not clearly

distinguished from each other in much of the volume. Research into international regimes has concentrated on hegemonic power explanations of regimes, which dismiss totally, or sideline, the importance of norms. In this way regimes are denied any independent impact in world politics and cannot, as Haggard and Simmons ponder "matter". This work has based itself on the premise that regimes do matter, and therefore we need a clearer understanding of the nature, role and impact of norms in International Relations as this chapter will demonstrate. Again, problems over terminology, highlighted in previous chapters will be addressed. Problems concerning the use of the term "norm" strike at the heart of the concerns over regime theory, that there is still no fundamental answer to Krasner's first question, "What is a regime?",¹¹ because as Haas points out "theorists of regimes disagree widely because the words they use...come from different normative and philosophical traditions".¹² These traditions therefore have to be explored.

Issue-Systems, norms, and international regimes

The last chapter referred to the relationship between the concept of issue-systems and international regimes as different stages in the same process of agenda formation. Critics of regime theory have attacked international regimes for simply being systems "in disguise".¹³ Both Arthur Stein and Jack Donnelly have commented on the fact that much of the current regime literature simply adds to the already overstocked store of jargon that makes up contemporary International Relations.¹⁴ However, this writer believes the two concepts to be analytically distinct and this distinction can be comprehended by an understanding of the concept of norms.

As Chapter Three explained, values are abstract aspirations for improving the human condition that can only be pursued indirectly by the acquisition of concrete objects, or stakes. As Mansbach and Ferguson write, "Abstract values are sought as consummatory ends with intrinsic worth, while the stakes that represent them are merely instrumental in terms of their satisfaction"¹⁵. When a high level of consensus is reached over the disposition of stakes, we can see norm emergence. Issue-systems can be seen to generate norms if and when the process of contention over values leads

to consensus around a norm. Then regimes can be seen to enforce and regulate norms.
(See Figure 5)

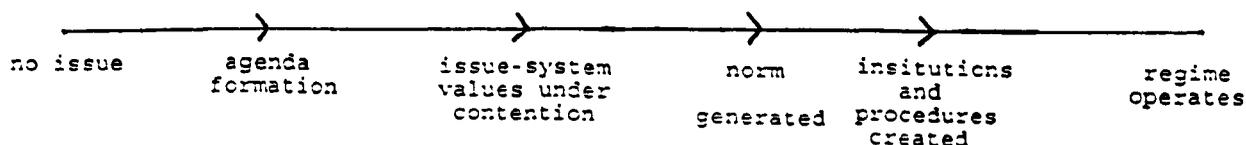


FIGURE 5 Regime creation

The norm-regulated rules of a regime are implemented in what can be seen as a drugs policy-system, as referred to in Chapter Two. A policy-system can be seen as a set of issues conceptually different but behaviourally linked. The issue of money-laundering, for example, involves contention among actors for whom the issue is salient forming an issue-system. The issue-system generates a norm which is implemented within the banking and finance policy-system as the next chapter will explain further.

As the previous chapter on the changing attitudes towards drug use in the nineteenth-century demonstrated, contention among actors over values led to the formation of various issue-systems with economic efficiency and economic welfare, as values, overriding anti-drug values. There was no agreement on the value position that drugs were evil and dangerous and therefore no norm emerged to be enforced and regulated by a drug-control regime. With the decline in the relative salience of the economic welfare value, for the actors concerned during the first half of the twentieth century, the anti-drug value position increased in importance. As a result a number of anti-drug norms were formed along with a weak drug-control regime. In this sense

issue-systems and regimes can be seen as producing the same process of behaviour modification, with norms forming the link in understanding both the conceptual world of issues and the behavioural world of policy formation.

It is therefore necessary to identify norms in the present day politics of drugs in order to understand regime creation and regime absence. To identify the norms concerned with drug-related activity, and to understand the role norms play in regime creation and significance, it is necessary to reach a suitable definition of a norm.

As has already been emphasised in this work and in the work of others, the apparently haphazard aggregation of disparate phenomena in the Krasner definition of an international regime, such as implicit rules, principles and norms, adds to the confusion in understanding the nature of international regimes.¹⁶ The difficulty of distinguishing an "implicit rule" from a "norm" or from a "principle", has led to the role of norms not being explicitly explored by regime theorists. A clearer understanding of the role of norms in international regimes is needed, distinct from rules and decision-making procedures.

The nature of norms

The concept of a norm is not expanded in the Krasner work beyond the initial description as outlined above, despite the emphasis of the importance of norms in the introduction to the book. Neither does Kratochwil present us with a definitive understanding of the concept. He states, "Norms are used to make demands, rally support, justify actions, ascribe responsibility, and assess the praiseworthy or blameworthy character of an action."¹⁷ This is an extensive list of characteristics, that will be refined later in the chapter. But Kratochwil emphasises that his purpose is not to understand the nature of norms: "I shall use the terms "norms" and "rules" interchangeably, since I am mainly concerned with the *force* of prescriptions".¹⁸ One of the difficulties involved in understanding norms is that the term is often used interchangeably with both "rules", as the work of Kratochwil emphasises, and "values".

As Kratochwil states he is not interested in distinguishing between rules and norms. The sociologist Ullmann-Margalit, in her work, *The Emergence of Norms*, hypothesises a lack of clarity over the two terms may be due to the different backgrounds of writers: that the term "norm" tends to be used by Continental authors, whereas the term "rule" and "law" is preferred by Anglo-Saxons to cover more or less the same domain of discourse.¹⁹ Although the Krasner definition does blur the two by talking about "implicit rules" and "explicit norms", and although, at the margin, they can be seen to merge into one another, it is clear that there is a difference between the two. As will be shown, it is important to distinguish between the two for an understanding of the importance of norms for international regimes. In order to understand the impact of regimes, we need to separate out the norms from the rules and from the actual behaviour. That is, in asking whether regimes matter we need to know if norms change an actor's behaviour.

Norms are often used interchangeably with values in International Relations literature with little methodological consistency. This can be seen to be due to the dominance of the Realist paradigm in the discipline which dismisses norms and values as of little importance in international affairs, concentrating instead on notions of power and status. It is however common to find both terms in the disciplines of anthropology, sociology and political science with the study of comparative politics. However, as James Rosenau states in his work, *The Scientific Study of Foreign Policy*, neither students of comparative politics nor those in international politics are "drawn by conceptual necessity to find a theoretical home for the external behaviour of societies".²⁰ Students of comparative politics, concerned with political functions, goal attainment and political culture, focus primarily on processes *within* societies. As such, they have generally not accounted for the penetration of national societies by international systems²¹. This penetration is clearly demonstrated by international drug control, where international legislation at the turn of the century preceded national legislation in many cases. Similarly, one reason many national governments now give as to why the legalisation of cannabis cannot be considered is their commitment to international control. Students of the traditional approach to International Relations

have focused on processes of interactions that occur *between* national systems. However, in the Globalist paradigm, adopted by this work, the boundary between the national and the international is challenged. An exploration of recent literature in the discipline of sociology, beginning with the work of Amitai Etzioni (as referred to in Chapter Three), can be seen to have begun to illuminate the relationship between the national and the international, and the discipline of sociology generally can be used to illuminate the concept of norms.

The Krasner description of norms as "standards of behaviour defined in terms of rights and obligations" and Milton Rokeach's description of values as "an enduring belief that a specific mode of conduct or end-state of existence is personally or socially preferable to an opposite or converse mode of conduct or end-state of existence",²² obviously share some common ground. But it is important to differentiate between them. Norms are not the same as values. Values are abstract: they can exist independently of a specific situation. In contrast norms are "role-specific and context specific" modes of behaviour.²³ When norms are used in general terms, detached from specific issues and circumstances, they can be difficult to distinguish from values, adding to the confusion. Values however can be seen as more general, and norms more specific. A single value can be translated into and codified into a great number and variety of different norms. As the sociologist Robin Williams describes it, "The same value may be a point of reference for a great many specific norms; a particular norm may represent the simultaneous application of several separable values...Values as standards (criteria) for establishing what should be regarded as desirable, provide the grounds for accepting or rejecting particular norms."²⁴

A fundamental difficulty with reaching an understanding of a norm is that the concept has different meanings in the literature of different fields, as suggested above. In the discipline of International Relations, the term would appear to be naturally associated with "normative theory", which has become increasingly popular in the last decade, in the same period that the concept of international regimes has also become popular.²⁵ Normative theory asks of world politics a question that political theory has asked of politics in domestic societies for centuries, "What is the good life?". In this

sense, it stands in the tradition of ethical political philosophy and seeks to warrant or justify alternative ethical positions. Therefore, although it concerns itself with values and norms, as do those studying comparative politics, the current debate between "cosmopolitanism and communitarianism"²⁶ in asking whether present structures of the international system promote or detract from the living of "the good life", does little to explain behaviour and impact on decision-making, but rather restricts itself to philosophical considerations, and works in isolation from regime theorists. For normative theorists, norms are seen as standards of behaviour that are considered "right", and are a standard by which behaviour can be considered and judged.

The term "legal norm" is widely understood to refer to those norms embodied in formal documents such as written constitutions or legal codes in what is known as International Law. Legal norms are therefore often institutionalised and can be seen as instruments for the joint pursuit of shared purposes by states. The concept of a norm however is not clarified by its use in International Law since the discipline of law also makes a sharp distinction between the domestic and the international. In the theory of law there are two broad schools of thought about the nature of law, and therefore of norms. On the one hand, there are those, especially within the Anglo-American legal tradition, who see all law as positive, as direct commands from someone or something to enforce them. This school clearly differentiates between law and morality. They also deny the status of "law" to non-enforceable rules, such as norms making up the body of conventions and expectations known as "International" law. On the other hand, there is the "Natural Law" school which sees law as somehow representing binding obligations arising from a prior moral sphere, to which the actual positive laws merely give effect (or ought to). Therefore, norms play a significant role. Until quite recently the "positive law" tradition was dominant in American and English legal thinking and most common amongst practitioners of law, if not theorists, everywhere, but this position is increasingly challenged, especially by writers in the new liberal tradition following philosophers such as John Rawls, whose influence will be discussed later.

Kratochwil, in writing about the role of norms in international life refers a great deal to concepts from international law. In talking about the concept of "rights", used

by Krasner to define norms, along with the idea of "obligations", Kratochwil makes a distinction between rights as "it is right that" and "having rights". As Kratochwil argues in his book, international law has been clearly divorced from conceptions of morality. In writing about the wars of religion he states,

"After all, it was no accident that a legal conceptualization of international relations attained importance when attempts to use "the right way of life" as an organizing principle of political life had to be abandoned".²⁷

Norms as morals can be seen to have been replaced by norms as rules in modern political thinking.

In sociology the general reference to "cultural norms" or "social norms", as the general conceptions about right and wrong ways of behaving in political life shade off into "technical or cognitive norms" (how to boil an egg, the most effective way to manufacture a car) to "moral" norms (Thou shalt not kill). Between these, as Williams points out, come others such as "conventional" norms ("custom", "etiquette", etc.) and aesthetic norms (standards of taste, beauty, etc.)²⁸, adding a further element to our understanding of the concept. As Williams states, norms always carry some prescriptive or proscriptive quality, although there is an enormous variation in the kind of normative emphasis. He cites as examples the difference between the conformity accompanying fashions and the most deeply ingrained taboos.

As emphasised by the first chapter in this work, analysis of regime norms can draw on all three disciplines as described above and further emphasise the connections between these various artificially separated areas. Writers on regimes however have, for the most part, avoided exploring the notion of "justice and fairness", as emphasised by normative theory. More attention could be paid to this, as the current interests within International Relations theory demonstrate. The concept of values, evoking as they do domestic social, cultural and political factors necessitates some accounting for concepts of fairness and equity since values are closely related to distinct domestic histories and cultures. From the legal tradition, we can see that international regimes

also involve the idea of commonly accepted behaviour in order to reach shared goals, or to use Terry Nardin's phrase of "purposive associations".²⁹ The 1990 Keohane definition of a regime, already mentioned, stresses the explicit, persistent and connected sets of rules rather than implicit rules or norms. In so doing, regime theory and international law are brought very closely together. Kratochwil has emphasised what he sees as the neglect of the legal bases of the regime concept, among those from an international politics perspective.³⁰ For regimes there is overlap between these different uses. Many international conventions provide the framework of legal norms under which international regimes may develop. From the discipline of sociology, we can see that norms can be understood as a commonly accepted type of behaviour outside an institutionalised context. This is an important modification to the use of the term by many regime theorists and international lawyers. Sociology also shows us that there is an enormous difference in types of norms, a point made by Kratochwil in a recent work. He stresses the importance of making "careful distinctions between norms which are clear and whose duty-imposing character is easily established and other norms such as "comity" or tacit understandings which carry no such obligations".³¹ This distinction is necessary for understanding regime norms or "norms of obligation" as will be explained later.

As the previous chapter has illustrated, the concept of regimes can be traced back to David Easton. His work can also be used to give a clearer understanding of the nature of regime norms. For Easton, normative theory means the adoption of a value as an objective and the evolution of an explanation in terms of the conditions necessary to maximize the selected value, rather than an understanding of the "good life" as in the tradition of ethical philosophy.³² The concept of a norm therefore can be seen to mean different things for different disciplines, but a widely acceptable definition of the concept comes from the sociologist Robin Williams. Norms are described as "rules of conduct; they specify what should and should not be done by various kinds of social actors in various kinds of situations".³³

These "norms of obligation" are described by the sociologist Edna Ullmann-Margalit as a "sub-class" of "social norm".³⁴ Ullmann-Margalit describes a "social

norm" as a "prescribed guide for conduct or action which is generally complied with by the members of a society".³⁵ This broad definition, which emphasises the idea of collective consensus, is then refined by focusing on a sub-class of social norms. For this purpose she utilises H L A Hart's, *The Concept of Law*³⁶. In his work, Hart describes "social norms" as "rules of obligation". In order to maintain uniform terminology, Ullmann-Margalit substitutes norms for rules in utilising Hart's description. This sub-class of norms is characterized as follows:

1. "[Norms] are conceived and spoken of as imposing obligations when the general demand for conformity is insistent and the social pressure brought to bear upon those who deviate or threaten to deviate is great.
2. "The [norms] supported by [a] serious pressure are thought important because they are believed to be necessary to the maintenance of social life or some highly prized feature of it".
3. "It is generally recognized that the conduct required by these [norms] may, while benefitting others, conflict with what the person who owes the duty may wish to do".³⁷

These features however are not intended to provide the necessary conditions for norms of obligation. As Ullmann-Margalit writes, "examples can be found of norms of obligation to which one, or more, of these features does not apply."³⁸

It is the third characteristic which highlights the fact that actors do not necessarily act in their own interests, contrary to Realist understanding of regime creation and change. The first characteristic, concerned with the process of "socialisation", shows that power as force cannot adequately explain actor behaviour. United Kingdom drug control policy emphasises the importance of norms for actors' decision-making, "In all instances, UK drug law has been strengthened to comply with international treaty obligations rather than to combat British drug problems"³⁹

This diversity over the concept of "norm" in normative theory, international law and sociology is significant when we consider the question of what impact norms have:

that is whether they do change the behaviour of actors, as suggested by the features above. Whether actions are guided solely by self-interest or whether values and/or morality also play a part is a central question for political philosophy. It also must be a central question for regime theorists, as highlighted by the use of the term "norm" in the Krasner definition.

The role of norms

There are several contending schools of thought on the role of norms in international affairs which can be broadly viewed in relation to the inter-paradigm debate in International Relations: that is the debate between Realism and Globalism as explained in this work. These approaches in turn relate clearly to the philosophical debate which underpins much of International Relations, as to whether the "rules of conduct" described above by Robin Williams, are derived from the interests of the actors or have an independent influence and constrain such interests. The former position was espoused by the nineteenth-century philosopher Jeremy Bentham who considered moral truths "nonsense on stilts", while the latter was adopted by John Locke in the seventeenth century and this century by John Rawls. The contending schools of thought are reflected in the debate amongst regime theorists over why states obey rules of a regime that are usually unenforced and mostly unenforceable: that is explanations of power, coercion, egoistic self-interest and reciprocal benefits contrasted with the role of values, morality, and a sense of justice.

The dominant approach to International Relations, Realism, has traditionally been seen as exemplified by the work of Thomas Hobbes writing more than three-hundred years ago. His philosophy on the nature of life as a struggle for power in an anarchic world underlines much Realist thought. Hobbes argued that before governments existed, the state of nature was dominated by the problem of selfish individuals who competed on such ruthless terms that life was "solitary, poor, nasty, brutish, and short".⁴⁰ In his view, states could not function without a central authority, and consequently a strong government (a Leviathan/Hegemon) was necessary. All the people commit themselves to transfer authority to the sovereign by

a "social contract" or covenant and in so doing the sovereign becomes possessed of unlimited right of sanction. His word is then the law and therefore there is no higher moral authority. This philosophy makes the assumption that international life is almost norm-free. States are condemned to anarchy and the constant threat of war: there is no escape from the struggle for power.

A variation on this theme acknowledges the existence of norms, but argues that they are the servants and not the masters, of national interest. For Realists such as E H Carr, norms are merely "the unconscious reflections of national policy based on a particular interpretation of national interests at a particular time".⁴¹ There can be no norms, guaranteeing stability and order. David Hume's description of the emergence of convention and co-operation within domestic society illustrates this:

"I observe, that it will be for my interest to leave another in possession of his goods, provided he will act in the same manner with regard to me. He is sensible of a like interest in the regulation of his conduct. When this common sense of interest is mutually expressed, and is known to both, it produces a suitable resolution and behaviour. And this may properly enough be called a convention or agreement betwixt us.....repeated experience of the inconvenience of transgressing [the convention]..assures us still more that the sense of interest has become common to all....and gives us confidence of the future regularity of their conduct; and it is only on the expectation of this that our moderation and abstinence are founded".⁴²

A modification of this approach views norm compliance, not in terms of hegemonic power, but in terms of the long-term, calculations of actors interests. This approach, developed by the philosopher Jeremy Bentham, from the work of Hobbes and Hume, has been termed utilitarianism.⁴³ Bentham's work covered many areas, but his utilitarian position was most fully developed in his political theory and moral philosophy. His general argument was that pleasure and pain were the two driving forces of mankind and that moral or political values had to be translated into these terms. Treating man as selfish, Bentham argued that the only way to judge any policy, choice or decision was to discover whether it produced a positive or negative balance of pleasure over pain. Whatever maximises the positive balance of pleasure over pain across a group or for a single individual, if only one person is concerned, is what is

"good" and therefore "right". There have of course been many adjustments and refinements to this basic approach. One problem has been that what tends to maximise the interests or happiness of a single individual might, were everyone to act in the same way, be disastrous as a public policy. Therefore there has come about a distinction between "Rule" versus "Act" utilitarianism. An act-utilitarian requires that each individual ensures that his every act maximises his own utility, whereas a rule-utilitarian requires that laws and regulations be decided so that, on balance, the rule maximises the sum of individual utilities, even though in particular cases individuals would not, as selfish utility maximisers, choose to act as the rule requires. Utilitarianism is a further move away from relying on any source of moral authority or "natural law" appealing instead to rational self-interest.

An alternative approach to norms, and a challenge to the utilitarianism of Bentham, has been the functionalist school in sociology from Durkheim to Parsons which contrasts with the above approaches in seeing norms as "givens" in any social system, including the international system, and stresses the *consensus-generating and order-maintaining* functions of norms - a direct challenge to the Hobbesian/Realist anarchic world. As Talcott Parsons writes,

"In most current sociological theory, order is conceived as the existence of normative control over a range of the action of acting units, whether these be individuals or collectives, so that, on the one hand, their action is kept within limits which are compatible with at least the minimum stability of the system as a whole and, on the other hand, there is a basis for at least certain types of concerted action when the occasion requires."⁴⁴

Durkheim contrasts with both Hobbes and Hume, in conceptualizing norms and rules as "social facts" existing objectively and constraining individual choices. In other words, as Durkheim and Parsons and others have argued, it is norms, rather than "social contracts" which should be postulated as primitives in explaining how international co-operation comes about.⁴⁵ According to Durkheim and Parsons, interaction presupposes convergent expectations based on some sort of common value orientation. The increase in interactions under conditions of interdependence also

fosters the convergence of value orientations which allows for further institutionalisation of co-operation. This is in contrast to the "rationalist approach" of Bentham. Interactions do not presuppose, yet create a demand for normative institutions which can reduce the probability of undesirable outcomes.⁴⁶

This view influenced the philosophy of John Rawls. His major book, *A Theory of Justice*, published at the beginning of the 1970s, was a major attack on the prevailing utilitarian theories of political obligation and social order, and attempted to revivify the "social contract" approach to political theory⁴⁷. The essential points of Rawls' work are two-fold. He argued for the re-establishment of some form of "natural rights" so that there would be some values to be held as absolute, principally the right to liberty and developed the "justice as fairness" argument in challenge to the cost-accounting approach of the utilitarians.

Rawls developed his ideas from the political theory of John Locke, who was the contemporary of Hobbes, whose work he opposed. Despite the work of Locke, there has been very little opposition to the idea of utilitarianism since its inception (dominating western political parties and governments, most economic theory, policy analysis and until recently law and jurisprudence). Only in the nineteen seventies did political theorists of a non-Marxist kind even begin to develop non-utilitarian general political philosophies, so total was the hold of the Benthamite tradition over Western intellectuals.

The role of norms in decision-making for the Realist present no problem since his or her conception of the world is state-centric and power political. The Hobbesian/Realist decision-maker acts in a rational self-interested manner. Given that society is composed of extremely self-interested individuals, co-operation is based on the concept of social covenant. As Hobbes writes, individuals are driven to covenant/contract with each other by the dominant element of fear common to them all. However, for the Globalist, understanding decision-making is more complex. Rosenau's work, already referred to, has gone some way in showing just how complex.

Kratochwil challenges the Hobbesian/Realist notion of rationality outlined above. As Kratochwil states, the problem with the modified structuralist (or Utilitarian) approach is that norms are conceived "largely in instrumental terms" and as such the approach does not take into account the other important functions served by norms. Norms define social settings within which actors operate: they "simplify choices and impart "rationality" to situations by delineating the factors that a decision-maker has to take into account".⁴⁸ The "rational" choice of the modified structuralist actor, is possible only after the actor has interpreted the situation, and as Kratochwil states, the interpretations themselves are "largely governed by the actor's attitudes, which in turn are informed by general social "values"". ⁴⁹ Kratochwil illustrates this with the Prisoner's Dilemma game. The dilemma of whether to give evidence against the other prisoner is caused by the attitude of the two players towards each other, derived from a lack of trust. As Kratochwil states, where mutual trust exists it would be "rational" to co-operate, and "irrational" to defect.⁵⁰ Therefore, values can be seen as establishing a "general medium which makes co-ordination of choices and co-operation possible."⁵¹

As has been suggested, the different approaches to norms amongst International Relations theorists have been influenced by different philosophical traditions. Hobbes's, Hume's, and Durkheim's theories of norms have been shown to be roughly identifiable with the Realist, modified Realist (or Utilitarian) and Globalist positions respectively. The domination of the Realist and Utilitarian approaches have limited the use of norms to explain international co-operation in the form of international regimes. One of the reasons for this limitation is due to the concept of a norm being firmly established in domestic politics. It is not investigated thoroughly in an international setting due to the separation of the domestic and the international by Realist writers. The understanding of the role of norms in regime theory has in the main been associated with international law by regime theorists, and therefore concern with both the nature of norms and with their role has been limited. Regime norms however evoke both custom and law in understanding the nature of international regimes. The concept of a "norm" encompasses both rule-like characteristics, and standards of behaviour appropriate to a particular role or situation, elaborated or codified in accordance with the value-

system of international society. In this sense it is possible to imagine that there are thousands and thousands of norms in international affairs, rather than the absence of norms claimed by the Realists. Furthermore, these norms can be seen to affect the behaviour of actors in decision-making.

The norms of drug control

If we take on board the complexity of the concept of norms as illustrated above we can see that,

"Norms do not as a rule come into existence at a definitive point in time, nor are they the result of a manageable number of identifiable acts. They are, rather, the resultant of complex patterns of behaviour of a large number of people over a protracted period of time."⁵²

Such a description does not suggest that straightforward utilitarian calculations of interest can explain the existence of norms. Their emergence requires the utilisation of the concept of salience as described in this research. This concept of salience has been utilized in contrast to the Realist hegemonic-power theory of agenda-building. When actors in an issue-system reach consensus over values, they will try to realise those values by the creation of a norm.

As we have seen, norms can be seen to contain two ideas, the specification of a more general value and the formation of consensus. I will now proceed to identify the norms in the politics of drugs. Why I have chosen the particular norms is due to the high-level of consensus within the international system, over the last ten years, and the salience to many political actors of the values under threat. The following propositions now would appear to have the status of being global norms.

1. Private associations should not seek to prevent governments from exercising their authority, or to seek to exercise the authority of legitimate governments.
2. Activities should not be engaged in which lead to the corruption of the due process of government whether by financial inducements or threats.

3. Activities should not be engaged in which would damage the emotional, mental or physical growth of a minor.
4. Banks should not profit from criminal finance.

The norm that "Private associations should not seek to prevent governments from exercising their authority, or seek to exercise the authority of legitimate governments" can be seen to have emerged due to the alliance of terrorist and insurgency movements with drug production. The adverse effects of the drug phenomenon on political and economic dimensions of domestic and international security in an increasing number of countries throughout the eighties has been explained in Chapter Two. Colombia in particular throughout the eighties experienced "narco-terrorism", with an open war declared by the Medellin cartel. The huge increase in organized crime of a non-drug-related nature such as illicit arms trading, the trafficking in transplant organs, insurance fraud etc, by groups such as the Cosa Nostra, Triads, Yakusa, Yardies and others, is seen as constituting a grave threat to public security, the rule of law and other fundamental social, economic and political institutions by nearly every country. The evolution of organized crime can be regarded as a process of rational reorganisation on an international basis of criminal "enterprises", following the same patterns as legal enterprises. As the United Nations report on Crime Prevention and Criminal Justice states,

"This "transnationalization" of organised crime represents a situation that is both quantitatively and qualitatively different from that which prevailed in the past and which, needless to say, complicates the implementation of effective prevention and control measures."⁵³

The break-up of the former Soviet Union and the downfall of one-party regimes in Central and Eastern Europe has opened up extensive possibilities to both domestic and "imported" organized crime threatening the still frail political institutions. Concern was reflected in the recent International Seminar on Organised Crime, held in Moscow in October 1991.⁵⁴

Throughout the eighties there have been increasing examples of how the vast

profits to be made from organized crime have corrupted the governments, military and judiciary of various states throughout the world. This has led to the acceptance of the norm that "Activities should not be engaged in which lead to the corruption of the due process of government whether by financial inducements or threats". The interface with political power is an integral part of the phenomenon of organised crime. Preventing corruption has therefore increased in importance in recent years. The assassinations of Judges Giovanni Falcone and Paulo Borsellino in Italy and numerous other senior law-enforcement figures around the world, committed to uncovering corruption, serve as an illustration of organized crimes's influence and perseverance. The expansion of transnational and organized crime outlined above, has led to the concern being placed higher up the political agenda. Resolution seven of the Eighth United Nations Congress on Crime Prevention and Treatment of Offenders⁵⁵ entitled "corruption in government" recommended that Member States devise a variety of administrative and regulatory mechanisms to prevent corrupt practises involving the abuse of power.

The Mafia, as important actors in all areas of drug-related activity, obviously do not support the first and second norms. However the third norm is universally accepted by all actors for whom the questions involved in drug-related activity are salient, that children and youth should not have access to potentially harmful psychoactive substances. Unlike the attitude towards adults, the sale of all such substances to children is prohibited by law, including the sale of alcohol and tobacco, in most Western industrialised countries while their use is prohibited by social norm in most countries.

The recognition of the importance of protecting the young in this manner is a relatively recent phenomenon. The assertion of John Ruskin in 1851 that it was "indisputable" that the first duty of a state was to ensure the well-being of every child "til it attain years of discetion"⁵⁶ went against nineteenth-century reality. However by the end of the century, as Jordan notes, "a powerless minority, exploited and then cast aside, came to enjoy schooling and the protection of effective, enforced legislation by the end of the century".⁵⁷ The protection of children's welfare was soon to be extended to include protection from potential harm arising from their own choices and

actions. Beatrice and Sydney Webb point to the law passed in England at the end of the nineteenth century prohibiting the sale of liquor to children for consumption on the premises as representing "an entirely new departure".⁵⁸ In America too, the restrictions of "youthful drinking" was not seen as a problem for much of the nineteenth century and the intervention of the state was seen as a major break with the past.

The oft-quoted statement of justification for this action comes from John Stuart Mill's *On Liberty*, as quoted in Chapter One. Although Mill said "over himself, over his own body and mind, the individual is sovereign", he qualified this doctrine by adding,

"It is perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood. Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as external injury".⁵⁹

As Chapter Three argued, pressure to legislate over drug use in the nineteenth century came from various sources including concern over widespread opiate use among the working classes. In particular, the public was outraged by a spate of infant deaths from overdoses of preparations of opium-soothing syrups, commonly administered to infants.⁶⁰

Throughout the first half of the twentieth century the question of child drug-use was of minimal concern. Drug users were seen as a criminal and sick minority of foreign elements, hoods and hookers. Then in the nineteen sixties, it seemed that an entire generation of white, well-educated youth were smoking marijuana, "turning on, tuning in and dropping out". With the sixties came a new era of "recreational drug use" and drug users were viewed as challenging the values of society. Similarly, during the eighties and early nineties the increase in drug use for recreational purposes among increasingly younger groups has led to fears over law and order, strengthening the norm that activities should not be engaged in which would damage the emotional,

mental or physical growth of a minor.⁶¹

Consensus over child drug-use evokes different values from the question of adult drug use. The norm that activities should not be engaged in which would damage the emotional, mental or physical growth of a minor has emerged because there is a high-level of consensus over the values that the actors share. On the other hand, there is no consensus on adult drug-use. There is no agreement, within most societies, on whether adults should be free to take drugs or not.

Actors for whom the issue of adult drug use is salient disagree on the values under contention. Some believe that adults should be free to choose which drugs they do or do not take, in line with the nineteenth-century liberalism of John Stuart Mill, described in Chapter One. A recent Colombian Supreme Court decision, to decriminalise the personal use of small amounts, found that it was unconstitutional to violate a person's freedom to decide whether to use drugs.⁶² Supporters of the legalisation of cannabis argue that the drug is not harmful, despite the claims of those that advocate its continued criminalisation, and indeed emphasise the medical benefits that legalisation of the drug would bring (see Chapter One). Supporters also emphasise that the continued criminalisation of cannabis is putting undue pressure on the forces of law and order. They also claim that the criminalisation of cannabis along with other substances such as cocaine, crack and heroin makes a mockery of law enforcement, due to its inability to control the problem, and is therefore creating a challenge to the status of enforcement authorities. There is also the view that the knowledge surrounding the dangers of certain substances is unreliable (see Chapters One and Three). There is no consensus on adult drug use amongst users, policy-makers and traffickers. The conflicting values can be seen to form an issue-system of actors for whom the issue of adult drug-use is salient, but no norm and therefore no regime is possible.

Because there was no consensus on the use of drugs by adults, there was no widespread direct support, until the 1980's, for an international norm that "trade in drugs should be stopped". It is only since drug gangs have challenged government

authority and corrupted government processes, that support for a ban on trafficking has grown. However, as we will see in examination of the debate on the legalisation of drugs, in the last chapter, a ban on trafficking is not the only way of promoting this norm.

Of the four norms it is the one concerned with the tracing, freezing and confiscation of traffickers assets that can be seen most clearly to be regulated by an international regime, as the next chapter will demonstrate. The norm that banks should not profit from criminal finance concerns the problem of money laundering of traffickers illicit funds. The norm has emerged since the increase in drug trafficking with the subsequent flourishing of organised criminal networks, explained earlier in this work, has made the issue salient to many actors who previously were not active in the area. The anti-laundering norm has gained support from many actors, for example the Swiss government, who were important for achieving results. Contested values, regarding banking secrecy and the need for banking regulation not to interfere with criminal investigations in the context of international co-operation, have led to the acceptance of the norm that banks should not profit from illicit funds. The next chapter will look at the emergence of a money-laundering control regime.

Conclusion

The answer to the question of regime significance, raised at the beginning of this chapter, depends on the behavioural assumptions that underlie the different theoretical models of International Relations. Commitment to one or other understanding of the nature and role of norms in international affairs clearly illustrates this. Despite the fact that what can be seen to distinguish regimes from other international phenomenon is their specifically normative element, the nature and role of norms have been glossed over by most writers in the field. This is so even though the consensus-definition of an international regime by Stephen Krasner emphasises the importance of norms, along with principles, as the defining characteristics of any regime. This writer believes that the Krasner definition forces us to consider norms and decision-making procedures in world politics.

The different approaches to norms among International Relations theorists have been influenced by different philosophical traditions. The dominance of the Realist rational-actor approach, stated by Krasner in his volume as regarded by the majority of writers as the most important determinant of regimes, has limited the use of norms to explain international co-operation and the creation of international regimes. Norm emergence has been explained in terms of the power of actors writing the rules in their own interests. This chapter however emphasises the role of values in norm emergence. Norms can be seen to evolve within a framework defined and legitimated by the value system of a group. By looking at values and norms our attention is drawn to the importance of understanding the aspect of norms as the setting of standards, in terms of the "right" and the "good" of current normative theory which is lacking in current understanding of regime theory. But for this study on international drug control, perhaps more importantly, norms draw our attention to the study of how standards are set.

Regime theory to date has concerned itself with asking "Why and how regimes come about and vanish?" rather than "Why and how they ought to come about in the service of a normative principle of world order".⁶³ As Susan Strange says, Krasner's common question is about order - how in an international system of territorial states claiming sovereignty within their respective territories can order be achieved and maintained (a Hobbesian view) rather than a concern with justice or efficiency, nor legitimacy, nor any other moral value.⁶⁴ Strange argues that we need to answer the question "How to achieve change?", which she sees as no less important than "How to keep order?". This work has shown that in order to understand change we need to understand values and norms, but our understanding of the role of values and norms must not be restricted by notions of morality on the one hand, and power politics on the other.

Norms can be seen to evolve within a framework defined and legitimated by the value system of a group. As Kim writes, "The common political science definition of politics as described as the authoritative allocation of values indicates that societies' value system guides what social roles and functions are to be legitimated by what kind

of norms."⁶⁵ In this way we can see international politics as a "value-realizing, norm-setting process".⁶⁶ Norms are real and do influence behaviour and outcomes. Furthermore, a focus on regime norms emphasises the increasingly fragmented, issue-specific character of world politics in the nineteen-nineties.

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Chapter 6

The International Money-Laundering Control Regime

Introduction

Money laundering is not a new phenomenon. Techniques have always been used to dispose of the proceeds of a variety of criminal offences that involve payments for contraband goods (such as during Prohibition). Historically, a variety of banking and money-laundering services outside normal banking channels have been available for the "washing" of money from illicit activities. However, the dramatic increase in drug use in the early eighties substantially increased money-laundering activity and brought about increased international interest and concern. Interest was first awakened to the problem of drug-money laundering in 1979 with the opening up of a suitcase containing 600,000 dollars at Palermo airport leading to the Italian-American "Pizza Connection" case that came to trial in 1985. An estimated 1.6 billion dollars of illicit profits from five heroin refining laboratories in Sicily was laundered through Mafia-run pizzerias in New York, passing through Canada and the Caribbean to Switzerland and Italy, and ending up in banks in Hong Kong, Singapore and Bangkok. The trial exposed the huge amounts of money involved as well as demonstrating the transnationalisation of the phenomenon. As an issue, money laundering is truly international.

The increased integration of financial markets and the removal of barriers to the free movement of capital during the eighties has led to increased activity in the world economy, enhanced the ease with which criminal money can be laundered, and complicated the tracing process. As McClean has pointed out: "The facility with which assets, particularly in the form of financial credits of some sort, can be passed across national boundaries means that an order enforceable only in the country of origin may be of limited value."¹ The need for enhanced international co-operation in this area was thus evident to the actors for whom the issue was salient. Domestic and transnational law-enforcement strategies have increasingly emphasised the need to focus on the financial aspects of the drug trade with the object of more effectively disrupting the major trafficking networks. As Nadelmann has pointed out, a number of rationales support the view that "going after the money" is the best way to tackle drug trafficking:

"The most basic of these is that insofar as criminals...act as they do for the money, the best deterrent and punishment is to confiscate their incentive. A second rationale is that, while the higher level and more powerful criminals rarely come into contact with illicit goods, such as drugs, from which they derive their profits, they do come into contact with the proceeds from the sale of goods. That contact often provides a "paper trail" or other evidence, which constitutes the only connection with a violation of the law. A third rationale is that confiscating the proceeds of criminal activities is a good way to make law enforcement pay for itself".²

Various international conferences such as the United Nations Conference for the Adoption of a Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances at Vienna in December 1988,³ the 1990 World Ministerial Summit to Reduce Demand for Drugs and to Combat the Cocaine Threat,⁴ the 9th Non-Aligned summit, Belgrade, 1989⁵, the Commonwealth Heads of Government Meetings, held in Kuala Lumpur, October 1989⁶, and Harare, October 1991⁷, and the Second Interregional Meeting of Heads of National Law Enforcement Agencies convened in Vienna in September, 1989⁸, all emphasised growing awareness of the vast profits generated by this form of criminal activity and the need for international co-operation.

The accumulation of illicit profits can be seen as perhaps the most politically and economically destabilising element of the international drugs trade: it gives traffickers the means to buy arms, property, companies, political power, and protection. Estimates of the size of the drug trade vary enormously from \$76 - \$800 billion.⁹ Illegal drugs have been estimated to have overtaken oil as a source of revenue globally and to be, after armaments, the second biggest trading commodity according to the Director-General of the United Nations Office in Vienna.¹⁰ Profits from drugs are huge - so much so that a relatively small group of criminals were estimated to have a bigger turnover than the income of 150 of the world's 170 countries in 1989.¹¹ Some individuals are even believed to have a personal worth that exceeds their country's national debt.¹² Profits from drug trafficking erode and distort the legal economies of public institutions and entire societies. Furthermore, the free circulation of untaxed funds can be seen to distort freedom of competition and undermine

legitimate business.

In this sense, drug-money laundering has created problems in the financial world. Drug traffickers seek out countries and territories with weak central banks, restrictive bank secrecy practices and limited controls on foreign exchange. Experience indicates that even when jurisdictions have enacted laws to control money laundering, such laws are likely to be ineffective unless bank, corporate and official secrecy requirements are relaxed. Financial institutions have been reluctant to do this in the past. However, the salience of the money-laundering issue has increased in importance for all actors involved during the last decade due to the recognition of the negative impact that such vast flows of "dirty money" can have on the financial sector. As the Basle Committee on Banking Regulations and Supervisory Practices stated in December 1988:

"Public confidence in banks, and hence their stability, can be undermined by adverse publicity as a result of inadvertent association by banks with criminals. In addition, banks may lay themselves open to direct losses from fraud, either through negligence in screening undesirable customers or where the integrity of their own officers has been undermined through association with criminals."¹³

The salience of the money-laundering issue as it has emerged in the last decade arises from the amount of money being laundered due to the increase in drug trafficking. The international politics of the issue becomes complicated as the forum for debate at various times involves the Basle Committee, the United Nations, the Council of Europe, the European Community, the Group of Seven industrialised countries and a Financial Action Task Force. This chapter will look at the changing attitudes towards money laundering among actors for whom the issue is salient and the emergence of the norm that "Banks should not profit from illicit funds". The fact that this norm is adhered to by the actors for whom the issue is salient (except the drug barons) has led to the emergence of an international regime to regulate the issue.

The money-laundering issue

"Money laundering" is a widely used term that is difficult to define concisely. The term itself is reputed to have originated from the nineteen twenties, when Al Capone and Bugsy Moran literally opened up laundry companies in Chicago in order to disguise their illicit earnings. The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, discussed in the previous chapter, limits the definition of money laundering solely to drug related offences, unlike the later European Economic Community Directive (see Appendix H). The Directive defines it as:

"the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such activity to evade the legal consequences of his actions; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity; the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity".¹⁴

Any attempt to counsel, facilitate or assist the commission of such actions is also an offence. The Article concludes by stating that money laundering is to be considered as such even when the activities which generated the property to be laundered were perpetrated in the territory of another Member State or third country. This somewhat long-winded description reflects the long-winded process of money laundering which makes it difficult to control. As the International Narcotics Control Strategy Report of 1988 stated: "The techniques of money laundering are innumerable, diverse, complex, subtle and secret."¹⁵ The broadening of the definition of money laundering to include all criminal funds and not simply drug money is a significant change in attitude among financial actors, the importance of which will be explained later.

Cash lends anonymity to many forms of criminal activity and is the normal

medium of exchange in drug trafficking. This gives rise to three common factors:

- drug dealers need to *conceal* the true ownership and origin of the money
- they need to *control* the money
- they need to *change* the form of the money

Money laundering can therefore be summarised as "the *conversion* of illicit cash to another asset, the *concealment* of the true source or ownership of the illegally acquired proceeds, and the *creation* of the perception of legitimacy of source and ownership".¹⁶

There are three stages of money laundering during which there may be numerous transactions made by money launderers that could alert a financial business to criminal activity -

- Placement* - the physical disposal of cash proceeds derived from illegal activity.
- Layering* - separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity.
- Integration* - the provision of apparent legitimacy to criminally derived wealth. If the layering process has succeeded, integration schemes place the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing to be normal business funds. The following diagram illustrates the laundering stages in more detail. (See Figure 6)

The scale of the problem

As has been already stated, illicit drug traffic has been estimated as generating an annual income of between \$76 and \$800 billion. The Financial Action Task Force (FATF), created on the recommendation of the seven major industrialised nations at the July 1989 Paris Economic Summit,¹⁷ estimated the sales of cocaine, heroin and cannabis to be approximately \$122 billions per year in the United States and Europe. The Group estimated that as much as \$85 billion per year could be available for laundering and investment.¹⁸ Profit margins in drug trafficking are huge, and all the

more so because profits are untaxed. In 1993, a single gramme of heroin cost the British National Health Service £5.86, which has been estimated as about 3% of the

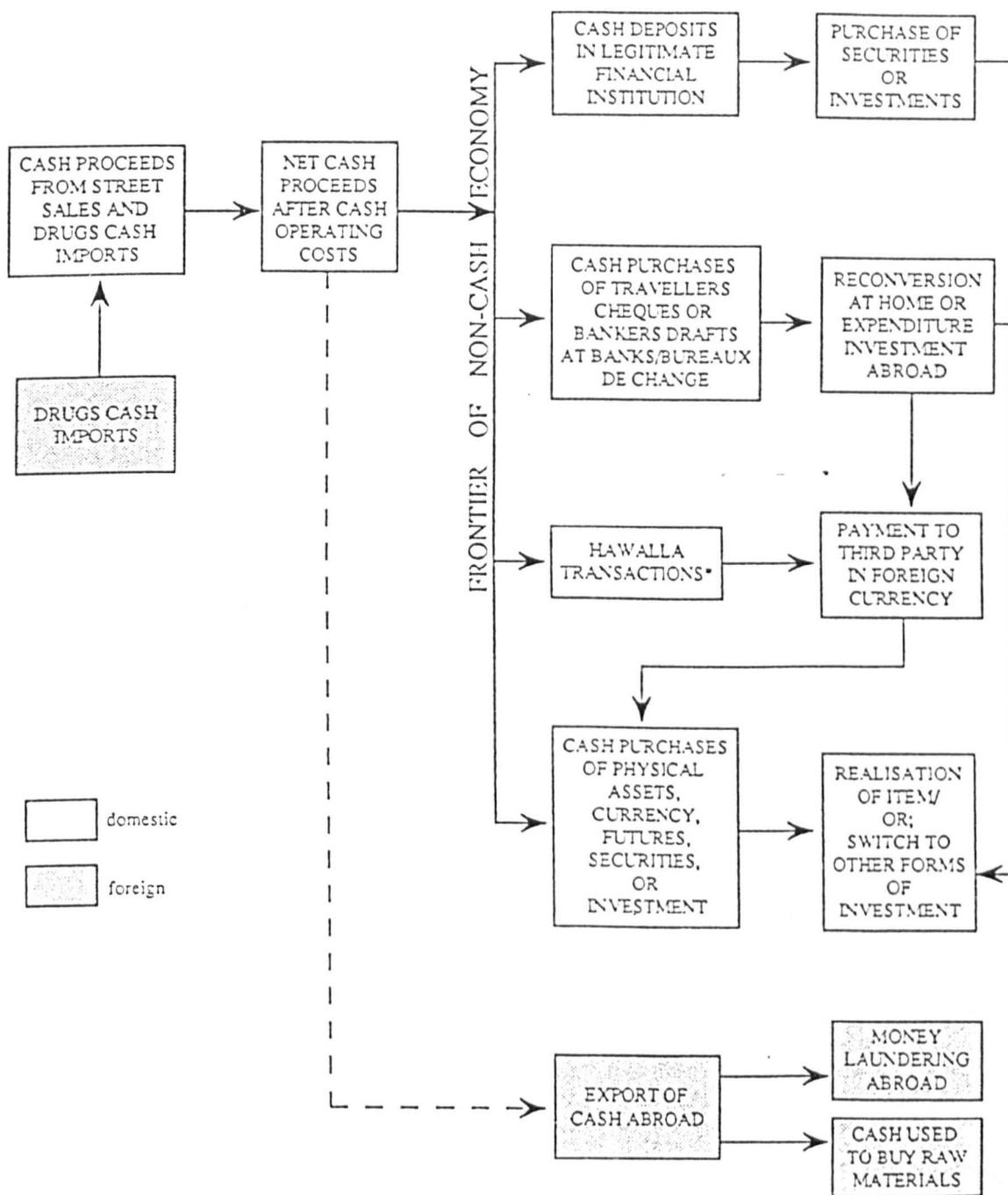


FIGURE 6 The laundering of drug proceeds.

price on the illicit market.¹⁹ Some studies claim that the street prices of drugs such as heroin and cocaine are 60-100 times higher than licit pharmaceutical prices.²⁰ As has already been mentioned in this study, the power that drug money bestows on the major traffickers has been seen in many Latin American countries (See Chapter Two).

The reason why it is difficult to estimate with any accuracy the amount of drug money being laundered was explored by the Financial Action Task Force. Their report points to the fact that the financial flows arising from drug trafficking might be estimated directly or indirectly. A direct estimation would involve the measuring of these flows from the international banking statistics and capital account statistics for the balance of payments. This would involve an analysis of errors and omissions and other discrepancies. The Task Force concluded however that this method was not viable. Although deposits covered by international banking statistics may include a substantial amount of drug money, this aspect cannot be singled out and was believed to account for only a small percentage of the totals. Instead, three indirect methods of estimation were used to assess the scale of financial flows arising from drug traffic: estimations of world drug production; consumption needs of drug users; and seizures of illicit drugs. All these methods have their weaknesses. Using the first method, estimated drug trafficking proceeds worldwide were put at \$300 billion in 1987 by the United Nations.²¹ But the figure remains very uncertain. The second method also has a fundamental flaw. The consumption needs of drug abusers obtained through surveys, is frequently of doubtful reliability since the activity is illegal: sample populations surveyed for example in homes or schools may miss a significant proportion of drug users. The final estimate projects the total amounts of drugs available for sale by the application of a multiplier to recorded seizures, which is estimated on the basis of a law-enforcement seizure rate. This varies between 5% and 20% according to the type of drug considered, and which, on a weighted average, could be approximately 10%. This approach, too, raises significant methodological problems as the Task Force Report points out.

Washing the money

As has already been emphasised in this work, the numerous methods drug traffickers use to transport drugs is a significant problem for enforcement authorities. Similarly, it is impossible to detail, and difficult for enforcement authorities to anticipate, the entire range of methods used to launder money. However, all the methods outlined share some common factors, regarding the role of cash domestically, of various kinds of financial institutions, of international cash transfers, and of corporate techniques.

The form of money generated through drug trafficking needs to be changed in order to shrink the huge volumes of cash generated. Because of the huge sums involved, often largely in small denomination notes, the physical volume of notes received from street dealing in heroin and cocaine has been estimated at being much larger than the volume of the drugs themselves.²² This accounts for the view that the proceeds from drugs should be more detectable than the drugs themselves. These large amounts of cash present drug traffickers with major difficulties. The complications involved with dealing with such large amounts of cash is illustrated by the example of drug traffickers in Colombia reportedly having to regularly dig up plastic-covered bundles of cash hidden in the Colombian jungle and dry it with battery-powered hairdriers before the money disintegrates in the humidity. The money is buried again to await its injection at some future date into the international banking system.²³ The transporting of suitcases full of money, so fundamental to the money-launderers activities in the past, have been replaced by other techniques as regulators in various countries have tried to control the problem by specifying an upper limit for a single cash transaction, leading to the use of "smurfs" by launderers (see later) and more sophisticated techniques as the volume of money involved has become too great to handle.

Banks and other deposit-taking financial institutions are the main transmitters of money internationally. The stage of depositing money in institutions (placement) is therefore obviously a key one for money launderers. Deposits have to be disguised to avoid the currency reporting systems in many countries, or laws that allow or require

the reporting of suspicious transactions. In countries where there is cash transaction reporting, deposits have to be broken down into sizes which are lower than the threshold for that reporting ("smurfing") in order to escape attention. However, as the sums of money became larger and larger, this method proved too cumbersome for some of the larger operations and new methods to launder their illicit funds have been utilised.

One method utilised by money launderers has been the depositing of funds in the name of a company whose beneficial owners do not have to be disclosed in the country in which it is headquartered. In some countries, bank accounts were opened in the name of trustees, and the beneficiaries under the trust kept secret. Deposits could also be made by the legal profession in the name of clients for whom the rules of attorney confidentiality may apply.

Another method often utilised by launderers is currency exchange. It is easier for the launderer if the cash in which he operates can be directly accepted abroad as a means of exchange. The US dollar is acceptable as a means of exchange in large amounts in many parts of the world. Federal Reserve Board staff estimated that adult residents in the United States held only 11-12 per cent of issued notes and coins in 1984. The remainder were held by legitimate and illegitimate business enterprises, residents of foreign countries, and persons less than 18 years old.²⁴

Formal financial institutions are of course not the only avenue open to launderers. Informal and largely unregulated financial institutions, which under the law are not supposed to accept deposits, can also be used. The first category of these are the Bureaux de Change. Bureaux de Change accept money in one currency and exchange it for another. Although still working in cash, a first transformation has taken place which makes it more difficult to detect the origin of the funds. The identity of the transactor is often not recorded. Increasing use of gambling/lottery facilities is another example. Large sums of small denomination notes can be exchanged for gambling chips or winning lottery tickets, then turned in for clean notes.

The informal system of "hawalla", evolved and is used perfectly legally, mainly by Indians and Pakistanis. Hawalla, which means "reference" in Urdu, is a centuries-old banking system. It relies on a system of trust between families and ethnic groups who may be thousands of miles apart. A merchant travelling overseas would take with him a letter of credit issued by a hawalla banker in his own country which would be honoured by a hawalla banker in the other country. This tradition has continued to the present day and has been used by Asian immigrants in Europe who have used it to transfer money to their families in Pakistan or India. Hawalla banking does not necessarily require a letter of credit, any agreed form of recognition in the form of a secret code or simple object, such as a half playing card or a bus ticket, can be a binding instrument of exchange for cash. Hawalla bankers are often involved in the gold bullion, gold jewellery or currency exchange business. The scale of their operations vary from families with similar businesses in several countries, to a single trader in a street corner confectionary shop. Hawalla banking has been utilised by the drug traffickers to launder their illicit funds.

Another method of laundering drug proceeds is the depositing of funds abroad in jurisdictions where the banking system is insufficiently regulated and where the establishment of "letter box" companies is permitted. These jurisdictions may include countries attempting to establish a financial services industry, since the sale of banking licenses can constitute a major source of revenue to the authorities, as well as countries known as tax-havens. Cash is integrated into the financial system of these countries and can then be returned by means of wire transfers for example. Offshore fiscal havens offer banking anonymity to the money launderer, unregulated financial transactions, and often judicial protection. The financial sanctuaries of the Caribbean in particular have been important centres for money laundering since its island archipelagos are geographically well situated for cocaine transit from South America to Europe and North America. The spectacular growth of the Cayman Islands as an offshore financial centre illustrates the problem for those attempting to stem the illicit flow of drug money:

"In 1964 the Cayman Islands had two banks and no offshore business.

By 1981 the Caymans had 360 branches of American and foreign banks, over 8,000 registered companies, and more telex machines per capita...than any other country."²⁵

But fiscal havens exist within and on the periphery of Europe too. Monaco, Andorra, Luxembourg, Liechtenstein, the Channel Islands, the Isle of Man, Malta and Ireland all offer considerable tax incentives to outside investors and opportunities to the money launderer.

Various corporate techniques can also be used to launder money. Offshore companies can be used by launderers in ways other than simply as depositories for cash. Launderers can set up or buy corporations in a tax haven for example, using a local lawyer or nominee owner with an account at a local bank. They can then finance the purchase of a similar business at home through a loan from their corporation abroad (or the bank), in effect borrowing their own money and paying it back as if it were a legitimate loan.

The technique known as "double invoicing" is another example of a corporate technique used by launderers. Goods are purchased at inflated prices by domestic companies owned by money launderers from offshore corporations which they also own. The difference between the price and the true value is then deposited offshore and paid to the offshore company and repatriated at will. For instance, researchers have found that raw cane sugar exported from Britain to America at \$1,407 a kilogramme, was 282,530 per cent higher than the average world price of 50 cents. Similarly, pine wood moulding was being shipped from England at \$828 a metre, a mark up of 176,213 per cent. Commodities fraud is not a new phenomenon. In the 1970s, Iranians sold sets of tyres for \$20,000 to get their money out of Iran when the Shah was overthrown.²⁶

As the Financial Action Task Force report states, all these techniques involve going through stages where detection is possible. Cash has either to be exported over a territorial frontier and then deposited in a foreign financial institution, or it requires the knowing or unknowing complicity of someone at home not connected with the drug

trade, or it requires convincing a domestic financial institution that a large cash deposit is legitimate. As has been discussed above, key stages for the detection of money-laundering operations are those where cash enters the domestic financial system, formally or informally, where it is sent abroad to be integrated into the financial systems of regulatory havens, and where it is repatriated in the form of transfers of legitimate appearance. Identifying these stages is quite simple, finding the money much less so and preventing the utilisation of the financial services in this way even less so. The diverse methods used to launder illicit funds has made the job of enforcement agencies very difficult. This has become worse due to the changing conditions of the financial marketplace.

The nineteen eighties saw many of the boundaries between national financial markets dissolve and a truly global capital market emerge. The "globalisation" of the world economy - expanding international trade, the growth of multinational businesses, the rise in international joint ventures and increasing interdependence through capital flows - have all led to problems for those concerned with combatting money laundering. Although the scale of this internationalisation has increased fundamentally in recent times, paralleling the expansion of multinational corporations, banking has been international almost from the very beginning of the institution, circa 1000 A.D. Bankers soon settled outside their home countries to serve clients better, to simplify funds transfers, to meet the requirements of international trade that began expanding in the thirteenth century, and to profit from differences in exchange rates.²⁷ The development of rules and norms from this period can be seen in the rules, norms and values of modern day banking.

The increased integration of financial markets and the removal of barriers to the free movement of capital that we have witnessed in the second half of the eighties and the early nineties, such as in Europe, have enhanced the ease with which criminal money can be laundered. Money-laundering channels generally involve international operations. As the Commission of the European Communities noted:

"Internationalisation of economies and financial services are

opportunities which are seized by money launderers to carry out their criminal activities, since the origin of funds can be better disguised in an international context."²⁸

This enables money launderers to use differences in national laws, regulations and enforcement practices. When funds are repatriated after laundering abroad and detected, these differences in national laws, regulations and enforcement practices seriously impair the efficiency of enquiries and law enforcement measures.

The "globalisation" of the world economy has been driven by the forces of innovation, technology and deregulation acting together, and each multiplying the effects of the other. The links between telecommunications and technology and the foreign expansion of banks have been fundamental. When foreign branches came into existence on a wide scale, a telephone call or telex message to a branch bank could often accomplish in a few minutes what might have taken at least a day through a correspondence bank. Banks have not been slow to realise the importance of technology to banking. When the first experimental telephone exchange began operation in Boston in 1877, one of the three corporate clients was a banking firm.²⁹ Since the spread of telephone systems, foreign exchange dealings have come to rely heavily on telephone commitments, backed up by exchange of written documentation later. This has meant that money can be described as rushing around the world at a furious pace, where entire cycles of borrowing and depositing can take place every fifteen minutes or so.

The rise of telecommunications networks has been accompanied by a rise in computer networks. The electronic transfer of funds, not only among banks, or between banks and corporate clients, but also between banks and the general public, have added a new dimension to money laundering.³⁰ And, just as with the establishment of the first telephone exchange, some of the larger banks are recognized leaders in information-processing technology, with research and development departments and database subsidiaries. The construction of these international computerized information-processing networks such as The Society for Worldwide Interbank Financial Telecommunications (Swift), can be seen as one of the major technological developments in banking of the past twenty years. Swift was founded in

May 1973 by 240 European, American and Canadian Banks, but became operational only in May 1977. There were by 1981 about 680 member banks in twenty-six countries, which were exchanging over 170,000 messages a day.³¹ Computerization has powered the innovations in techniques that, with rapid communication networks, make for an unstoppable combination:

"Securitization is driven by the IT revolution, and each new payments system introduces an almost new form of money as a transactions vehicle."³²

However, a disadvantage of this technology has been that launderers have been able to use the systems without giving names and addresses of recipients, making it impossible for investigators to trace the money. Traffickers have also been able to utilise this technology in avoiding some of the problems of dealing in large sums of cash, as described above.

The skill and speed with which large-scale traffickers are able to launder their profits using this new technology is a problem for judicial and law-enforcement authorities. The global nature of financial markets, the new communications and new computer technologies means that assets derived from trafficking in one country can readily be transferred to another, in contrast to the central Realist axiom of state sovereignty. New communications and new computer technologies are together, altering the dimensions of markets, the relative importance of location and the organization of firms, and destroying the barriers that hitherto have been synonymous with specific geographical co-ordinates. As Jackson states:

"The international flowing of funds information electronically has, according to some, resulted in the phenomena of *money without a country* and a supranational banking system."(emphasis by current author)³³

And on the other hand, money launderers are able to exploit the rigidities of state sovereignty that limit enforcement agencies and regulators, moving money from one country to another less-regulated country with strong bank secrecy laws where their

funds will be protected. Money is "a creature of regulation" but it is also adept at finding its way around regulation. As O'Brien states "Whatever efforts are made to maintain barriers in financial services or to help define the role of money and the rules governing it, the job is almost impossible".³⁴ Attempts to "control" illicit funds are complicated by the fact that property and funds for drug trafficking are often intermingled with, or converted into, legitimate property and funds, hence posing a problem for judicial and law-enforcement officials. It is all too easy for illicit funds to be converted into licit funds.

Another significant problem in attempting to control the money involved in laundering is that individual countries have different cultures and values with regard to cash. As has been discussed above, traffickers, at the first stage of their operations must deal in cash. Controlling the amount of cash transactions by financial institutions has been shown to limit fraud, and could be utilised by regulators attempting to control drug-money laundering. However, some economies are very cash centred. In Italy, for example, credit cards are still relatively rare compared with some other European countries. Banks do not formally accept responsibility for customer losses incurred when cheques are stolen or forged, even within the clearing system. Therefore cash or cash instruments are frequently the preferred option for payment of wages, professional services, and a wide variety of commercial transactions. In general therefore, substantial cash movements are not likely to arouse suspicion in Italy.

Another problem for regulators therefore is the sheer volume of financial activities and the impossibility of verifying every transaction. The cost of registering every large cash transaction over a given sum would signify major cost and resource implications for the banks. Every large Currency Transaction Report (CTR) in the United States costs 17 dollars, and there are approximately 6 million of them per year.³⁵ Therefore, attempts at moves towards mandatory reporting of cash transactions over a certain amount have faced a great deal of opposition. (See later)

The number and diversity of financial institutions also aids the money launderer. Money laundering is not limited to banks and building societies alone. Once illicit

funds are in the financial system, they can readily be switched into different types of assets and between institutions (the layering and integration stages). Some of those utilised by money launderers have been mentioned above, such as bureaux de change, cheque cashers, money transmission services, casinos and lotteries. Therefore other types of financial institutions need to accept regulation.

Money laundering is a very sophisticated crime. The increased use of complex corporate structures and intricate business transactions involving banks, trust companies, firms dealing in real estate and other financial institutions has added to the difficulties of the enforcement agencies. Some countries do not have sophisticated enough financial institutions to attempt to deal with the problem. It is these countries, often dealing predominantly in cash, which are most at risk generally. For more developed financial systems, the banking secrecy rule which has governed banking for the greater part of this decade, meant that bankers could not report their suspicions even if they wanted to. In order to avoid any involvement in money-laundering activities they would simply deny assistance and the funds would go elsewhere, moving the problem on, rather than dealing with it.

Money laundering has been described as "Financial AIDS", once the money reaches the system nothing can remove it. Furthermore, as with AIDS, the problem is spreading dramatically. Once in the financial system, illicit funds can at best be diverted. If money is diverted in its course, as described in the example above of financial institutions denying assistance to suspicious transactions, it can simply return to the financial flow further down stream. Therefore the only way to control money laundering is to prevent the money entering the financial system in the first place by truly international co-operation, or in making illicit money licit by legalising drug trafficking. The legalisation debate will be looked at in the concluding chapter to this study.

There is a great deal of national legislation in place to combat money laundering. The United States pioneered legislation to prevent the flow of illicit profits with the requirement from 1971 for documentation of all financial transactions over

\$10,000 by means of Currency Transaction Report (CTR). That legislation, commonly known as the Bank Secrecy Act (BSA) mandated a series of reporting and record-keeping requirements designed to help track down money-laundering activity and to prevent the veil of secrecy surrounding offshore bank accounts. However, implementation of the Act was delayed due to a number of factors. Bankers challenged the constitutionality of the law claiming that the BSA reporting requirements violated the search and seizure provisions of the Fourth Amendment. This issue was not settled until 1974 when the Supreme Court ruled against the bankers. This unsuccessful challenge was followed by a period of massive non-compliance by banks and other financial institutions with BSA reporting requirements. The non-compliance problem was aggravated by a lack of concern and interest by bank regulatory agencies towards BSA compliance issues. It was not seen as a priority issue for the regulators and consequently enforcement was minimal between 1974 and 1984. The increase in drug use and the increase in funds available for laundering challenged this position.

In 1979, the Federal Reserve Bank conducted a study that showed that there was a \$4.3 billion surplus of currency in Florida while the rest of the country were for the most part showing currency deficits.³⁶ This led to increased enforcement activity against money laundering.³⁷ In the years that followed there were several amendments to the law including the inclusion of non-bank financial institutions and foreign banks (including foreign subsidiaries) in the currency reporting requirements. These amendments were incorporated into the Money Laundering Control Act of 1986; establishing the crime of money laundering where previously no such crime had existed. The Act also provided for an amendment to the Right to Financial Privacy Act that made it easier for banks to report suspicious transactions information to federal enforcement agencies without running the risk of being sued by customers. In 1989, a federal law was introduced which permits the government to track and to claim ownership of laundered drug money. The pre-trial freezing of assets of suspected drug traffickers pending judicial forfeiture procedures is also permissible.

In the United Kingdom a different path was taken to control money laundering. The Drug Trafficking Offences Act 1986 (DTOA) obliged anyone handling finances

on behalf of a third party - solicitors and accountants as well as banks and financial institutions, to disclose suspicious transactions, overriding any confidentiality imposed by contract. However, unlike in the United States, there was no obligation to report transactions above a certain amount and it was left to the banks discretion as to what constituted a suspicious transaction.

International co-operation

It is generally accepted that in order to combat the financial aspects of drug trafficking and other forms of criminal activity, preventative strategies and not just penal measures, as has been the approach, for example, of the Vienna Convention (see previous chapter and below), can play a significant and positive role. This belief lay at the heart of the Recommendations by the Committee of Ministers of the Council of Europe of 27 June 1980 on measures against the transfer and the safekeeping of funds of criminal origin.³⁸ However, this initiative, prompted in the main by concern over a growing number of acts of criminal violence such as kidnapping, did not see its recommendations generally implemented. It was not until the late eighties with the dramatic increase in drug-money laundering, that attitudes had changed sufficiently to consider the measures put forward by this earlier initiative.

The Statement of Principles for the guidance of bank supervisors issued on 12 December 1988 by the Basle Committee on Banking Regulations and Supervisory Practices encourages the banking sector to adopt a common position in order to ensure that banks are not used to hide or launder funds acquired through criminal activities and, in particular, through drug trafficking. (See Appendix D) Although the Statement refers throughout to "banks" it is applicable to all financial institutions. As the Preamble to the text states, the document constitutes;

"a general statement of ethical principles which encourages bank's management to put in place effective procedures to ensure that all persons conducting business with their institutions are properly identified; that transactions that do not appear legitimate are discouraged; and that co-operation with law enforcement agencies is achieved."³⁹

The Statement sets out the following basic principles:

Customer identification - when establishing a relationship by opening account or providing any other service, including safe deposit box facilities, reasonable effort should be taken to determine the true identity of the customer requesting the service.

Compliance with legislation and law-enforcement agencies - business should be conducted in conformity with high ethical standards and local laws and regulations pertaining to financial transactions. Institutions should co-operate fully with national law enforcement authorities to the extent permitted without breaching customer confidentiality.

Record Keeping and Systems - institutions should implement specific procedures for retaining internal records of transactions and establish an effective means of testing for general compliance with the Statement.

Staff training - attention should be given to staff training and their on-going education in the institution's procedures to facilitate the recognition and reporting of money laundering.

The Basle Statement of Principles is not a treaty in terms of public international law and has no direct legal effect in the domestic law of any country. However, as the Financial Action Task Force Report pointed out:

"Although it is not itself a legally binding document, various formulas have been used to make its principles an obligation, notably a formal agreement among banks that commits them explicitly (Austria, Italy, Switzerland), a formal indication by bank regulators that failure to comply with these principles could lead to administrative sanctions (France, United Kingdom), or legally binding texts with a reference to these principles (Luxembourg).⁴⁰

In spite of its relatively recent nature, the FATF was able to report that practical measures towards implementation "have already been taken in many countries."⁴¹

The first treaty in terms of public international law to attempt to control money laundering came with the conclusion in Vienna in December 1988 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁴² (See Appendix B) The Convention recognized the need to define with care the specific elements which the notion of the effective control of illicit traffic

encompasses. Article 3(1) of the final text, frequently described as the cornerstone of the Convention, "requires Parties to legislate as necessary to establish a modern code of criminal offences relating to illicit trafficking in all its different aspects".⁴³ To that end Article 3(1)(a) requires that each state party shall "establish as criminal offences under its domestic law, when committed intentionally" a fairly comprehensive list of activities which have a major international impact. This includes in Article 3(1)(b) requiring the criminalisation of drug related money laundering by each state party. They are required to establish as criminal offences:

- (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such offence or offences to evade the legal consequences of his actions;
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences.

Also of relevance in this context is Article (1)(c)(i) which requires Parties to take measures to render criminal: "The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences." However, the obligation on parties is qualified by the constitutional principles and the basic concepts of parties legal systems. The Convention created an obligation to criminalize the laundering of money derived from drug trafficking, thereby facilitating judicial co-operation and extradition, which was seen as hampered by the fact that many countries had not criminalised money laundering.

Article 5, paragraph 3 of the Convention requires that each state party empowers its courts or other relevant authorities to order that bank, financial or commercial records be made available for the investigation of drug-related offences. And that, "A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy." The inclusion of this affirmative obligation can be seen as a major breakthrough. As Sproule and Saint-Denis state: "The exclusion of bank secrecy as a justification to decline to act may prove to be one of the most important measures in combatting drug money laundering operations".⁴⁴

The 1990 Council of Europe Convention represented the final product of an initiative taken by European Ministers of Justice in 1986 in order to combat the problems in the financial area posed by drug trafficking. (See Appendix G) A Select Committee of Experts was established by the European Committee on Crime Problems, with fairly wide terms of reference. In particular, it was not obliged to restrict its focus to the proceeds derived from drug trafficking alone. Although the Committee of Experts made direct reference to the relevant provisions of the 1988 United Nations Convention in their study, the willingness of the Council of Europe to go beyond that which was agreed in the UN context, is to be found in its much wider scope. The Convention states:

"One of the purposes of the Convention is to facilitate international co-operation as regards investigative assistance, search, seizure and confiscation of the proceeds from all types of criminality, especially serious crimes, and in particular drug offences, arms dealing, terrorist offences, trafficking in children and young women...and other offences which generate large profits."⁴⁵

Article 2 of the Convention illustrates the nature of and limits to its ambition. It addresses confiscation measures to be taken at the national level. In essence, Article 2(1) obliges states to enact legislation to permit the confiscation of the proceeds of crime and contains an implicit invitation for such legislation to be as broad as possible. However, the article did not impose an obligation to require confiscation in relation to all forms of criminal conduct, which is not supported by certain participating states existing legislation.

A further indication of the Council of Europe's intention to go beyond the 1988 Convention can be seen in Article 6. The basic approach has been summarised in a House of Lords Select Committee report as follows:

"Article 6 of the Convention requires States Parties to establish an offence of international money laundering. The property involved in any conversion or transfer could be proceeds not only of drug trafficking or terrorism but of any criminal offence (described as the "predicate offence") and the State Party prosecuting need not have criminal jurisdiction over the predicate offence. Although this constitutes a very wide definition of money laundering, it is open to States on signature or ratification to limit the definition for themselves to more limited categories of predicate offence."⁴⁶

This definition therefore expands money laundering beyond the association with drug trafficking as described above, and finds support in the existing legislative practice of certain states such as Switzerland.⁴⁷ This development has the backing of the Financial Action Task Force which recommended in its 1990 Report (see later) that countries should consider extending the scope of the offence of money laundering to reach any other crime for which there is a link to drugs, or to all serious offences.⁴⁸ This approach signals the awareness of many experts of the disadvantages associated with drug-specific definitions of money laundering. As Levi points out in the context of the United Kingdom Drug Trafficking Offences Act of 1986: "Sometimes - particularly in the laundering sphere and in the case of organised crime groups - the same people are involved in drug trafficking, fraud and terrorism."⁴⁹

As with the Vienna Convention, the Council of Europe Convention concentrates mainly on penal means to combat money laundering within the framework of international co-operation among judicial and law-enforcement authorities. The European Economic Community Directive of 10 June 1991 recognises that the financial system and actors not associated with law enforcement, can play a highly effective role in preventing the use of the financial system for money laundering. (See Appendix H) The first paragraph of the preamble to the Directive lays out its essential objective:

"...when credit and financial institutions are used to launder proceeds from criminal activities (hereinafter referred to as "money laundering"), the soundness and stability of the particular institution concerned and confidence in the financial system as a whole could be seriously jeopardised, thereby losing the trust of the public".⁵⁰

The Directive is primarily a pro-active tool in the sense that it deals with measures to be taken before any crime has taken place. This is a deliberate approach since the explanatory memorandum states that repressive measures are dealt with by the 1988 United Nations Convention, described above. The recognition of the importance of prevention is central to the work of the European Communities. Community action in this area has been prompted by the perceived need to ensure "the integrity and cleanliness of the financial system"⁵¹ in the light of moves towards the creation of a single financial market. As the House of Lords Select Committee observed, the free movement of capital and of financial services "offers great scope for organised crime as well as for legitimate enterprise."⁵² Also, it was felt that "lack of Community action against money laundering could lead Member States, for the purpose of protecting their financial systems, to adopt measures which could be inconsistent with completion of the single market."⁵³ Like the 1990 Council of Europe Convention mentioned above, the Directive recognises the fact that money laundering occurs in relation to the proceeds of other criminal activities such as organised crime and terrorism and not only in relation to the proceeds of drug trafficking. Thus, while the definition of money laundering contained in Article 1 is derived from that used in the 1988 United Nations Convention, it relates to "criminal activity" rather than merely to serious drug-trafficking offences.

The Directive also recognised the importance of including the whole financial system, including for example, the insurance industry and other types of professions and undertakings (Article 12 and 13(I)(d)), since "partial coverage..could provoke a shift in money laundering from one to another kind of financial institutions.."⁵⁴ The Directive states that scrutiny of the non-banking sector remains one of the major problems facing efforts to combat money laundering.

The Directive imposes a number of specific obligations. Firstly, it requires the identification of customers and beneficial owners "particularly when opening an account or savings account, or when offering safe custody facilities." (Article 3(1)) This requirement also applies when transacting business at or above 15,000 ECUs. Secondly, provision is made to ensure the due diligence of credit and financial institutions (Article 5). Thirdly, obligations are imposed on financial institutions to ensure co-operation with the relevant institutions and authorities responsible for combatting money laundering. In particular, the financial institutions must "on their own initiative" inform such authorities of any fact that might be an indication of money laundering. Furthermore, on request, they must furnish those authorities with all necessary information (Article 6 and 10), without informing the customer concerned or any other third parties (Article 8). The Directive also provides for the legal immunity of institutions under such conditions (Article 9). The Directive calls for the establishment of procedures of internal control by credit and financial institutions and the creation by them of appropriate training programmes (Article 11).

In contrast to both the 1988 and 1990 Conventions, the Directive has as a primary objective "preventing abuse of the financial system and detecting laundering, rather than increasing international co-operation in regard to punishment of offenders and confiscation of the proceeds of their crimes".⁵⁵ Furthermore, it recognises the importance of the participation of non-state actors, banks, insurance companies, investment businesses etc., in controlling money laundering.

Norm emergence

As has been emphasised above, in order successfully to prevent illicit funds from entering the financial system, and thereby to control money laundering, the co-operation of banks and other financial institutions is crucial. Up until the nineteen eighties banks for the most part did not see money laundering as their concern. The old maxim of "see no evil, hear no evil" was prevalent in the financial world. As Brian Quinn, Executive Director of the Bank of England said, as recently as February 1991 in a conference speech, the idea that money laundering is a concern of banks is a

recent occurrence: "At first sight it may not be obvious that a Central Bank has an important role to play in combatting money laundering."⁵⁶ But during the eighties banking values, such as support for the free market, the dominance of economic efficiency, customer confidentiality and the importance of maintaining banking soundness and stability, came into conflict with each other.

Support for the free market meant that financial institutions had been reluctant for free capital movements to be disrupted in any way. Support for economic efficiency and profit meant that banks were not primarily concerned with whether the business offered to them was legitimate or not. This reflected the role of banking supervision, the primary function of which as the Basle Statement of Principles states was to "maintain the overall financial stability and soundness of banks rather than to ensure that individual transactions conducted by bank customers are legitimate."⁵⁷ Furthermore, it was difficult to separate "dirty" money from "grey" or "hot" money, that is, capital in flight for fiscal reasons - speculation, tax evasion or tax avoidance. Banks in Switzerland for example had an estimated 150 billion Swiss Francs of tax evaders money in 1989.⁵⁸ The difficulty of separating drug money from other illicit funds led to an awareness in the eighties that it was necessary to legislate for all illicit funds.

It has always been the duty of our banker to keep our banking affairs secret. Customer confidentiality has been the holiest of holies for the financial sector since its creation. Enshrined in banking tradition, the basic principles were accepted and restated by the Court of Appeal in the case of Tournier in 1924. In the United Kingdom, for example, until the Drug Trafficking Offences Act of 1986, statutory disclosure was permitted only rarely and then with strict safeguards. Drug trafficking was seen to be a special case where there was a clear need to track down offenders and prevent money laundering. The Act made it an offence for a bank official to handle a transaction he or she regarded as suspicious without reporting it to the police.

The Financial Action Task Force, reporting in 1990, called for banks and other types of depository institutions such as savings banks and building societies to improve

their monitoring of money transactions. The report says this can best be done with a "suspicion-based" system by which banks are required to report cash movements which they suspected might be drug-related.

Conflict arose in the financial world between those who wanted the adoption of an American system of mandatory reporting of all cash movements above a certain amount, in the American case \$10,000 and those who thought this was inefficient and costly. As Quinn stated in his speech:

"While we wish to see effective measures taken against money laundering on a global basis, it is also important to try to avoid recommendations being brought forward that could involve unnecessary cost and complexity for financial institutions or be unduly disruptive to the efficiency of their operation."⁵⁹

There was also conflict between those who felt that the suspicion-based system would lead to banking confidentiality becoming a sham, as officials, facing prosecution for failing to report suspicions, would report every irregularity that might conceivably relate to crime of any kind, leading to the financial affairs of many innocent people being investigated needlessly. The American mandatory reporting system was also rejected by the Bank of England.

The Bank of England opposed the so called Kerry Amendment, whereby Section 4702 of the 1988 United State's Anti-Drug Abuse Act instructs the Secretary of the United States Treasury to negotiate with other countries, whose financial institutions do business in US currency, to ensure that they maintain records of their large US currency transactions and to establish a mechanism whereby such records may be made available to US law enforcement officials. The Bank of England stated that: "In our view, this legislation was both extra-territorial in nature and an unnecessary erosion of customer/banker confidentiality".⁶⁰

Mandatory reporting of transactions was also a problem for the emerging financial sectors of former Eastern bloc countries. In beginning to build up their

financial systems, it was important that these countries participated in money-laundering initiatives. Some countries however have reservations regarding the declarations of suspicious transactions. It was felt that strong bank secrecy laws were essential to obtain the confidence of the population in the new financial system, because in the old system, a general obligation existed to report any suspicion of illegal activity.

A balance between the different views was struck with consensus reached that the mandatory reporting of all cash movements above a certain amount was too cumbersome and inefficient and that a suspicion-based system would be more appropriate.

A change in opinion also came about that measures to deter money laundering through "know your customer" provisions were helpful in the fight against fraud which was seen as a growing cause of loss by banks. Concerns over the costs of implementing reporting systems (the cost in the United States has already been mentioned) by the major financial centres is balanced by the view that every centre will have to do the same to avoid their competitive position being damaged. As Quinn comments "the various steps being taken to combat money laundering could, over time, enhance the UK's reputation for financial honesty and integrity."⁶¹

The shift in value salience for the financial institutions is due to a number of factors. As has already been mentioned the increase in money-laundering due to an increase in crime, particularly trafficking in illicit drugs, has meant that it has become an issue that financial institutions have not been able to ignore or dismiss as unimportant. Furthermore, the idea of society consciously sustaining norms through socialisation, as described in the previous chapter, led to bankers responding to the general concern outside the banking world about a "major social evil".⁶² The Basle Statement describes itself as "a general statement of ethical principles" to prevent institutions becoming associated with criminals.⁶³ Efficiency, profits and secrecy had been of higher salience than honesty and stability for financial institutions. This had to change for a regime to form on money-laundering.

Financial deregulation and the fierce battle fought for new accounts that developed in the early nineteen eighties led to the erosion of customer identification procedures and in particular, the provision of bankers' references. This has led to an increase in fraud and losses for the banks. Financial shocks and scandals, the fallout after the Big Bang in the UK, the costs of the developing countries debt crisis, the savings and loans crisis in the United States, problems with the United States insurance industry, the stock market crashes of 1987 and the failure of banking supervisors to prevent the collapse of the Bank of Credit and Commerce International (BCCI), have all undermined public confidence in banks and hence threatened their stability. As Richard O'Brien states in his book, *Global Financial Integration: The End of Geography*: "The most worrying aspect of the 1990s for many observers is the apparent "financial fragility" of markets".⁶⁴ These crises have led to increasing efforts to develop more global rules and more global co-operation in the market:

"In the financial marketplace, the trend towards some sort of global governance is best represented by the efforts of banking supervisors under the aegis of the Bank for International Settlements in Basle to impose common minimum capital requirements on banks, and, in conjunction with supervisors and regulators, in other financial sectors (security and insurance), to integrate and coordinate the supervision of banking, securities markets and insurance".⁶⁵

This increase in international co-operation and action included a focus on efforts to combat money laundering and the emergence of an international regime based on the Financial Action Task Force.

The FATF: a money laundering control regime

On a number of occasions, mention has been made of the work of the Financial Action Task Force on Money Laundering. The FATF must be seen as the decision-making focus of an international regime on money laundering.

Various international organisations or groups, including the Council of

Europe⁶⁶, the Fond provenant des activites criminelles (FOPAC) a division of Interpol, and among EEC members, the Mutual Assistance Group (MAG) between customs administrations, and the TREVI Group of ministers in charge of security, as well as the Customs Cooperation Council (CCC), have already devoted much attention to the money-laundering problem. But none of these organisations deal exclusively with the problem of money laundering, concerned as they are with other aspects of the drug phenomenon.

The Task Force was established by the Heads of State or Government of the seven major industrial nations (Group of Seven), and the President of the Commission of the European Communities, at their fifteenth annual summit in Paris in July 1989. (See Appendix E) The resulting Economic Declaration stressed the importance of dealing with the financial aspects of drug trafficking and decided on the creation of a task force from summit participants and other countries for whom the issue was salient. Its mandate was:

"to assess the results of co-operation already undertaken in order to prevent the utilisation of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventative efforts in this field, including the adaptation of the legal and regulatory systems so as to enhance multilateral judicial assistance."⁶⁷

In addition to summit participants (United States, Japan, Germany, France, United Kingdom, Italy, Canada, and the Commission of the European Communities) eight other countries (Sweden, Netherlands, Belgium, Luxembourg, Switzerland, Austria, Spain and Austria) were invited to take part in this initiative. More than one hundred and thirty experts from various ministries, law-enforcement authorities and bank supervisory and regulatory agencies participated in the production of a report containing forty recommendations for action, in February 1990. (See Appendix F) These recommendations were viewed as constituting "a minimum standard in the fight against money laundering"⁶⁸ although some of the recommendations failed to attract unanimous support.

The recommendations, focused on three central areas: i) improvements to national legal systems; ii) the enhancement of the role of financial system; and iii) the strengthening of international co-operation. Within these broad areas the report identified three measures which were unanimously regarded as constituting the overall general framework for its many specific proposals. These were:

1. Each country should take steps to ratify the Vienna Convention and proceed to implement it;
2. Secrecy laws for financial institutions should not inhibit implementation of the recommendations of the group;
3. Increased multi-lateral co-operation and mutual legal assistance, in investigations, prosecutions and extradition, is necessary for an effective enforcement program.

At the Houston Summit in July 1990 it was agreed that the FATF process should continue in order to "assess and facilitate the implementation of the forty recommendations, and to complement them where appropriate".⁶⁹ All Organization for Economic Cooperation and Development (OECD) countries and financial centre countries were invited to subscribe to the recommendations and to participate in the preparation of the second FATF report.⁷⁰

The FATF saw its membership enlarged with Denmark, Finland, Greece, Ireland, New Zealand, Norway, Portugal, Turkey, Hong Kong and the Gulf Cooperation Council, together with law enforcement specialists of Interpol and the Customs Cooperation Council joining the process. With the involvement of Hong Kong and the Gulf, two of the three most important off-shore banking centres were now participating. Singapore, the third most important off-shore financial centre in relation to controlling money laundering eventually joined the Task Force at the outset of the third session.⁷¹ The most important accomplishment of FATF-2, was the agreement reached to move from self-reporting of progress towards the implementation of Task Force recommendations, to a system in which mutual assessment or evaluation plays a major role.

In its second report, the Task Force made special note of the need for its regulations to cover not just banks but non-traditional financial institutions or professions that might be involved in money-laundering practises. As it becomes harder for money launderers to work in established financial centres, the Task Force highlighted the importance of looking at businesses that have not traditionally been associated with money laundering. These included special mention of bureaux de change, casinos, lotteries, precious metal and gem dealers, auction houses, real estate agents, automobile, aeroplane and boat dealers and professionals who, in the course of providing their professional services, offer, in some countries, client account facilities (for example lawyers, accountants, notaries and certain travel agents).

In FATF-2 it was agreed that the FATF process should continue for a further five years when it would be reviewed again. A Secretariat was established within the OECD. In its most recent report, published on June 16th 1994, the Task Force noted that its recommendations now form the basis of anti-money laundering laws in all its member states.⁷² (See Appendix I)

As has been explained in Chapter Two, where an issue-system features a high degree of consensus over its central norm and a high rate of actor compliance with rules and decisions designed to uphold that norm, then an international regime can be seen to have emerged, regulating the issue. This can be seen to be the case with a high degree of consensus over the norm that "Banks should not profit from illicit funds" and the formation of the Financial Action Task Force to regulate the issue.

Conclusion

As has been mentioned earlier in this study, the drug phenomenon can be seen as a number of separate, identifiable issues which can be isolated into distinct issue-systems comprised of actors in contention over related values. For the actors in the financial issue-system only one of the drug issues is salient, that of the problem of money laundering.

The adherence of the actors to the global norm can be seen to be determined, firstly by how salient they perceive the norm to be to them in allocating stakes to satisfy a particular value by which they are guided. As has been explained, banking stability and soundness was threatened by the increase in drug-money laundering and therefore rules such as "know your customer" and "report suspicious transactions" have replaced "see no evil, hear no evil" in the pursuit of efficiency and profit, which seemed so prevalent in the past. Secondly, an actor may be influenced by other actors into adhering to a particular norm. This process of socialisation, explained in the previous chapter can be seen to have influenced the banks and financial institutions into accepting the "ethical principles" of the Basle Committee and is fundamental to the work of the Financial Action Task Force.

Krasner's definition of a regime as featuring "principles, norms, rules and decision-making procedures", is met by the Financial Action Task Force in this "given area of international relations".⁷³ The norm that banks should not profit from illicit funds is nearly universally accepted. The norms and the principles of the regime can be seen to have been developed by the Basle Committee and the work of the United Nations. The Council of Europe, the European Economic Community and the United States can be seen to have started to develop regional regimes for the control of money laundering. However, the Financial Action Task Force is the only global body whose focus is exclusively on money laundering. The emergence of the Task Force can be seen as the decision-making focus of a global money-laundering control regime.

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70. The FATF recommendations have been considered in a number of different fora. See, eg., *Report of the Caribbean Drug Money Laundering Conference*, Oranjestad, Aruba, June 8-10, 1990, Foreign and Commonwealth Office, London.
71. *Financial Action Task Force on Money Laundering. Report of the 25th June 1992, Paris*, p 5. Source: Bank of England.
72. *Financial Action Task Force On Money Laundering. Report of 16th June 1994, Paris*, p 9. Source: Bank of England. See Appendix I.
73. S D Krasner, *International Regimes* (Cornell University Press, Ithaca, New York, 4th Ed. 1986, first pub, 1983) p 2.

Chapter 7

International Regimes and Drug Control

Introduction

The nineteen eighties saw the wider availability and growing consumption of illicit drugs. It also saw the emergence of an international consensus against drug trafficking by the international community. The increase in drug trafficking has occurred despite increasing international action through the main international control body, the United Nations, and other international institutions to prevent it. This research has shown that there are many difficulties involved in attempts by legal structures to control an illegal activity, especially one which is as multi-faceted and multi-dimensional as the drug phenomenon. Suppression of one source of supply, one method of transportation and one pattern of abuse has often simply led to the emergence of other forms. This research has attempted to set the "drug problem", as it has become known, into a theoretical framework which aids our understanding of the phenomenon, by further developing theories of regime creation. Because the drug phenomenon is complex and multi-faceted, it requires precisely the issue-specific approach of international regimes as understood by this research.

Regime creation

It has become clear through the course of this study that the prevailing literature on international regimes has concentrated on structural models of regimes - the rules and decision-making procedures - within a Realist hegemonic-stability framework. Hegemonic-stability theory incorporates the central Realist axiom, of states rationally aiming to secure themselves through maximising their power, in the face of growing interdependence between countries. This view has been expounded by writers such as Kindleberger¹, Gilpin², Krasner³ and Keohane⁴, principally as an explanation of patterns of international economic co-operation. In this area, the theory might be seen to have some descriptive utility. The dominance of the United States in the post-war

international economic and military order until the 1970s, exemplified by security institutions such as the North Atlantic Treaty Organization (NATO) and economically, by the Bretton Woods system illustrates this. The other classic example of hegemonic-stability advanced by the Realists is the international trade system of the second half of the nineteenth century, which was dominated by Great Britain by virtue of her vast Empire and naval strength. However, as we have seen in Chapter Three, at the turn of the century, the United States, which was not then a military power on a par with the global empires, was able to put the question of drug control onto the international agenda and Britain was forced to accept international legislation.

While accepting that Great Britain and the United States were often able to utilize their capabilities to secure international co-operation to suit their interests in the nineteenth and twentieth century respectively, hegemonic-stability theory does not help to explain the many international institutions and agreements in the form of regimes, that have survived the decline of the hegemon or been created in the absence of one. Despite the decline of US hegemony in the 1970's, most international arrangements can be seen to have continued to function, including the General Agreement on Tariffs and Trade (GATT).

Critics of hegemonic-stability theory have also been able to point to the many examples of regime creation in the last thirty years, despite the decline of the US as a hegemon, as a challenge to the usefulness of the theory. Much of their work has been concerned with environmental and conservation regimes: Oran Young writing about the North Pacific fur seals regime and the Svalbard Archipelago⁵; Peter Haas writing about the development of a regional regime regulating marine pollution in the Mediterranean known as the Mediterranean Action Plan⁶ and the issue of ozone depletion and the emergence of an international regime curbing CFC use and production⁷, and most recently Oran Young and Gail Osherenko detail the example of the creation of a regime to conserve polar bears in the Arctic.⁸ A regime to conserve polar bears was set up in 1973 and included both superpowers. The regime can be seen to have represented a common (non-security) concern which transcended ideological differences, without apparently advancing the economic or military interests of any of

the participating governments, in contrast to the hegemonic-stability argument. Other regimes that are worthy of investigation with a non-hegemonic approach include marine oil pollution, global climate change, preservation of bio-diversity, allocation of geostationary satellite orbits, acid rain, conservation of elephants and conservation of Antarctica.

Various explanations have been offered by regime theorists for the failure of international institutions and regimes created in the late-1940s to collapse in the absence of continued American hegemony. One argument is that, although American power can be judged to have declined, the United States still maintains an important position and can continue to direct international arrangements in a way which favours her interests.⁹ Roger Toose links what can be seen as the continuation of America hegemony under a new guise to the predominantly American discourse of regime theory,

"regime analysis allows for the continued articulation of interest by a dominant political and economic power. In other words, the concept of regime, and its widespread adoption not only changes the way that we think about international cooperation, but also enables and legitimises a continuation of American power within the "new" regime framework."¹⁰

This is what Cox refers to as the "process of institutionalization of hegemony" where there is continued acceptance of the values underlying the structure of the world political economy.¹¹

An alternative but related position accepts that American hegemony has declined but sees a new hegemon in the form of a trilateral power structure formed by the United States, Japan and the European Community. Since both Japan and the EC are in broad agreement with the ideology of the post-war economy, the values, beliefs and goals of the new hegemonic coalition broadly reflect those of the old.

Finally, to return to the work of Stephen Krasner, an alternative explanation comes from the idea that there is a time-lag between the rise and fall of a regime and

the underlying changes in the structure of power. Therefore, regimes can be seen to continue and "assume a life of their own"¹² despite a realignment of power in international society. This phenomena, or time-lag, can be explained as being a result of custom and usage, uncertainty and cognitive failing.¹³ States which are party to a regime may continue to adhere to its rules and principles through habit, and can be reluctant to defect in order to maximise short-term interests through fear of incurring long-term costs. Although unhappy with the regime to which they are a party, states may not wish to bear the costs of constructing an alternative regime. Therefore, a regime can be seen to be able to survive the decline of the hegemon through these "feedback mechanisms", whose preponderant position had created the conditions for the regime's creation.¹⁴

The above explanations are not however useful for understanding the setting up of regimes such as that described for polar bear or fur seal conservation or the protection of the ozone layer or indeed the money laundering control regime described in the previous chapter. The polar bear regime cannot be seen to advance the economic or military interests of any of the participating governments. In the case of the creation of the money laundering control regime, although the world's largest banks are based in the United States, they were not able to force the acceptance of a mandatory reporting system for all financial transactions over a certain amount, on the other actors in the system.

Supporters of hegemonic-stability theory would say that its lack of application to environmental regimes does not matter, since they concern what Realist writers would term "low politics" issues and therefore do not challenge the validity of the theory. Opponents of hegemonic-stability arguments for regime creation have often been criticised for concentrating efforts on areas where their hypotheses are, in the words of Jonsson, "doomed to success", that is these "low politics", non-contentious issues.¹⁵ However, as Chapter One has demonstrated, the drug phenomenon challenges the Realist approach to international relations since a social problem, drug-related activity, is seen as a threat to national and international security by many governments and could therefore be described as a "high politics" issue. This research

has shown the lack of theoretical applicability of the Realist High/Low politics distinction to current developments in international relations. An alternative view, advocated by the Globalists, is that in principle any issue may affect security, involve the highest decision-makers, produce crises' and be dominated by governments. The drug phenomenon clearly demonstrates that while the hegemon may be a factor in regime creation, especially in economic issues as described above, it is not the single overriding determinant that the hegemonic-stability theorists would have us believe.

Returning to the description of an international regime given by Krasner, this study has focused on the importance of understanding the nature of the principles and norms and their dynamics for regime creation rather than the narrower focus on the rules and decision-making procedures favoured by hegemonic-stability theory. The literature on international regimes suggests that a regime must have an issue that it seeks to regulate. The concept of an issue however, suffers from lack of clarification in current International Relations literature.

This research has pointed out that the concept of issues forming distinct issue-systems and the concept of international regimes which emerged from the literature on interdependence in the seventies, developed principally in isolation from each other. The former within the Globalist paradigm and the latter within the Realist approach to International Relations as a response to the challenge of interdependence. Both concepts can be seen to have suffered from lack of clarification in the discipline. Important to both approaches is the concept of an issue. The concept is central to the Global Politics paradigm in the acceptance that there is not a single international system, but instead there are multiple issue-based systems, with each system featuring a unique cast of actors for whom the issue is salient. However, as we have seen, an authoritative theoretical literature on the nature of issues is lacking. The use of the term "issue-area" in the work of Rosenau, Mansbach and Vasquez and Keohane and Nye has generated a great deal of confusion. The use of systems analysis in political science pioneered by David Easton defines a political system as wherever one can identify behaviour modification in any given area, which is in keeping with Mansbach and Vasquez' description of an issue as consisting of "a cluster of values that are to be allocated".

The concept of an "issue-system" can be seen as more analytically useful than issue-area, because it need not evoke the behavioral processes that Rosenau associated with the term issue-area. Therefore we can concentrate attention on the contention over values of the actors concerned. This understanding of the nature of issues, in terms of contention over values being central to the study of politics, described by Easton as "the authoritative allocation of values", is quite distinct from the Realist understanding of the nature of issues and of politics as the struggle for power in an anarchic world. According to the Realist perspective, state power and "state interests" explain which issues come on to the agenda (and form international regimes) and which remain on the periphery.

Work on agenda formation has not been taken up in International Relations literature. This can be seen to be partly due to the dominance of the Realist paradigm in the discipline, and the emphasis on the anarchy of the global system, rather than viewing world politics as co-operation and conflict of actors over efforts to allocate values authoritatively in multiple systems. Mansbach and Vasquez' "issue cycle" and crisis stage, as discussed in Chapter Two, although useful, does not claim to have general application, but is applied to issues that "dominate the attention and energy of the major actors".¹⁶ This study believes that the concept of salience, developed by the Globalist paradigm, is a more fundamentally useful theoretical concept for understanding issue formation and evolution because it shifts the "critical" property from the issue to the actor. Using the concept of salience we can understand how one issue can be more salient than another issue for a specific actor at a specific time if it optimises the actor's own set of value preferences at that time. The concept of salience suggests a dynamic to change, lacking in the emphasis on stability in the state-centric approach of Realism.

Salience can explain the emergence of issue-systems, when actors seek to generate support for particular values and seek to allocate them authoritatively. The extent to which the actors in an issue-system regulate the issue (by authoritatively allocating the value at stake) is variable. A regime is formed, if the issue-system can successfully translate values into the form of an agreed norm and if there is a high rate

of actor compliance with the rules and decisions designed to uphold that norm. Therefore the formation of issue-systems and the creation of regimes can be seen as different stages in the same process of global change. This emphasis on understanding the nature of issues through an understanding of values is central to systems analysis and has been shown in this study to give a firmer theoretical footing for explaining the normative nature of international regimes, lacking in the dominant hegemonic approach to regime creation.

A clearer understanding of values and norms, their evolution and role in international decision-making has been explored in order to develop a theory of international regimes that gave them an independent impact in international relations and not simply a role as a reflection of hegemonic interests. Developing theories of value and norm emergence can also be seen as central to understanding of change in world politics.

The dynamics of change

For the traditional Realist school, change in world politics is defined in terms of changes in state power, and the emergence of regimes is similarly defined. An alternative approach to the emergence and role of international regimes challenges this established belief by asserting that agendas are determined by the attempt of actors individually to maximise the achievement of their preferred values and collectively to *allocate values authoritatively* on specific issues.

How values emerge, change and influence decision-making in international politics has received very little attention in International Relations literature and specifically in relation to the field of regimes. The standard Krasner definition of an international regime as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors expectations converge in a given area of international relations"¹⁷ implicitly contains the concept of values with his definition of "principles" and "norms". The concept of "values" is evoked with the use of "principles" defined as "beliefs of fact causation and rectitude" and "norms" defined

as "standards of behaviour defined in terms of rights and obligations"¹⁸ and further developed in this research.

In Chapter Three, this study explained the changing attitudes towards drug use in the nineteenth century and emphasised the importance of taking into account the advances and concepts from alternative disciplines, such as sociology, philosophy and history in our understanding of change. This chapter helps to illustrate how the Realists' preoccupation with the "struggle for power" does not explain the fact that there are a "multiplicity of values and stakes for which actors both cooperate and compete".¹⁹ Rapid industrialisation, urbanisation and technological advances, with corresponding social and economic transformation and increasing social unrest, a rising economic group in the form of the medical profession and their attempts to establish monopolistic restrictive practices, the attempts by traders to destroy the British monopoly of trade with China and to promote free trade, the values of the religious movements and the missionaries promoting the end of the opium trade with China, all illustrate that power, as understood by the Realist approach to International Relations, was not the sole variable for change in the nineteenth century towards drug use.

Chapter Three illustrated the mix of social and technological change, competing domestic interests, changing religious values and competing trade interests which all promoted changing norms about drug use. Nineteenth-century society also illustrates how the norm towards drug use were sustained through the process of socialisation. By the end of the nineteenth century there was widespread consensus that the non-medical use of opium in particular and its derivatives (heroin, morphine, methadone) was evil, immoral and dangerous. Although contemporary scientific evidence demonstrated that opium had no particularly harmful effects other than addiction (Report of the Royal Commission on Opium, 1894-95²⁰), there were few moral or political issues which were so strongly condemned by public opinion at the time. This was despite the fact that opiate use had been quite widespread earlier in the nineteenth century. In the twentieth century, anti-opium attitudes can be seen to have been institutionalised by national and international agreements, again despite conflicting scientific evidence as detailed in Chapter One.

An authoritative literature on the source and role of values in the discipline of International Relations has been shown to be lacking. The work of Mansbach and Vasquez, mentioned above, is one of the few examples of an attempt by International Relations writers to present an analysis of the nature of values. Mansbach and Vasquez illuminate the nature of values, which they say are abstract and intangible, by proposing that they are represented by objects or stakes representing the values. They make a distinction between "concrete" and "transcendental" stakes in their analysis. Concrete stakes represent a means of directly satisfying a value, whereas transcendental stakes are, "entirely abstract and non-specific, and which concern beliefs, prescriptions or norms about how people should live or behave."²¹ Mansbach and Vasquez also talk about stakes in relation to their intrinsic and instrumental worth, that is they may be sought for the values they represent on the one hand, or they may be sought for the instrumental purpose of acquiring values that are actually associated with other stakes, on the other. Confusion arises since values are also talked about as either intrinsic or instrumental, suggesting that there is a corresponding relationship between intrinsic and instrumental stakes and intrinsic and instrumental values. This research has put forward the view that since values are abstract and cannot be attained directly, all values must be intrinsic. Since stakes are the objects with which value satisfaction can be achieved, all stakes can be seen as instrumental, a way of satisfying preferences. As we have seen in this research, actors do not always continue to support stakes in a static manner, but for the value that supporting the stake may satisfy at the time, or for the satisfaction of an alternative stake. Similarly, different actors may contest the same stake for the satisfaction of different values.

In this sense, acting in your self-interest can still be understood as value-guided behaviour, a fact commonly overlooked in the traditional Realist approach to international politics. As Easton states:

"Interests is itself a conceptually ambiguous term in political research. It might be used to refer to the fundamental value system of an individual or group, his basic goals, hopes and aspirations in life. To use it so broadly is to destroy any specific analytic significance it may have. It is more helpful to abandon this possible meaning and retain "basic goals" or "fundamental values" as concepts for this purpose."²²

As Easton goes on to clarify that in this way "Interests can then be more narrowly defined to refer to instrumental values"²³ (or stakes as described by this author), those means through which a person or group seeks to implement what may be considered to be his or its fundamental goals.

The United States' government supported the moral position on drug control in the nineteenth century because the British monopoly of trade with China was against their interest. On the other hand, the missionaries position derived from the value that drugs were evil, immoral and dangerous and the abolition of the trade with China partly satisfied this value. The norm "Banks should not profit from illicit activity" emerged as a specific interpretation of the value that drugs were evil, immoral and dangerous, and that drug trafficking should be prevented, but has come to be salient to financial institutions for its role in realizing the very different value of protecting the soundness and stability of financial institutions. As Mansbach and Vasquez state, "actors may seek the same stake in the name of different values".²⁴

The role of norms

This study has put forward the view the dominant hegemonic theory for both regime creation, change and decline in pursuit of power by state actors cannot adequately explain what Krasner talked about as "convergent expectations". The important of understanding values, emphasised by the work on issue-systems in political science gives us an alternative understanding of why actors co-operate in international affairs - not for the allocation of power, but for the allocation of values. The shifting values and norms of actors must therefore be understood to play a significant role in agenda-building.

Norms have received very little attention in the discipline of International Relations, with the notable exception of the work of Friedrich Kratochwil. Although given as a key element of an international regime in the Krasner definition, regime

theorists have by and large not explored the normative nature of international regimes. Chapter Five discussed how the different approaches to the nature and the role of norms have been influenced by different philosophical traditions. This was seen to have led to confusion, with the term "norm" meaning different things in the literature of different fields. The use of the concept by regime theorists has been limited to explaining their emergence in terms of the utility for powerful actors of writing the norms and rules in their own interests. Utilitarian logic and state of nature concepts can be seen to have no empirical referents in the complex world of individuals who are born into a pre-existing society, have multiple objectives, possess limited information, cannot necessarily conceptualise a coherent value calculus and cannot always predict the outcome of their actions.²⁵ The less-logical, less-satisfactory concept of a social norm, as explained in Chapter Five does match the reality of a society with organised religious groups, competing political parties and subject to socialisation processes. This work has portrayed norms as central to understanding the creation of international regimes and their role and impact in international affairs. The significance of norms has been shown to be what makes the study of regime theory distinctive from any other area of International Relations such as the study of international organisations. Fundamentally, if regimes are to have any independent impact on world affairs, they must change actors behaviour. In order to do this they must allocate values authoritatively by enforcing norms and implementing their rules and procedures amongst state and non-state actors.

Chapter Four described various norms that have emerged in response to drug-related activity. However, from the norms listed, only one can be seen to have formed an effective international regime. Despite strong consensus around a second norm, only a "declaratory regime", to use Donnelly's terminology can be seen to have emerged at this present time. Why this is so will be explored in the next section.

Drug trafficking and money laundering: the focus of international attention

As we have explained above, norm emergence is not a guarantee of regime emergence. As Chapter Four detailed, the emergence of a consensus against drug trafficking by the

international community did not lead to the creation of an international regime that could effectively enforce the norm to prevent drug trafficking. Consensus over values can be seen to have led to the emergence of a norm, but not to international decision-making procedures. This work has shown that, in the literature on international regimes, there is a great deal of definitional confusion about what constitutes a regime.

The extent to which a regime's norms and its decision-making procedures are enforced varies. As Donnelly states,

"Regime norms may range from binding international standards that are generally accepted by states as authoritative to international guidelines that are commended in word but rarely in deed. Regime procedures likewise may range from full international decision making, including generally effective enforcement powers, to procedures that amount to little more than international verbal encouragement of sovereign national action. *International regimes thus come in an immense variety of forms*" (emphasis added by current author).²⁶

For Donnelly, a regime's "strength" increases according to the extent of its decision-making powers - that is the range of activities available to relevant international institutions. Four types of regimes, based on four types of action, are identified by Donnelly: *Promotion* - encouraging national implementation of international norms by public information activities; *Assistance* - providing support for national implementation of international norms, typically through financial or technical assistance; *Implementation* - playing a direct international role in putting regime norms into practice through systems of international information exchange, policy consultation or co-ordination, or (unenforceable) international monitoring of national compliance with regime norms or recommended policies and finally; *Enforcement* - binding and enforceable international implementation of regime norms.²⁷

Within each general type, as defined in the first instance by decision-making procedures, regimes can be further differentiated by their normative scope. Donnelly identifies four types of regime norms running from fully international or "authoritative international norms: binding international standards, generally accepted as such by

states" to entirely national, described as "the absence of substantive international norms". A fifth type of regime can therefore be identified, a "declaratory regime" which involves international norms but has no international decision-making procedures. (See Figure 7) The global trafficking regime is an example of a declaratory regime. The norms of the regime are coherent, well-developed, and widely commended by state and non-state actors alike. However, implementation of the norm that trafficking must be controlled, has remained the responsibility of national and not international actors. The regime can be described therefore as a "declaratory regime". In as much as governments are beginning to co-operate in the exchange of information on trafficking, the declaratory regime may be evolving into a promotional regime.

	National Decisions	Promotion or Assistance	Information Exchange	Policy Coordination	International Monitoring	International Decisions
International Norms	Strong Declaratory		Strong Promotional		Strong Implementation	Strong Enforcement
International Standards with National Exemptions				Weak Implementation		
International Guidelines	Weak Declaratory	Weak Promotional				Weak Enforcement
National Standards	No Regime					
	Declaratory Regime	Promotional Regime	Implementation Regime	Enforcement Regime		

FIGURE 7 Donnelly's regime classification

Source: J Donnelly, "International human rights: a regime analysis", *International Organisation*, Vol. 40, No. 3, Summer 1986, p 603.

The description of international attempts to control drug trafficking given above conforms to the approach to regime formation adopted by the European regime

theorists in the late eighties. For them the final criterion for regime formation is that the behaviour of international actors must be affected by the regime's norms, rules and decision-making procedures. Wolf and Zurn have added the appendage of "effectiveness" to Krasner's standard definition of an international regime.²⁸ As Rittberger points out, this enables us to distinguish between regimes and treaties, since a regime's rules may be informal. A further distinction can therefore be made between rules that are actually observed and those that exist in writing but have no discernable influence on actor behaviour. As Rittberger states "norms and rules which do not measurably shape the behaviour of states cannot be considered prescriptions".²⁹ Commenting on the research by Mendler into the issue of the working conditions of foreign journalists, where Krasner's criteria for a regime had been met, Rittberger states,

"norm observance and rule compliance varied so greatly over time and across countries, especially in Eastern Europe and the Soviet Union, that - using effectiveness as a criterion - it did not seem warranted to acknowledge the existence of a regime."³⁰

It can be seen therefore that there is no effective trafficking regime because governments cannot implement the norm. Firstly, drug trafficking cannot be effectively controlled for practical reasons, since borders of countries have offered limited protection from smugglers throughout history, for goods for which there is a high demand. Also the nature of the drugs themselves presents practical problems: they are not a bulky commodity. Because of the demand for heroin, cocaine and marijuana, smuggling small amounts, easily disguisable about the person or in a vehicle, can generate large profits. Secondly, there is no international institution available that has the authority to implement the norm. GATT, the main institution concerned with trade, promotes freedom of trade rather than restrictions on trade.

On the other hand, the norm of the international money-laundering control regime is seen as a binding international standard that is generally accepted as authoritative, by states and non-state actors for whom the issue is salient. The regime can be seen to enforce its decision-making powers effectively through the Financial

Action Task Force.

The dynamics of change in an issue-system means that different actors may create norms, but they will not necessarily be able to form a regime. A regime needs an appropriate institution to regulate the rules and decision-making procedures. If no appropriate institution exists you cannot have a regime. There is currently no regulatory body with the global authority necessary for implementation of the drug trafficking norm. This is despite the fact that the norm is coherent, well-developed and widely commended by state and non-state actors alike. Implementation of the norm remains almost entirely in the hands of national actors. The lack of authority of the United Nations International Drug Control Programme (UNDCP), the focus of United Nations efforts to control trafficking, has been detailed in Chapter Four.

Other possible global bodies which could be the centre for a global trafficking control regime include the International Criminal Police Organization (ICPO/Interpol). However, its role has always been one of stimulating the exchange of information among national drug law-enforcement services, through the establishment of a data bank, and international bodies concerned with drug control, and in aiding the ability of national services to control illicit traffic. Its secretariat has no operational role independent of national authorities.

The lack of development of a supranational operational regulatory body for controlling drug trafficking is clearly due to the importance states give to their policing powers as a core item of their sovereignty. The lack of development of co-ordinated policing operations by the international community, despite the increase in transnational crime described earlier in this study, illustrates this. Any effective international action against drug trafficking would require relinquishing control over parts of the national law-enforcement machinery which states are still reluctant to do. Recently there have been more examples of successful co-ordinated operations on a global level. A three country co-operation over a drug haul was described as unprecedented by police chiefs involved. The chief of Italy's anti-drug unit described the haul as marking the end of the era of "jealousy and territorial policing".³¹ On a regional level there have also

been important developments.

The Schengen Convention drawn up in 1985 by France, Germany, Luxembourg, Holland and Belgium concerned the need for enhanced police co-operation and information exchange when Europe became frontier-free. However, the United Kingdom, the Irish Republic and Denmark have remained outside the Schengen Group. It has taken until the recent ratification of the Maastricht Treaty in 1993 for there to be any moves towards the development of unified policing within the formal structures of the European Community. Within Europe, the activities of the Trevi Group, a forum for co-operation on law enforcement between the European Community member states, remained separate from the work of the European Community until the ratification of the Maastricht Treaty and the creation of the European Union in November 1993.

The Declaration on Police Co-operation incorporated in the Final Act of the Maastricht conference calls for support for national criminal investigation and security authorities, in particular in the co-ordination of investigation and search operations; creation of data bases; central analysis and assessment of information in order to identify investigative approaches; collection and analysis of national prevention programmes for drawing up Europe-wide prevention strategies; measures relating to further training, research, forensic matters and criminal records departments.³²

Co-operation on policing is viewed by member states as in the same category as co-operation on foreign policy. All decisions concerning provisions on co-operation in the fields of justice and home affairs must be decided unanimously, with Britain insisting on endorsement by Westminster of any decisions that are taken. This policy on immigration and crime is to be decided intergovernmentally and the national veto is not removed by qualified majority voting as it is in other areas of policy, which shows the lack of willingness of member states to surrender any sovereignty over policing. There have however been some recent moves towards greater co-operation over policing within Europe.

The commitment to a common police information system has led to the creation of a European Police Organisation, or Europol. One of the first steps has been the creation of a Drugs Intelligence Unit (DIU) which became operational at the end of 1992. The future role of Europol is undecided. The German government, for example, want Europol to develop into a fully-fledged investigative body with powers of arrest in any country, while the British are happier with a Europol that simply exchanges information - a role that would mesh neatly with the new National Criminal Intelligence System.³³

There are both practical problems and conflict over values involved in the establishment of a European police force and the creation of a regional drug trafficking regime. These problems reflect the similar difficulties that would need to be overcome in establishing a global trafficking regime. British police and customs officers, unlike most of their European counterparts, are not armed, except in exceptional circumstances. Most European police forces are organised nationally and functionally and are often answerable to several ministries, whereas the UK police have no central political direction: the 52 separate forces operate a tripartite system of accountability through the Home Office, the area Chief Constable and local Police Authorities.

There are problems even at the first stage of Europol's role of data collection and information exchange. International drug trafficking has been the major rationale for broadening and intensifying international police co-operation and information-sharing. Britain's National Criminal Intelligence System (as mentioned above) is planned to co-operate with similar organisations in other countries but there is concern that the structures through which this co-operation occurs are beyond direct democratic control at the European level. Data protection requirements may conflict with police needs for intelligence gathering and collation. Roger Birch, chair of the chief constables' International Committee stated in 1992 that "the policing of Europe cannot wait for the total harmonisation of legislation and for the resolution of such thorny issues as data protection."³⁴ Council of Europe member states have been under an obligation since 1981 to implement the Council's Convention on Data Processing. Despite the 1984 Data Protection Act, police in the United Kingdom have reserved

their right not to implement fully a critical recommendation on giving people notice that information is held on them. Furthermore they have reserved the right to accumulate information on people not directly related to a particular investigation. Police co-operation and information sharing therefore raises problems of responsibility and accountability in law enforcement.

The Supplementary Agreement signed at Schengen in 1990 foresaw a declaration by each signatory, at the time of ratification, to harmonise procedures for cross-border pursuit, rights of arrest, territorial and time limits, and penalties for violation of agreed procedures. However, French law has hitherto denied the possibility of arrest by a foreign policeman on French territory and hot pursuit is a particularly delicate issue in the UK, given that one EC land border is between the Irish Republic and Northern Ireland. Nor are matters straightforward between England and Scotland, where fundamentally differing legal systems apply and there is no automatic reciprocity of powers of arrest or even validity of arrest warrants. The multi-national police apparatus, that would compensate for the loss of border checks is not yet in place.

Despite all the differences in accountability, data protection regulations, issues of public order policing (such as whether British policemen should be armed), and differing judicial systems the formal arrangements for greater police co-operation within Europe are in place. The Trevi Group discussions, the Schengen Convention, and developments within Interpol can be seen to have developed the principles and the norms of a would-be regional regime. Using Donnelly's regime types described above the European trafficking regime can be described as a "promotional regime". The regime may become stronger in the future if the salience of drug trafficking, which has already led to increased centralisation of policing in the UK and increased police co-operation in Europe, reduces the commitment to national sovereignty in the field of law enforcement, or rather, if there is a shift in value salience. For the time being, the situation for trafficking is best described as being a European promotional regime operating within a global declaratory regime.

The trafficking regime is also a weak regime since as has been shown, it has

no relevant international institution to implement the regime's norms. Interpol engages in, to use Donnelly's classifications, promotional and assistance activities, providing support for national implementation of international norms, policy co-ordination, international monitoring etc. Neither Interpol nor Trevi have any international decision-making powers. The regime will remain weak until states are willing to surrender decision-making activities to an external authority. Banking has a longer history of co-operation and more willingness to surrender sovereignty especially in the deregulation era of Thatcherite and Reaganite economics during the eighties. Mrs Thatcher's government abolished foreign exchange controls within days of taking office in 1979, emphasising that governmental regulation of any sort would henceforth be under attack.

If the problems associated with the creation of a regional or global trafficking regime were solely of a practical nature, development of the regime's strength would seem to be forthcoming. However, the conflict over the relative value of national sovereignty in law-enforcement activities suggest that it will be much more difficult to create an effective regime.

Value Dynamics

The twentieth century has seen various massive shifts in values. Interest in environmental concerns has developed dramatically in the later half of the century with the emergence of numerous national, international and global organisations to manage them. The importance of the environment, not mentioned in the United Nations founding Charter, now takes up an increasing part of United Nations time and also resources. This shift in value salience can be seen to be due to the re-conceptualising of the importance of the value by actors through crises: the Torrey Canyon disaster, the discovery of the hole in the ozone layer, Three Mile Island and Chernobyl among others. There has also been a shift in the relative prestige of actors, such as the environmental group Greenpeace.

In the United States similar types of crisis situations have led to changing

attitudes towards drug use. Concerns over the use of drugs for human health and drug taking amongst young people have shifted to concerns for national security and increasing crime rates. The repeated declaration of the "War on Drugs" by the American administration has seen the salience of the value shift from a health concern to a security and crime concern. The rhetorical war on drugs was militarized with the deployment of the armed forces to assist drug enforcement operations, the contribution of intelligence operations by the CIA and the involvement of NASA assisting with satellite-based surveillance of crops under cultivation (see Chapter Two). Public concern in the United States over the use of illicit drugs was critical throughout the eighties. Regardless of political affiliation, socio-economic status and ethnicity, or geographical and occupational location, the "drug problem" was consistently ranked by most Americans as one of the major problems facing the nation. High profile drug convictions among prominent Americans such as the mayor of Washington, Marion Barry, have added to this public sense of urgency. That values are constantly shifting and changing is emphasised by Marion Barry standing for re-election in 1994.³⁵

It is necessary therefore to analyze the values people adhere to and the way they affect their approach to politics and ultimately, why co-operation occurs in the form of international regimes. The dynamic process occurring at the current time concerning drug legalisation emphasises the importance of understanding the dynamics of values. The next section will examine the evolving debate on the legalisation of drugs.

The legalisation debate

The increase in international efforts to stem the increase of drug trafficking and use throughout the eighties highlighted to many observers that the decades of prohibition by the international community and current drug control strategies were doomed to failure. In the United States, federal funds paid out for supply and demand reduction from 1981 through 1988 totalled as much as \$16.5 billion, not including state and local government spending on law enforcement and other criminal justice system costs, and spending on prevention, education, treatment and research.³⁶ Interdiction initiatives in the United States have been estimated to have seized only 20% of the marijuana and

cocaine coming into the country.³⁷ Despite the interdiction, the growing supply of drugs has resulted in increased availability and a dramatic decline in price. In 1982, the national wholesale price of a kilogram of cocaine ranged from \$47,000 to \$70,000. In 1988 the price ranged from \$10,000 to \$38,000 per kilogram.³⁸ Purity also increased dramatically over this period. This pattern was also reflected in the United Kingdom. Between 1979 and 1984 the interception of illicit drugs by customs officials in the United Kingdom tripled, seizures by police went up by a factor of ten. Although Customs and Excise claim to seize between 10% and 20% of the drugs smuggled into the United Kingdom, other studies put the amount of heroin seized at as low as 4%.³⁹ During the same period, however, prices decreased by 20% and consumption is estimated to have increased by 350%.⁴⁰

Chapter Two outlined how the vast profits to be made from drug trafficking have corrupted the governments and the military of many countries throughout the world. Throughout the eighties, involvement in drug trafficking can be traced to the highest officials in governments in Mexico, the Bahamas, Pakistan, Argentina, Peru, Guatemala, Paraguay, Colombia and Panama. Most recently, the Zambian government has been at the centre of a corruption scandal. The scandal has seen the foreign minister, the community affairs minister, the deputy leader of parliament and the legal affairs minister all sacked or tendering resignations over involvement in drug trafficking. The former ruler, Kenneth Kaunda has described the government of President Chilumba as "enriching themselves through corrupt practices and drug-trafficking."⁴¹

In the countries of the industrialised world it is the relationship between drugs and the increasing domestic and international crime rate which has added to the call for a debate over legalisation by various law-enforcement officials and members of the judiciary. The relationship between domestic crime and drugs is one which continues to resist coherent analysis because cause and effect are so difficult to distinguish. However, the estimated cost of drug-related crime has been put at as much as £2 billion a year in the United Kingdom and more than \$100 billion in the United States where an estimated half of all murders are drug related (see below).⁴² Internationally,

in the Lebanon, Peru, Afghanistan, Laos, Cambodia and Thailand, drug profits have fuelled insurrections. In much of Asia, South and North America and some parts of Europe the drug trade is closely associated with organised crime and terrorism. The threat of illicit funds corrupting financial institutions has also been of great concern during the eighties, with the danger being highlighted by the collapse of the Bank of Credit and Commerce International.

It is within this context that the debate over the legalisation of drugs first emerged in the late eighties, in the United States. Drug legalisation, particularly the legalisation of marijuana, has been discussed on and off over the last twenty years. However, the range of actors involved differentiates the contemporary debate from past debates. Support for the decriminalisation of illicit drugs has traditionally come primarily from the conservative end of the political spectrum, disturbed by the infringements on individual liberty and civil rights posed by the drug laws in the eighties in particular.

One of the most consistent and high profile supporters of decriminalisation is the economist Milton Friedman. Friedman reaffirms in his work the nineteenth-century philosophy of John Stuart Mill that adults should be free to live their lives in their own way as long as their conduct is not directly harmful to others (see Chapter One). Friedman states that we have no rights in respect of adults

"to use the machinery of government to prevent an individual from becoming an alcoholic or a drug addict....Reason with the potential addict, yes. Tell him the consequences, yes. Pray for him, yes. But I believe that we have no right to use force, directly or indirectly to prevent a fellow man from committing suicide, let alone from drinking alcohol or taking drugs".⁴³

This view can be seen to have been reflected in the recent decision of the Colombian Supreme Court to decriminalise the possession of drugs in small amounts. The Supreme Court decided that it was unconstitutional to violate a person's freedom to decide whether to take drugs. The decision has been criticised as "ingenuous and anachronistic, based on 19th century liberalism" by four of the nine judges who

opposed the decision.⁴⁴ A similar ruling took place in Germany in 1992 which called for the recognition of the "constitutional right of individuals to intoxication."⁴⁵

As Chapter One described, the civil liberties of citizens are seen as seriously eroded by the war on drugs. Those on the conservative end of the political spectrum dismiss the argument that drug control is necessary for public health. The public health risks accepted from alcohol and tobacco are much greater than those for the three major illicit drugs - cocaine, heroin and marijuana.⁴⁶ The dominant argument for Friedman is the importance of upholding the value of individual choice: you cannot make illegal something which a significant segment of the population in any society is committed to doing. In a letter to the American "Drug Czar" William Bennett, appointed in 1989 he writes, "The drug war cannot be won by those tactics [referring to the increase in law enforcement] without undermining the human liberty and individual freedom that you and I cherish".⁴⁷ In the United States, a country with one of the most restrictive policies towards drug use, an estimated 33% of the population of 12 years of age and over, admit to using marijuana at some stage in their lives.⁴⁸ Recent highly publicised examples of enforcement policies conflicting with the civil liberties of American citizens include the example of a woman given a life sentence by a state court for the possession of 80lbs of cannabis. A similar case in a federal court would have received an average of five years in jail.⁴⁹ Another highly publicised case is the example of Donald Scott, a reclusive millionaire who was shot dead after a drug raid when a helicopter pilot thought he saw marijuana plants growing on the millionaire's property. None were ever found.⁵⁰ These examples illustrate the view that the freedom of American citizens has been seriously eroded by the war on drugs. Furthermore, the defenders of civil rights, the courts, are seen by those concerned with the erosion of rights under America's drug laws, as having joined the war on drugs. As Steven Wisotsky writes "the U.S. Supreme Court has given its approval to just about every challenged drug enforcement technique."⁵¹

There also emerged in the United States in the later half of the eighties an intellectual rationale for legalisation, with the work of Ethan Nadelmann and Arnold Trebach amongst others. A series of articles by Nadelmann that appeared in the

journals *Foreign Policy*, *The Public Interest*, and *Science* were of particular significance.⁵² In 1987, Trebach, a university professor, established the Drug Policy Foundation in Washington, DC, which became the most significant American institutional voice against the drug war. Many of the evils associated with the drug problem in the eighties, the increase of domestic crime and international instability, were attributed to the fact that drugs were illegal. As Milton Friedman stated "all the atrocities associated with the illegal drug trade occur because the United States and other Western countries pass anti-drug laws which they cannot enforce."⁵³ The "drug problem" as Edward Brecher states in his influential work, *Licit and Illicit Drugs* is itself a problem.⁵⁴ The advantages of legalisation have attracted a great deal of media coverage and were discussed on the front pages of leading newspapers and magazines and were debated on national television. Editorial support from *The Financial World*, *The New Republic* and *The National Review*, and in the United Kingdom *The Economist*, *The Lancet*, *The Independent* and *The Daily Telegraph* have guaranteed coverage of the debate.⁵⁵

Respected intellectuals and professionals have participated in the discussions. The first elected official (a significant development) in the United States to come out in favour of broadening the debate was former prosecutor and then mayor of Baltimore, Kurt Schmoke. Speaking to the National Conference of Mayors he asked for the merits of legalisation to be debated in congressional hearings.⁵⁶ Other prominent participants in the debate have included, the head of the American Civil Liberties Union, prominent Harvard professors, lawyers, former Attorney Generals, Congressmen and prominent businessmen⁵⁷ who began to voice much publicised alternatives to the drug war. Well-known Republicans, such as former Secretary of State George Schultz with a speech published in the *Wall Street Journal* urged that we at least "consider and examine forms of controlled legalisation" in order to "take the criminality out of the drug business".⁵⁸

In the United Kingdom several judges and senior policemen (most recently and significantly, serving police officers) have spoken on the need to reform drugs laws. Among members of the judiciary, Lord Woolf and Judge Pickles have both made much

publicised attacks on the current policy⁵⁹. Among the police forces, Commander John Grieve, head of criminal intelligence at the Metropolitan Police⁶⁰, Edward Ellison, former Central Drug Squad Detective Chief Superintendent⁶¹, Keith Hellowell, Chief Constable of West Yorkshire⁶² and William Nelson, assistant chief constable of Hampshire⁶³ have all spoken out in the debate. Internationally, the Head of Interpol, Raymond Kendall, recently called for an end to the present drug policy and for the decriminalisation of drug use.⁶⁴ A conference of police chiefs, burgomasters and medical officers from large European cities with major drug problems approved a declaration in November 1990 which amounted to a recommendation of decriminalisation. Commenting in an editorial, *The Lancet* said: "the abject failure of prevailing policies is now so generally acknowledged that the momentum towards decriminalisation is surely becoming unstoppable".⁶⁵

Another group with changing attitudes have been European public health authorities as best represented in the Netherlands. They have begun to promote a new health paradigm under the slogan of "harm reduction". Harm reduction policy in the drug field entails, (1) providing information on safer ways to take drugs for those who will continue to take drugs no matter what, (2) offering alternative non-drug methods of altering consciousness, (3) recognizing and responding to drug-related problems (eg overdosing), and (4) making available injecting equipment and drug treatment with minimal restrictions. Harm-reduction policy recognises that abstinence is not a realistic short-term goal for most dependent users. Policy therefore proceeds in a pragmatic fashion through a hierarchy of more achievable objectives. Before the discovery of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS), governments were reluctant to sanction harm-reduction policies which might seem to condone drug use and require police co-operation, even though it was known that a large proportion of HIV infection was caused through needle sharing amongst drug users.⁶⁶ Police co-operation is essential because, if the law were strictly enforced, clients could be arrested in the vicinity of needle-exchange clinics for the possession of a prohibited substance (as was the case in France, as outlined in Chapter One).⁶⁷ The realisation that AIDS posed a greater threat to public health than drug addiction removed political objections.

Within the United States the Surgeon-General, Dr Jocelyn Elders, identified the high murder rate (50% of which is drug-related) as a major menace to public health. In December 1993, and again in January 1994, Dr Elders argued that the US administration ought at least to study legalisation as a means of reducing violent crime and other health risks.⁶⁸

Many grass-roots non-governmental organisations have emerged which support drug-law reform: mention has already been made of Arnold Trebach's Drug Policy Foundation (DPF). Within the UK there is the National Organisation for the Reform of Marijuana Laws (NORML), and within Europe there is the European Movement for the Normalization of Drug Policy (EMNDP), The International Anti-Prohibition League and the Coordinamento Radicale Antiproibizionista (CORA) sponsored by and involved with Italy's Radical Party. The European groups have successfully lobbied for support from members of the European Parliament who now support drug-policy reform. In Italy, Marco Taradash was elected as member to the European Parliament on an anti-prohibition ticket.

The relationship between CORA and Italy's Radical Party reflects the differences between European and American attitudes towards drug reform. The Radical Party places the social integration of marginalised people high on the agenda and looks for global and transnational solutions to problems. European arguments for drug-policy reform can be seen to be more broadly based than the American arguments, encompassing the geo-political, sociological and economic effects of prohibition. A different cultural tradition is represented by the Drug Policy Foundation which comes out of the American liberal democratic tradition. In this tradition the civil liberties arguments dominate. This difference in the political traditions of the two cultures is clearly demonstrated in the scope of the collections of papers published from the recent conferences of the DPF and CORA.⁶⁹ These different cultural traditions and values demonstrate that for any drug policy reform strategy to succeed, it must be couched within the political traditions of that culture.

Events in countries such as Colombia and Bolivia have led to an urgent political need for radical alternatives to current policies. The clash of Bolivian farmers with US troops in July 1991, as outlined in Chapter Two, and the Colombian governments reversal of its policy of extradition to the United States for drug traffickers illustrate this. The decision by the Bolivian government to promote coca tea⁷⁰ and the recent decision by the Colombian judicial system to decriminalise personal drug use, despite opposition from the Colombian government can be seen to reflect this momentum for change. In Europe, a group of Spanish jurists launched a campaign in February 1992 calling for a pragmatic approach to allow sales under strict conditions⁷¹; in May of 1994 the German courts decriminalised the possession of small amounts of the "soft drugs", hashish and marijuana (see above); and in June of the same year a decree issued in Italy repealed the prohibition of the non-medical use of drugs.

These changes in attitudes towards current drugs policy and illicit drug use can be seen in part to be due to the shift in patterns of licit drug consumption. Changing attitudes towards both licit and illicit drug use cannot be seen to be due to government legislation and law enforcement. In the United Kingdom, a recent survey for the Home Office revealed that thirty percent of people were in favour of limited legalisation of drugs such as cannabis.⁷² The Home Secretary, in recently increasing the fine for the possession of drugs five-fold to a maximum of £2,500, has faced extensive criticism from all quarters including magistrates and the police who have criticised the decision as having little impact on the problem of drug use.⁷³ The use and abuse of both legal and illegal drugs has been recognized as the cause of serious health, social, and economic problems for more than a hundred years. Substantial resources have been spent on trying to limit drug use and the associated crime problem created by the illegalization of certain drugs by both the international community and states. Only the decline in the proportion of adults smoking cigarettes can be seen to have been moderately successful through education programmes. The decline in the use of licit drugs such as tobacco and alcohol is due to changing attitudes within society and the recognition of the harmful nature of the substances. This shift has occurred without any change in the law. Illicit drug consumption cannot be controlled solely by law-

enforcement measures but by changes in peoples attitudes towards drug use. Accurate information is therefore needed about the dangers associated with particular types of drug use rather than the blanket condemnation under current drug policy.

This debate on reforming the drug laws outlined above is in stark contrast to the climate of the early eighties where there was very little resistance to the ideological orthodoxy that provided the moral weapons for the campaigns in the drug war begun by President Ronald Reagan and continued by George Bush. However, academic works such as Berridge and Edwards' *Opium and the People* and Courtwright's *Dark Paradise* have, through their analysis of drug use in early industrial society (as described in Chapter Three), provoked many into questioning whether our current drug policies ameliorate or exacerbate drug problems and has led to the reemergence of the legalisation rationale by academics such as Nadelmann as described above.

What differentiates the debate in the latter half of the eighties and early nineties from previous debates has been the perception by the wide range of actors participating that the problem is critical. Previously, discussion of legalisation by policy makers was deemed irresponsible and dismissed. However, a growing number of people in authority, including senior ministers, police officers and members of the judiciary worldwide have come to agree that there is a case to be answered and have responded with reasoned arguments.⁷⁴ Perhaps the current debate about drug legalisation will achieve results as impressive as the shift in values brought about in part by the British anti-opium movement of the 1890s. It is possible there will be a willingness to discard prohibitions and criminal penalties against drug users and sellers, as happened with alcohol in the 1930s. The challenge to "law and order", "civil rights", "justice and fairness" etc by current drug policies can be seen as a value challenge to the belief that "drugs are evil and dangerous", just as in the nineteenth century the values of economic efficiency and economic welfare overrode the value position that drugs were evil and dangerous. The case for legalisation stems from the contention that prohibition is wrong in principle and does not work in practice. It is this latter functional link that can be seen to be leading to a possible successful value challenge to the current policy.

Conclusion

This research has attempted to show that regime analysis, which necessitates an emphasis on the role of values and norms in agenda-building, rather than concentrating on rules and decision-making procedures, is necessary for an understanding of the drug phenomenon. The drug phenomenon has been shown to be a complex phenomenon which challenges the traditional Realist approach to International Relations to explain its complexity. However, the clarification of these key terms used in international regimes literature has been necessary due to the dominance of hegemonic-stability theory to explain the nature and emergence of regimes.

The attempt by actors to control drug trafficking can be seen to be sub-optimal, when compared to the initial goal of the norm from which co-operation occurred. Attempts by actors to control money laundering has led to a high degree of consensus over the norm that "Banks should not profit from illicit funds". Unlike attempts to control drug trafficking, the fact that this norm is adhered to by the actors for whom the issue is salient has led to the emergence of a strong enforcement regime with the Financial Action Task Force emerging as the decision-making focus of the regime. Unlike attempts to control drug trafficking, implementation of the regime's policies is not entirely in the hands of national, rather than international actors. But an international drug-trafficking control regime can be seen to exist since it can still be seen to have influenced political behaviour. By adopting this criterion for regime creation, the concept of an international regime can be distinguished from that of an issue-system in response to Donnelly's criticism of much of regime theory that it is simply systems theory in disguise.⁷⁵ An issue-system can be seen as an area of contention over proposals for the disposition of stakes that each actor perceives as being salient for the realisation of their values. An issue-system may or may not form a regime, depending on the success of translating values into the form of an agreed norm. Where regulation based on an agreed norm occurs the phenomenon of an international regime emerges.

The norm of the international money-laundering control regime is seen as a binding international standard, accepted as authoritative by states and non-state actors. As has been explained in the previous chapter, efficiency, profits and secrecy were of higher salience than honesty and stability for financial actors during the early eighties. However, the perceived threat to the banking system from drug money and the response of bankers to the general concern outside the banking world about drug criminality, led to a value shift and norm emergence.

During the last two decades, there has been strong intergovernmental co-operation on the need to control illicit drug-use. During the eighties, a new focus emerged, emphasising control of demand for illicit drugs and an international consensus against drug trafficking. However, expansion of drug trafficking continues to outpace the international communities efforts to contain it. In response to this lack of success a shift in attitudes towards current drug policy and illicit drug-use can be seen to have occurred. Either the technology for effective enforcement of the drug trafficking norm will have to improve or the pressure towards liberalisation of current drugs policy will continue.

This research has shown that the answer to the question of regime significance, raised at the beginning of this work, depends on the behavioral assumptions that underlie the different theoretical models of International Relations towards the concept of values and norms. The Realist explanation of norm emergence in terms of the power of a hegemon writing the rules in their own interest has been replaced with the importance of the role of values in norm emergence. Norms can be seen to be real and to influence behaviour and outcomes in world politics and are central to understanding international regimes. An international regime can be seen to emerge when there is an authoritative allocation of the values and norms being contended. This authoritative allocation of values and norms can be seen to have occurred if a set of rules and decision-making procedures have been established by an appropriate institutional structure, and that these rules and decisions are then acted upon by the actors within the issue-system.

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64. "Depenalise drug use, says Interpol boss", *The Independent*, 30.12.93.
65. *The Lancet*, Vol. 337, 16 February 1991, p 402.
66. It has been estimated that more than 50% of all the people with AIDS in New York, and many other parts of the country, as well as the majority of AIDS-infected homosexuals, have contracted the disease directly or indirectly through illegal intravenous drug use. See Nadelmann in Inciardi, *op cit.*, p 34.
67. See "French minister campaigns for British way with Aids control", *The Guardian*, 26.1.93., in Chapter One.
68. See, "Legalising Drugs: Another Look", *The Economist*, 22.1.94.
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72. "One in three backs legalising cannabis", *The Independent*, 3.3.94.

73. "Magistrates oppose rise in drug fines", *The Guardian*, 15.2.94.

74. See, Rt Hon. Douglas Hurd, MP, "Drug legalisation is no answer", Speech to the Derby North Conservative Association, 8 September, 1989; Council of Europe Social, Health and Family Affairs Committee, *Report on drug misuse and illicit trafficking and the question of legalisation*, Rapporteur Mr Rathbone, Strasbourg, 23 May 1990.

75. See Chapter Four.

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Appendix A

List of targets of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control

I. PREVENTION AND REDUCTION OF THE ILLICIT DEMAND FOR NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

1. Assessment of the extent of drug misuse and abuse.
2. Organization of comprehensive systems for the collection and evaluation of data.
3. Prevention through education.
4. Prevention of drug abuse in the workplace.
5. Prevention program by civic, community, and special interest groups and law-enforcement officials.
6. Leisure-time activities in the service of the continuing campaign against drug abuse.
7. Role of the media.

II. CONTROL OF SUPPLY

8. Strengthening of the international system of control of narcotic drugs and psychotropic substances.
9. Rational use of pharmaceuticals containing narcotic drugs and psychotropic substances.
10. Strengthening the control of international movements of psychotropic substances.
11. Action related to the increase in the number of controlled psychotropic substances.
12. Control of the commercial movement of precursors, specific chemicals, and equipment.
13. Control of analogues of substances under international control.
14. Identification of illicit narcotic plant cultivation.
15. Elimination of illicit plantings.
16. Redevelopment of areas formerly under illicit drug crop cultivation.

III. SUPPRESSION OF ILLICIT TRAFFICKING

17. Disruption of major trafficking networks.
18. Promoting controlled delivery.
19. Facilitation of extradition.
20. Mutual judicial and legal assistance.
21. Admissibility in evidence of samples of bulk seizures of drugs.
22. Improved efficacy of penal provisions.
23. Forfeiture of the instruments and proceeds of illicit drug trafficking.
24. Tightening of controls of movement through official points of entry.

25. Strengthening of external border controls and of mutual assistance machinery within economic unions of sovereign states.
26. Surveillance of land, water, and air approaches to the frontier.
27. Controls over the use of the international mails for drug trafficking.
28. Controls over ships on the high seas and aircraft in international airspace.

IV. TREATMENT AND REHABILITATION

29. Towards a policy of treatment.
30. Inventory of available modalities and techniques of treatment and rehabilitation.
31. Selection of appropriate treatment programmes.
32. Training for personnel working with drug addicts.
33. Reduction of the incidence of diseases and the number of infections transmitted through drug-using habits.
34. Care for drug-addicted offenders within the criminal justice and prison system.
35. Social reintegration of persons who have undergone programs for treatment and rehabilitation.

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

Adopted in Vienna on 19 December 1988

Source: Home Office, London

The Parties to this Convention,

Deeply concerned by the magnitude of and rising trend in the illicit production of, demand for and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society,

Deeply concerned also by the steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances, and particularly by the fact that children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity,

Recognizing the links between illicit traffic and other related organized criminal activities which undermine the legitimate economies and threaten the stability, security and sovereignty of States,

Recognizing also that illicit traffic is an international criminal activity, the suppression of which demands urgent attention and the highest priority,

Aware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels,

Determined to deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing,

Desiring to eliminate the root causes of the problem of abuse of narcotic drugs and psychotropic substances, including the illicit demand for such drugs and substances and the enormous profits derived from illicit traffic,

Considering that measures are necessary to monitor certain substances, including precursors, chemicals and solvents, which are used in the manufacture of narcotic drugs and psychotropic substances, the ready availability of which has led to an increase in the clandestine manufacture of such drugs and substances,

Determined to improve international co-operation in the suppression of illicit traffic by sea,

Recognizing that eradication of illicit traffic is a collective responsibility of all States and that, to that end, co-ordinated action within the framework of international co-operation is necessary,

Acknowledging the competence of the United Nations in the field of control of narcotic drugs and psychotropic substances and desirous that the international organs concerned with such control should be within the framework of that Organization,

Reaffirming the guiding principles of existing treaties in the field of narcotic drugs and psychotropic substances and the system of control which they embody,

Recognizing the need to reinforce and supplement the measures provided in the Single Convention on Narcotic Drugs, 1961, that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961, and the 1971 Convention on Psychotropic Substances, in order to counter the magnitude and extent of illicit traffic and its grave consequences,

Recognizing also the importance of strengthening and enhancing effective legal means for international co-operation in criminal matters for suppressing the international criminal activities of illicit traffic,

Desiring to conclude a comprehensive, effective and operative international convention that is directed specifically against illicit traffic and that considers the various aspects of the problem as a whole, in particular those aspects not envisaged in the existing treaties in the field of narcotic drugs and psychotropic substances,

Hereby agrees as follows:

Article 1

DEFINITIONS

Except where otherwise expressly indicated or where the context otherwise requires, the following definitions shall apply throughout this Convention:

- (a) "Board" means the International Narcotics Control Board established by the Single Convention on Narcotic Drugs, 1954, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1954;
- (b) "Cannabis plant" means any plant of the genus *Cannabis*;
- (c) "Coca bush" means the plant of any species of the genus *Erythroxylon*;
- (d) "Commercial carrier" means any person or any public, private or other entity engaged in transporting persons, goods or mails for remuneration, hire, or any other benefit;
- (e) "Commission" means the Commission on Narcotic Drugs of the Economic and Social Council of the United Nations;
- (f) "Confiscation", which includes forfeiture where applicable, means the permanent deprivation of property by order of a court or other competent authority;
- (g) "Controlled delivery" means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1 of the Convention;
- (h) "1954 Convention" means the Single Convention on Narcotic Drugs, 1954;
- (i) "1954 Convention as amended" means the Single Convention on Narcotic Drugs, 1954, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1954;
- (j) "1971 Convention" means the Convention on Psychotropic Substances, 1971;
- (k) "Council" means the Economic and Social Council of the United Nations;
- (l) "Freezing" or "seizure" means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority;
- (m) "Illicit traffic" means the offences set forth in article 3, paragraphs 1 and 2, of this Convention;
- (n) "Narcotic drug" means any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1954, and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1954;
- (o) "Opium poppy" means the plant of the species *Papaver somniferum* L.;
- (p) "Proceeds" means any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with article 3, paragraph 1;
- (q) "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

- (r) "Psychotropic substance" means any substance, natural or synthetic, or any natural material in Schedules I, II, III and IV of the Convention on Psychotropic Substances, 1971;
- (s) "Secretary-General" means the Secretary-General of the United Nations;
- (t) "Table I" and "Table II" mean the correspondingly numbered lists of substances annexed to this Convention, as amended from time to time in accordance with article 12;
- (u) "Transit State" means a State through the territory of which illicit narcotic drugs, psychotropic substances and substances in Table I and Table II are being moved, which is neither the place of origin nor the place of ultimate destination thereof.

Article 2

SCOPE OF THE CONVENTION

1. The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

2. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

3. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions which are exclusively reserved for the authorities of that other Party by its domestic law.

Article 3

OFFENCES AND SANCTIONS

1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

- (a) (i) The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;
- (ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;
- (iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above;
- (iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;
- (v) The organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above;
- (b) (i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

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- (ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such an offence or offences;
- (c) Subject to its constitutional principles and the basic concepts of its legal system:
 - (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences;
 - (ii) The possession of equipment or materials or substances listed in Table I and Table II, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;
 - (iii) Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly;
 - (iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

3. Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

- 4. (a) Each Party shall make the commission of the offences established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.
- (b) The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.
- (c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.
- (d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.

5. The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph 1 of this article particularly serious, such as:

- (a) The involvement in the offence of an organized criminal group to which the offender belongs;
- (b) The involvement of the offender in other international organized criminal activities;
- (c) The involvement of the offender in other illegal activities facilitated by commission of the offence;
- (d) The use of violence or arms by the offender;

- (e) The fact that the offender holds a public office and that the offence is connected with the office in question;
 - (f) The victimization or use of minors;
 - (g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities;
 - (h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.
6. The Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
7. The Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph 1 of this article and the circumstances enumerated in paragraph 5 of this article when considering the eventuality of early release or parole of persons convicted of such offences.
8. Each Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with paragraph 1 of this article, and a longer period where the alleged offender has evaded the administration of justice.
9. Each Party shall take appropriate measures, consistent with its legal system, to ensure that a person charged with or convicted of an offence established in accordance with paragraph 1 of this article, who is found within its territory, is present at the necessary criminal proceedings.
10. For the purpose of co-operation among the Parties under this Convention, including, in particular, co-operation under articles 5, 6, 7 and 9, offences established in accordance with this article shall not be considered as fiscal offences or as political offences or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the Parties.
11. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

Article 4

JURISDICTION

1. Each Party:
- (a) Shall take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:
 - (i) The offence is committed in its territory;
 - (ii) The offence is committed on board a vessel flying its flag or an aircraft which is registered under its laws at the time the offence is committed;
 - (b) May take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when:
 - (i) The offence is committed by one of its nationals or by a person who has his habitual residence in its territory;
 - (ii) The offence is committed on board a vessel concerning which that Party has been authorized to take appropriate action pursuant to article 17, provided that such jurisdiction shall be exercised only on the basis of agreements or arrangements referred to in paragraphs 4 and 9 of that article;

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- (iii) The offence is one of those established in accordance with article 3, paragraph 1, subparagraph (c)(iv), and is committed outside its territory with a view to the commission, within its territory, of an offence established in accordance with article 3, paragraph 1.

2. Each Party:

- (a) Shall also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party on the ground:

- (i) That the offence has been committed in its territory or on board a vessel flying its flag or an aircraft which was registered under its law at the time the offence was committed; or
- (ii) That the offence has been committed by one of its nationals;

- (b) May also take such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with article 3, paragraph 1, when the alleged offender is present in its territory and it does not extradite him to another Party.

3. This Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law.

Article 5

CONFISCATION

1. Each Party shall adopt such measures as may be necessary to enable confiscation of:

- (a) Proceeds derived from offences established in accordance with article 3, paragraph 1, or property the value of which corresponds to that of such proceeds;
- (b) Narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used in or intended for use in any manner in offences established in accordance with article 3, paragraph 1.

2. Each Party shall also adopt such measures as may be necessary to enable its competent authorities to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article, for the purpose of eventual confiscation.

3. In order to carry out the measures referred to in this article, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. (a) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the Party in whose territory proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

- (i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or
- (ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, in so far as it relates to proceeds, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party.

- (b) Following a request made pursuant to this article by another Party having jurisdiction over an offence established in accordance with article 3, paragraph 1, the requested Party shall take measures to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, by the requested Party.

- (c) The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party.
 - (d) The provisions of article 7, paragraphs 6 to 19 are applicable *mutatis mutandis*. In addition to the information specified in article 7, paragraph 10, requests made pursuant to this article shall contain the following:
 - (i) In the case of a request pertaining to subparagraph (a)(i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;
 - (ii) In the case of a request pertaining to subparagraph (a)(ii), a legally admissible copy of an order of confiscation issued by the requesting Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;
 - (iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting Party and a description of the actions requested.
 - (e) Each Party shall furnish to the Secretary-General the text of any of its laws and regulations which give effect to this paragraph and the text of any subsequent changes to such laws and regulations.
 - (f) If a Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention as the necessary and sufficient treaty basis.
 - (g) The Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article.
5. (a) Proceeds or property confiscated by a Party pursuant to paragraph 1 or paragraph 4 of this article shall be disposed of by that Party according to its domestic law and administrative procedures.
- (b) When acting on the request of another Party in accordance with this article, a Party may give special consideration to concluding agreements on:
 - (i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against illicit traffic in and abuse of narcotic drugs and psychotropic substances;
 - (ii) Sharing with other Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.
6. (a) If proceeds have been transformed or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.
- (b) If proceeds have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds.
- (c) Income or other benefits derived from:
 - (i) Proceeds;
 - (ii) Property into which proceeds have been transformed or converted; or
 - (iii) Property with which proceeds have been intermingledshall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds.

7. Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a Party.

Article 6

EXTRADITION

1. This article shall apply to the offences established by the Parties in accordance with article 3, paragraph 1.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. The Parties which require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

4. The Parties which do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests received pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

7. The Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

9. Without prejudice to the exercise of any criminal jurisdiction established in accordance with its domestic law, a Party in whose territory an alleged offender is found shall:

- (a) If it does not extradite him in respect of an offence established in accordance with article 3, paragraph 1, on the grounds set forth in article 4, paragraph 2, subparagraph (a), submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the requesting Party;
- (b) If it does not extradite him in respect of such an offence and has established its jurisdiction in relation to that offence in accordance with article 4, paragraph 2, subparagraph (b), submit the case to its competent authorities for the purpose of prosecution, unless otherwise requested by the requesting Party for the purposes of preserving its legitimate jurisdiction.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested Party, the requested Party shall, if its law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence which has been imposed under the law of the requesting Party, or the remainder thereof.

11. The Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

12. The Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentence there.

Article 7

MUTUAL LEGAL ASSISTANCE

1. The Parties shall afford one another, pursuant to this article, the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3, paragraph 1.

2. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures;
- (d) Examining objects and sites;
- (e) Providing information and evidentiary items;
- (f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.

3. The Parties may afford one another any other forms of mutual legal assistance allowed by the domestic law of the requested Party.

4. Upon request, the Parties shall facilitate or encourage, to the extent consistent with their domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings.

5. A Party shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual legal assistance in criminal matters.

7. Paragraphs 8 to 19 of this article shall apply to requests made pursuant to this article if the Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 8 to 19 of this article in lieu thereof.

8. Parties shall designate an authority, or when necessary authorities, which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or the authorities designated for this purpose shall be notified to the Secretary-General. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization, if possible.

9. Requests shall be made in writing in a language acceptable to the requested Party. The language or languages acceptable to each Party shall be notified to the Secretary-General. In urgent circumstances, and where agreed by the Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;
- (c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure the requesting Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned;
- (f) The purpose for which the evidence, information or action is sought.

11. The requested Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.

13. The requesting Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.

14. The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

15. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;
- (b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
- (c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;
- (d) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.

16. Reasons shall be given for refusal of mutual legal assistance.

17. Mutual legal assistance may be postponed by the requested Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

18. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting Party, shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.

19. The ordinary costs of executing a request shall be borne by the requested Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

20. The Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.

Article 8

TRANSFER OF PROCEEDINGS

The Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with article 3, paragraph 1, in cases where such transfer is considered to be in the interests of a proper administration of justice.

Article 9

OTHER FORMS OF CO-OPERATION AND TRAINING

1. The Parties shall co-operate closely with one another, consistent with their respective domestic legal and administrative systems, with a view to enhancing the effectiveness of law enforcement action to suppress the commission of offences established in accordance with article 3, paragraph 1. They shall, in particular, on the basis of bilateral or multilateral agreements or arrangements:

- (a) Establish and maintain channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences established in accordance with article 3, paragraph 1, including, if the Parties concerned deem it appropriate, links with other criminal activities;
- (b) Co-operate with one another in conducting enquiries, with respect to offences established in accordance with article 3, paragraph 1, having an international character, concerning:
 - (i) The identity, whereabouts and activities of persons suspected of being involved in offences established in accordance with article 3, paragraph 1;
 - (ii) The movement of proceeds or property derived from the commission of such offences;
 - (iii) The movement of narcotic drugs, psychotropic substances, substances in Table I and Table II of this Convention and instrumentalities used or intended for use in the commission of such offences;

- (c) In appropriate cases and if not contrary to domestic law, establish joint teams, taking into account the need to protect the security of persons and of operations, to carry out the provisions of this paragraph. Officials of any Party taking part in such teams shall act as authorized by the appropriate authorities of the Party in whose territory the operation is to take place; in all such cases, the Parties involved shall ensure that the sovereignty of the Party on whose territory the operation is to take place is fully respected;
- (d) Provide, when appropriate, necessary quantities of substances for analytical or investigative purposes;
- (e) Facilitate effective co-ordination between their competent agencies and services and promote the exchange of personnel and other experts, including the posting of liaison officers.

2. Each Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement and other personnel, including customs, charged with the suppression of offences established in accordance with article 3, paragraph 1. Such programmes shall deal, in particular, with the following:

- (a) Methods used in the detection and suppression of offences established in accordance with article 3, paragraph 1;
- (b) Routes and techniques used by persons suspected of being involved in offences established in accordance with article 3, paragraph 1, particularly in transit States, and appropriate countermeasures;
- (c) Monitoring of the import and export of narcotic drugs, psychotropic substances and substances in Table I and Table II;
- (d) Detection and monitoring of the movement of proceeds and property derived from, and narcotic drugs, psychotropic substances and substances in Table I and Table II, and instrumentalities used or intended for use in, the commission of offences established in accordance with article 3, paragraph 1;
- (e) Methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities;
- (f) Collection of evidence;
- (g) Control techniques in free trade zones and free ports;
- (h) Modern law enforcement techniques.

3. The Parties shall assist one another to plan and implement research and training programmes designed to share expertise in the areas referred to in paragraph 2 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote co-operation and stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

Article 10

INTERNATIONAL CO-OPERATION AND ASSISTANCE FOR TRANSIT STATES

1. The Parties shall co-operate, directly or through competent international or regional organizations, to assist and support transit States and, in particular, developing countries in need of such assistance and support, to the extent possible, through programmes of technical co-operation on interdiction and other related activities.

2. The Parties may undertake, directly or through competent international or regional organizations, to provide financial assistance to such transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic.

3. The Parties may conclude bilateral or multilateral agreements or arrangements to enhance the effectiveness of international co-operation pursuant to this article and may take into consideration financial arrangements in this regard.

Article 11

CONTROLLED DELIVERY

1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.

3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part.

Article 12

SUBSTANCES FREQUENTLY USED IN THE ILLICIT MANUFACTURE OF
NARCOTIC DRUGS OR PSYCHOTROPIC SUBSTANCES

1. The Parties shall take the measures they deem appropriate to prevent diversion of substances in Table I and Table II used for the purpose of illicit manufacture of narcotic drugs or psychotropic substances, and shall co-operate with one another to this end.

2. If a Party or the Board has information which in its opinion may require the inclusion of a substance in Table I or Table II, it shall notify the Secretary-General and furnish him with the information in support of that notification. The procedure described in paragraphs 2 to 7 of this article shall also apply when a Party or the Board has information justifying the deletion of a substance from Table I or Table II, or the transfer of a substance from one Table to the other.

3. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission, and, where notification is made by a Party, to the Board. The Parties shall communicate their comments concerning the notification to the Secretary-General, together with all supplementary information which may assist the Board in establishing an assessment and the Commission in reaching a decision.

4. If the Board, taking into account the extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit purposes and for the illicit manufacture of narcotic drugs or psychotropic substances, finds:

- (a) That the substance is frequently used in the illicit manufacture of a narcotic drug or psychotropic substance;
- (b) That the volume and extent of the illicit manufacture of a narcotic drug or psychotropic substance creates serious public health or social problems, so as to warrant international action,

it shall communicate to the Commission an assessment of the substance, including the likely effect of adding the substance to either Table I or Table II on both licit use and illicit manufacture, together with recommendations of monitoring measures, if any, that would be appropriate in the light of its assessment.

5. The Commission, taking into account the comments submitted by the Parties and the comments and recommendations of the Board, whose assessment shall be determinative as to scientific matters, and also taking into due consideration any other relevant factors, may decide by a two-thirds majority of its members to place a substance in Table I or Table II.

6. Any decision of the Commission taken pursuant to this article shall be communicated by the Secretary-General to all States and other entities which are, or which are entitled to become, Parties to this Convention, and to the Board. Such decision shall become fully effective with respect to each Party one hundred and eighty days after the date of such communication.

7. (a) The decisions of the Commission taken under this article shall be subject to review by the Council upon the request of any Party filed within one hundred and eighty days after the date of notification of the decision. The request for review shall be sent to the Secretary-General, together with all relevant information upon which the request for review is based.
 - (b) The Secretary-General shall transmit copies of the request for review and the relevant information to the Commission, to the Board and to all the Parties, inviting them to submit their comments within ninety days. All comments received shall be submitted to the Council for consideration.
 - (c) The Council may confirm or reverse the decision of the Commission. Notification of the Council's decision shall be transmitted to all States and other entities which are, or which are entitled to become, Parties to this Convention, to the Commission and to the Board.
8. (a) Without prejudice to the generality of the provisions contained in paragraph 1 of this article and the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the Parties shall take the measures they deem appropriate to monitor the manufacture and distribution of substances in Table I and Table II which are carried out within their territory.
 - (b) To this end, the Parties may:
 - (i) Control all persons and enterprises engaged in the manufacture and distribution of such substances;
 - (ii) Control under licence the establishment and premises in which such manufacture or distribution may take place;
 - (iii) Require that licensees obtain a permit for conducting the aforesaid operations;
 - (iv) Prevent the accumulation of such substances in the possession of manufacturers and distributors, in excess of the quantities required for the normal conduct of business and the prevailing market conditions.
9. Each Party shall, with respect to substances in Table I and Table II, take the following measures:
 - (a) Establish and maintain a system to monitor international trade in substances in Table I and Table II in order to facilitate the identification of suspicious transactions. Such monitoring systems shall be applied in close co-operation with manufacturers, importers, exporters, wholesalers and retailers, who shall inform the competent authorities of suspicious orders and transactions.
 - (b) Provide for the seizure of any substance in Table I or Table II if there is sufficient evidence that it is for use in the illicit manufacture of a narcotic drug or psychotropic substance.
 - (c) Notify, as soon as possible, the competent authorities and services of the Parties concerned if there is reason to believe that the import, export or transit of a substance in Table I or Table II is destined for the illicit manufacture of narcotic drugs or psychotropic substances, including in particular information about the means of payment and any other essential elements which led to that belief.
 - (d) Require that imports and exports be properly labelled and documented. Commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names, as stated in Table I or Table II, of the substances being imported or exported, the quantity being imported or exported, and the name and address of the exporter, the importer and, when available, the consignee.
 - (e) Ensure that documents referred to in subparagraph (d) of this paragraph are maintained for a period of not less than two years and may be made available for inspection by the competent authorities.

10. (a) In addition to the provisions of paragraph 9, and upon request to the Secretary-General by the interested Party, each Party from whose territory a substance in Table I is to be exported shall ensure that, prior to such export, the following information is supplied by its competent authorities to the competent authorities of the importing country:
- (i) Name and address of the exporter and importer and, when available, the consignee;
 - (ii) Name of the substance in Table I;
 - (iii) Quantity of the substance to be exported;
 - (iv) Expected point of entry and expected date of dispatch;
 - (v) Any other information which is mutually agreed upon by the Parties.
- (b) A Party may adopt more strict or severe measures of control than those provided by this paragraph if, in its opinion, such measures are desirable or necessary.
11. Where a Party furnishes information to another Party in accordance with paragraphs 9 and 10 of this article, the Party furnishing such information may require that the Party receiving it keep confidential any trade, business, commercial or professional secret or trade process.
12. Each Party shall furnish annually to the Board, in the form and manner provided for by it and on forms made available by it, information on:
- (a) The amounts seized of substances in Table I and Table II and, when known, their origin;
 - (b) Any substance not included in Table I or Table II which is identified as having been used in illicit manufacture of narcotic drugs or psychotropic substances, and which is deemed by the Party to be sufficiently significant to be brought to the attention of the Board;
 - (c) Methods of diversion and illicit manufacture.
13. The Board shall report annually to the Commission on the implementation of this article and the Commission shall periodically review the adequacy and propriety of Table I and Table II.
14. The provisions of this article shall not apply to pharmaceutical preparations, nor to other preparations containing substances in Table I or Table II that are compounded in such a way that such substances cannot be easily used or recovered by readily applicable means.

Article 13

MATERIALS AND EQUIPMENT

The Parties shall take such measures as they deem appropriate to prevent trade in and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances and shall co-operate to this end.

Article 14

MEASURES TO ERADICATE ILLICIT CULTIVATION OF NARCOTIC PLANTS AND TO ELIMINATE ILLICIT DEMAND FOR NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

1. Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances and to the elimination of illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1953 Convention, the 1961 Convention as amended and the 1971 Convention.
2. Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment.

3. (a) The Parties may co-operate to increase the effectiveness of eradication efforts. Such co-operation may, *inter alia*, include support, when appropriate, for integrated rural development leading to economically viable alternatives to illicit cultivation. Factors such as access to markets, the availability of resources and prevailing socio-economic conditions should be taken into account before such rural development programmes are implemented. The Parties may agree on any other appropriate measures of co-operation.
- (b) The Parties shall also facilitate the exchange of scientific and technical information and the conduct of research concerning eradication.
- (c) Whenever they have common frontiers, the Parties shall seek to co-operate in eradication programmes in their respective areas along those frontiers.

4. The Parties shall adopt appropriate measures aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances, with a view to reducing human suffering and eliminating financial incentives for illicit traffic. These measures may be based, *inter alia*, on the recommendations of the United Nations, specialized agencies of the United Nations such as the World Health Organization, and other competent international organizations, and on the Comprehensive Multidisciplinary Outline adopted by the International Conference on Drug Abuse and Illicit Trafficking, held in 1957, as it pertains to governmental and non-governmental agencies and private efforts in the fields of prevention, treatment and rehabilitation. The Parties may enter into bilateral or multilateral agreements or arrangements aimed at eliminating or reducing illicit demand for narcotic drugs and psychotropic substances.

5. The Parties may also take necessary measures for early destruction or lawful disposal of the narcotic drugs, psychotropic substances and substances in Table I and Table II which have been seized or confiscated and for the admissibility as evidence of duly certified necessary quantities of such substances.

Article 15

COMMERCIAL CARRIERS

1. The Parties shall take appropriate measures to ensure that means of transport operated by commercial carriers are not used in the commission of offences established in accordance with article 3, paragraph 1; such measures may include special arrangements with commercial carriers.

2. Each Party shall require commercial carriers to take reasonable precautions to prevent the use of their means of transport for the commission of offences established in accordance with article 3, paragraph 1. Such precautions may include:

- (a) If the principal place of business of a commercial carrier is within the territory of the Party:
 - (i) Training of personnel to identify suspicious consignments or persons;
 - (ii) Promotion of integrity of personnel;
- (b) If a commercial carrier is operating within the territory of the Party:
 - (i) Submission of cargo manifests in advance, whenever possible;
 - (ii) Use of tamper-resistant, individually verifiable seals on containers;
 - (iii) Reporting to the appropriate authorities at the earliest opportunity all suspicious circumstances that may be related to the commission of offences established in accordance with article 3, paragraph 1.

3. Each Party shall seek to ensure that commercial carriers and the appropriate authorities at points of entry and exit and other customs control areas co-operate, with a view to preventing unauthorized access to means of transport and cargo and to implementing appropriate security measures.

Article 16

COMMERCIAL DOCUMENTS AND LABELLING OF EXPORTS

1. Each Party shall require that lawful exports of narcotic drugs and psychotropic substances be properly documented. In addition to the requirements for documentation under article 31 of the 1961 Convention, article 31 of the 1961 Convention as amended and article 12 of the 1971 Convention, commercial documents such as invoices, cargo manifests, customs, transport and other shipping documents shall include the names of the narcotic drugs and psychotropic substances being exported as set out in the respective Schedules of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention, the quantity being exported, and the name and address of the exporter, the importer and, when available, the consignee.

2. Each Party shall require that consignments of narcotic drugs and psychotropic substances being exported be not mislabelled.

Article 17

ILLICIT TRAFFIC BY SEA

1. The Parties shall co-operate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea.

2. A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or marks of registry is engaged in illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

3. A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel.

4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to, *inter alia*:

- (a) Board the vessel;
- (b) Search the vessel;
- (c) If evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.

5. Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested State.

6. The flag State may, consistent with its obligations in paragraph 1 of this article, subject its authorization to conditions to be mutually agreed between it and the requesting party, including conditions relating to responsibility.

7. For the purposes of paragraphs 3 and 4 of this article, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is entitled to do so, and to requests for authorization made pursuant to paragraph 3. At the time of becoming a Party to this Convention, each Party shall designate an authority or, when necessary, authorities to receive and respond to such requests. Such designation shall be notified through the Secretary-General to all other Parties within one month of the designation.

8. A Party which has taken any action in accordance with this article shall promptly inform the flag State concerned of the results of that action.

9. The Parties shall consider entering into bilateral or regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

10. Action pursuant to paragraph 4 of this article shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorised to that effect.

11. Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea.

Article 18

FREE TRADE ZONES AND FREE PORTS

1. The Parties shall apply measures to suppress illicit traffic in narcotic drugs, psychotropic substances and substances in Table I and Table II in free trade zones and in free ports that are no less stringent than those applied in other parts of their territories.

2. The Parties shall endeavour:

- (a) To monitor the movement of goods and persons in free trade zones and free ports, and, to that end, shall empower the competent authorities to search cargoes and incoming and outgoing vessels, including pleasure craft and fishing vessels, as well as aircraft and vehicles and, when appropriate, to search crew members, passengers and their baggage;
- (b) To establish and maintain a system to detect consignments suspected of containing narcotic drugs, psychotropic substances and substances in Table I and Table II passing into or out of free trade zones and free ports;
- (c) To establish and maintain surveillance systems in harbour and dock areas and at airports and border control points in free trade zones and free ports.

Article 19

THE USE OF THE MAILS

1. In conformity with their obligations under the Conventions of the Universal Postal Union, and in accordance with the basic principles of their domestic legal systems, the Parties shall adopt measures to suppress the use of the mails for illicit traffic and shall co-operate with one another to that end.

2. The measures referred to in paragraph 1 of this article shall include, in particular:

- (a) Co-ordinated action for the prevention and repression of the use of the mails for illicit traffic;
- (b) Introduction and maintenance by authorized law enforcement personnel of investigative and control techniques designed to detect illicit consignments of narcotic drugs, psychotropic substances and substances in Table I and Table II in the mails;
- (c) Legislative measures to enable the use of appropriate means to secure evidence required for judicial proceedings.

Article 20

INFORMATION TO BE FURNISHED BY THE PARTIES

1. The Parties shall furnish, through the Secretary-General, information to the Commission on the working of this Convention in their territories and, in particular:

- (a) The text of laws and regulations promulgated in order to give effect to the Convention;
- (b) Particulars of cases of illicit traffic within their jurisdiction which they consider important because of new trends disclosed, the quantities involved, the sources from which the substances are obtained, or the methods employed by persons so engaged.

2. The Parties shall furnish such information in such a manner and by such dates as the Commission may request.

Article 21

FUNCTIONS OF THE COMMISSION

The Commission is authorized to consider all matters pertaining to the aims of this Convention and, in particular:

- (a) The Commission shall, on the basis of the information submitted by the Parties in accordance with Article 20, review the operation of this Convention;
- (b) The Commission may make suggestions and general recommendations based on the examination of the information received from the Parties;
- (c) The Commission may call the attention of the Board to any matters which may be relevant to the functions of the Board;
- (d) The Commission shall, on any matter referred to it by the Board under article 22, paragraph 1(b), take such action as it deems appropriate;
- (e) The Commission may, in conformity with the procedures laid down in article 12, amend Table I and Table II;
- (f) The Commission may draw the attention of non-Parties to decisions and recommendations which it adopts under this Convention, with a view to their considering taking action in accordance therewith.

Article 22

FUNCTIONS OF THE BOARD

1. Without prejudice to the functions of the Commission under article 21, and without prejudice to the functions of the Board and the Commission under the 1953 Convention, the 1961 Convention as amended and the 1971 Convention:

- (a) If, on the basis of its examination of information available to it, to the Secretary-General or to the Commission, or of information communicated by United Nations organs, the Board has reason to believe that the aims of this Convention in matters related to its competence are not being met, the Board may invite a Party or Parties to furnish any relevant information;
- (b) With respect to articles 12, 13 and 16:
 - (i) After taking action under subparagraph (a) of this article, the Board, if satisfied that it is necessary to do so, may call upon the Party concerned to adopt such remedial measures as shall seem under the circumstances to be necessary for the execution of the provisions of articles 12, 13 and 16;
 - (ii) Prior to taking action under (iii) below, the Board shall treat as confidential its communications with the Party concerned under the preceding subparagraphs;
 - (iii) If the Board finds that the Party concerned has not taken remedial measures which it has been called upon to take under this subparagraph, it may call the attention of the Parties, the Council and the Commission to the matter. Any report published by the Board under this subparagraph shall also contain the views of the Party concerned if the latter so requests.

2. Any Party shall be invited to be represented at a meeting of the Board at which a question of direct interest to it is to be considered under this article.

3. If in any case a decision of the Board which is adopted under this article is not unanimous, the views of the minority shall be stated.

4. Decisions of the Board under this article shall be taken by a two-thirds majority of the whole number of the Board.

5. In carrying out its functions pursuant to subparagraph 1(a) of this article, the Board shall ensure the confidentiality of all information which may come into its possession.

6. The Board's responsibility under this article shall not apply to the implementation of treaties or agreements entered into between Parties in accordance with the provisions of this Convention.

7. The provisions of this article shall not be applicable to disputes between Parties falling under the provisions of article 32.

Article 23

REPORTS OF THE BOARD

1. The Board shall prepare an annual report on its work containing an analysis of the information at its disposal and, in appropriate cases, an account of the explanations, if any, given by or required of Parties, together with any observations and recommendations which the Board desires to make. The Board may make such additional reports as it considers necessary. The reports shall be submitted to the Council through the Commission which may make such comments as it sees fit.

2. The reports of the Board shall be communicated to the Parties and subsequently published by the Secretary-General. The Parties shall permit their unrestricted distribution.

Article 24

APPLICATION OF STRICTER MEASURES THAN THOSE REQUIRED BY THIS CONVENTION

A Party may adopt more strict or severe measures than those provided by this Convention if, in its opinion, such measures are desirable or necessary for the prevention or suppression of illicit traffic.

Article 25

NON-DEROGATION FROM EARLIER TREATY RIGHTS AND OBLIGATIONS

The provisions of this Convention shall not derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the 1951 Convention, the 1951 Convention as amended and the 1971 Convention.

Article 26

SIGNATURE

This Convention shall be open for signature at the United Nations Office at Vienna, from 20 December 1988 to 28 February 1989, and thereafter at the Headquarters of the United Nations at New York, until 20 December 1989, by:

- (a) All States;
- (b) Namibia, represented by the United Nations Council for Namibia;
- (c) Regional economic integration organizations which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention, references under the Convention to Parties, States or national services being applicable to these organizations within the limits of their competence.

Article 27

RATIFICATION, ACCEPTANCE, APPROVAL OR
ACT OF FORMAL CONFIRMATION

1. This Convention is subject to ratification, acceptance or approval by States and by Namibia, represented by the United Nations Council for Namibia, and to acts of formal confirmation by regional economic integration organizations referred to in article 26, subparagraph (c). The instruments of ratification, acceptance or approval and those relating to acts of formal confirmation shall be deposited with the Secretary-General.

2. In their instruments of formal confirmation, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

Article 28

ACCESSION

1. This Convention shall remain open for accession by any State, by Namibia, represented by the United Nations Council for Namibia, and by regional economic integration organizations referred to in article 26, subparagraph (c).

Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Convention. These organizations shall also inform the Secretary-General of any modification in the extent of their competence with respect to the matters governed by the Convention.

Article 29

ENTRY INTO FORCE

1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the twentieth instrument of ratification, acceptance, approval or accession by States or by Namibia, represented by the Council for Namibia.

2. For each State or for Namibia, represented by the Council for Namibia, ratifying, accepting, approving or acceding to this Convention after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

3. For each regional economic integration organization referred to in article 26, subparagraph (c) depositing an instrument relating to an act of formal confirmation or an instrument of accession, this Convention shall enter into force on the ninetieth day after such deposit, or at the date the Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 30

DENUNCIATION

1. A Party may denounce this Convention at any time by a written notification addressed to the Secretary-General.

2. Such denunciation shall take effect for the Party concerned one year after the date of receipt of the notification by the Secretary-General.

Article 31

AMENDMENTS

1. Any Party may propose an amendment to this Convention. The text of any such amendment and the reasons therefor shall be communicated by that party to the Secretary-General, who shall communicate it to the other Parties and shall ask them whether they accept the proposed amendment. If a proposed amendment so circulated has not been rejected by any Party within twenty-four months after it has been circulated, it shall be deemed to have been accepted and shall enter into force in respect of a Party ninety days after that Party has deposited with the Secretary-General an instrument expressing its consent to be bound by that amendment.

2. If a proposed amendment has been rejected by any Party, the Secretary-General shall consult with the Parties and, if a majority so requests, he shall bring the matter, together with any comments made by the Parties, before the Council which may decide to call a conference in accordance with Article 62, paragraph 4, of the Charter of the United Nations. Any amendment resulting from such a Conference shall be embodied in a Protocol of Amendment. Consent to be bound by such a Protocol shall be required to be expressed specifically to the Secretary-General.

Article 32

SETTLEMENT OF DISPUTES

1. If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to the settlement of the dispute by negotiation, enquiry, mediation, conciliation, arbitration, recourse to regional bodies, judicial process or other peaceful means of their own choice.

2. Any such dispute which cannot be settled in the manner prescribed in paragraph 1 of this article shall be referred, at the request of any one of the States Parties to the dispute, to the International Court of Justice for decision.

3. If a regional economic integration organization referred to in article 26, subparagraph (c) is a Party to a dispute which cannot be settled in the manner prescribed in paragraph 1 of this article, it may, through a State Member of the United Nations, request the Council to request an advisory opinion of the International Court of Justice in accordance with article 65 of the Statute of the Court, which opinion shall be regarded as decisive.

4. Each State, at the time of signature or ratification, acceptance or approval of this Convention or accession thereto, or each regional economic integration organization, at the time of signature or deposit of an act of formal confirmation or accession, may declare that it does not consider itself bound by paragraphs 2 and 3 of this article. The other Parties shall not be bound by paragraphs 2 and 3 with respect to any Party having made such a declaration.

5. Any Party having made a declaration in accordance with paragraph 4 of this article may at any time withdraw the declaration by notification to the Secretary-General.

Article 33

AUTHENTIC TEXTS

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention are equally authentic.

Article 34

DEPOSITARY

The Secretary-General shall be the depositary of this Convention.

ANNEX

Table I

Ephedrine
Ergometrine
Ergotamine
Lysergic acid
1-phenyl-2-propanone
Pseudoephedrine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

Table II

Acetic anhydride
Acetone
Anthranilic acid
Ethyl ether
Phenylacetic acid
Piperidine

The salts of the substances listed in this Table whenever the existence of such salts is possible.

APPENDIX C

UNITED
NATIONS

A



General Assembly

Distr.
GENERAL

A/RES/S-17/2
15 March 1990

Seventeenth special session
Agenda items 14 and 15

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[on the report of the Ad Hoc Committee of the Seventeenth Special Session (A/S-17/11)]

S-17/2. Political Declaration and Global Programme of Action adopted by the General Assembly at its seventeenth special session, devoted to the creation of international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances

The General Assembly

Adopts the Political Declaration and the Global Programme of Action on international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances annexed to the present resolution.

8th plenary meeting
23 February 1990

ANNEX

Political Declaration

We, the States Members of the United Nations, --

Assembled at the seventeenth special session of the General Assembly to consider the question of international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances,

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/...

Deeply alarmed by the magnitude of the rising trend in the illicit demand, production, supply, trafficking and distribution of narcotic drugs and psychotropic substances, which are a grave and persistent threat to the health and well-being of mankind, the stability of nations, the political, economic, social and cultural structures of all societies and the lives and dignity of millions of human beings, most especially of young people,

Aware of the dangers posed for all countries alike by the illicit cultivation, production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, and aware also of the need for a comprehensive approach in combating them,

Conscious that the extraordinarily high levels of illicit consumption, cultivation and production of narcotic drugs and of illicit drug trafficking necessitate a more comprehensive approach to international co-operation in drug abuse control and counter-offensives at the national, regional and international levels,

Reaffirming our determination to combat the scourge of drug abuse and illicit trafficking in narcotic drugs and psychotropic substances in strict conformity with the principles of the Charter of the United Nations, the principles of international law, in particular respect for the sovereignty and territorial integrity of States, the principle of non-interference in the internal affairs of States and non-use of force or the threat of force in international relations, and the provisions of the international drug control conventions,

Reaffirming also the provisions set forth in the Single Convention on Narcotic Drugs of 1953, 1/ and in that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1953, 2/ the Convention on Psychotropic Substances of 1971 3/ and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in 1988, 4/

Reaffirming further the principle of shared responsibility in combating drug abuse and illicit traffic in narcotic drugs and psychotropic substances,

Recognising the links between the illicit demand, consumption, production, supply, trafficking and distribution of narcotic drugs and psychotropic substances and the economic, social and cultural conditions in the countries affected by them,

1/ United Nations, Treaty Series, vol. 520, No. 7515.

2/ Ibid., vol. 976, No. 14152.

3/ Ibid., vol. 1019, No. 14956.

4/ E/CONF/82/15 and Corr.2.

Deeply concerned about the violence and corruption generated by the illicit demand, production, trafficking and distribution of narcotic drugs and psychotropic substances and the high human, political, economic and social costs of drug abuse and of the fight against the drug problem, entailing the diversion of scarce resources from other national priorities, which in the case of developing countries includes development activities,

Conscious that international co-operation for the development of the developing countries should be strengthened, allowing all countries to participate more fully in an effective fight against the drug problem,

Recognizing the links between drug abuse and a wide range of adverse health consequences, including the transmission of human immunodeficiency virus (HIV) infection and the spread of acquired immunodeficiency syndrome (AIDS),

Recognizing also that illicit trafficking in narcotic drugs and psychotropic substances is a criminal activity and that its suppression requires a higher priority and concerted action at the national, regional and international levels by all States, including rapid ratification of and accession to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,

Noting that the large financial profits derived from illicit drug trafficking and related criminal activities enable transnational criminal organizations to penetrate, contaminate and corrupt the structure of Governments, legitimate commercial activities and society at all levels, thereby vitiating economic and social development, distorting the process of law and undermining the foundations of States,

Recognizing that a growing number of countries, in particular developing countries, are affected by illicit transit trafficking in narcotic drugs because of their geographical location or economic situation, which imposes serious burdens on the drug law enforcement machinery of those countries and forces diversion of scarce resources from pressing developmental needs and other national priorities,

Convinced that the fight against illicit trafficking in narcotic drugs and psychotropic substances has to comprise effective measures aimed, inter alia, at eliminating illicit consumption, cultivation and production of narcotic drugs and psychotropic substances; preventing the diversion from legitimate uses of precursor chemicals, specific substances, materials and equipment frequently used in the illicit manufacture of narcotic drugs and psychotropic substances; and preventing the use of the banking system and other financial institutions for the laundering of proceeds derived from illicit drug trafficking by making such activities criminal offences,

Alarmed at the growing link between illicit trafficking in narcotic drugs and terrorist activities, which is aggravated by insufficient control of commerce in arms and by illicit or covert arms transfers, as well as by illegal activities of mercenaries,

Mindful of the results already achieved by the United Nations in the field of drug abuse control, including the Declaration 5/ and the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control, 6/ adopted at the International Conference on Drug Abuse and Illicit Trafficking, as well as the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances,

Convinced that action against drug abuse and illicit production of and trafficking in narcotic drugs and psychotropic substances should, as a shared responsibility, be accorded a higher priority by the international community and convinced also that the United Nations should be the main focus for concerted action and should play an enhanced role in that field,

Considering that the goals of intensified international co-operation and increased efforts of States in that direction would be served by the proclamation of a United Nations decade against drug abuse,

Agree on the following:

1. We resolve to protect mankind from the scourge of drug abuse and illicit trafficking in narcotic drugs and psychotropic substances;
2. We affirm that the fight against drug abuse and illicit trafficking in narcotic drugs and psychotropic substances should be accorded high priority by Governments and by all relevant regional and international organizations;
3. We are determined to take the necessary actions to combat the drug problem, taking into account the fundamental responsibility resting with each State in that regard;
4. We shall expand the scope and increase the effectiveness of international co-operation against illicit demand, production, supply, trafficking and distribution of narcotic drugs and psychotropic substances, with strict respect for the sovereignty and territorial integrity of States and the principle of non-interference in their internal affairs;
5. We shall increase our efforts and resources in order to intensify international co-operation and concerted action, based upon the principle of shared responsibility, including the necessary co-operation and assistance to affected States, when requested, in the economic, health, social, judicial and law enforcement sectors in order to strengthen the capabilities of States to deal with the problem in all its aspects;

5/ Report of the International Conference on Drug Abuse and Illicit Trafficking, Vienna, 17-26 June 1987 (United Nations publication, Sales No. E.87.I.18), chap. I, sect. E.

6/ Ibid., sect. A.

6. We shall pursue strategies that are comprehensive and multidisciplinary in scope and that comprise measures to eliminate illicit demand for narcotic drugs and psychotropic substances, cultivation of illicit crops and illicit drug trafficking, to prevent the misuse of the financial and banking systems and to promote effective treatment, rehabilitation and social reintegration;

7. We commend the efforts made by some States in the fight against illicit drug production, trafficking and consumption and urge that current levels of international co-operation be increased and strengthened;

8. We condemn the crime of illicit drug trafficking in all its forms and reaffirm our political commitment to concerted international action;

9. We are convinced that the international fight against illicit drug trafficking should be pursued in full conformity with the principles of non-interference in internal affairs and respect for the territorial integrity of States and free from unrelated political motivations;

10. We shall continue our national efforts in the simultaneous fight on all levels against the phenomenon of illicit drug trafficking, with special emphasis on the need for stronger measures to eliminate illicit demand for narcotic drugs and psychotropic substances;

11. We shall reinforce our policies aiming at the prevention, reduction and elimination of illicit demand;

12. We shall intensify our efforts in the fields of health, education and public information, including well-targeted campaigns involving the relevant United Nations specialized agencies and non-governmental organizations, as an essential measure to reduce illicit demand;

13. We urge the international community to increase economic and technical co-operation to developing countries and to facilitate trade flows in support of viable alternative income schemes, such as crop-substitution programmes, by means of integrated rural development strategies, including facilitation of appropriate efficient marketing and sound economic policies, so as to eliminate illicit cultivation and production of narcotic drugs;

14. We call for international co-operation to assist and support transit countries, in particular developing transit countries, by implementing appropriate programmes of technical and financial assistance through competent international or regional organizations for the purpose of expanding and strengthening the infrastructure needed for effective control and prevention of illicit drug trafficking;

15. We stress the need for effective action to prevent the diversion for illicit purposes of precursors and other chemicals, materials and equipment frequently used in the illicit manufacture of narcotic drugs and psychotropic substances;

16. We urge the international community to strengthen international co-operation under mutually agreed conditions through bilateral, regional and multilateral mechanisms:

17. We stress that all initiatives undertaken within the United Nations in the field of international drug abuse control shall take into consideration the competence of its organs as defined in the Charter of the United Nations:

18. We shall further develop and utilize, to the maximum extent, existing bilateral and other international instruments or arrangements for enhancing international legal and law enforcement co-operation:

19. We reaffirm the principles set forth in the Declaration of the International Conference on Drug Abuse and Illicit Trafficking 5/ and undertake to apply, as appropriate, the recommendations of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control; 6/

20. We urge States to ratify or accede to the United Nations conventions in the field of drug abuse control and illicit trafficking and, to the extent they are able to do so, to apply provisionally the terms of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:

21. We commend the important work carried out by the organizations of the United Nations system in the field of international drug abuse control with regard to combating the abuse and production of and trafficking in illicit drugs and psychotropic substances, as well as the work done in other multilateral forums:

22. We commend also the positive action undertaken by the Division of Narcotic Drugs of the Secretariat, the International Narcotics Control Board and its secretariat, and the United Nations Fund for Drug Abuse Control:

23. We call upon the United Nations, the specialized agencies and other organizations of the United Nations system to give higher priority in their programmes of work, in accordance with existing procedures, to international measures to combat illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances:

24. We emphasize the importance of the development and implementation of a United Nations system-wide action plan aimed at the fulfilment of all existing mandates for drug abuse control and the implementation of subsequent decisions of intergovernmental bodies throughout the United Nations system:

25. We shall strengthen and enhance the capability of the United Nations to achieve more effective and co-ordinated co-operation at the international, regional and national levels against the threats posed by illicit production and illicit trafficking and abuse of narcotic drugs and psychotropic substances:

26. We stress the need to reinforce United Nations structures for drug abuse control in order to increase their effectiveness and status:

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27. We recognize the need for additional financial and human resources, which shall be made available for United Nations activities in the area of drug abuse control, bearing in mind the Organization's additional responsibilities in that regard;

28. We attach high priority to the speedy and effective implementation of the Global Programme of Action;

29. We proclaim the period from 1991 to 2000 the United Nations Decade against Drug Abuse, to be devoted to effective and sustained national, regional and international actions to promote the implementation of the Global Programme of Action, taking into account and paying due consideration to the guidelines for international decades recommended by the Economic and Social Council in its resolution 1988/63 of 27 July 1988;

30. We resolve to keep under constant review the activities set out in the present Declaration and in the Global Programme of Action.

Global Programme of Action

I. INTRODUCTION

1. The international community confronts a dramatic problem of drug abuse and the illicit cultivation, production, processing, distribution and trafficking of narcotic drugs and psychotropic substances, insufficiently effective controls over or monitoring of specific chemical substances and monitoring of the economic benefits of drug trafficking. States are not in a position to deal with this scourge individually. Therefore, international solidarity and the concerted, collective and simultaneous action of the international community are required.
2. An important aspect of the fight against drug abuse has been the elaboration of international legal instruments. The adoption of the Single Convention on Narcotic Drugs of 1953^{1/} and of that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1953^{2/} and of the Convention on Psychotropic Substances of 1971^{3/} were first important steps in that direction.
3. By its resolution 40/122 of 13 December 1985, the General Assembly decided to convene an International Conference on Drug Abuse and Illicit Trafficking. The Conference took place at Vienna from 17 to 26 June 1987 and adopted a Declaration^{4/} and a Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control.^{5/}
4. In order to reinforce and supplement the measures provided in existing legal instruments and to counter the new magnitude and extent of illicit drug trafficking and its grave consequences, a United Nations plenary conference, held at Vienna from 25 November to 20 December 1988, adopted the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.^{6/}

5. The General Assembly, in its resolution 44/16 of 1 November 1989, decided to convene a special session of the Assembly to consider, as a matter of urgency, the question of international co-operation against illicit production, supply, demand, trafficking and distribution of narcotic drugs, with a view to expanding the scope and increasing the effectiveness of such co-operation.

6. Cognizant of the above, and following extensive deliberations at its seventeenth special session, the General Assembly, in order to achieve the goal of an international society free of illicit drugs and drug abuse, adopts the present Global Programme of Action and commits itself to its full and speedy implementation, where necessary following due consideration of the modalities by the competent technical bodies.

7. In adopting the Global Programme of Action, and without prejudice to the existing procedures, the General Assembly also decides to accord, within the United Nations system, a higher priority to the allocation of the necessary financial, personnel and other resources. There is a need for all parts of the United Nations system to galvanize efforts to improve international co-operation to stamp out the scourge of illicit drugs and drug abuse. The requirement for additional resources for that purpose is explicitly recognized, in the full expectation that that will be reflected as a high priority in the medium-term plan for the period 1992-1997 and in the programme budget for the biennium 1992-1993, as well as future medium-term plans and biennial budgets. The General Assembly also recognizes that the effective implementation of the Global Programme of Action will require examination of the structure of the existing drug control units based at the United Nations Office at Vienna with a view to enhancing their effectiveness and status in the system.

II. ACTIVITIES OF THE GLOBAL PROGRAMME OF ACTION

8. The Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control ^{6/} shall be used by national authorities and interested organizations as a basis for developing and translating into action, at the national, regional and international levels, to the widest extent possible, balanced strategies aimed at combating all aspects of drug abuse and illicit trafficking. Those strategies shall include, in particular, the aspects described below.

A. Prevention and reduction of drug abuse with a view to elimination of the illicit demand for narcotic drugs and psychotropic substances

9. States ^{7/} shall give higher priority to prevention and reduction of drug abuse with a view to elimination of the illicit demand for narcotic drugs and

^{7/} References to States in the present Global Programme of Action should be understood to refer also to regional economic integration organizations within the limits of their competence.

psychotropic substances at the national and international levels. National strategies, plans and programmes for combating drug abuse shall be elaborated, adopted and implemented through the necessary policy and legislative adjustments, including the allocation of appropriate resources and services for prevention, treatment, rehabilitation and social reintegration.

10. The causes generating illicit demand for narcotic drugs and psychotropic substances, including its recent increase, shall be analysed and the necessary measures shall be identified in order to combat drug abuse at the root of the problem. In this regard, special attention shall be given to the social causes underlying the drug problem, which should be adequately reflected in national social policies.

11. Information and education programmes shall be used to prevent the abuse of narcotic drugs and psychotropic substances and to increase awareness of their harmful effects. In this context, States, relevant specialized agencies and non-governmental organizations shall co-ordinate and exchange information with a view to initiating well-targeted campaigns in this field.

12. The role of the United Nations as an advisory centre for collecting, analysing and disseminating information and experience in the field of reduction of illicit demand, for reviewing and evaluating national scientific programmes in the field of combating drug abuse and for co-ordinating efforts of States concerning those activities shall be further enhanced. Bodies of the United Nations system such as the United Nations Educational, Scientific and Cultural Organization, the United Nations Children's Fund (including its national committees), the United Nations Development Programme, the World Health Organization, the International Labour Organisation and the United Nations information centres shall play a more active role in collecting and disseminating information and exchanging experience.

13. States shall establish and promote national systems to assess the extent of drug abuse and to collect data on trends of abuse. For that purpose, they shall establish data bases that should be based on the international drug abuse assessment system being developed by the Division of Narcotic Drugs of the Secretariat with financial support from the United Nations Fund for Drug Abuse Control. The Division, in collaboration with other United Nations drug control bodies and the World Health Organization, shall assist Governments in establishing such data bases and shall work to establish a data base concerning the nature and extent of drug abuse at the international level.

14. The Division of Narcotic Drugs shall publish and update periodically a digest listing national focal points that deal with various aspects of the drug problem, including information on direct channels of communication.

15. In order to assess the level of national and international progress towards prevention and reduction of the demand for narcotic drugs and psychotropic substances with a view to its elimination, and in implementing the seven targets set out in chapter I of the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control, the Division of Narcotic Drugs shall submit, by 31 December each year, a succinct questionnaire to all Governments, regional

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intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council. The questionnaire shall request details of action taken in this regard at the national and regional levels, the results achieved by the measures taken, and details of any practical difficulties encountered. The Secretary-General is requested to prepare a report, in collaboration with the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, to be submitted to the Commission on Narcotic Drugs at its regular and special sessions analysing the information submitted and assessing, in particular, the best means of providing assistance to States in furthering demand-reduction strategies.

16. States and regional intergovernmental organizations shall co-operate fully in the preparation of that report by providing in good time the information required by the questionnaire.

17. In the light of the experience of operating that questionnaire and reporting system, the Commission on Narcotic Drugs shall consider the necessity and feasibility of elaborating, under the auspices of the United Nations, an international instrument that would deal especially with the reduction of the illicit demand for drugs and that would provide, *inter alia*, comprehensive and specific measures for the control and elimination of illicit demand for narcotic drugs and psychotropic substances, as well as for treatment and rehabilitation of drug addicts.

18. The recommendations of all international high-level meetings aimed at the reduction and eventual elimination of illicit demand for narcotic drugs and psychotropic substances, including those of the World Ministerial Summit to Reduce Demand for Drugs and to Combat the Cocaine Threat, to be held in London from 9 to 11 April 1990, shall be submitted to States for reference, if requested, in order to make it possible for them to consider such recommendations in the elaboration of their national anti-drug campaigns and policies.

19. The United Nations Educational, Scientific and Cultural Organization, in collaboration with the World Health Organization and other appropriate United Nations bodies, shall be encouraged to solicit, compile and analyse information on effective prevention strategies, including public information, education programmes and professional training, and on programme evaluation techniques and to disseminate that material to States upon request.

20. The United Nations Children's Fund shall be encouraged to give financial support to developing countries in order to enhance their campaigns to prevent drug abuse by children and the use of children for the illicit production and traffic in narcotic drugs and psychotropic substances, as well as for implementing programmes to rehabilitate such children.

21. The International Labour Organisation shall be invited to provide, upon request, advice on education programmes to reduce drug abuse in the work-place and monitor their effectiveness.

22. Measures for the prevention of drug abuse shall be developed and included to the extent possible in the curricula of all educational institutions if circumstances so require. The expertise of relevant United Nations bodies should be made available to all countries, in particular all developing countries, in order to assist them in elaborating such curricula.
23. Information on the rational prescribing and use of narcotic drugs and psychotropic substances and pharmaceutical preparations containing such substances shall be incorporated into the curricula of training institutions for health-care personnel.
24. The World Health Organization, in collaboration with United Nations drug control bodies, non-governmental organizations and other organizations involved in the rational use of pharmaceutical preparations containing narcotic drugs and psychotropic substances, shall be encouraged to assist national educational authorities in developing training materials and conducting training courses to ensure that medical practitioners and other health personnel are well trained in rational prescribing and use of narcotic drugs and psychotropic substances.
25. The mass media shall be encouraged to publish and disseminate information in support of national and international strategies for the elimination of illicit demand for narcotic drugs and psychotropic substances.
26. The establishment of national committees or other ad hoc structures aimed at mobilizing public support and the participation of communities and at co-operating in and implementing the activities emanating from the Global Programme of Action shall be considered.
27. States shall, as appropriate, promote increased co-operation with and involvement of non-governmental organizations in the field of reduction of illicit demand, thus encouraging initiatives and programmes at the grass-roots level.
28. Appropriate United Nations bodies shall be invited to collaborate with non-governmental organizations with special expertise in the field of narcotic drugs and psychotropic substances to identify and make available technical expertise on strategies and methods for reduction of illicit demand.
29. The United Nations shall undertake a review of activities of the United Nations system and the specialized agencies for the reduction of illicit demand in order to identify the needs for intensified action consistent with the principles of the Global Programme of Action.

E. Treatment, rehabilitation and social reintegration of drug addicts

30. National strategies in the health, social, legal and penal fields shall contain programmes for the social reintegration, rehabilitation and treatment of drug abusers and drug-addicted offenders. Such programmes shall be in conformity with national laws and regulations and be based on respect for basic human rights

and the dignity of the individual, showing due regard for the diverse needs of individual drug addicts.

31. The United Nations shall act as a clearing-house for information on effective policies and techniques, programme modalities and resource materials for the treatment, rehabilitation and occupational reintegration of former drug addicts, the World Health Organization and the International Labour Organisation, in collaboration with other organizations of the United Nations system and non-governmental organizations, shall be encouraged to contribute to that end.

32. The relevant United Nations bodies should render assistance to interested States, in particular developing countries, in their programmes for treatment and rehabilitation of drug abusers.

33. Training programmes relating to the latest developments and techniques in the field of treatment of drug addiction and rehabilitation and reintegration of former addicts shall be conducted more regularly at the national, regional and international levels. Governments, the relevant United Nations bodies, the specialized agencies, intergovernmental organizations and non-governmental organizations in a position to do so shall, upon request, provide advice, information and proposals on existing training programmes, new methods and techniques and other general guidelines for States wishing to develop their training programmes further.

34. The World Health Organization shall be encouraged to work with Governments with a view to facilitating access to drug-treatment programmes and to strengthening the capacity of primary health care to respond to drug-related health problems.

35. The World Health Organization shall be encouraged to continue to explore with Governments the development of health education programmes and policies for the reduction of risk and harm of drug abuse as a means of preventing the transmission by drug abusers of the human immunodeficiency virus (HIV) and of securing appropriate treatment and counselling for drug abusers who are HIV-positive or who have developed acquired immunodeficiency syndrome (AIDS), and to report thereon.

36. The International Labour Organisation should prepare and publish guidelines for programmes to reintegrate former addicts into occupational activities or vocational training.

37. States shall, as appropriate, facilitate and promote the involvement of non-governmental organizations in all areas of treatment and rehabilitation and intensify their co-operation with the relevant United Nations bodies.

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C. Control of supply of narcotic drugs and psychotropic substances

1. Eradication and substitution of illicit production of narcotic drugs, and eradication of illicit processing of such drugs and of illicit production and diversion of psychotropic substances

38. States shall consider, at the national and international levels, means by which the internal sector of those economies that are affected by the illicit production and processing of narcotic drugs and psychotropic substances might be strengthened, in order to support and strengthen the implementation, by competent national authorities, of effective anti-drug programmes, including the following measures:

(a) Prompt identification, eradication and substitution of illicit cultivation of narcotic plants, taking into account the need to protect the environment; for the purpose of crop surveys and monitoring efforts, such technologies as high-resolution satellite imagery and aerial photography could be used when agreement has been reached with the Government concerned;

(b) Further development and implementation of comprehensive and well-articulated reduction programmes with a view to eliminating illicit production of narcotic drugs and psychotropic substances in countries affected by illicit production, taking particular account of traditional licit uses of such cultivation;

(c) Identification and provision of further incentives for crop substitution;

(d) Assessment and study, by the United Nations Environment Programme, of effects on the environment of the expanding cultivation and production of narcotic drugs and the use and disposal of chemical substances related to those activities, as well as methods used for the eradication of illicit production of narcotic drugs;

(e) Extension of the scope of economic and technical co-operation in support of crop substitution and integrated rural development programmes and other economic and technical programmes aimed at reducing illicit production and processing of narcotic drugs and psychotropic substances;

(f) Establishment of complementary programmes in the fields of employment, health, housing and education;

(g) Elaboration and implementation of programmes for agro-industrial development;

(h) Elaboration and implementation of programmes for economic recovery of the social and economic sectors in countries that are adversely affected by the diversion for supply-reduction programmes of resources that would otherwise be used for development.

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39. The external sectors of those economies that are affected by illicit production and processing of narcotic drugs and psychotropic substances shall be strengthened in order to support and strengthen the implementation by competent national authorities of effective anti-drug programmes by the following means:

(a) Consideration of measures to strengthen international co-operation to facilitate trade flows, in particular measures to create expanded opportunities for trade and investment in order to provide access to international markets for crop-substitution products and other goods produced by countries affected by the illicit production and processing of narcotic drugs;

(b) Consideration by States of entering into multilateral, bilateral or regional agreements with countries affected by illicit drug production and processing, with a view to facilitating access by those countries to international markets and to assisting them in strengthening and adapting their internal capacity to produce exportable goods;

(c) Consideration of economic and other forms of co-operation with developing countries directly affected by the illicit transit of narcotic drugs through their territories, including measures to create expanded opportunities for trade and investment;

(d) Regular submission by States to the relevant United Nations drug control bodies of information on the extent of the manufacture, availability and abuse of illicit synthetic drugs in their territories.

2. licit production, manufacture and supply of narcotic drugs and psychotropic substances

40. A balance shall be maintained between demand and supply of raw materials, intermediates and final products for legitimate uses, including medical and scientific purposes.

41. International co-operation, solidarity and assistance are called for to overcome the problem of excess stock of opiate raw materials in traditional supplier countries. This may include international assistance, particularly to developing countries, to help them establish the necessary opiate drug management régime to enable them to meet their potential legitimate need for opiates.

3. Co-operation on the multilateral level

42. The United Nations Fund for Drug Abuse Control, in collaboration, where appropriate, with the United Nations Development Programme and other United Nations bodies, is invited to elaborate for consideration by States a subregional strategy covering all aspects of drug abuse control and concentrating on the most affected areas where the problems are most complex and grave. States shall increase their co-operation with the Fund in support of such a subregional strategy.

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43. States should endeavour to obtain the support of international, regional and national financial institutions, within their respective areas of competence, with the goal of identifying alternative development and crop-substitution programmes to support countries so that they can carry out sound economic policies and effective programmes against illicit drugs. States should also encourage those institutions to consider the economic and social consequences of drug trafficking when analysing the economic systems of those countries. In this regard, those institutions should consider availing themselves of assistance from and co-operation with the United Nations Fund for Drug Abuse Control.

44. Specialized agencies and other United Nations bodies such as the United Nations Development Programme and the Food and Agriculture Organization of the United Nations, as well as the international financial institutions, in accordance with their mandates, should consider the possibility of undertaking further activities in the field of prevention and substitution of illicit production of narcotic drugs.

4. Monitoring and control mechanisms

45. States shall take all necessary measures, such as the conclusion of bilateral and regional agreements, to establish monitoring and control systems to prevent diversion from legitimate purposes of specific chemical substances, materials and equipment frequently used in the illicit manufacture of narcotic drugs and psychotropic substances, in particular through the application of articles 12 and 13 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in 1958. 4/

46. Consideration shall be given to the convening of an international conference on the production and distribution of chemical products used in the illicit production of narcotic drugs and psychotropic substances, in order to co-ordinate efforts for more effective prevention of the diversion of precursor chemicals, specific substances, materials and equipment for illicit purposes. It is desirable that States include representatives of manufacturing and distribution enterprises in their delegations to that conference.

47. The World Health Organization, in collaboration with the Division of Narcotic Drugs and the International Narcotics Control Board, should assist national drug regulatory authorities in developing and strengthening their pharmaceutical administrations and control laboratories in order to enable them to control pharmaceutical preparations containing narcotic drugs and psychotropic substances.

48. Governmental, intergovernmental and non-governmental organizations and the United Nations shall be encouraged to co-operate in measures within the guidelines set out in the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control 5/ to strengthen national and international systems of control of narcotic drugs and psychotropic substances, in particular those established under the Single Convention on Narcotic Drugs of 1953. 1/ and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1953 2/ and the Convention on Psychotropic Substances of 1971. 3/

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49. The International Narcotics Control Board is invited to advise States, at their request, and to extend its technical co-operation activities with a view to furthering the aims of the Single Convention on Narcotic Drugs of 1953 and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1953, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted in 1988.

50. Special attention shall be paid to co-operation that will enable States to strengthen their drug detection and pharmaceutical control laboratories, as well as their police and customs activities in the field of drug control.

D. Suppression of illicit trafficking in narcotic drugs and psychotropic substances

1. Traffic

51. States shall proceed rapidly and make every effort to ratify or accede to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in 1988, in order to enable the entry into force of the Convention, preferably by the end of 1990.

52. The United Nations, in particular the Division of Narcotic Drugs, the International Narcotics Control Board and the United Nations Fund for Drug Abuse Control, shall provide expertise and assistance to States, at their request, to enable them to establish the legislative and administrative measures for the ratification and effective implementation of the United Nations Convention.

53. States shall, to the extent and where they are able to do so, apply provisionally the measures set forth in the United Nations Convention.

54. Consistent with the United Nations Convention, consideration shall be given to the conclusion of bilateral, regional and multilateral agreements and other arrangements aimed at suppressing illicit trafficking in narcotic drugs and psychotropic substances.

55. States that have not yet done so shall consider ratification of or accession to the Single Convention on Narcotic Drugs of 1953 ^{1/} and that Convention as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs of 1953 ^{2/} and the Convention on Psychotropic Substances of 1971. ^{1/}

56. States in a position to do so and the organizations of the United Nations system, in particular the United Nations Fund for Drug Abuse Control, shall provide appropriate technical and financial support to enable States, at their request, to establish effective mechanisms against illicit trafficking in narcotic drugs and psychotropic substances. Particular attention shall be given, in that regard, to the strengthening of interdiction capabilities of transit States, including control of land, sea and air boundaries. To that end, States should undertake an analysis of the methods and routes used for illicit transit traffic in narcotic drugs and

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psychotropic substances, and should monitor them in their respective territories on a continuing basis, bearing in mind that the routes and methods used change frequently and affect a growing number of States. States shall consider appropriate information-sharing in this respect on a bilateral, regional or multilateral basis.

57. Interested States may consider, in conformity with international law and the Charter of the United Nations, the possibility of jointly establishing border inspection check-points, with a view to suppressing illicit trans-boundary movement of narcotic drugs and psychotropic substances, without affecting the national sovereignty and territorial integrity of States.

58. Specialized agencies such as the International Civil Aviation Organization and the International Maritime Organization, in collaboration with member States and intergovernmental and non-governmental organizations, shall be invited to expand the development of programmes whereby such organizations and member States work with the transportation industry to suppress illicit trafficking in narcotic drugs and psychotropic substances.

59. States shall make increased use of the meetings of Heads of National Drug Law Enforcement Agencies and other intergovernmental organizations, such as the Customs Co-operation Council and the International Criminal Police Organization (Interpol), regional co-operation arrangements and other relevant institutional frameworks, for the purpose of co-ordinating co-operation in law enforcement and expanding programmes of training for law enforcement personnel in investigative matters and methods, interdiction and narcotics intelligence.

60. The United Nations, in particular the United Nations Fund for Drug Abuse Control, should assist States, at their request, in equipping and strengthening their law enforcement authorities and criminal justice systems.

2. Distribution

61. States shall strengthen their national efforts to curb and eradicate domestic illicit commerce and distribution of narcotic drugs and psychotropic substances.

E. Measures to be taken against the effects of money derived from, used in or intended for use in illicit drug trafficking, illegal financial flows and illegal use of the banking system

62. Priority shall be accorded to the implementation of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in 1988, and the conclusion of bilateral, regional and multilateral agreements on tracing, freezing and seizure and forfeiture or confiscation of property and proceeds derived from, used in or intended for use in illicit drug trafficking.

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63. Mechanisms shall be developed to prevent the banking system and other financial institutions from being used for the processing and laundering of drug-related money. To this end, consideration should be given by States to entering into bilateral, regional and multilateral agreements and developing mechanisms to trace property and proceeds derived from, used in or intended for use in drug-related activities through the international banking system, facilitate access to banking records and provide for the exchange of information between law enforcement, regulatory or investigative agencies concerning the financial flow of property or proceeds related to illicit drug trafficking.
64. The Division of Narcotic Drugs of the Secretariat, in co-operation with the Customs Co-operation Council and the International Criminal Police Organization (Interpol), should promote bilateral or regional exchanges of information between governmental regulatory or investigative agencies concerning the financial flow of illicit drug proceeds.
65. The Division of Narcotic Drugs and Interpol shall be invited to develop a repository of laws and regulations on money laundering, currency reporting, bank secrecy and forfeiture of property and proceeds, as well as procedures and practices designed to prevent banking systems and other financial institutions from money laundering, and shall make this information available to States, at their request.
66. States shall consider enacting legislation to prevent the use of the banking system for the processing and laundering of drug-related money, *inter alia*, through declaring such activities criminal offences.
67. States shall consider enacting legislation to permit the seizure and forfeiture of property and proceeds derived from, used in or intended for use in illicit drug trafficking. To that end, consideration should be given by States to concluding bilateral and multilateral agreements to enhance the effectiveness of international co-operation, taking into particular account article 5, paragraph 5, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
68. States shall encourage international, regional and national financial associations to develop guidelines to assist their members in co-operating with government authorities in identifying, detecting, tracing, freezing and seizing proceeds and property related to illicit trafficking in narcotic drugs and psychotropic substances.
69. The elaboration of international agreements providing for stringent controls on money derived from, used in or intended for use in drug-related activities and penalizing the laundering of such money might be considered. Such instruments might also deal with the forfeiture or confiscation of funds, proceeds and property acquired through revenues deriving from drug-related activities.
70. States shall consider measures on an international level, including the feasibility of a United Nations facility to strengthen the gathering, collation and exchange of information on the financial flow from drug-related funds, giving particular emphasis to principles, rules and national law concerning the protection

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of ongoing law enforcement investigations and of individuals with regard to automatic processing of personal data.

71. States should encourage international, regional and national financial institutions, within their respective areas of competence, to pay special attention, in their analyses of the economies of States, to the characteristics and magnitude of the conversion and transfer of drug-related monies in order to contribute to international efforts aimed at counteracting the negative economic and social consequences of the drug problem.

72. States shall consider the possibility of using forfeited property and proceeds for activities to combat drug abuse and illicit trafficking. In that context, the possible use of such proceeds and property or their equivalent value for United Nations drug-related activities shall also be taken into consideration.

73. All measures and proposals on possible action to prevent the use of the banking systems and financial institutions for money laundering, such as the conclusions arising from the study undertaken by the Financial Action Task Force, established at the Summit of seven major industrial nations, held in Paris from 14 to 16 July 1989, shall be made available to all States for information.

F. Strengthening of judicial and legal systems, including law enforcement

74. States shall, as soon as possible, ratify or accede to the United Nations conventions in the field of drug abuse control and illicit trafficking.

75. States in a position to do so and the United Nations, strengthening their action in co-ordination with the regional institutes of the United Nations with mandates in this sphere, shall provide advice and legal and technical assistance to enable States, at their request, to adapt their national legislation to international conventions and decisions dealing with drug abuse and illicit trafficking.

76. States are invited to give consideration to the model treaties on mutual assistance in criminal matters and on extradition, which contain specific provisions related to illicit traffic in narcotic drugs and psychotropic substances and are to be dealt with by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

77. States shall encourage international and regional organizations to elaborate model agreements on co-operation among customs officials, law enforcement agencies and other interested organs in the field of combating drug abuse and illicit trafficking.

78. The scope of international co-operation in support of technical assistance programmes aimed at the strengthening of judicial, legal and law enforcement systems, in particular in the field of the administration of justice, shall be extended. Particular attention shall be given to the training of personnel at all levels.

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79. Measures to protect the judiciary from any form of exposure and intimidation threatening its independence and integrity shall be studied and promoted.

80. The United Nations shall act as a clearing-house for information on training programmes in drug law enforcement, including training for national narcotics agents in investigative methods, interdiction and narcotics intelligence.

81. Consideration shall be given to establishing a capability within the United Nations system to co-ordinate the provision by States of training and equipment to other States, at their request, for their own anti-drug operations, within their territories, to inhibit the use, interdict the supply and eliminate the illicit trafficking of drugs.

82. Since the International Law Commission has been requested to consider the question of establishing an international criminal court or other international trial mechanism with jurisdiction over persons alleged to be engaged in illicit trafficking in narcotic drugs across national frontiers, the Administrative Committee on Co-ordination shall consider, in its annual adjustments to the United Nations system-wide action plan on drug abuse control requested by the General Assembly in its resolution 44/141 of 15 December 1989, the report of the International Law Commission on the question.

83. States shall consider the appropriateness of establishing arrangements, on the basis of bilateral, regional and multilateral agreements, which would allow them to benefit from one another's criminal justice system in dealing with similar drug-related offences.

84. Consideration shall be given to establishing a register of anti-drug expertise and services, under the supervision of the Division of Narcotic Drugs, which could be made available to States, at their request.

85. A review should be undertaken of international and regional law enforcement activities funded or sponsored by the United Nations, as well as those of other intergovernmental organizations and regional arrangements, to ensure a coherent approach to law enforcement activities within the overall context of the Global Programme of Action.

G. Measures to be taken against the diversion of arms and explosives and illicit traffic by vessels, aircraft and vehicles

86. States shall consider the adoption of measures, within their territories, to strengthen arrangements for controlling or monitoring the licit transportation of narcotic drugs and psychotropic substances, including the vessels, aircraft and vehicles being used for that purpose, so as to prevent their misuse for the illicit transportation of narcotic drugs and psychotropic substances.

87. Effective measures should be taken to prevent illicit and covert transfers of arms and explosives and their diversion to illicit drug traffic-related activities.

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88. Alarmed by the growing link between illicit traffic in narcotic drugs, illegal activities of mercenaries and subversive and terrorist activities, States shall take prompt measures on their prevention.

89. States shall take strict measures to prevent private aircraft, vessels and vehicles registered in their territory from engaging in illicit drug trafficking and related activities.

H. Resources and structure

90. There is need both for optimum utilization of existing resources of the United Nations drug-related units and for additional resources to be allocated to those units in order to enable them fully to implement their mandates, bearing in mind their increased responsibilities.

91. A higher priority shall be accorded to United Nations drug control activities in the medium-term plan for the period 1992-1997 and in the corresponding biennial budgets, and the General Assembly, at its forty-fifth session, is invited to take appropriate action in this regard, in accordance with existing procedures.

92. Priority shall be given to providing, on both a short-term and long-term basis, extrabudgetary support to enhance the efficiency of the United Nations structure for drug abuse control and to achieve and promote a truly comprehensive global programme of action.

93. Intensification of efforts at the national level and increased intergovernmental co-operation require a commensurate strengthening of the United Nations drug control organs and their secretariats. Against this background, the functioning of the United Nations structure for drug abuse control needs to be reviewed and assessed, in accordance with the mandate given to the Secretary-General by the General Assembly in paragraph 4 of its resolution 44/141, for the purpose of identifying alternative structural possibilities, the end result being the establishment of a stronger, more efficient United Nations drug control structure with enhanced status, with a report to be made to the General Assembly at its forty-fifth session.

94. Attention shall be given to the need for (a) coherence of actions within the United Nations drug-related units and co-ordination, complementarity and non-duplication of all drug-related activities across the United Nations system; (b) integration of drug-related information within the United Nations system; (c) integration of the reduction of illicit demand in United Nations programming; (d) integration of law enforcement field expertise in United Nations programmes; (e) compliance with all non-discretionary obligations mandated by the three drug control conventions; and (f) an estimate of resources necessary to carry out these mandates successfully.

95. More States should contribute financial and other resources to the operational activities of the United Nations Fund for Drug Abuse Control in order to enable the Fund to expand its technical co-operation programmes and to develop an operational structure capable of assisting States in joint efforts on the subregional level.

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III. FOLLOW-UP MEASURES

96. States should take the necessary measures to promote and implement the Global Programme of Action and to translate it into practical action to the widest possible extent at the national, regional and international levels. The United Nations and its relevant bodies and specialized agencies, other relevant intergovernmental organizations and non-governmental organizations should extend their co-operation and assistance to States in the promotion and implementation of the Global Programme of Action.

97. The Commission on Narcotic Drugs and the United Nations drug control bodies should continuously monitor the progress on the implementation of the Global Programme of Action, and the Secretary-General should report annually to the General Assembly on all activities relating to the Global Programme of Action and the efforts of Governments.

98. The Secretary-General shall, in consultation with all Member States, identify, whenever necessary, a limited number of experts, from different regions of the world, on various aspects pertaining to the drug problem to advise him and existing United Nations drug control units and other bodies and specialized agencies on specific issues dealt with in the Global Programme of Action that may require further elaboration. These experts shall be funded exclusively from voluntary contributions.

99. The United Nations Decade against Drug Abuse, covering the years 1991 to 2000, as proclaimed by the General Assembly in the Political Declaration adopted at its seventeenth special session, is a period for intensifying and sustaining international, regional and national efforts in the fight against drug abuse on the basis of the measures contained in the Global Programme of Action.

100. The International Day against Drug Abuse and Illicit Trafficking, 26 June, as proclaimed by the General Assembly in its resolution 42/112 of 7 December 1987, shall be observed in the continuing effort to raise public awareness of the fight against drug abuse and illicit trafficking in narcotic drugs and psychotropic substances, as well as to promote preventive measures.

APPENDIX D

Committee on Banking Regulations
and
Supervisory Practices

Prevention of criminal use of the banking system for the
purpose of money-laundering

Preamble

1. Banks and other financial institutions may be unwittingly used as intermediaries for the transfer or deposit of funds derived from criminal activity. Criminals and their associates use the financial system to make payments and transfers of funds from one account to another; to hide the source and beneficial ownership of money; and to provide storage for bank-notes through a safe-deposit facility. These activities are commonly referred to as money-laundering.

2. Efforts undertaken hitherto with the objective of preventing the banking system from being used in this way have largely been undertaken by judicial and regulatory agencies at national level. However, the increasing international dimension of organised criminal activity, notably in relation to the narcotics trade, has prompted collaborative initiatives at the international level. One of the earliest such initiatives was undertaken by the Committee of Ministers of the Council of Europe in June 1980. In its report¹ the Committee of Ministers concluded that "... the banking system can play a highly effective preventive role while the co-operation of the

1 Measures against the transfer and safeguarding of funds of criminal origin. Recommendation No. R(80)10 adopted by the Committee of Ministers of the Council of Europe on 27th June 1980.

banks also assists in the repression of such criminal acts by the judicial authorities and the police". In recent years the issue of how to prevent criminals laundering the proceeds of crime through the financial system has attracted increasing attention from legislative authorities, law enforcement agencies and banking supervisors in a number of countries.

3. The various national banking supervisory authorities represented on the Basle Committee on Banking Regulations and Supervisory Practices² do not have the same roles and responsibilities in relation to the suppression of money-laundering. In some countries supervisors have a specific responsibility in this field; in others they may have no direct responsibility. This reflects the role of banking supervision, the primary function of which is to maintain the overall financial stability and soundness of banks rather than to ensure that individual transactions conducted by bank customers are legitimate. Nevertheless, despite the limits in some countries on their specific responsibility, all members of the Committee firmly believe that supervisors cannot be indifferent to the use made of banks by criminals.

4. Public confidence in banks, and hence their stability, can be undermined by adverse publicity as a result of inadvertent association by banks with criminals. In addition, banks may lay themselves open to direct losses from fraud, either through negligence in screening undesirable customers or where the integrity of their own officers has been undermined through association with criminals. For these reasons the members of the Basle Committee consider that banking supervisors have a general role to encourage ethical standards of professional conduct among banks and other financial institutions.

5. The Committee believes that one way to promote this objective, consistent with differences in national supervisory practice, is to obtain international agreement to a Statement of Principles to which financial institutions should be expected to adhere.

2 The Committee comprises representatives of the central banks and supervisory authorities of the Group of Ten countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, United Kingdom, United States) and Luxembourg.

6. The attached Statement is a general statement of ethical principles which encourages banks' management to put in place effective procedures to ensure that all persons conducting business with their institutions are properly identified; that transactions that do not appear legitimate are discouraged; and that co-operation with law enforcement agencies is achieved. The Statement is not a legal document and its implementation will depend on national practice and law. In particular, it should be noted that in some countries banks may be subject to additional more stringent legal regulations in this field and the Statement is not intended to replace or diminish those requirements. Whatever the legal position in different countries, the Committee considers that the first and most important safeguard against money-laundering is the integrity of banks' own managements and their vigilant determination to prevent their institutions becoming associated with criminals or being used as a channel for money-laundering. The Statement is intended to reinforce those standards of conduct.

7. The supervisory authorities represented on the Committee support the principles set out in the Statement. To the extent that these matters fall within the competence of supervisory authorities in different member countries, the authorities will recommend and encourage all banks to adopt policies and practices consistent with the Statement. With a view to its acceptance worldwide, the Committee would also commend the Statement to supervisory authorities in other countries.

Basle, December 1988

Statement of Principles

I. Purpose

Banks and other financial institutions may unwittingly be used as intermediaries for the transfer or deposit of money derived from criminal activity. The intention behind such transactions is often to hide the beneficial ownership of funds. The use of the financial system in this way is of direct concern to police and other law enforcement agencies; it is also a matter of concern to banking supervisors and banks' managements, since public confidence in banks may be undermined through their association with criminals.

This Statement of Principles is intended to outline some basic policies and procedures that banks' managements should ensure are in place within their institutions with a view to assisting in the suppression of money-laundering through the banking system, national and international. The Statement thus sets out to reinforce existing best practices among banks and, specifically, to encourage vigilance against criminal use of the payments system, implementation by banks of effective preventive safeguards, and co-operation with law enforcement agencies.

II. Customer identification

With a view to ensuring that the financial system is not used as a channel for criminal funds, banks should make reasonable efforts to determine the true identity of all customers requesting the institution's services. Particular care should be taken to identify the ownership of all accounts and those using safe-custody facilities. All banks should institute effective procedures for obtaining identification from new customers. It should be an explicit policy that significant business transactions will not be conducted with customers who fail to provide evidence of their identity.

III. Compliance with laws

Banks' management should ensure that business is conducted in conformity with high ethical standards and that laws and regulations

pertaining to financial transactions are adhered to. As regards ~~transactions~~ executed on behalf of customers, it is accepted that banks may have no means of knowing whether the transaction stems from or forms part of criminal activity. Similarly, in an international context it may be difficult to ensure that cross-border transactions on behalf of customers are in compliance with the regulations of another country. Nevertheless, banks should not set out to offer services or provide active assistance in transactions which they have good reason to suppose are associated with money-laundering activities.

IV. Co-operation with law enforcement authorities

Banks should co-operate fully with national law enforcement authorities to the extent permitted by specific local regulations relating to customer confidentiality. Care should be taken to avoid providing support or assistance to customers seeking to deceive law enforcement agencies through the provision of altered, incomplete or misleading information. Where banks become aware of facts which lead to the reasonable presumption that money held on deposit derives from criminal activity or that transactions entered into are themselves criminal in purpose, appropriate measures, consistent with the law, should be taken, for example, to deny assistance, sever relations with the customer and close or freeze accounts.

V. Adherence to the Statement

All banks should formally adopt policies consistent with the principles set out in this Statement and should ensure that all members of their staff concerned, wherever located, are informed of the bank's policy in this regard. Attention should be given to staff training in matters covered by the Statement. To promote adherence to these principles, banks should implement specific procedures for customer identification and for retaining internal records of transactions. Arrangements for internal audit may need to be extended in order to establish an effective means of testing for general compliance with the Statement.

APPENDIX E

Group of 7 Economic Declaration of 16 July 1989

(extracts)

Source: Department of State Bulletin, September 1989

1) We, the Heads of State or Government of seven major industrial nations and the President of the Commission of the European Communities, have met in Paris for the fifteenth annual Economic Summit.

Drug Issues

52) The drug problem has reached devastating proportions. We stress the urgent need for decisive action, both on a national and an international basis. We urge all countries, especially those where drug production, trading and consumption are large, to join our efforts to counter drug production, to reduce demand and to carry forward the fight against drug trafficking itself and the laundering of its proceeds.

53) Accordingly, we resolve the following measures within relevant fora:

- Conclude further bilateral or multilateral agreements and support initiatives and cooperation, where appropriate, which include measures to facilitate the identification, tracing, freezing, seizure and forfeiture of drug crime proceeds.
- Convene a financial action task force from Summit Participants and other countries interested in these problems. Its mandate is to assess the results of cooperation already undertaken in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventive efforts in this field, including the adaptation of the legal and regulatory systems so as to enhance multilateral judicial assistance. The first meeting of this task force will be called by France and its report will be completed by April 1990.

APPENDIX F

Financial Action Task Force on Money Laundering

Report of 6 February, 1990

Source: Foreign & Commonwealth Office, London

INTRODUCTION

The Heads of State or Government of seven major industrial nations and the President of the Commission of the European Communities met in Paris in July 1989 for the fifteenth annual Economic Summit. They stated that the drug problem has reached devastating proportions, and stressed the urgent need for decisive actions, both on a national and international basis. Among other resolutions on drug issues, they convened a Financial Action Task Force (FATF) from Summit Participants and other countries interested in these problems, to assess the results of the cooperation already undertaken to prevent the utilization of the banking system and financial institutions for the purpose of money laundering, and to consider additional preventive efforts in this field, including the adaptation of the statutory and regulatory systems to enhance multilateral legal assistance. They decided that the first meeting of this Task Force would be called by France, and that its report would be completed by April 1990.

In addition to Summit Participants (United States, Japan, Germany, France, United Kingdom, Italy, Canada, and the Commission of the European Communities), eight countries (Sweden, Netherlands, Belgium, Luxembourg, Switzerland, Austria, Spain and Australia), were invited to join the Task Force, in order to enlarge its expertise and also to reflect the views of other countries particularly concerned by, or having particular experience in the fight against money laundering, at the national or international level.

France held the presidency of the Task Force. Several meetings were held in Paris and one meeting in Washington. More than one hundred and thirty experts from various ministries, law enforcement authorities, and bank supervisory and regulatory agencies, met and worked together. The work of the Task Force, in itself, has improved the international cooperation in the fight against money laundering: contacts were established between experts and law enforcement authorities of member countries, and a comprehensive documentation on money laundering techniques, and national programs to combat them has been compiled. As a result, Task Force countries have already improved their readiness and ability to fight against money laundering, and to cooperate to this end.

To facilitate the work of the Task Force, and to take advantage of the expertise of its participants, three working groups were created, which focused respectively on money laundering statistics and methods (working - group 1, presidency: United Kingdom), on legal questions (working - group 2, presidency: United States), and on administrative and financial cooperation (working - group 3, presidency: Italy). Their comprehensive experts constitute part of the background material of this report, and of possible future work.

Building upon this substantial preparation, the Task Force report begins with a thorough analysis of the money laundering process, its extent and methods (part I); then, it presents the international instruments and national programs already in place to combat money laundering (part II); and it devotes its most extensive and detailed developments to the formulation of action recommendations, on how to improve the national legal systems, enhance the role of the financial system, and strengthen international cooperation against money laundering (part III).

Recommendation
numbers

III - RECOMMENDATIONS

A - GENERAL FRAMEWORK OF THE RECOMMENDATIONS

Many of the current difficulties in international cooperation in drug money laundering cases are directly or indirectly linked with a strict application of bank secrecy rules, with the fact that, in many countries, money laundering is not today an offense, and with insufficiencies in multilateral cooperation and mutual legal assistance.

1 Some of these difficulties will be alleviated when the Vienna Convention is in effect in all the signatory countries, principally because this would open more widely the possibility of mutual legal assistance in money laundering cases. Accordingly, the group unanimously agreed as its first recommendation that each country should, without further delay, take steps to fully implement the Vienna Convention, and proceed to ratify it.⁽¹⁾

2 Concerning bank secrecy, it was unanimously agreed that financial institutions' secrecy laws should be conceived so as not to inhibit implementation of the recommendations of this group.

3 Finally, an effective money laundering enforcement program should include increased multilateral cooperation and mutual legal assistance in money laundering investigations and prosecutions and extradition in money laundering cases, where possible.

Nevertheless, this should not be the end point of our efforts to fight this phenomenon. Additional measures are necessary, for at least two reasons:

- the need for rapid and tough actions

As the purpose of the Vienna Convention is the fight against drug trafficking in general, including of course, but not exclusively, the fight against drug money laundering, some countries could have difficulties in ratifying and implementing it for reasons that are not related to the issue of money laundering. It remains crucial, whatever the difficulties may be on legal and technical grounds, to ratify and implement the Convention fully and without delay.

Rapid progress on the issue of money laundering is necessary. Hence, the Task Force's recommendations include important steps that are implied by this Convention. Furthermore, even on the topics mentioned by the Vienna Convention, it seemed to the group that the growing dimension and increasing awareness of the problem of money laundering, would justify a reinforcement of its provisions applicable to money laundering issues.

(1) However the Task Force did not undertake to determine what steps would be adequate to meet the requirements of the Vienna Convention. So, the adoption of the proposals and recommendations of the Task Force would not necessarily constitute full compliance with the obligations assumed by Task Force countries as parties to the U.N. Vienna Convention.

- the need for practical measures

Any discrepancy between national measures to fight money laundering can be used potentially by traffickers, who would move their laundering channels to the countries and financial systems where no or weak regulations exist on this matter, making more difficult the detection of funds of criminal origin. To avoid such a risk, these national measures, particularly those concerning the diligence of financial institutions, have to be conceived in a way that builds upon and enhances the Basel Statement of Principles, and to be harmonized in their most practical aspects, which is not provided for in the Statement.

On these bases, we recommend action steps that, in our view, could constitute a minimal standard in the fight against money laundering, for the countries participating in this Task Force, as well as for other countries. Some of these recommendations reflect the view of a majority of delegates, rather than unanimity, so that they are not limited to the weakest existing solution in the participating countries on each topic. Cases where a minority held a significantly different view are also mentioned. Accordingly, the minimal standard we recommend can be viewed as rather ambitious. Nevertheless, it should in no way prevent individual countries from adopting or maintaining more stringent measures against money laundering. Furthermore, as money laundering techniques evolve, anti-money laundering measures must evolve too: our recommendations will probably need periodic reevaluation.

These action steps against money laundering focus on improvements of national legal systems (B), enhancement of the role of the financial system (C), and the strengthening of international cooperation (D).

**B - IMPROVEMENT OF NATIONAL LEGAL SYSTEMS
TO COMBAT MONEY LAUNDERING**

1 - Definition of the criminal offense of money laundering

4 Each country should take such measures, as may be necessary, including legislative ones, to enable it to criminalize drug money laundering as set forth in the Vienna Convention.

However, the laundering of drug money is frequently associated with the laundering of other criminal proceeds. Given the difficulty to bring evidence of drug money laundering specifically, an extension of the scope of this offense, for instance to the most serious offenses, such as arms trafficking, etc., might facilitate its prosecution.

5 Accordingly, each country should consider extending the offense of drug money laundering to any other crimes for which there is a link to narcotics; an alternative approach is to criminalize money laundering based on all serious offenses, and/or on all offenses that generate a significant amount of proceeds, or on certain serious offenses.

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6 The group agreed that, as provided in the Vienna Convention, the offense of money laundering should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances. Some delegates consider that the offense of money laundering should go beyond the Vienna Convention on this point to criminalize activity where a money launderer should have known the criminal origin of the laundered funds. As already mentioned, a few countries would impose criminal sanctions for negligent money laundering activity.

7 In addition, the group recommends that, where possible, corporations themselves -not only their employees- should be subject to criminal liability.

2 - Provisional measures and confiscation

The Vienna Convention provides for provisional measures and confiscation in case of drug trafficking and laundering of drug money. These measures are a necessary condition to an effective fight against drug money laundering, notably because they facilitate the execution of sentences and help reduce the financial attractiveness of money laundering.

8 Accordingly, countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offense, or property of corresponding value.

Such measures should include the authority to: 1) identify, trace, and evaluate property which is subject to confiscation; 2) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer, or disposal of such property and 3) take any appropriate investigative measures.

In addition to confiscation and criminal sanctions, countries also should consider monetary and civil penalties, and/or proceedings including civil proceedings, to void contracts entered by parties, where parties knew or should have known that as a result of the contract, the state would be prejudiced in its ability to recover financial claims, e.g., through confiscation or collection of fines and penalties.

C - ENHANCEMENT OF THE ROLE OF THE FINANCIAL SYSTEM

In addressing the subject of money laundering, the group has kept in mind the necessity to weigh the impact of its recommendations on financial institutions, and to preserve the efficient operation of national and international financial systems.

1 - Scope of the following recommendations

The entry of cash into the financial system is of crucial importance in the drug money laundering process. This may occur through the financial system (banks and other financial institutions), and also through certain other professions dealing with cash, which are unregulated or virtually unregulated in many countries.

9 Accordingly, the recommendations 12 to 29 of this paper should apply not only to banks, but also to non-bank financial institutions.

10 For maximum effectiveness, these recommendations need to cover as many organisations as possible that receive large value cash payments in the course of their business. Therefore, the appropriate national authorities should take steps to ensure that these recommendations are implemented on as broad a front as is practically possible.

11 Nevertheless, excessive variation among the national lists for these non-bank financial institutions and other professions dealing with cash, subject to the following recommendations, could potentially facilitate the activity of money launderers. To avoid that, some delegates prefer that a common, minimum list of these financial institutions and professions be accepted by all the countries. As examples of non-bank financial institutions, savings societies including postal savings societies, loan societies, building societies, security brokers and dealers, credit card companies, check cashers, transmitters of funds by wire, money changers / bureaux de change, sales finance companies, consumer loan companies, leasing companies, factoring companies, and gold dealers were mentioned.

It was agreed that, a working group should further examine the possibility of establishing a common minimal list of non bank financial institutions and other professions dealing with cash subject to these recommendations.

2 - Customer identification and record keeping rules

Crucial in the fight against money laundering through the financial system, are the ability of financial institutions to screen undesirable customers, and the ability for law enforcement authorities to conduct their enquiries on the basis of reliable documents about the transactions and the identity of clients.

12 Hence, financial institutions should not keep anonymous accounts or accounts in obviously fictitious names; they should be required (by law, by regulations, by agreements between supervisory authorities and financial institutions or by self-regulatory agreements among financial institutions) to identify, on the basis of an official or other reliable identifying document, and record the identity of their clients, either occasional or usual, when establishing business relations or conducting transactions (in particular opening of accounts or passbooks, entering into fiduciary transactions, renting of safedeposit boxes, performing large cash transactions).

Furthermore, layering of funds of illicit origin is often facilitated by nominee accounts in financial institutions and shareholdings in companies, where beneficial ownership is disguised.

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13 Hence, financial institutions should take reasonable measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction is conducted if there are any doubts as to whether these clients or customers are not acting on their own behalf. In particular, in the case of domiciliary companies (i.e. institutions, corporations, foundations, trusts, etc., that do not conduct any commercial or manufacturing business or any other form of commercial operation in the country where their registered office is located).

14 Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.

Financial institutions should keep records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the account is closed.

These documents should be available to domestic competent authorities, in the context of criminal prosecutions and investigations.

3 - Increased diligence of financial institutions

Identification of customers is generally not sufficient to allow financial institutions and law enforcement authorities to detect suspicious transactions.

15 Hence, financial institutions should pay special attention to all complex, unusual, large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.

Where financial institutions suspect that funds stem from a criminal activity, bank secrecy rules or other privacy laws which are presently enforced in most countries prohibit them to report their suspicions to the competent authorities. Thus, to avoid any involvement in money laundering operations, they have no other choice, in that case, than denying assistance, severing relations and closing accounts in accordance with the Basic Statement of Principles. The consequence is that these funds can flow through other, undetected channels, which would frustrate the efforts of competent authorities in the fight against money laundering.

16 To avoid this risk, the following principle should be established: If financial institutions suspect that funds stem from a criminal activity, they should be permitted or required to report promptly their suspicions to the competent authorities. Accordingly, there should be legal provisions to protect financial institutions and their employees from criminal or civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report in good faith, in disclosing suspected criminal activity to the competent authorities, even if they have not known precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

There is a divergence of opinions within the Task Force on whether suspicious activity reporting should be mandatory or permissive. A few countries strongly believe that this reporting should be mandatory, possibly restricted to suspicions on serious criminal activities, and with administrative sanctions available for failure to report.

If financial institutions, while making these reports, warned at the same time their customers, the effect might be similar to a refusal to handle the suspected funds: the suspected customers and their funds would flow through undetected channels.

17 Hence, financial institutions, their directors and employees, should not, or, where appropriate, should not be allowed to, warn their customers when information relating to them is being reported to the competent authorities.

18 In the case of a mandatory reporting system, or in the case of a voluntary reporting system where appropriate, financial institutions reporting their suspicions should comply with instructions from the competent authorities.

19 In countries where no obligation of reporting these suspicions exist, when a financial institution develops suspicions about operations of a customer, and when the financial institution chooses to make no report to the competent authorities, it should deny assistance to this customer, sever relations with him and close his accounts.

The group also discussed what actions financial institutions should take when they learn from competent authorities, even in an informal way, that criminal proceedings, including international mutual assistance requests and/or appropriate freezing orders, are pending or imminent. Further examination of the intricate legal and practical aspects of this question would be useful, to avoid a premature withdrawal of funds which would unduly impair the criminal proceedings.

Staff in financial institutions are still only beginning, in most countries, to become aware of money laundering. This is of great help to money launderers. In some countries, complicity of staff may be also a problem.

20 Hence, financial institutions should develop programs against money laundering. These programs should include, as a minimum:

a) the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees;

b) an ongoing employee training program;

c) an audit function to test the system.

4 - Measures to cope with the problem of countries with no or insufficient anti money laundering measures.

The strengthening of the fight against money laundering in some countries could lead to a simple move of the money laundering channels, to countries with insufficient money laundering measures, in a process akin to regulator shopping.

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Frequently, a money laundering operation would involve the following stages :

- drugs cash proceeds would be exported from regulated countries to unregulated ones ;
- this cash would be laundered through the domestic formal or informal financial system of these havens ;
- the subsequent stage would be a return of these laundered funds to regulated countries with safe placement opportunities, particularly through wire transfers.

While sovereignty principles make it difficult to prevent this type of displacement of money laundering channels, and other laundering operations using regulation havens, the following principles should be applied by financial institutions in regulated countries :

- 21 - financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies.
- 22 - financial institutions should ensure that the principles mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply these recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the mother institution should be informed by the financial institutions that they cannot apply these recommendations.

Within the context of relations between regulated and unregulated countries, the study of a system to monitor cash movements at the border is of special importance (see point 5 hereunder).

5 - Other measures to avoid currency laundering

It was recognised that the stage of drugs cash movements between countries is crucial in the detection of money laundering. A few delegates strongly support the proposal that a system of reporting of all large international transportations of currency or cash equivalent bearer instruments to a domestic central agency with a computerized data base available to domestic judicial or law enforcement authorities should be established for use in money laundering cases. But this opinion is not shared by the majority of the group.

- 23 Nevertheless, the group acknowledged that the feasibility of measures to detect or monitor cash at the border should be studied, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.

The detection of suspicious cash operations could potentially be also facilitated if law enforcement authorities were in a position to be informed and to analyze all large cash transactions occurring within their country.

For that purpose, one suggested solution is that these transactions be routinely reported by financial institutions to competent authorities.

However, the efficiency of such a system, which currently exists in two participating countries, is uncertain. The majority of the group was not convinced of the cost-effectiveness of this system at this time, and expressed fears that it could lead financial institutions to feel less responsible for the fight against money laundering. On the other hand, it is the view of a few members that a comprehensive program to combat money laundering must include such a currency reporting system together with the reporting of international transportation of currency and currency equivalent instruments.

24 Nevertheless, the group agreed that countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerized data base, available to competent authorities for use in money laundering cases, subject to strict safeguards to ensure proper use of the information.

25 Furthermore, given the crucial importance of cash in drug trafficking and drug money laundering, and despite the fact that no clear correlation could be established between the cash intensiveness of a country's economy, and the role of this economy in international money laundering, countries should further encourage in general the development of modern and secure techniques of money management, including increased use of checks, payment cards, direct deposit of salary checks, and book entry recording of securities, as a means to encourage the replacement of cash transfers.

6 - Implementation and role of regulatory and other administrative authorities

Effective implementation of the above recommendations must be ensured.

But the authorities supervising banks and other financial institutions have currently, in many countries, no competence to participate in the fight against criminal activities, because their mission is primarily a prudential one, and because of professional secrecy or other rules.

26 Accordingly, in each member country, the competent authorities supervising banks or other financial institutions or intermediaries, or other competent authorities, should ensure that the supervised institutions have adequate programs to guard against money laundering. These authorities should cooperate and lend expertise spontaneously or on request with other domestic judicial or law enforcement authorities in money laundering investigations and prosecutions.

27 The effective implementation of the above mentioned recommendations in other professions dealing with cash is hampered by the fact that, in many countries, these professions are virtually unregulated. Hence, competent authorities should be designated to ensure an effective implementation of all these recommendations, through administrative supervision and regulation, in other professions dealing with cash as defined by each country.

28 The establishment of programs to combat money laundering in financial institutions and other professions dealing with cash, would require the support of these competent authorities, particularly to make these institutions and professions aware of facts that should normally lead to suspicions. Accordingly, the competent authorities should establish guidelines which will assist financial institutions in detecting suspicious patterns of behaviour by their customers. It is understood that such guidelines must develop over time, and will never be exhaustive. It is further understood that such guidelines will primarily serve as an educational tool for financial institutions' personnel.

29 Furthermore, the competent authorities regulating or supervising financial institutions should take the necessary legal or regulatory measures to guard against control of, or acquisition of a significant participation in financial institutions by criminals or their confederates.

The group acknowledged the risk that, outside the financial sector, industrial or commercial companies also could be acquired by criminals with the aim to use them for money laundering purposes.

D - STRENGTHENING OF INTERNATIONAL COOPERATION

The study of practical cases of money laundering clearly demonstrated that money launderers conduct their activities at an international level, thus exploiting differences between national jurisdictions and the existence of international boundaries. Therefore, enhanced international cooperation between enforcement agencies, financial institutions, and financial institution regulators and supervisors to facilitate the investigations, and prosecution of money launderers, is critical.

1 - Administrative cooperation

a) Exchange of general information

A first step is to improve the knowledge of international flows of drug money, noticeably cash flows, and the knowledge of money laundering methods, to enable a better focus of international and national efforts to combat this phenomenon.

30 Accordingly, national administrations should consider recording, at least in the aggregate, international flows of cash in whatever currency, so that estimates can be made of cash flows and reflows from various sources abroad, when this is combined with central bank information. Such information should be made available to the IMF and BIS to facilitate international studies.

31 International competent authorities, perhaps Interpol and the Customs Cooperation Council, should be given responsibility for gathering and disseminating information to competent authorities about the latest development in money laundering and money laundering techniques. Central banks and bank regulators could do the same on their network. National authorities in various spheres, in consultation with trade associations, could then disseminate this to financial institutions in individual countries.

b) Exchange of information relating to suspicious transactions

Present arrangements for international administrative cooperation and international exchange of information relating to identified transactions, are acknowledged to be insufficient. At the same time, this exchange of information must be consistent with national and international provisions on privacy and data protection. Furthermore, several countries consider that exchange of information relating to individual money laundering cases should take place only in the context of mutual legal assistance.

32

It was agreed that each country should make efforts to improve a spontaneous or "upon request" international information exchange relating to suspicious transactions, persons and corporations involved in those transactions between competent authorities. Strict safeguards should be established to ensure that this exchange of information is consistent with national and international provisions on privacy and data protection.

2 - Cooperation between legal authorities

a) Basis and means for cooperation in confiscation, mutual assistance, and extradition

A necessary condition to improve mutual legal assistance on money laundering cases, is that countries acknowledge the offense of money laundering in other countries as an acceptable basis for mutual legal assistance. The group agreed that countries should consider extending the scope of the offense of money laundering to reach any other crimes for which there is a link to narcotics, or to all serious offenses, and let the definition for this wider money laundering offense open between different options. Furthermore, it agreed that:

- countries should adopt a definition covering the offense of drug money laundering compatible with the definition of the Vienna Convention.

33

- countries should try to ensure, on a bilateral or multilateral basis, that different knowledge standards in national definitions - i.e. different standards concerning the intentional element of the infraction - do not affect the ability or willingness of countries to provide each other with mutual legal assistance.

34

Furthermore, international cooperation should be supported by a network of bilateral and multilateral agreements and arrangements based on generally shared legal concepts with the aim of providing practical measures to affect the widest possible range of mutual assistance.

35

The current works in the framework of the Council of Europe, concerning international cooperation as regards search, seizure and confiscation of the proceeds from crime, could constitute the basis of an important multilateral agreement on this matter. Accordingly, countries should encourage international conventions such as the draft convention of the Council of Europe on confiscation of the proceeds from offenses.

b) Focus of improved mutual assistance on money laundering issues

Experience of international cooperation on money laundering issues shows that improvements are necessary on the following topics:

36

- Cooperative investigations - Cooperative investigations among appropriate competent authorities of countries, should be encouraged.

37

- Mutual assistance in criminal matters - There should be procedures for mutual assistance in criminal matters regarding the use of compulsory measures including the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in money laundering investigations and prosecutions and in related actions in foreign jurisdictions.

38

- Seizure and confiscation - There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate proceeds or other property of corresponding value to such proceeds, based on money laundering or the crimes underlying the laundering activity.

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39 - Coordination of prosecution actions - To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country. Similarly, there should be arrangements for coordinating seizure and confiscation proceedings which may include the sharing of confiscated assets.

40 - Extradition - Countries should have procedures in place to extradite, where possible, individuals charged with a money laundering offense or related offenses. With respect to its national legal system, each country should recognize money laundering as an extraditable offense. Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgments, extraditing their nationals, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.

CONCLUSION

The delegates to the Financial Action Task Force agreed that the presidency of the Task Force would address this report to finance ministers of participating countries, which would submit it to their Heads of State or Government, and circulate it to other competent authorities.

The group agreed that decisions from the Summit of the Heads of State or Government of seven major industrial nations, which convened the Financial Task Force, would be crucial for the implementation of the recommendations and further work and studies. Political impetus would also be particularly necessary to crystallize strong coordinated overall international action, and to define the best ways to associate other countries, including drug producing countries, to the fight against money laundering.

While discussing the most adequate ways by which the follow-up to its work could be organized, the group emphasized that the wider the number of countries applying these recommendations (including countries which have weak or no regulations against money laundering) the greater their efficiency would be. It considered that a regular assessment of progress realized in enforcing money laundering measures would stimulate countries to give to these issues a high priority, and would contribute to a better mutual understanding and hence to an improvement of the national systems to combat money laundering.

APPENDIX G

1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

Source: Council of Europe, Strasbourg

PREAMBLE

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Convinced of the need to pursue a common criminal policy aimed at the protection of society;

Considering that the fight against serious crime, which has become an increasingly international problem, calls for the use of modern and effective methods on an international scale;

Believing that one of these methods consists in depriving criminals of the proceeds from crime;

Considering that for the attainment of this aim a well-functioning system of international co-operation also must be established,

Have agreed as follows:

CHAPTER I

USE OF TERMS

Article 1

Use of terms

For the purposes of this Convention:

- a. "proceeds" means any economic advantage from criminal offences. It may consist of any property as defined in sub-paragraph b of this article;
- b. "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to, or interest in such property;
- c. "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;
- d. "confiscation" means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property;
- e. "predicate offence" means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 6 of this Convention.

CHAPTER II

MEASURES TO BE TAKEN AT NATIONAL LEVEL

Article 2

Confiscation measures

375

1. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds.

Council of Europe

2. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies only to offences or categories of offences specified in such declaration.

Article 3

Investigative and provisional measures

Each Party shall adopt such legislative and other measures as may be necessary to enable it to identify and trace property which is liable to confiscation pursuant to Article 2, paragraph 1, and to prevent any dealing in, transfer or disposal of such property.

Article 4

Special investigative powers and techniques

1. Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 2 and 3. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy.

2. Each Party shall consider adopting such legislative and other measures as may be necessary to enable it to use special investigative techniques facilitating the identification and tracing of proceeds and the gathering of evidence related thereto. Such techniques may include monitoring orders, observation, interception of telecommunications, access to computer systems and orders to produce specific documents.

Article 5

Legal remedies

Each Party shall adopt such legislative and other measures as may be necessary to ensure that interested parties affected by measures under Articles 2 and 3 shall have effective legal remedies in order to preserve their rights.

Article 6

Laundering offences

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

a. the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

b. the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;

and, subject to its constitutional principles and the basic concepts of its legal system:

c. the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;

d. participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For the purposes of implementing or applying paragraph 1 of this article:
 - a. it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party;
 - b. it may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;
 - c. knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective, factual circumstances.
3. Each Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender:
 - a. ought to have assumed that the property was proceeds;
 - b. acted for the purpose of making profit;
 - c. acted for the purpose of promoting the carrying on of further criminal activity.
4. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe declare that paragraph 1 of this article applies only to predicate offences or categories of such offences specified in such declaration.

CHAPTER III

INTERNATIONAL CO-OPERATION

Section 1

Principles of international co-operation

Article 7

General principles and measures for international co-operation

1. The Parties shall co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.
2. Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:
 - a. for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;
 - b. for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.

Section 2

Investigative assistance

Article 8

Obligation to assist

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.

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Article 9

Execution of assistance

The assistance pursuant to Article 8 shall be carried out as permitted by and in accordance with the domestic law of the requested Party and, to the extent not incompatible with such law, in accordance with the procedures specified in the request.

Article 10

Spontaneous information

Without prejudice to its own investigations or proceedings, a Party may without prior request forward to another Party information on instrumentalities and proceeds, when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings or might lead to a request by that Party under this chapter.

Section 3

Provisional measures

Article 11

Obligation to take provisional measures

1. At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.
2. A Party which has received a request for confiscation pursuant to Article 13 shall, if so requested, take the measures mentioned in paragraph 1 of this article in respect of any property which is the subject of the request or which might be such as to satisfy the request.

Article 12

Execution of provisional measures

1. The provisional measures mentioned in Article 11 shall be carried out as permitted by and in accordance with the domestic law of the requested Party and, to the extent not incompatible with such law, in accordance with the procedures specified in the request.
2. Before lifting any provisional measure taken pursuant to this article, the requested Party shall, wherever possible, give the requesting Party an opportunity to present its reasons in favour of continuing the measure.

Section 4

Confiscation

Article 13

Obligation to confiscate

1. A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:
 - a. enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or
 - b. submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.

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2. For the purposes of applying paragraph 1.b of this article, any Party shall whenever necessary have competence to institute confiscation proceedings under its own law.
3. The provisions of paragraph 1 of this article shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested Party. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested Party shall, if payment is not obtained, realise the claim on any property available for that purpose.
4. If a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

Article 14

Execution of confiscation

1. The procedures for obtaining and enforcing the confiscation under Article 13 shall be governed by the law of the requested Party.
2. The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.
3. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.
4. If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.
5. In the case of Article 13, paragraph 1.a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

Article 15

Confiscated property

Any property confiscated by the requested Party shall be disposed of by that Party in accordance with its domestic law, unless otherwise agreed by the Parties concerned.

Article 16

Right of enforcement and maximum amount of confiscation

1. A request for confiscation made under Article 13 does not affect the right of the requesting Party to enforce itself the confiscation order.
2. Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

Article 17

Imprisonment in default

The requested Party shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 13, if the requesting Party has so specified in the request.

Section 5

Refusal and postponement of co-operation

Article 18

Grounds for refusal

1. Co-operation under this chapter may be refused if:
 - a. the action sought would be contrary to the fundamental principles of the legal system of the requested Party; or
 - b. the execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of the requested Party; or
 - c. in the opinion of the requested Party, the importance of the case to which the request relates does not justify the taking of the action sought; or
 - d. the offence to which the request relates is a political or fiscal offence; or
 - e. the requested Party considers that compliance with the action sought would be contrary to the principle of *ne bis in idem*; or
 - f. the offence to which the request relates would not be an offence under the law of the requested Party if committed within its jurisdiction. However, this ground for refusal applies to co-operation under Section 2 only in so far as the assistance sought involves coercive action.
2. Co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter, may also be refused if the measures sought could not be taken under the domestic law of the requested Party for the purposes of investigations or proceedings, had it been a similar domestic case.
3. Where the law of the requested Party so requires, co-operation under Section 2, in so far as the assistance sought involves coercive action, and under Section 3 of this chapter may also be refused if the measures sought or any other measures having similar effects would not be permitted under the law of the requesting Party, or, as regards the competent authorities of the requesting Party, if the request is not authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.
4. Co-operation under Section 4 of this chapter may also be refused if:
 - a. under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates; or
 - b. without prejudice to the obligation pursuant to Article 13, paragraph 3, it would be contrary to the principles of the domestic laws of the requested Party concerning the limits of confiscation in respect of the relationship between an offence and:
 - i. an economic advantage that might be qualified as its proceeds; or
 - ii. property that might be qualified as its instrumentalities; or
 - c. under the law of the requested Party confiscation may no longer be imposed or enforced because of the lapse of time; or
 - d. the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought; or
 - e. confiscation is either not enforceable in the requesting Party, or it is still subject to ordinary means of appeal; or
 - f. the request relates to a confiscation order resulting from a decision rendered *in absentia* of the person against whom the order was issued and, in the opinion of the requested Party, the proceedings

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conducted by the requesting Party leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.

5. For the purposes of paragraph 4.f of this article a decision is not considered to have been rendered *in absentia* if:

- a. it has been confirmed or pronounced after opposition by the person concerned; or
- b. it has been rendered on appeal, provided that the appeal was lodged by the person concerned.

6. When considering, for the purposes of paragraph 4.f of this article, if the minimum rights of defence have been satisfied, the requested Party shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made *in absentia*, elected not to do so. The same will apply when the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.

7. A Party shall not invoke bank secrecy as a ground to refuse any co-operation under this chapter. Where its domestic law so requires, a Party may require that a request for co-operation which would involve the lifting of bank secrecy be authorised by either a judge or another judicial authority, including public prosecutors, any of these authorities acting in relation to criminal offences.

8. Without prejudice to the ground for refusal provided for in paragraph 1.a of this article:

a. the fact that the person under investigation or subjected to a confiscation order by the authorities of the requesting Party is a legal person shall not be invoked by the requested Party as an obstacle to affording any co-operation under this chapter;

b. the fact that the natural person against whom an order of confiscation of proceeds has been issued has subsequently died or the fact that a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved shall not be invoked as an obstacle to render assistance in accordance with Article 13, paragraph 1.a.

Article 19

Postponement

The requested Party may postpone action on a request if such action would prejudice investigations or proceedings by its authorities.

Article 20

Partial or conditional granting of a request

Before refusing or postponing co-operation under this chapter, the requested Party shall, where appropriate after having consulted the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

Section 6

Notification and protection of third parties' rights

Article 21

Notification of documents

1. The Parties shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.
2. Nothing in this article is intended to interfere with:
 - a. the possibility of sending judicial documents, by postal channels, directly to persons abroad;

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b. the possibility for judicial officers, officials or other competent authorities of the Party of origin to effect service of judicial documents directly through the consular authorities of that Party or through judicial officers, officials or other competent authorities of the Party of destination,

unless the Party of destination makes a declaration to the contrary to the Secretary General of the Council of Europe at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

3. When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending Party, this Party shall indicate what legal remedies are available under its law to such persons.

Article 22

Recognition of foreign decisions

1. When dealing with a request for co-operation under Sections 3 and 4, the requested Party shall recognise any judicial decision taken in the requesting Party regarding rights claimed by third parties.
2. Recognition may be refused if:
 - a. third parties did not have adequate opportunity to assert their rights; or
 - b. the decision is incompatible with a decision already taken in the requested Party on the same matter; or
 - c. it is incompatible with the *ordre public* of the requested Party; or
 - d. the decision was taken contrary to provisions on exclusive jurisdiction provided for by the law of the requested Party.

Section 7

Procedural and other general rules

Article 23

Central authority

1. The Parties shall designate a central authority or, if necessary, authorities, which shall be responsible for sending and answering requests made under this chapter, the execution of such requests or the transmission of them to the authorities competent for their execution.
2. Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of paragraph 1 of this article.

Article 24

Direct communication

1. The central authorities shall communicate directly with one another.
2. In the event of urgency, requests or communications under this chapter may be sent directly by the judicial authorities, including public prosecutors, of the requesting Party to such authorities of the requested Party. In such cases a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
3. Any request or communication under paragraphs 1 and 2 of this article may be made through the International Criminal Police Organisation (Interpol).

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4. Where a request is made pursuant to paragraph 2 of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

5. Requests or communications under Section 2 of this chapter, which do not involve coercive action, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

Article 25

Form of request and languages

1. All requests under this chapter shall be made in writing. Modern means of telecommunications, such as telefax, may be used.

2. Subject to the provisions of paragraph 3 of this article, translations of the requests or supporting documents shall not be required.

3. At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any Party may communicate to the Secretary General of the Council of Europe a declaration that it reserves the right to require that requests made to it and documents supporting such requests be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language as it may specify. The other Parties may apply the reciprocity rule.

Article 26

Legalisation

Documents transmitted in application of this chapter shall be exempt from all legalisation formalities.

Article 27

Contents of request

1. Any request for co-operation under this chapter shall specify:
 - a. the authority making the request and the authority carrying out the investigations or proceedings;
 - b. the object of and the reason for the request;
 - c. the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;
 - d. in so far as the co-operation involves coercive action:
 - i. the text of the statutory provisions or, where this is not possible, a statement of the relevant law applicable; and
 - ii. an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting Party under its own law;
 - e. where necessary and in so far as possible:
 - i. details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and
 - ii. the property in relation to which co-operation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons' interests in the property; and

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f. any particular procedure the requesting Party wishes to be followed.

2. A request for provisional measures under Section 3 in relation to seizure of property on which a confiscation order consisting in the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.

3. In addition to the indications mentioned in paragraph 1, any request under Section 4 shall contain:

a. in the case of Article 13, paragraph 1.*a*:

i. a certified true copy of the confiscation order made by the court in the requesting Party and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;

ii. an attestation by the competent authority of the requesting Party that the confiscation order is enforceable and not subject to ordinary means of appeal;

iii. information as to the extent to which the enforcement of the order is requested; and

iv. information as to the necessity of taking any provisional measures;

b. in the case of Article 13, paragraph 1.*b*, a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic law;

c. when third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

Article 28

Defective requests

1. If a request does not comply with the provisions of this chapter or the information supplied is not sufficient to enable the requested Party to deal with the request, that Party may ask the requesting Party to amend the request or to complete it with additional information.

2. The requested Party may set a time-limit for the receipt of such amendments or information.

3. Pending receipt of the requested amendments or information in relation to a request under Section 4 of this chapter, the requested Party may take any of the measures referred to in Sections 2 or 3 of this chapter.

Article 29

Plurality of requests

1. Where the requested Party receives more than one request under Sections 3 or 4 of this chapter in respect of the same person or property, the plurality of requests shall not prevent that Party from dealing with the requests involving the taking of provisional measures.

2. In the case of plurality of requests under Section 4 of this chapter, the requested Party shall consider consulting the requesting Parties.

Article 30

Obligation to give reasons

The requested Party shall give reasons for any decision to refuse, postpone or make conditional any co-operation under this chapter.

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Article 31

Information

1. The requested Party shall promptly inform the requesting Party of:
 - a. the action initiated on a request under this chapter;
 - b. the final result of the action carried out on the basis of the request;
 - c. a decision to refuse, postpone or make conditional, in whole or in part, any co-operation under this chapter;
 - d. any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and
 - e. in the event of provisional measures taken pursuant to a request under Sections 2 or 3 of this chapter, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.
2. The requesting Party shall promptly inform the requested Party of:
 - a. any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and
 - b. any development, factual or legal, by reason of which any action under this chapter is no longer justified.
3. Where a Party, on the basis of the same confiscation order, requests confiscation in more than one Party, it shall inform all Parties which are affected by an enforcement of the order about the request.

Article 32

Restriction of use

1. The requested Party may make the execution of a request dependent on the condition that the information or evidence obtained will not, without its prior consent, be used or transmitted by the authorities of the requesting Party for investigations or proceedings other than those specified in the request.
2. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, declare that, without its prior consent, information or evidence provided by it under this chapter may not be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.

Article 33

Confidentiality

1. The requesting Party may require that the requested Party keep confidential the facts and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.
2. The requesting Party shall, if not contrary to basic principles of its national law and if so requested, keep confidential any evidence and information provided by the requested Party, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.
3. Subject to the provisions of its domestic law, a Party which has received spontaneous information under Article 10 shall comply with any requirement of confidentiality as required by the Party which supplies the information. If the other Party cannot comply with such requirement, it shall promptly inform the transmitting Party.

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Article 34

Costs

The ordinary costs of complying with a request shall be borne by the requested Party. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the Parties shall consult in order to agree the conditions on which the request is to be executed and how the costs shall be borne.

Article 35

Damages

1. When legal action on liability for damages resulting from an act or omission in relation to co-operation under this chapter has been initiated by a person, the Parties concerned shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.
2. A Party which has become subject of a litigation for damages shall endeavour to inform the other Party of such litigation if that Party might have an interest in the case.

CHAPTER IV

FINAL PROVISIONS

Article 36

Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe and non-member States which have participated in its elaboration. Such States may express their consent to be bound by:
 - a. signature without reservation as to ratification, acceptance or approval; or
 - b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three States, of which at least two are member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
4. In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraph 1.

Article 37

Accession to the Convention

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Convention, may invite any State not a member of the Council and not having participated in its elaboration to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2. In respect of any acceding State the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 38

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 39

Relationship to other conventions and agreements

1. This Convention does not affect the rights and undertakings derived from international multilateral conventions concerning special matters.
2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
3. If two or more Parties have already concluded an agreement or treaty in respect of a subject which is dealt with in this Convention or otherwise have established their relations in respect of that subject, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention, if it facilitates international co-operation.

Article 40

Reservations

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in Article 2, paragraph 2, Article 6, paragraph 4, Article 14, paragraph 3, Article 21, paragraph 2, Article 25, paragraph 3 and Article 32, paragraph 2. No other reservation may be made.
2. Any State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.
3. A Party which has made a reservation in respect of a provision of this Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

APPENDIX H

Council Directive of 10 June 1991 on Prevention of the Use of the Financial System for the Purpose of Money Laundering

Source: H M Treasury, London

COUNCIL DIRECTIVE

of 10. VI. 1991

[COUNCIL DIRECTIVE 91/308/EEC]

on prevention of the use of the
financial system for the purpose of money laundering

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57(2), first and third sentences, and Article 100a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In co-operation with the European Parliament ⁽²⁾,

Having regard to the Opinion of the Economic and Social Committee ⁽³⁾,

(1) OJ No C 106, 28. 4.1990, p. 6 and
OJ No C 319, 19.12.1990, p. 9.

(2) OJ No C 324, 24.12.1990, p. 264 and Decision of 17 April 1991 (not yet published in the Official Journal).

(3) OJ No C 332, 31.12.1990, p. 388.

European Communities

Whereas money laundering is usually carried out in an international context so that the criminal origin of the funds can be better disguised; whereas measures exclusively adopted at a national level, without taking account of international co-ordination and co-operation, would have very limited effects:

Whereas any measures adopted by the Community in this field should be consistent with other action undertaken in other international fora; whereas in this respect any Community action should take particular account of the recommendations adopted by the Financial Action Task Force on money laundering, set up in July 1989 by the Paris Summit of the Seven Most Developed Countries:

Whereas the European Parliament has requested, in several Resolutions, the establishment of a global Community programme to combat drug trafficking, including provisions on prevention of money laundering:

Whereas for the purposes of this Directive the definition of money laundering is taken from that adopted in the Vienna Convention; whereas, however, since money laundering occurs not only in relation to the proceeds of drug-related offences but also in relation to the proceeds of other criminal activities (such as organized crime and terrorism), the Member States should, within the meaning of their legislation, extend the effects of the Directive to include the proceeds of such activities, to the extent that they are likely to result in laundering operations justifying sanctions on that basis;

Whereas prohibition of money laundering in Member States' legislation backed by appropriate measures and penalties is a necessary condition for combating this phenomenon:

Whereas ensuring that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, exceeding certain thresholds, are necessary to avoid launderers' taking advantage of anonymity to carry out their criminal activities; whereas such provisions must also be extended, as far as possible, to any beneficial owners:

Council Directive - 10 June 1991

Whereas credit and financial institutions must keep for at least five years copies or references of the identification documents required as well as supporting evidence and records consisting of documents relating to transactions or copies thereof similarly admissible in court proceedings under the applicable national legislation for use as evidence in any investigation into money laundering;

Whereas ensuring that credit and financial institutions examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering is necessary in order to preserve the soundness and integrity of the financial system as well as to contribute to combating this phenomenon; whereas to this end they should pay special attention to transactions with third countries which do not apply comparable standards against money laundering to those established by the Community or to other equivalent standards set out by international fora and endorsed by the Community;

Whereas, for those purposes, Member States may ask credit and financial institutions to record in writing the results of the examination they are required to carry out and to ensure that those results are available to the authorities responsible for efforts to eliminate money laundering;

Whereas preventing the financial system from being used for money laundering is a task which cannot be carried out by the authorities responsible for combating this phenomenon without the co-operation of credit and financial institutions and their supervisory authorities; whereas banking secrecy must be lifted in such cases; whereas a mandatory system of reporting suspicious transactions which ensures that information is transmitted to the abovementioned authorities without alerting the customers concerned, is the most effective way to accomplish such co-operation; whereas a special protection clause is necessary to exempt credit and financial institutions, their employees and their directors from responsibility for breaching restrictions on disclosure of information;

Whereas the information received by the authorities pursuant to this Directive may be used only in connection with combating money laundering; whereas Member States may nevertheless provide that this information may be used for other purposes;

European Communities

Whereas establishment by credit and financial institutions of procedures of internal control and training programmes in this field are complementary provisions without which the other measures contained in this Directive could become ineffective;

Whereas, since money laundering can be carried out not only through credit and financial institutions but also through other types of professions and categories of undertakings, Member States must extend the provisions of this Directive in whole or in part, to include those professions and undertakings whose activities are particularly likely to be used for money laundering purposes;

Whereas it is important that the Member States should take particular care to ensure that co-ordinated action is taken in the Community where there are strong grounds for believing that professions or activities the conditions governing the pursuit of which have been harmonized at Community level are being used for laundering money;

Whereas the effectiveness of efforts to eliminate money laundering is particularly dependent on the close co-ordination and harmonization of national implementing measures; whereas such co-ordination and harmonization which is being carried out in various international bodies requires, in the Community context, co-operation between Member States and the Commission in the framework of a Contact Committee;

Whereas it is for each Member State to adopt appropriate measures and to penalize infringement of such measures in an appropriate manner to ensure full application of this Directive.

HAS ADOPTED THIS DIRECTIVE:

Council Directive - 10 June 1991

Article 1

For the purpose of this Directive:

- "credit institution" means a credit institution, as defined as in the first indent of Article 1 of Directive 77/780/EEC ⁽¹⁾, as last amended by Directive 89/646/EEC ⁽²⁾ and includes branches within the meaning of the third indent of that Article and located in the Community, of credit institutions having their head offices outside the Community;

- "financial institution" means an undertaking other than a credit institution whose principal activity is to carry out one or more of the operations included

(1) OJ No L 322, 17.12.1977, p. 30
[Directive 77/780/EEC provides:

Article 1

For the purposes of this Directive:

- 'credit institution' means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account, ...]

(2) OJ No L 386, 30.12.1989, p. 1.

[This directive adopts without change the definition in Directive 77/780. However, the directive contains a number of substantive provisions relating to credit institutions generally. These are not reproduced here.]

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in numbers 2 to 12 and number 14 of the list annexed to Directive 89/646/EEC,^[*] or an insurance company duly authorized in accordance with Directive 79/267/EEC ⁽¹⁾ as last amended by Directive 90/619/EEC ⁽²⁾, insofar

[* Directive 89/646/EEC provides:

ANNEX

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Acceptance of deposits and other repayable funds from the public.
2. Lending⁽¹⁾.
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
6. Guarantees and commitments.
7. Trading for own account or for account of customers in:
(a) money market instruments (cheques, bills, CDs, etc.); (b) foreign exchange;
(c) financial futures and options; (d) exchange and interest rate instruments; (e) transferable securities.
8. Participation in share issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit reference services.
14. Safe custody services.

⁽¹⁾ Including *inter alia*:

- consumer credit.
- mortgage credit.
- factoring, with or without recourse.
- financing of commercial transactions (including forfaiting).

(1) OJ No L 63, 13.3.1979, p. 1.

[Directive 79/267/EEC provides:

Article 6

1. Each Member State shall make the taking up of the activities referred to in this Directive in its territory subject to an official authorization.
2. Such authorization shall be sought from the competent authority of the Member State in question by:
 - (a) any undertaking which establishes its head office in the territory of such State;
 - (b) any undertaking whose head office is situated in another Member State and which opens an agency or branch in the territory of the Member State in question;
 - (c) any undertaking which, having received the authorization required under (a) or (b) above, extends its business in the territory of such State to other classes;
 - (d) any undertaking which, having obtained, in accordance with Article 7 (1), an authorization for a part of the national territory, extends its activity beyond such part.
3. Member States shall not make authorization subject to the lodging of a deposit or the provision of security.

Article 7

1. An authorization shall be valid for the entire national territory unless, and in so far as national laws permit, the applicant seeks permission to carry on his business only in a part of the national territory.
2. Authorization shall be given for a particular class of insurance. The classification by class appears in the Annex. Authorization shall cover the entire class unless the applicant wishes to cover only part of the risks pertaining to such class.

The supervisory authorities may restrict an authorization requested for one of the classes to the operations set out in the scheme of operations referred to in Articles 9 and 11.

3. Each Member State may grant an authorization for two or more of the classes, where its national laws permit such classes to be carried on simultaneously.

(2) OJ No L 330, 29.11.1990, p. 50.

Council Directive - 10 June 1991

as it carries out activities covered by that Directive; this definition includes branches located in the Community of financial institutions whose head offices are outside the Community;

- "money laundering" means the following conduct when committed intentionally:

- . the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- . the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- . the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;
- . participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing paragraphs.

Knowledge, intent or purpose required as an element of the abovementioned activities, may be inferred from objective factual circumstances.

Money laundering shall be regarded as such even where the activities which generated the property to be laundered were perpetrated in the territory of another Member State or in that of a third country.

European Communities

- "property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interests in such assets;
- "criminal activity" means a crime specified in Article 3(1)(a) of the Vienna Convention and any other criminal activity designated as such for the purposes of this Directive by each Member State;
- "competent authorities" means the national authorities empowered by law or regulation to supervise credit or financial institutions.

Article 2

Member States shall ensure that money laundering as defined in this Directive is prohibited.

Article 3

1. Member States shall ensure that credit and financial institutions require identification of their customers by means of supporting evidence when entering into business relations, particularly when opening an account or savings accounts, or when offering safe custody facilities.
2. The identification requirement shall also apply for any transaction with customers other than those referred to in paragraph 1, involving a sum amounting to ECU 15 000 or more, whether the transaction is carried out in a single operation or in several operations which seem to be linked. Where the sum is not known at the time when the transaction is undertaken, the institution concerned shall proceed with identification as soon as it is apprised of the sum and establishes that the threshold has been reached.

Council Directive - 10 June 1991

3. By way of derogation from paragraphs 1 and 2, the identification requirements with regard to insurance policies written by insurance undertakings within the meaning of Directive 79/267/EEC, where they perform activities which fall within the scope of that Directive shall not be required where the periodic premium amount or amounts to be paid in any given year does or do not exceed ECU 1 000 or where a single premium is paid amounting to ECU 2 500 or less. If the periodic premium amount or amounts to be paid in any given year is or are increased so as to exceed the ECU 1 000 threshold, identification shall be required.

4. Member States may provide that the identification requirement is not compulsory for insurance policies in respect of pension schemes taken out by virtue of a contract of employment or the insured's occupation, provided that such policies contain no surrender clause and may not be used as collateral for a loan.

5. In the event of doubt as to whether the customers referred to in the above paragraphs are acting on their own behalf, or where it is certain that they are not acting on their own behalf, the credit and financial institutions shall take reasonable measures to obtain information as to the real identity of the persons on whose behalf those customers are acting.

6. Credit and financial institutions shall carry out such identification, even where the amount of the transaction is lower than the thresholds laid down, wherever there is suspicion of money laundering.

European Communities

7. Credit and financial institutions shall not be subject to the identification requirements provided for in this Article where the customer is also a credit or financial institution covered by this Directive.

8. Member States may provide that the identification requirements regarding transactions referred to in paragraphs 3 and 4 are fulfilled when it is established that the payment of the transaction is to be debited to an account opened in the customer's name with a credit institution subject to this Directive according to the requirements of paragraph 1.

Article 4

Member States shall ensure that credit and financial institutions keep the following for use as evidence in any investigation into money laundering:

- in the case of identification, a copy or the references of the evidence required, for a period of at least five years after the relationship with their customer has ended;
- in the case of transactions, the supporting evidence and records, consisting of the original documents or copies admissible in court proceedings under the applicable national legislation for a period of at least five years following execution of the transactions.

Article 5

Member States shall ensure that credit and financial institutions examine with special attention any transaction which they regard as particularly likely, by its nature, to be related to money laundering.

Article 6

Member States shall ensure that credit and financial institutions and their directors and employees co-operate fully with the authorities responsible for combating money laundering:

- by informing those authorities, on their own initiative, of any fact which might be an indication of money laundering;
- by furnishing those authorities, at their request, with all necessary information, in accordance with the procedures established by the applicable legislation.

The information referred to in the first paragraph shall be forwarded to the authorities responsible for combating money laundering of the Member State in whose territory the institution forwarding the information is situated. The person or persons designated by the credit and financial institutions in accordance with the procedures provided for in Article 11(1) shall normally forward the information.

Information supplied to the authorities in accordance with the first paragraph may be used only in connection with the combating of money laundering. However, Member States may provide that such information may also be used for other purposes.

European Communities

Article 7

Member States shall ensure that credit and financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities referred to in Article 6. Those authorities may, under conditions determined by their national legislation, give instructions not to execute the operation. Where such a transaction is suspected of giving rise to money laundering and where to refrain in such manner is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money-laundering operation, the institutions concerned shall apprise the authorities immediately afterwards.

Article 8

Credit and financial institutions and their directors and employees shall not disclose to the customer concerned nor to other third persons that information has been transmitted to the authorities in accordance with Article 6 and 7 or that a money laundering investigation is being carried out.

Article 9

The disclosure in good faith to the authorities responsible for combating money laundering by an employee or director of a credit or financial institution of the information referred to in Article 6 and 7 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the credit or financial institution, its directors or employees in liability of any kind.

Article 10

Member States shall ensure that if, in the course of inspections carried out in credit or financial institutions by the competent authorities, or in any other way, those authorities discover facts that could constitute evidence of money laundering, they inform the authorities responsible for combating money laundering.

Article 11

Member States shall ensure that credit and financial institutions:

- 1) establish adequate procedures of internal control and communication in order to forestall and prevent operations related to money laundering;
- 2) take appropriate measures so that their employees are aware of the provisions contained in this Directive. These measures shall include participation of their relevant employees in special training programmes to help them recognize operations which may be related to money laundering as well as to instruct them as to how to proceed in such cases.

Article 12

Member States shall ensure that the provisions of this Directive are extended in whole or in part to professions and to categories of undertakings, other than the credit and financial institutions referred to in Article 1, which engage in activities which are particularly likely to be used for money-laundering purposes.

European Communities

Article 13

1. A Contact Committee (hereinafter referred to as "the Committee") shall be set up under the aegis of the Commission. Its function shall be:
 - (a) without prejudice to Articles 169 and 170 of the Treaty, to facilitate harmonized implementation of this Directive through regular consultation on any practical problems arising from its application and on which exchanges of view are deemed useful;
 - (b) to facilitate consultation between the Member States on the more stringent or additional conditions and obligations which they may lay down at national level;
 - (c) to advise the Commission, if necessary, on any supplements or amendments to be made to this Directive or on any adjustments deemed necessary, in particular to harmonize the effects of Article 12.
 - (d) to examine whether a profession or a category of undertaking should be included in the scope of Article 12 where it has been established that such profession or category of undertaking has been used in a Member State for money-laundering.
2. It shall not be the function of the Committee to appraise the merits of decisions taken by the competent authorities in individual cases.
3. The Committee shall be composed of persons appointed by the Member States and of representatives of the Commission. The secretariat shall be provided by the Commission. The Chairman shall be a representative of the Commission. It shall be convened by its Chairman, either on his own initiative or at the request of the delegation of a Member State.

Council Directive - 10 June 1991

Article 14

Each Member State shall take appropriate measures to ensure full application of all the provisions of this Directive and shall in particular determine the penalties to be applied for infringement of the measures adopted pursuant to this Directive.

Article 15

The Member States may adopt or retain in force stricter provisions in the field covered by this Directive to prevent money laundering.

Article 16

1. Member States shall bring into force the laws, regulations and administrative decisions necessary to comply with this Directive before 1 January 1993 at the latest.

2. Where Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field governed by this Directive.

Article 17

One year after 1 January 1993, whenever necessary and at least at three yearly intervals thereafter, the Commission shall draw up a report on the implementation of this Directive and submit it to the European Parliament and the Council.

European Communities

Article 18

This Directive is addressed to the Member States.

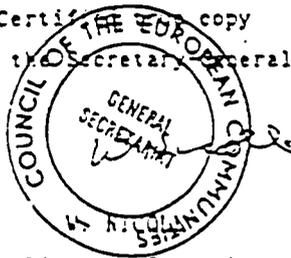
Done at Luxembourg, 10. VI. 1991

For the Council
The President

(s.)

J.-C. JUNCKER

Certified copy
For the Secretary-General



Director-General

APPENDIX I

FATF-V

FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING

ANNUAL REPORT
1993-1994

16 June 1994

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FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING

ANNUAL REPORT 1993-1994

SUMMARY

1. The fifth round of the Financial Action Task Force (FATF), which was chaired by the United Kingdom, focused on three priorities:
 - (i) monitoring the implementation of the forty Recommendations of 1990 by its members;
 - (ii) monitoring developments in money laundering methods and examining appropriate refinements to counter-measures; and
 - (iii) carrying out an active external relations programme to promote the widest possible international action against money laundering.
2. In addition, a major task conducted in 1993-1994 by the FATF was the review of its future mission and programme. It was decided that the FATF should be maintained for a further five years. While the laundering of drug money will remain a principal focus for the FATF, its work will continue to cover money laundering of the proceeds of serious crimes and/or offences which generate significant funds. Over the next five years the Task Force will concentrate on three main areas: further monitoring of members' progress in countering money laundering; the review of money laundering techniques and counter-measures; and external relations, in order to promote world-wide action against money laundering.
3. As in previous rounds, the Task Force devoted a considerable part of its work to the monitoring of members' implementation of the forty Recommendations on the basis of the self-assessment and mutual evaluation procedures. The 1993-1994 self-assessment exercise showed that members had continued to make significant progress in implementing the legal and financial Recommendations. In particular, almost all members have now enacted laws to make drug money laundering a criminal offence. In parallel, all member governments permit their banks to report suspicious transactions to the competent authorities and, in nineteen member jurisdictions, the banks are required to do so.
4. The mutual evaluation procedure, which provides a highly detailed examination of anti-money laundering measures, has again proved to be a particularly effective monitoring mechanism. The mutual evaluation examinations continued to be carried out at a rapid pace and twenty one FATF members have now been evaluated. Summaries of the nine evaluations conducted during FATF-V (the Kingdom of the Netherlands, Germany, Norway, Japan, Greece, Spain, Finland, Hong Kong and Ireland) are contained in Part II of the report. The remaining evaluations will take place in FATF-VI.
5. The collection and sharing of information on the latest developments and trends in money laundering methods confirmed the tendencies observed in previous exercises. While FATF members have introduced preventive measures

covering the banking sector, money launderers have been increasingly using more diverse routes, both in terms of geographical areas targeted and techniques used.

6. With regard to the development of counter measures, no new Recommendations were adopted during FATF-V. However, two Interpretative Notes were agreed: one on the identification of customers who are legal entities and the other on measures to counter money laundering through financial activities carried out by non-financial businesses or professions. The Task Force also continued its work on several initiatives launched in earlier rounds: preventive measures by non-bank financial institutions, especially bureaux de change; countering the use of non financial businesses generally for money laundering; identification requirements in cases where there is no face-to-face contact between an institution and its customer; and maintaining an audit trail for funds transfers on electronic payment and message systems. On the latter issue, the FATF reviewed the implementation by its members of the SWIFT broadcast of 30 July 1992, and it also pursued positive contacts with SWIFT, the leading international funds transfer message system.

7. With regard to the external relations domain, the Task Force maintained its efforts to encourage non-member countries to take effective measures against money laundering. In addition, the FATF undertook a major review of its external relations work and a strategy was drawn up for its contacts with non-member jurisdictions in the forthcoming years.

8. External actions undertaken in 1993-1994 have also involved contacts with countries from every continent, with particular emphasis on the Caribbean area, Central and Eastern Europe, and Asia. As in 1992-1993, the FATF carried out several anti-money laundering seminars and missions in non-member jurisdictions. Two major seminars were held during FATF-V: in Riyadh (October 1993) and Moscow (November 1993). FATF representatives also took part in high-level missions to Israel, the People's Republic of China, Malaysia, Thailand and Taiwan.

9. In carrying out its external relations programme, the FATF has continued to work in close co-operation with other international bodies involved in combating money laundering, such as the United Nations International Drug Control Programme, the Council of Europe, the Commonwealth Secretariat, the Customs Co-operation Council and Interpol.

10. At its 7-8 June meeting, the OECD Council at Ministerial Level endorsed the decision of the FATF to extend its work for a further five years, emphasising the importance of continued world-wide action against money laundering. During the 1994-1995 round, FATF-VI will be chaired by the Kingdom of the Netherlands.

INTRODUCTION

11. The Financial Action Task Force was established by the G-7 Economic Summit in Paris in 1989 to examine measures to combat money laundering. In April 1990, it issued a report with a programme of forty Recommendations in this area. Membership of the FATF comprises twenty eight jurisdictions and regional organisations, representing the world's major financial centres.

12. In August 1993, the United Kingdom succeeded Australia as the Presidency of the Task Force for its fifth round of work. Five series of meetings were held in 1993-1994, four at the OECD headquarters in Paris and one in London. The delegations attending the Task Force are drawn from a wide range of disciplines, including experts from finance, justice and external affairs ministries, financial regulatory authorities and law enforcement agencies. The FATF co-operates closely with international organisations concerned with combating money laundering and representatives from the United Nations International Drug Control Programme, the World Bank, the Council of Europe, the Commonwealth Secretariat, the Customs Co-operation Council, Interpol and the Offshore Group of Banking Supervisors attended various meetings during the year.

13. In addition to its plenary sessions, the FATF has continued to operate through three Working Groups, dealing respectively with legal issues (Working Group I, Chairman: Italy); financial matters (Working Group II, Chairman: France); and external relations (Working Group III, Chairman: USA). As in previous rounds, Working Groups I and II met jointly on several occasions to discuss the draft mutual evaluation reports on FATF members and various policy issues.

14. A major element of the work of the Task Force during 1993-1994 was the review of the future mission and programme of the FATF. Part I of the report sets out the conclusions of this review, which have been endorsed by all FATF member governments. Parts II, III and IV of the report outline the progress made by FATF over the past year in its continuing work in the following three areas:

- (i) evaluation of the progress of its members in implementing the forty Recommendations;
- (ii) monitoring developments in money laundering trends and techniques and considering necessary refinements to counter-measures; and
- (iii) undertaking an external relations programme to promote the widest possible international action against money laundering.

14. THE FUTURE ROLE OF THE FINANCIAL ACTION TASK FORCE

14.1. When the decision was taken in 1991 that the FATF should continue its work for a further five years as an independent ad hoc group, it was agreed that there should be a mid-point review of its progress and the continuing need, mission and work programme of the group. This review took place during the 1991-94 round.

Background Material

14.2. ~~The FATF's work encompasses 24 members, of the FATF, OECD, together with Hong Kong, Singapore and representatives of the European Commission and the Caribbean Co-operation Centre.~~ FATF members have made good progress in introducing measures to counter money laundering and, by the end of 1994, every member will have undergone an evaluation of the steps they have taken. The FATF is also conducting an ambitious programme of missions and seminars in significant non-member financial centre countries to promote awareness of the money laundering problem and to encourage them to take action. This has already started to produce positive results, most notably through the formation of a Financial Action Task Force for Caribbean states and territories. However, FATF members have unanimously agreed that the work of the Task Force is far from completed. It has therefore been decided that the FATF should be maintained for a further five years, i.e. until 1996-99.

Future Missions and Work Programme

14.3. As regards the scope of its work, while the laundering of drugs money will remain a principal focus for the FATF, its work will continue to cover money laundering of the proceeds of serious crime and/or offences which generate significant funds. However, as in the past, the FATF will not deal with tax issues. It was agreed that over the next five years the FATF should concentrate on three main tasks it has been pursuing since 1991:

- (i) monitoring of members' progress in applying measures to counter money laundering;
- (ii) review of money laundering techniques and counter-measures and their implications for the early recommendations;
- (iii) promoting the adoption and implementation of the FATF recommendations by non-member countries.

In keeping with the FATF's function as a task force, this work should be directed through annual mandates towards clear goals in each area.

(1) Monitoring of Members' Implementation of Anti-Money Laundering Measures

14.4. The monitoring process has shown that members have made good progress in implementing the Recommendations. However, in many cases it was too soon to assess how effectively the measures are working in practice. For each FATF member, four years after its first mutual evaluation, there should be a second round of evaluation concentrating on the effectiveness of the measures adopted. The goal would be to complete a second round of evaluations by the end of 1995.

During 1995, when no mutual evaluations would be conducted, there would be an analysis and discussion of various thematic aspects of the measures taken in different members to implement the Recommendations.

19. The annual self-assessment exercise, whereby members report on their state of application of the Recommendations, will be continued. However, given that most members have implemented the Recommendations, or are coming towards the end of this process, the self-assessment will be conducted on a simplified basis.

(ii) Reviewing Money Laundering Developments and Counter-Measures

20. Money laundering is a dynamic activity. There is a constant need to keep trends and techniques under review so that any essential refinements can be made to the counter-measures. The forty Recommendations have demonstrated their continued utility and no major changes are planned. However, a stocktaking exercise will be conducted in 1995, taking in account experience gained over the last four years, including the Interpretative Notes which have been developed. In subsequent rounds, the Recommendations would continue to be monitored but only altered in exceptional circumstances.

(iii) External relations work

21. It has been recognised from the inception of the FATF that taking action in Member jurisdictions without corresponding measures elsewhere would simply move money laundering to new paths. Working with other international and regional organisations concerned with combating money laundering, the FATF has therefore been active in its efforts to encourage the widest possible global mobilisation in this area. However, as more and more countries open up their economies and develop their financial systems they will become increasingly attractive to money launderers. Hence there is a need for the FATF to step up its programme of contacts with non-member countries. The goal it has set itself is to persuade all countries with significant financial centres to endorse and implement the FATF Recommendations. Other governments should be persuaded to commit themselves to take action to prevent the abuse of their countries by money launderers.

22. The FATF has agreed a strategy for its contacts with third countries, with East Asia, Eastern Europe and the Caribbean as the first priorities. This strategy calls for close co-operation with organisations such as the United Nations International Drug Control Programme and INTERPOL. The FATF's prime role will be obtaining a political commitment to action and monitoring progress towards implementation.

Membership of the FATF

23. There was agreement that a significant increase in the size of the FATF would prejudice its flexibility and efficiency. Hence it was decided that there should be no more than a very limited expansion. However, the FATF will be examining further the possibility of setting up additional regional Task Forces on the lines of the Caribbean FATF.

Institutional Arrangements

24. The FATF intends to continue to function as a free-standing ad hoc group, reporting to Finance Ministers or other competent Ministers and authorities of its member governments. It will also continue to send its reports to the OECD Ministerial Meeting and the G7 Summit.

25. The FATF has hitherto operated through three working groups as well as plenary meetings. However, it was considered that following the completion of their current work programmes, the committee structure should be discontinued and the functions of the plenary strengthened. From FATF-VI the plenary will therefore play a greater role in FATF meetings, overseeing the external relations programme and discussing and deciding on any further policy Recommendations and Interpretative Notes. It will also discuss the second round of mutual evaluation reports. However, ad hoc groups might be created to carry out specific tasks in line with specific terms of reference approved by the plenary.

26. The Presidency of the FATF will continue to rotate annually. A small permanent secretariat will be maintained at the OECD.

II. MONITORING THE PROGRESS OF FATF MEMBERS IN IMPLEMENTING THE FORTY RECOMMENDATIONS

27. The Task Force monitors the performance of its members using the two methods agreed in 1991: an annual self-assessment exercise; and the more detailed mutual evaluation process under which each member jurisdiction is examined once over the period 1991-1994.

(i) Self Assessment

28. FATF members completed two questionnaires relating respectively to the legal and financial Recommendations. Some minor modifications were made to the questionnaires used in the previous round. The changes were mostly designed to elicit more precise information from those members who had not yet implemented particular Recommendations on when they expected action to be taken in these areas.

29. The FATF Secretariat produced compilations of the responses to show the state of implementation of Recommendations across the membership and a comparison with the results of last year's exercise. These were discussed in the legal and financial Working Groups.

(ii) State of Implementation

(a) Legal Issues

30. The FATF membership has continued to make significant progress over the past year in implementing the legal Recommendations. In particular, nearly all member jurisdictions have now enacted laws to make drug money laundering a criminal offence. Two out of the three remaining members who have yet to take action expect to pass the necessary legislation within the next 12 months. There has also been an increase in the number of members who have made the laundering of proceeds of crimes, other than drug trafficking, an offence. Sixteen members have already done so and a further five expect to be in this position by the end of 1994.

31. Good progress has also been achieved on making the requisite changes to financial institution secrecy laws, and on putting in place the necessary legal framework for mutual assistance in criminal matters, including assistance concerning the freezing, seizure and confiscation of assets. In addition, more members have ratified the Council of Europe Convention on Money Laundering (which came into force on 1 September 1993) and there should be a substantial increase in the numbers doing so over the next twelve months.

32. Among the generality of the membership, the areas where there has been least progress in taking action are those where there are constitutional or other fundamental difficulties over implementing a particular measure. These areas mostly concern Recommendations which, for these reasons, have a discretionary rather than a mandatory character. Examples include the issues of introducing corporate criminal liability for money laundering offences and arrangements for sharing of confiscated assets between jurisdictions. However, another area where progress has been slow has been the ratification and implementation of the Vienna Convention as required by FATF Recommendation 1.

Only just over half the membership are now in compliance with this Recommendation, although another five partially comply and a further four members expect to have ratified and implemented the Convention within the next twelve months. Certain FATF members are also finding it difficult to make much progress in implementing significant numbers of the legal Recommendations.

(b) Financial Issues

33. The 1993-1994 self-assessment exercise showed that although the financial Recommendations were not fully applied by all members, major overall progress had been made. As noted last year, the requirement for several European FATF members to comply with the provisions of the EC Money Laundering Directive played a significant role in the progress observed. However, it is regrettable that none of the financial Recommendations has, to date, been applied by all FATF members. Considerable differences still persist in the state of implementation of the various Recommendations between the banking sector and non-bank financial institutions (NBFIs).

34. The vast majority of members comply fully with customer identification requirements, although there are still some notable exceptions for Recommendation 13, especially among NBFIs. A special matter of concern lies in the fact that the banks of two members are still allowed to keep anonymous accounts. All members but one are in full or partial compliance with record-keeping rules.

35. Significant progress had been made with the implementation of Recommendations on the increased diligence of financial institutions, while a large majority of FATF governments requires banks, and to a lesser extent non-bank financial institutions, to pay special attention to complex, unusually large transactions. A significant minority of members has not yet undertaken any action to put their non-bank financial institutions in compliance with the above-mentioned requirement. All member governments permit their banks to report their suspicions if they suspect that funds stem from a criminal activity. Moreover, in nineteen member jurisdictions, the reporting of suspicious transactions is mandatory. For two thirds of FATF members, most of the non-bank financial institutions are obliged to report their suspicions to the competent authorities. Banks, in a large majority of members, are required to pay special attention to business relations and transactions with persons from countries with insufficient anti-money laundering measures.

36. While all but four members require banks to develop specific programmes against money laundering, this requirement is better implemented for the insurance and securities industries than in other categories of non-bank financial institutions. In general, the supervisory authorities ensure that adequate programmes are set up. Only a few members have designated competent authorities to deal with the implementation of the Recommendations to other professions dealing with cash. Although Guidelines have already been established by two thirds of the member governments to assist their banks in detecting suspicious transactions, few members have done so for non-bank financial institutions as well. Finally, the vast majority of members have taken measures to guard banks, insurance companies and investment businesses against control, or acquisition by criminals.

(iii) Mutual Evaluations

37. The FATF is now nearing the end of the first round of mutual evaluations of its member jurisdictions. A further nine mutual evaluations were carried out in FATF-V: the Kingdom of the Netherlands, Germany, Norway, Japan, Greece, Spain, Finland, Hong Kong and Ireland. In addition, evaluations were also begun of New Zealand, Portugal and Iceland but the reports on these countries will fall for discussion in FATF-VI. Examination visits to the remaining two FATF members to be evaluated - Singapore and Turkey - will take place in the second half of 1994.

38. Given that many FATF members evaluated during this round had only just established their anti-money laundering framework or were in the process of doing so, it was not possible to reach definitive conclusions on the effectiveness of the measures in combating money laundering. Nevertheless, the evaluations were of great value in checking that members had properly implemented the Recommendations and providing a detailed scrutiny of the legal measures and enforcement and regulatory systems being put in place.

39. Summaries of the nine mutual evaluation reports completed during FATF-V are as follows.

Germany

40. As with other European countries, the Federal Republic of Germany is a major drug-consuming country and it also serves as a transit country for the flow of drugs from Asia and Central and South America. Although there are no statistical data on the amount of money laundering taking place in Germany, there is no doubt that the importance of the German banking system, the economic stability and the role of the Deutschmark in international financial transactions attract money launderers. In addition, organised crime in Germany has become an established factor and is spreading further. The activities of organised crime are not limited to drug trafficking but also extend to serious crimes.

41. The Federal Republic of Germany has just finalised the process of setting up new laws and systems to combat money laundering. On the legal side, the German strategy is based on the criminalisation of laundering the proceeds of all criminal offences carrying a minimum fine of one year's imprisonment, as well as drug-related offences and offences committed through organised crime. These provisions are completed with forfeiture and confiscation legislation contained in Section 261 of the Penal Code which entered into force on 22 September 1992.

42. On the financial side, the recent Money Laundering Act (GwG), which entered into force on 29 November 1992, provides the prerequisites for combating money laundering activities effectively in a repressive as well as preventive manner. The GwG contains three types of measures: identification requirements, the obligation for banks and other financial institutions as well as casinos to report suspicious transactions to the prosecuting authorities, and preventive measures to protect financial institutions and other businesses from money laundering. Most of the obligations which the GwG prescribes for banks also apply to non-bank financial institutions and to many non-financial institutions such as businessmen, property administrators and gambling casinos. In parallel

to this new legislation, the financial supervisory bodies and the private sector have taken steps to implement the Money Laundering Act. It is worthwhile to note that the German banking community has carried out remarkable training programmes and initiated growing awareness in their staff. With the experience thus gained in the recent legislation, the German authorities may plan other concrete measures for the future.

43. As the authority responsible for receiving suspicious transactions reports is determined by each Land, concerns have been expressed on the fact that the efficiency of the German system could be strongly affected by the lack of a central point for the reporting mechanism. Furthermore, the dispersal of the reporting procedure throughout the German jurisdiction could undermine endeavours to favour a common policy in the organisation of law enforcement systems.

44. The overall impression of the evaluation of Germany is that the objectives defined in the FATF principles are being seriously and correctly pursued. Once all the new regulations have been enforced, Germany will be equipped with a comprehensive and strong anti-money laundering framework. There is no doubt that the strict regulations contained in the GWG will constitute an excellent basis for combating money laundering in the whole financial sector. However, any evaluation of the efficiency of the legislation in place must be considered as tentative, given that the enactment of the GWG is so recent.

The Kingdom of the Netherlands

45. The evaluation covered not only the Netherlands itself, but also the the Netherlands Antilles and Aruba. The various parts of the Kingdom are at different stages in their formulation and implementation of anti-money laundering measures and hence were considered separately.

(a) The Netherlands

46. The Netherlands is significant as a drug-producing and drug-consuming country as well as being an important transit point for drugs trafficking. Large quantities of synthetic drugs, amphetamines, ecstasy and cannabis are produced partly for home consumption and partly for export. The Netherlands is a significant staging point for the distribution of heroin from South East and South West Asia to other parts of Europe and also for the re-export of hashish and marijuana. The annual turnover of the illegal drugs trade is estimated at some 3 - 4 billion guilders (US\$ 1¼-2 billion), the majority of which will be available for laundering. One recent estimate is that in total some 10 billion guilders (US\$5½ billion) of proceeds of crimes are generated annually in the Netherlands.

47. The Netherlands is coming towards the end of putting in place new laws and systems to combat money laundering. The strategy is based on the criminalisation of money laundering of the proceeds of all predicate offences; tough and flexible confiscation laws; a requirement for financial institutions to report all unusual transactions (as defined in published indicative criteria) to a new Disclosures Office, separate from the police; and the institution of anti-money laundering systems of control (customer identification, staff training, etc.) in financial institutions. Both the 1988 Vienna and the 1990 Council of Europe Conventions have now been ratified. The authorities are

willing to address particular areas of concern in the Netherlands, even when this goes beyond the requirements of the FATF Recommendations. An example is the decision to introduce a registration and monitoring system for bureaux de change.

48. The new anti-money laundering system has only just been put into effect and so firm conclusions cannot be drawn on how it will work in practice. However, the Netherlands complies with all the applicable FATF Recommendations. In particular, it benefits from having an excellent corpus of laws in this field, ranging from the basic money laundering offence, through asset confiscation and international co-operation, to the obligations of financial institutions. The last category of laws have the further strength that they can be modified in important respects as required without the need for fresh primary legislation.

49. The law enforcement system is also very well designed. Its streamlined nature and the recognition of the importance of a multi-disciplinary approach in investigating and prosecuting money laundering has great potential to maximise effective enforcement action. But, as the Netherlands authorities recognise, in operating the system, it will be important to ensure that it is adequately resourced. A weaker area is the system for supervising compliance of financial institutions. There appears to be some uncertainty about the precise roles of the agencies involved, which could have an adverse impact on the effectiveness of the supervisory effort. It is important that the Nederlandsche Bank plays a role commensurate with its status as the most important financial regulator.

50. The overall conclusion is that the Netherlands has drawn up and is implementing a well-designed, legally comprehensive system which should provide a very effective response to the challenge posed by money laundering.

(b) Netherlands Antilles and Aruba

51. The Netherlands Antilles and Aruba are separate jurisdictions. However, the situation in each is broadly similar. Both are of little importance as drug producers but they are significant transit points for cocaine trafficking from Colombia to the US and Europe. There is at present insufficient information to make an assessment of the money laundering situation. The two jurisdictions have begun the process of implementing measures to combat money laundering broadly based on those being brought into effect in the Netherlands. Both already have laws criminalising money laundering and legislation is now being drawn up regarding customer identification and mandatory reporting of unusual transactions, as well as implementation of the provisions of the Vienna Convention. It is intended that the legislation on identification and unusual transactions should cover all credit and financial institutions and also casinos and trust companies.

52. There are therefore encouraging signs of progress but both jurisdictions are still at too early a stage in the preparation of their new anti-money laundering framework for firm conclusions to be drawn. A further evaluation, involving on-site examinations, will therefore take place in early 1995 when it is hoped that all the new laws will have been enacted and the new systems implemented.

Norway

53. Both drug consumption and drug trafficking in Norway can be considered as serious problems, although perhaps not as serious as in certain other European countries. While not a drug producing country, Norway might be regarded as a transit country for cocaine. Another feature of the drug situation lies in the high street prices which make Norway one of the most profitable drug markets in Europe and therefore may generate illicit proceeds for local money laundering. Even if Norway cannot be deemed to be a major money laundering centre, it is most probable that the banks have been used to launder money. However, there is little indication of the type of laundering operations that might be carried out in Norwegian banks. Under these circumstances, the Government of Norway has become aware of the necessity of setting up a control system against money laundering.

54. As far as the Penal law is concerned, Norway has developed a high level of legal protection against money laundering. Section 317 of the Penal Code, by which money laundering has become a criminal offence, provides a sufficient broad definition of money laundering activities. It covers all predicate offences and penalises intentional as well as negligent acts. In addition, the penalties contained in this section are severe. Also, the provisions regarding seizure and confiscation present no specific problems.

55. The basic provisions of Section 2-17 of the Financial Services Act, which came into force on 1 January 1994, especially the obligation to report suspicious transactions to the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) as well as the far-reaching powers of that unit, provide for a coherent framework. It should be noted that the legislation on customer identification, record-keeping and the notification of suspicious transactions, including the possibility for ØKOKRIM to order the financial institution to stop a transaction, is largely based on the FATF Recommendations. The requirements of the new law are further specified in a regulation which came into force on 15 February 1994.

56. The supervision of the whole financial sector by the Banking, Insurance and Securities Commission (BISC) and the considerable attention they have given to the fight against money laundering must be underlined as very positive aspects of the Norwegian system. Even before Section 2-17 of the Financial Services Act entered into force, the BISC has started to draw the attention of the Boards of the supervised institutions to the issue of money laundering. This active approach includes the obligation to check compliance with anti-money laundering measures in the routine audits of financial institutions.

57. Given that the anti-money laundering legislation regarding the financial system is very recent, the evaluation of Norway must be considered tentative. An area of weakness is the definition of predicate offences, the proceeds of which can be deemed by financial institutions to constitute a money laundering situation. The current content of the new Section 2-17 of the Financial Services Act will probably prove too narrow for the smooth functioning of the reporting and investigation system.

58. The overall impression conveyed by the mutual evaluation of Norway is that there is still room for improvement, even if the efforts made in the context of money laundering should be considered in proportion to the size and

characteristics of the country. Norway is on the right path towards developing an effective system to counter money laundering.

Japan

59. Japan is not a drug producing nor an important drug transit country. However, drug abuse is a growing problem, albeit not as widespread as in other major industrialised economies. Drug trafficking is controlled by organised crime groups who also engage in other forms of illegal activity. It is impossible to estimate how much money laundering takes place in Japan. So far there has only been one prosecution for money laundering and not many reports of suspicious transactions. But it is possible that the Japanese financial system is abused for laundering purposes and the use of financial institutions to transmit money by traffickers has been observed.

60. Japan's New Special Anti-Drug Law, which entered into force in July 1992, made drug money laundering a criminal offence and introduced a mandatory confiscation regime for drug proceeds and instrumentalities. There are currently no plans to criminalise the laundering of the proceeds of non-drug crimes. In the financial sector, requirements have been placed on institutions to identify their customers and to report to the regulatory authorities any transactions where there are suspicions that the funds may be drug-related. Japan has ratified the Vienna Convention and under its domestic law can offer mutual legal assistance, subject to reciprocity and dual criminality, in money laundering investigations. Assistance in confiscation action can be provided in drug money laundering cases if there is a mutual legal assistance treaty or the state is a party to the Vienna Convention.

61. Japan is to be commended for the speed with which it implemented anti-money laundering measures following the adoption of the forty FATF Recommendations and its laws and regulations comply with most of the Recommendations. Financial institutions also seem to be well aware of the money laundering problem and, in particular, have made laudable efforts to explain to their customers the need for the new identification requirements. Japan takes a positive attitude to the further enhancement of its system and some refinements could profitably be considered, mainly in the implementation of the measures.

62. As regards the money laundering law itself, the examiners considered that the offence should cover all cases where a trafficker makes deposits of drug funds to or transfers money from a financial institution in their own true name, although the Japanese authorities consider that their current system is adequate in this respect. It was also suggested that there would be benefits in criminalising the laundering of the proceeds of other serious crimes rather than just drugs. However, given the absence of evidence of non-drug laundering and the existence of other laws in this area, the Japanese authorities now think it best to concentrate on drug laundering.

63. A reason for the lower than expected number of suspicious transaction reports so far made may be uncertainty among financial institutions on what type of transactions should be reported. The authorities will therefore provide guidance on this point. This is welcome. Another positive step is the establishment of a working group to draw up guidelines for financial institutions on what might constitute a suspicious transaction. Application of identification requirements are also being tightened, although a lower

threshold in the case of large cash transactions could be considered. More generally, closer co-operation between the financial sector and the police would also improve the fight against money laundering.

Greece

64. Greece is probably more notable as a transit country for drugs than a drug consuming country. Greece is part of the "Balkan route" via which drugs from south west Asia and the Middle East are directed to the consuming countries of northern and western Europe. As in many other countries, Greece is an attractive potential money laundering target because of the current opening of its economy and financial system, and its proximity to regular drug trafficking corridors.

65. Greece is a party to all relevant international multilateral agreements (the United Nations and Council of Europe Conventions) and is subject to the European Communities Council Directive 91/308 as well as the FATF Recommendations. However, it has not yet enacted all the legislation necessary to implement fully the provisions contained in these international arrangements and Conventions. While Greece has already passed legislation which makes money laundering a criminal offence, there are no laws to implement specific measures for the financial sector.

66. Before the Act 2145 was adopted by the Greek Parliament on 28 May 1993, money laundering was absolutely unknown as a crime. Article 5 of this Act has introduced a new Article 394A in the Greek Penal Code, making it a criminal offence to launder money which derives not only from drugs but also from a variety of other serious offences. This Act 2145 provides a sound legal basis for building a system to counter the laundering of funds. The specific crimes identified beyond narcotics trafficking make the definition of money laundering under Greek law broader than the definition in many other countries and exceeds the minimum definition suggested by the FATF.

67. The major problems encountered in Greek law with respect to the implementation of the Strasbourg and Vienna Conventions, as well as the FATF recommendations, are caused by strong taxation laws and banking secrecy. From an investigative point of view, these certainly cause major difficulties when money laundering criminal investigations are being conducted.

68. The most important initiatives concerning anti-money laundering measures in the financial sector have, so far, been taken by non governmental authorities such as the Bank of Greece and the Hellenic Banking Association. Therefore, specific measures on money laundering are only directed at banks and not at non-bank financial institutions which are not covered by these provisions. The regulations of the Bank of Greece are not sufficient enough to cover the whole area of money laundering. The obligation to report or identify the customer only applies to transactions in foreign currency. While banks are required to record the correct information or notify the proper authorities, there is no central repository authority for the records and the information required to be kept by the Governor's Decisions. Without a central body to review these records, the effectiveness of the record-keeping as a deterrent or as an investigative tool to identify money laundering patterns would be limited to detection and use in individual cases.

69. Greece has not yet set up a complete anti-money laundering programme. Despite positive signs and a good beginning, as shown by the introduction of Article 394 A in the Penal Code and other initiatives from the banking sector, further action needs to be taken. This issue should be dealt with by law as soon as possible and not by a decision of the Bank of Greece's Governor which is only in a position to control part of the financial sector which needs to be covered.

Spain

70. Although Spain is not a drug producing country, its geographical proximity as well as its linguistic, cultural and social links to notable drug production areas make it a sensitive location for the international trafficking of narcotics. In particular, Spain is used as a transit country for cocaine and hashish to the rest of Europe. Given these aforementioned circumstances, it is obvious that Spain is confronted with attempts at money laundering.

71. In order to implement the forty FATF Recommendations, Spain has created a policy group at governmental level which is co-ordinated by the National Plan on Drugs. Spain has deployed progressive efforts for several years to equip itself with an efficient means for action, particularly legislative action, in the framework of the fight against money laundering. Pending the appropriate legislation, the Central Bank and the banking associations adopted transitional measures. The first objective of the anti-money laundering policy was to define money laundering as a crime, so as to adapt domestic legislation to the provisions of the Vienna Convention. This goal was recently reached through Organic Law 8/1992 of 23 December 1992 which includes in the Penal Code the crime of money laundering derived from drug trafficking. A further objective yet to be achieved is to define generic money laundering as a crime.

72. The Act 19/1993 of 28 December 1993 introduced specific measures to prevent the laundering of funds. The system of prevention of money laundering contained in this Act affects all categories of financial bodies, including bureaux de change, but it also applies to casinos and real estate companies. The basic provisions of this Act provide for a coherent and comprehensive anti-money laundering framework.

73. Thanks to the Acts of 23 December 1992 and 28 December 1993, Spain has recently acquired a basic anti-money laundering legislation which needs to be further refined in two main areas. First, penal law should be adapted so as to coincide with the scope of money laundering activities as defined in Act 19/1993. Second, significant regulatory measures to implement the Act of 28 December must still be enacted by the authorities. Otherwise, the system for preventing money laundering cannot be considered as wholly operational especially the system for reporting suspicious transactions. While good practical results have already been achieved by the banking sector, non-bank financial institutions lack implementing rules even though they are broadly covered by the legislation. Finally, as numerous authorities are involved in the anti-money laundering programme, the necessity for co-ordination is crucial. In this respect, the role of the Commission for the Prevention of the Laundering of Funds and Monetary Offences, as far as preventive measures are concerned, and the role of the Government's Delegation for the National Plan on Drugs, as co-ordinating body, will be essential.

74. Given that the legislation is so recent and that the implementing regulations have not, to date, been promulgated, the evaluation of Spain must be considered as tentative. However, both the authorities and the banking sector are willing to comply with international requirements on money laundering, particularly the FATF Recommendations. With Act 19/1993 on specific measures to prevent the laundering of funds, Spain has chosen a broad approach to the fight against money laundering. In some respects, the Spanish system goes beyond the mandatory recommendations. Spain is therefore on the right path towards developing an effective anti-money laundering programme.

Finland

75. Finland is not a drug producing country but is increasingly becoming a transit country. Drug consumption is low but there has been a considerable increase in the number of drug related offences and drug trafficking is becoming more professional and organised. In addition to drug proceeds, it is believed that traditional crime such as bankruptcy offences, frauds and embezzlements also account for a substantial element of money laundering. However, the biggest potential problem is the flow of funds from the former Soviet Union for deposit in Finnish financial institutions or for the purchase of real estate or enterprises in Finland. It is suspected that these funds may include the illegal profits of the shadow economy being laundered and invested.

76. The Finnish authorities take money laundering very seriously. Finland has equipped itself with virtually a complete set of new laws and regulations concerning money laundering. These laws, which came into force at the start of 1994, are based on a very widely drawn money laundering offence covering all proceeds obtained by crime; confiscation of the proceeds and instrumentalities of money laundering; a very flexible new law concerning international co-operation; the mandatory reporting of suspicious transactions to the financial regulatory authorities by credit institutions and insurance companies; and the mandatory application by these entities of systems to help protect them against abuse by launderers, including customer identification and due diligence procedures.

77. Although the laws are new and untested, they look to provide a generally very good legal framework and in some respects - for example mutual legal assistance - are well in advance of general practice. Nearly all the FATF Recommendations have been implemented and legislation currently going through Parliament will add to the list by providing for corporate criminal liability for money laundering. The legal framework is reinforced by the positive attitude of the financial sector towards combating money laundering and the good co-operation between it, the financial regulators and the law enforcement authorities.

78. There are some areas where the anti-laundering system could be strengthened. In particular, all parts of the financial sector need to be brought within the anti-laundering framework as soon as possible - currently securities brokerage firms and bureaux de change are not covered. In addition, it would be desirable for the money laundering offence itself to be extended to cover attempted laundering. Operationally, experience in other FATF members suggests that the law enforcement authorities in Finland need to have legal authority to carry out a wider range of investigative techniques; and the formation of dedicated anti-laundering investigative units is certainly worthy of consideration.

79. However, the weaknesses of the Finnish system are minor in comparison to the progress that has already been made. Moreover, the Finnish authorities are very open to further refinements. The overall conclusion from the evaluation must therefore be that Finland has so far made a very good response to the money laundering challenge it is facing.

Hong Kong¹

80. Due to its close proximity to drug source countries and the fact that it is a free port at the centre of the communication and transportation network in South East Asia, Hong Kong faces a significant drug trafficking problem. Drugs from the "Golden Triangle" are smuggled into Hong Kong both for local consumption and re-export to other countries. Therefore, Hong Kong has a significant money laundering problem. The majority of funds laundered in Hong Kong results from drug sales which took place outside of Hong Kong, the actual amount of which is almost impossible to ascertain. These high profits are at least at some stage placed, layered and integrated in Hong Kong.

81. As one of the world's leading financial centres, Hong Kong presents several attractive factors to money launderers, such as a low tax system particularly for foreign source income, flexible corporate laws, sophisticated banking facilities and the absence of currency and exchange controls. Other favourable factors are an efficient communication system, the boom of real estate investments in South China and the fact that the Hong Kong dollar is a very desirable currency.

82. Determined to combat drug trafficking and the related money laundering, the Hong Kong Government has followed the approach and experience of the United Kingdom. Hong Kong enacted its first anti-drug related money laundering legislation in December 1989 (the Drug Trafficking (Recovery of Proceeds) Ordinance). This key legislative measure with respect to drug money laundering empowers the courts to freeze and confiscate the proceeds of drug trafficking, and includes, in Section 25, the offence of laundering the proceeds of drug trafficking.

83. With regard to measures applicable to the financial sector, the Hong Kong Monetary Authority issued in July 1993 a Guideline on Money Laundering which superseded the guidelines, issued in March 1989, on the prevention of the criminal use of the banking system for the purpose of money laundering. In parallel, Guidance Notes on Money Laundering were issued in December 1993 to all insurers authorised to carry on long term business in Hong Kong.

84. The Hong Kong government has shown a sincere commitment to address the problem of money laundering and is taking significant steps to comply with the

1. Under the Sino-British Joint Declaration signed on 19 December 1984, the Government of the People's Republic of China will resume sovereignty over Hong Kong with effect from 1 July 1997. Under the Joint Declaration, the monetary and financial systems previously practised in Hong Kong, including the systems of regulation and supervision of deposit-taking institutions and financial markets, as well as the laws previously in force, shall be maintained.

FATF Recommendations. The legislative framework and the Guidelines on "Money Laundering" to the banking and insurance industries provide for a good basis for countering money laundering. However, further efforts should be made to cover not only investment businesses but also other non-bank financial institutions such as remittance houses and bureaux de change. On the legal side, the enactment of the Organised and Serious Crimes Bill, which provides for the creation of a money laundering offence relating to the proceeds of any crime, will improve significantly the anti-money laundering legislation. The ready availability of shell companies makes investigations extremely difficult. This fact, together with lawyer/attorney privileges, creates problems for law enforcement agencies in identifying beneficial owners.

Ireland

85. Ireland has experienced a marked increase in the availability and consumption of illicit drugs in recent years, with cannabis followed by Ecstasy and LSD as the most common drugs. No estimates are available for the proceeds of drug trafficking and, given the absence of big organised crime gangs and the fragmented nature of the drugs trade, money laundering is not believed to be a serious problem. However, terrorist organisations do generate substantial sums to finance their operations and need to conceal these funds.

86. Ireland is moving from a situation in which little action had been taken against money laundering to the adoption of a wide-ranging framework in this area. The new law currently going through Parliament will implement the FATF Recommendations and the provisions of the EC Money Laundering Directive and enable Ireland to ratify the 1988 Vienna and 1990 Council of Europe Conventions. Ireland's approach is based on the criminalisation of the laundering of the proceeds of all crimes, backed up by tough confiscation provisions and requirements on financial institutions to identify their customers and report any suspicious transactions to the law enforcement authorities. The legislation will be supplemented by the production of detailed guidance notes.

87. The new legislation provides a very good legal framework for combating money laundering. The money laundering offence itself meets all the FATF Recommendations and Ireland is to be commended for the comprehensive coverage of predicate offences. The new confiscation provisions are a further strong feature of the new law. In addition, the obligations to be placed on financial institutions generally meet the FATF requirements. At present these obligations do not cover all relevant bodies - credit card issuers, unit trusts and investment intermediaries are the most notable exceptions. The legislation does enable the obligations to be extended to such entities by way of statutory regulations. Credit card issuers and unit trust managers will be covered by this means. However, failure to cover investment intermediaries could represent a weak point in the framework and it would be desirable for all financial institutions to be subject to the obligations as soon as possible.

88. The main financial sector trade associations have a positive and constructive attitude to the new legislation. The banks, building societies and also the life insurance sector were all well aware of the money laundering threat and ready to co-operate with the government on counter-measures.

89. Nevertheless, although a good start has been made, there is still much to be done in setting out the details of the necessary anti-laundering measures and how they should be implemented in practice. It is therefore important that the detailed guidance for financial institutions on matters such as training and handling of suspicious transactions, which is now being prepared, should be finalised as soon as possible. The guidelines need to cover all financial subsectors and should, as far as possible, lay down equivalent rules to avoid competitive distortions and ensure effective application of the measures.

90. Ireland has been relatively late among FATF members in putting an anti-money laundering framework in place. However, it is to be congratulated on the legislation it has drawn up and the very positive attitude of the main financial industry associations towards combating money laundering. If the implementation of the measures matches the standard of the primary legislation, Ireland should have a very effective anti-laundering system.

III. MONITORING DEVELOPMENTS ON MONEY LAUNDERING TECHNIQUES AND REFINEMENT OF THE FATF RECOMMENDATIONS

91. The FATF continues to collect and share information on the latest developments and trends in money laundering techniques. This exercise is useful not only for informing law enforcement agencies and others with operational responsibilities in FATF members but also for considering what further money laundering counter-measures might need to be adopted to take account of these developments. Money laundering is not simply a problem faced by the banking community and other mainstream financial institutions. As FATF members have introduced preventive measures covering the "regulated" financial sector, money launderers have been increasingly using more diverse routes, both in terms of the geographical areas targeted and methods used. During the 1993-1994 round, the FATF has therefore tended to focus increasingly on issues which were not given such close attention when the original forty Recommendations were drawn up in 1989-1990. However, in line with the decision taken in FATF-III, no new Recommendations will be considered until after all the mutual evaluation examinations have been completed.

1993-1994 Survey of Money Laundering Trends and Techniques

92. The annual review of developments in money laundering techniques drew on a large number of case histories submitted by FATF members, including some members who had not previously contributed to this exercise. These, and other cases, were discussed by an ad hoc expert group. As in previous exercises, the material was concerned with developments or trends in existing money laundering methods - e.g. use of shell companies, wire transfers, non-bank financial institutions (especially bureaux de change) and physical movement of currency - rather than indicating any significantly innovative techniques. Evidence was presented of an increasing amount of laundering of the proceeds of crime unrelated to drugs trafficking, such as arms smuggling, prostitution, white collar crime and even the illegal trafficking of animal hormones, which in one FATF member was second only to drugs as a source of criminal proceeds for laundering.

93. There were further indications of the existence of joint ventures of drug traffickers and financial professionals, which resulted in increasingly sophisticated money laundering methods. This was reflected in the growing use of instruments such as gold or bonds; and the expansion of underground banking systems well beyond the geographical areas with which they are traditionally associated. There were also a significant number of examples of banks conniving in money laundering operations, with criminals being able to take control of banks and penetrate other financial institutions, especially in jurisdictions with weak supervisory systems.

94. Geographically, the world-wide nature of money laundering operations was again emphasised. Central and Eastern European countries are becoming increasingly used in money laundering schemes. In parallel, the use of alternative financial centres in Asian and South American countries is also developing.

Refinement of Counter Measures

(i) Shell Corporations and Other Legal Entities

95. Given the propensity for shell corporations to be used in money laundering operations, the FATF has been examining what steps might be taken to counter their attractions as laundering vehicles. FATF-V continued the work begun in 1992-1993 to try to ensure that the beneficial owners of such bodies were identified and that this information was available to law enforcement authorities conducting money laundering investigations. As the study of the issue continued, the importance of applying the principle of transparency of ownership to corporate bodies in general was emphasised since not only shell corporations but virtually any legal entity could be used in money laundering schemes.

96. A very important element in preventing the use of legal entities by natural persons as a means of operating de facto anonymous accounts is to ensure that financial institutions obtain information on owners and beneficiaries of their client legal entities. After considerable discussion, an Interpretative Note to Recommendations 12, 13 and 16 to 19 was adopted to clarify the measures to be taken by financial institutions regarding the identification of customers who are legal entities. The text of this note is set out in Annex 1.

97. There was also some discussion of other ways of improving transparency of ownership of corporate bodies and some possible additional measures were proposed for dealing with specific problems posed by shell corporations. However, no conclusions were reached on these issues during FATF-V.

Use of non-financial institutions for money laundering

98. The FATF also continued the work begun in the previous round on measures to combat the use of businesses outside the financial sector for money laundering. The subject was dealt with in two stages. The first focused on the counter-measures applicable to financial activities carried on by businesses other than financial institutions. In some FATF members only licensed financial institutions can provide financial services to the public. However, in other members at least certain financial activities can be conducted by any business in conjunction with its mainstream operations. An example is the provision of bureaux de change facilities by travel agents. If no measures were taken in this area, there would be a potential loophole in the anti-money laundering framework which could be exploited by criminals. An Interpretative Note was therefore proposed to Recommendations 10 and 11 regarding the application of appropriate anti-money laundering measures to the conduct of financial activities by non-financial businesses or professions. The text of the draft Interpretative Note is to be found in Annex 2.

99. The second stage was an examination of the ways in which non-financial businesses could be exploited by money launderers, whether willingly or without their knowledge and consent. It was agreed that there was no one set of measures which would be applicable to the whole of the non-financial sector, which covers a vast range of businesses. Instead the FATF is studying a mixture of measures. Some would be of general application. These include consideration of means to improve the transparency of ownership of legal

entities; examining to what extent external auditors and public authorities should be enabled to pass on to law enforcement authorities any reasonable suspicions of money laundering activities they develop in carrying out their work with businesses; and the further scope for reducing and/or monitoring the use of cash as a payment mechanism for large value transactions.

100. There was also general agreement that certain business sectors - for example, the gaming industry and vendors of high value items (art/antique dealers, real estate dealers, sellers of cars, boats and other luxury goods) - were particularly vulnerable to abuse by money launderers. The application of more specific anti-money laundering measures to these sectors is therefore being studied.

101. The FATF has not reached definitive conclusions on what actions - general or specific - might need to be taken concerning non-financial businesses. It should be noted that a number of the measures under study would go beyond the existing forty FATF Recommendations. Further work on this subject will therefore need to be pursued in FATF-VI.

Identification Requirements

102. The FATF continued its work on the issue of identification requirements, particularly in cases where there is no face-to-face contact between the financial institution and its customers. Various options, which had been put forward by FATF members were discussed. It was recognised that there should be a satisfactory balance between flexibility in the method of identifying the customer and security. It was also pointed out that there should be no discrimination between categories of financial institutions. The advantages and disadvantages of the various methods of identification were reviewed. It was generally agreed that any identification method, when there is no face-to-face contact, should achieve the underlying objectives of Recommendations 12 and 13. However, this question will be reconsidered during FATF-VI.

Non-Bank Financial Institutions

103. During 1992-1993, FATF-IV had reviewed the tendency of money launderers to use the non-banking financial sector. Bureaux de change, intermediaries in investment businesses and insurance companies were identified as having been used, or as particularly vulnerable to being used, for money laundering. FATF-V considered further action on the implementation of the FATF Recommendations in various sectors of NBFIs. It was expected that the implementation of the Recommendations to the insurance and investment business industries would normally be achieved when anti-money laundering measures were being established.

104. However, a matter of general concern was the implementation of the FATF Recommendations on financial matters to bureaux de change since these institutions had been identified as being very vulnerable to money laundering schemes. In this regard, it was decided to deliberate on measures such as setting up registration or supervisory requirements or the application of other methods for the enforcement of anti-money laundering regulations by the bureaux de change.

105. Finally, it was also decided not to overlook entirely the other sectors of NBFIs, particularly intermediaries in investment businesses. The Task Force pursued contacts with the Working Party 4 of the International Organisation of Securities Commissions (IOSCO) so as to compare its work with that of the FATF on the implementation of Recommendations to the securities sector.

Electronic Funds Transfers

106. The FATF continued to work on this issue since there were indications that a number of money laundering cases had involved the use of electronic payment systems. It was decided to institute an exchange of information on how FATF members had implemented regulatory measures relating to electronic funds transfers. Several members presented their domestic measures on this matter: Government regulations, circulars from the Banking Commission or the Central Bank as well as instructions or directives from supervisory authorities. Following this review, it was agreed to continue to monitor implementation by FATF members of the SWIFT broadcast of 30 July 1992 -- in particular, the information loss which may occur when data enter internal payments systems. The review of the implementation of the SWIFT broadcast will continue during FATF-VI. However, the FATF was concerned about the possible shift of the problem to other wire transfer systems and therefore this question was studied more closely.

107. In parallel, the Task Force maintained its contact with SWIFT. A FATF delegation attended the annual conference of SWIFT users on 10 September 1993 in Geneva. The Chairman of Working Group II and several FATF experts also met with representatives of SWIFT in order to pursue the good co-operation already established in previous rounds. The SWIFT broadcast of 30 July 1992 was communicated to the Offshore Group of Banking Supervisors and to the Basle Committee.

IV. EXTERNAL RELATIONS

108. As in the previous round, the FATF carried out various anti-money laundering seminars and missions in non-member jurisdictions. The FATF mounted two major seminars during the round: in Riyadh in October 1993, and Moscow in November 1993. There has also been a smaller scale seminar in the Bahamas and high-level missions to Israel, the People's Republic of China, Malaysia, Thailand and Taiwan. Above all, a major review was undertaken of the FATF's external relations work and a strategy was drawn up for the FATF's contacts with third countries in forthcoming years. The FATF also conducted its annual survey of progress in implementing anti-money laundering measures in Dependent, Associated or Otherwise Connected Territories of FATF members.

The Gulf

109. The seminar in Riyadh held on 11-13 October 1993, was conducted in conjunction with the Gulf Co-operation Council and the Saudi Arabian Monetary Agency and had been attended by sizeable delegations (including representative from the banking sector, regulatory agencies, finance and justice ministries) from all six GCC members (Saudi Arabia, Kuwait, Bahrain, Qatar, the UAE and Oman). The seminar covered all aspects of the money laundering issue and the audience had been well-informed and taken a positive attitude.

Central and Eastern Europe

110. The FATF seminar in Moscow, held on 2-4 November, followed contacts between the Chairman and the Central Bank of Russia. Prior to the seminar, the Chairman visited Moscow for meetings with Russian government agencies to assess the situation. Some hundred representatives of various Russian agencies, including commercial banks, attended the seminar. Following a plenary session on the first day, separate workshops were held for financial and regulatory, legal and judicial, and law enforcement groups. The conclusions from these groups were presented at a final plenary session. The recommendations to the Russian government resulting from the seminar included the implementation of the FATF measures and ratification of the Vienna and Council of Europe Conventions, with particular emphasis on the importance of ensuring that financial institutions were not owned or controlled by criminals. In response, the FATF was invited to send a small team to Russia in 1994 to evaluate progress in taking action against money laundering.

111. Although the FATF conducted no other seminars in Central and Eastern Europe during the round, it continued to monitor developments in the application of money laundering counter-measures in Hungary and Poland, where seminars had taken place in early 1993. Representatives from the Hungarian National Bank and the National Bank of Poland attended meetings of Working Group III in November 1993 and April 1994, respectively. The Hungarian Parliament has now passed a law to make money laundering of the proceeds of drugs trafficking, terrorism and arms trafficking a criminal offence. Money laundering has not yet been made a criminal offence in Poland but the National Bank of Poland has taken a number of measures and it is hoped that anti-money laundering legislation will be introduced in the Polish Parliament in the near future.

112. Elsewhere in Eastern Europe, FATF members have participated in Council of Europe missions on money laundering to Lithuania, the Ukraine and Estonia. The FATF will also take part in a major conference on money laundering for European States, which the Council is organising in the second half of 1994. It should also be noted that the PHARE programme of the European Community, which covers money laundering, has been extended to include Albania, the three Baltic States (Estonia, Latvia and Lithuania) and Slovenia, in addition to the existing beneficiary countries. The programme will therefore assist the implementation of anti-laundering measures in eleven Central and Eastern European countries.

Caribbean

113. In the Caribbean, with the support of the FATF sponsoring countries (Canada, France, the Netherlands, the United Kingdom and the United States), a permanent secretariat for the Caribbean Financial Action Task Force (CFATF) has now been established. The secretariat is based in Trinidad, which currently holds the Presidency of the CFATF. During 1994, all CFATF members will take part in a self-assessment exercise to monitor their progress in implementing the forty FATF and nineteen CFATF Recommendations. A number of mutual evaluations will also be carried out. A full meeting of the CFATF will take place towards the end of 1994.

114. The FATF carried out one event in the Caribbean in FATF-V. This was a seminar in Nassau on 21-22 October. The seminar was held primarily for banking regulators from the members of the CFATF Steering Group and produced a good number of recommendations for the work of the CFATF.

Missions

115. Three high-level missions were conducted during FATF-V. A mission visited Jerusalem and Tel-Aviv in December 1993 for discussions with Israeli government agencies. Israel is not considered to be a significant money laundering centre but has the potential to become a transit point for the flow of dirty money. Israel has yet to take action against money laundering but the subject is under active consideration.

116. A mission also took place to Beijing in December 1993 for meetings with the Ministry of Justice, the Narcotics Commission and other agencies. Again, so far there had only been limited action against money laundering but it was planned to introduce legislation in 1994, which would bring China into conformity with the Vienna Convention.

117. Finally, the FATF has started preparations in conjunction with the Commonwealth Secretariat for a further Asian Money Laundering Symposium planned for late 1994 to follow up the event held in Singapore in April 1993. The FATF President visited Malaysia, Thailand and Taiwan in May 1994 for discussions with these governments in advance of the seminar. A small unit will be established in the near future to support the Asian initiatives of the FATF. This unit will be funded by advances from Australia's Confiscated Assets Trust Fund.

External Relations Strategy

118. The FATF has conducted an increasingly active external relations programme and this aspect of its work can be expected to grow in significance over the next few years. Hence it was decided that a plan was needed to guide its future activities in this area. During FATF-V, Working Group III drew up an external relations strategy based on papers prepared by the Chairman.

119. The agreed objective is to ensure the widest possible implementation of FATF policies to combat money laundering. The programme adopted, which determined the geographical and sectoral priorities and which will be regularly updated, is therefore focused on actions to persuade third countries to adopt and implement the FATF Recommendations as policy measures. But it also includes the monitoring and, where necessary, reinforcement of their progress in doing so. The strategy is based on maximum co-operation with other international and regional organisations interested in combating money laundering and builds on the good co-ordination which the FATF through Working Group III has already established.

120. Over the next twelve months the priority areas for the FATF and the proposed actions are as follows:

Asia: China, Taiwan, South Korea, India, Pakistan, Sri Lanka, Vietnam, Thailand and Malaysia. All these countries will be invited to attend the second Asian Money Laundering Symposium to be held in late 1994.

Europe: Russia, Poland, Hungary, Czech Republic. Contacts with these countries will be pursued bilaterally or at the Council of Europe Money Laundering Seminar to be held in the second half of 1994.

North America: Mexico

Caribbean Basin: Panama, Cayman Islands, Bahamas, and Venezuela. Contacts will be pursued through the CFATF.

South America: Colombia, Brazil, Argentina, Ecuador. Two seminars are planned for the second half of 1994 in conjunction with the Organisation of American States.

Africa: Kenya, Central African Republic, Zimbabwe, South Africa, Morocco, Ivory Coast, Nigeria. It is planned to hold two small group conferences for the sub-Saharan countries in late 1994 or early 1995 and a high level visit to Morocco in 1994.

Middle East: Egypt. A high level visit could take place in conjunction with one of the African conferences.

Co-operation with Regional and International Organisations

121. Representatives from the Council of Europe, INTERPOL, the UNDCP, the Commonwealth Secretariat and the CCC have regularly attended meetings of Working Group III. During FATF-V, the FATF has also developed its contacts with the Offshore Group of Banking Supervisors. Wherever possible seminars and conferences are organised in conjunction with and involving the participation

of relevant regional and international organisations. The FATF similarly welcomes the opportunity to take part in anti-money laundering events organised by other bodies. In addition to the Council of Europe Conference, FATF members ~~will also be attending the~~ Conference in Courmayeur in June organised jointly by the UK and the Italian Government. ~~As a further measure to promote~~ co-operation between international organisations on anti-laundering initiatives, the Chairman of Working Group III chairs an ad hoc co-ordination group of relevant bodies.

CONCLUSION

122. In 1993-1994, the member jurisdictions of the FATF achieved significant progress in the fight against money laundering. ~~As the main money laundering policy maker, the FATF has once again proved that its flexible structure did not impede effective results.~~ There has been substantial improvement in the implementation of the forty Recommendations by FATF member Governments. The review of money laundering techniques and counter-measures was again an essential and beneficial part of the work of the Task Force. The FATF continued to carry out a significant external relations action which has already resulted in positive steps being taken by non-member countries.

123. While considerable progress has already been made in combating money laundering, further action remains to be taken to achieve the FATF's programme. Efforts must still be made by FATF member governments to obtain a complete implementation of the forty Recommendations. The need for continuing action against money laundering is obvious. It is for this reason that it was decided that the FATF should continue its work for a further five years and that, while drug money laundering remained a principal focus, it should continue to cover money laundering of the proceeds of serious crimes and/or offences which generate significant funds. As money laundering is an evolutionary phenomenon, it is essential to keep abreast of trends and methods in this domain so as to facilitate the adoption of relevant counter-measures. In parallel, it is also essential to keep under constant review the existing counter-measures. As money laundering cannot be combated effectively if action is restricted to FATF members, it is of the utmost importance to encourage further the adoption of anti-money laundering measures in third countries. Indeed, the underlying objective of the FATF should be to ensure the implementation of effective programmes to combat money laundering in these countries.

124. As the world-wide mobilisation against money laundering is the ultimate goal of the FATF, its external relations work will be given a high priority in the forthcoming years. FATF-VI, under the presidency of the Kingdom of the Netherlands, will carry forward this task.

ANNEX 1

INTERPRETATIVE NOTE TO RECOMMENDATIONS 12, 13, 16 THROUGH 19 CONCERNING THE UTILISATION IN MONEY LAUNDERING SCHEMES OF ACCOUNTS IN THE NAMES OF CUSTOMERS WHO ARE NOT NATURAL PERSONS

1. There is increased concern with the misuse of many types of legal entities at every stage of the money laundering process. This concern extends beyond entities established solely for concealment purposes. It also encompasses the utilisation of entities with legitimate operating businesses for money laundering purposes. Thus the concern is not limited to any particular form of legal entity (such as, for example, shell corporations) since virtually any entity can be used in money laundering schemes.
2. Money laundering investigations should not be hindered or obstructed by the use of forms of legal entity which, in particular, conceal or obfuscate the true beneficial ownership of accounts. In many instances, such concealment is accomplished by placing financial institution accounts in the names of entities rather than natural persons with the expectation that an investigating agency will not be able to determine the identities of the true owners of the entities and thus of the accounts.
3. The identification by financial institutions of customers who are not natural persons raises specific problems related to the complexity of their activities and organisational structures. Financial institutions should pay special attention to this type of identification.
4. In order to fulfil identification requirements concerning legal entities, financial institutions should take measures as to:
 - (i) verifying the legal existence and structure of the customer by obtaining either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity.
 - (ii) verifying that any person purporting to act on behalf of the customer is so authorised and identifying that person, when necessary.
5. Whenever it is necessary in order to know the true identity of the customer and to ensure that legal entities cannot be used by natural persons as a method of operating in reality anonymous accounts, financial institutions should, if the information is not otherwise available through public registers or other reliable sources, request information - and update that information - from the customer concerning principal owners and beneficiaries. If the customer does not have such information, the financial institution should request information from the customer on whoever has actual control.

If adequate information is not obtainable, financial institutions should give special attention to business relations and transactions with the customer.

6. If, based on information supplied from the customer or from other sources, the financial institution has reason to believe that the customer's account is being utilised in money laundering transactions, the financial institution must comply with the relevant legislation, regulations, directives or agreements concerning reporting of suspicious transactions or termination of business with such customers.

ANNEX 2

MEASURES TO COUNTER MONEY LAUNDERING THROUGH FINANCIAL ACTIVITIES CARRIED ON BY NON-FINANCIAL INSTITUTIONS

Interpretative Note to FATF Recommendations 10 and 11

1. From the outset of the work of the FATF it has been recognised that not only financial institutions but also other types of businesses are vulnerable to exploitation by money launderers. This is reflected in FATF Recommendations 10 and 11 which note that measures to help protect financial institutions against money laundering need to be applied on as broad a front as practically possible, including to professions outside the financial sector.

2. Measures to counter the use of non-financial businesses for money laundering are the subject of a separate note. However, there is also a need for counter-measures covering the conduct of financial activities by businesses which are not financial institutions as such. (The Annex to this Note sets out the list of activities which are considered to be financial activities.) Although in some FATF members these activities can only be carried out by a licensed financial institution, in others at least some of them may be conducted by any business as an ancillary activity to its main commercial operations. Examples of this include the provision of bureaux de change services by travel agents or the provision of electronic fund transfer services or sale of financial instruments such as money orders by retail shops. Money launderers may find it as attractive to use the financial services provided by such businesses as to obtain them from recognised financial institutions.

3. Hence it is important that appropriate anti-money laundering measures should be applied to any business conducting financial activities, even if it is not a financial institution as such. These measures would, of course, only be applicable to the financial activities carried out, not the generality of the business's operations, and need not be applied in de minimis cases. The appropriate measures are those such as customer identification, record-keeping, etc. set out in FATF Recommendations 12 to 22 and 24. However, Recommendations 26 to 29, which deal with the role of regulatory and other administrative authorities, may also be applicable in appropriate cases.

4. The FATF has therefore adopted the following Interpretative Note to Recommendations 10 and 11.

FATF members should consider applying Recommendations 12 to 22, 24 and 26 to 29 to the conduct of financial activities as a commercial undertaking by businesses or professions even where these businesses or professions are not financial institutions as such. Financial activities are to be understood as those listed in the attached annex. It is for each individual jurisdiction to decide whether special situations should be defined where the application of anti-money laundering measures should not be required, for example, when a financial activity is carried out on an occasional or very limited basis.

ANNEX TO THE INTERPRETATIVE NOTE TO RECOMMENDATIONS 10 AND 11

List of Financial Activities Carried Out by Non-Financial Institutions

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.²
3. Financial leasing and hire purchase.
4. Money transmission services.
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques and bankers' drafts...).
6. Financial guarantees and commitments.
7. Trading for own account or for account of customers (spot, forward, swaps, futures, options...) in:
 - (a) money market instruments (cheques, bills, CDs, etc.);
 - (b) foreign exchange³;
 - (c) exchange, interest rate and index instruments;
 - (d) transferable securities;
 - (e) precious metals.
8. Participation in securities issues and the provision of financial services related to such issues.
9. Money broking.
10. Individual and collective portfolio management.
11. Safekeeping and administration of securities.
12. Insurance operations, in particular life insurance and other investment products.

2. Including inter alia:

- consumer credit
- mortgage credit
- factoring, with or without recourse
- financing of commercial transactions (including forfaiting).

3. Including, inter alia, manual money changing.