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Critical Reflections on International and National Control of Drugs

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INTERNATIONAL NARCOTICS TRAFFICKING SYMPOSIUM

Critical Reflections on International and National Control of Drugs

M. CHERIF BASSIOUNI*

I. INTRODUCTION

Drug-related problems have reached a perceived crisis-level in many consuming countries, particularly in the United States and other Western European societies. The real crisis is a result of crimes committed in connection with drug trafficking and by those engaged in the drug business, as well as by users and abusers who commit crimes to support their drug needs. Producing countries have also started to appreciate the extent of social, economic and political problems resulting from cultivation, production and consumption of drugs. Transit countries and countries used for recycling of drug proceeds are also experiencing problems similar to those of producing countries.

As a result, the multi-faceted and worldwide effects of drugs on the social, economic and political well-being and stability of a number of countries has reached a level of unprecedented international concern. The 1990 Special Session of the General Assembly on Drugs has evidenced that concern.

International and national efforts in confronting this new phenomenon, however, lag far behind the multi-faceted problems created by interdependent cycles of production and consumption, including intermediate stages of distribution, transportation, and recycling of funds, in addition to secondary and tertiary consequences in social, health, political and economic spheres.

Unfortunately, international and national responses aimed at complete control of cultivation, production, traffic, use and abuse of drugs

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have so far failed. Consuming societies cannot control consumption, and producing states cannot control production. The essential reason is that so long as there is demand, there will be supply and, *mutatis mutandis*, so long as there is supply, it will generate demand. Furthermore, it should also be recognized that supply will always find its way to demand. There are indeed too many transit routes in the world to effectively intercept the movement of drugs from producing to consuming countries.

The cumulative impact of these and other factors affecting the international community's ability to effectively control drugs requires a new, critical appraisal of the international system of drug control and its predication on certain assumptions concerning the ability of national systems of control to effectively fulfill their expected goals.

II. ASSESSING THE CONTROLS

A. *The International System and Mechanisms of Control*¹

International efforts at controlling drugs began in 1912 when it appeared that an estimated ten million Chinese had become opium addicts.² The world community at that time sought to control the spread of opium addiction making its way to the United States and Western Europe. Since then, thirteen international instruments have been developed culminating with the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed by eighty-nine states and ratified by four states [as of January 15, 1990].³

1. 1 Bassiouni, *The International Narcotics Control Scheme* in 1 M. C. BASSIOUNI, *INTERNATIONAL CRIMINAL LAW: CRIMES* 507 (1986). See also *infra* note 12.

2. International Opium Convention, The Hague, 23 Jan. 1912 (First International Opium Conference), 8 L.N.T.S. 187, T.S. No. 612, *reprinted in* 6 AM. J. INT'L L. 177 (1912).

3. *Id.* and Agreement Concerning the Suppression of the Manufacture of, Internal Trade in and Use of, Prepared Opium, Geneva, 11 Feb., 1925 (First Opium Conference of the League of Nations), 51 U.N.T.S. 337; International Opium Convention, Geneva, 19 Feb. 1925 (Second Opium Conference of the League of Nations), 81 U.N.T.S. 356, *reprinted in* 23 AM. J. INT'L L. 155 (1929); Convention for Limiting the Manufacture of Regulating the Distribution of Narcotic Drugs, Geneva, 13 July, 1931, 139 U.N.T.S. 301, T.S. No. 863, *reprinted in* 28 AM. J. INT'L L. (1934); Agreement Concerning the Suppression of Opium-Smoking, Bangkok, 27 Nov., 1931, 177 U.N.T.S. 373; Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, Geneva, 26 June, 1946, 198 L.N.T.S., 299; Protocol Amending the Agreements, Conventions and Protocols on Narcotic Drugs Concluded at the Hague on 23 Jan., 1912, at Geneva on 11 Feb., 1925 and 19 Feb., 1925, and 13 July, 1931, at Bangkok on 27 Nov., 1931 at Geneva on 26 June, 1936, and at Lake Success, New York on 11 Dec., 1946, 12 U.N.T.S. 179, T.I.A.S. No. 1671; Protocol Bringing Under International Control Drugs Outside the Scope of the Convention of 13 July, 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as Amended by the Protocol of 11 Dec., 1946, Paris, 19 Nov., 1948, 44 U.N.T.S., 277, T.I.A.S. No. 2308; Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium (Opium Convention), New York, 23 June, 1942, 456 U.N.T.S., T.I.A.S. No. 5273; Single Convention on Narcotic Drugs, 1961 (Narcotics Convention), New York, 30 Mar., 1961, 520 U.N.T.S., 151 T.I.A.S. No. 6298; Convention on Psychotropic Substances (Psychotropic Convention), Vienna, 21 Feb., 1971 (United Nations Conference for the Adoption of a Protocol on Psychotropic Substances, 11 Jan. thru 21 Feb.,

The evolutionary process of international legislation has therefore been consistent. At first, it dealt with opium because of its perceived dangers in the Western societies of the United States and Europe. Gradually, however, the range of concerns encompassed other types of naturally based drugs such as the coca derivatives and various types of cannabis sativa (marijuana, hashish, quat, and indian hemp).

Until 1971, the thrust of international controls was by the consuming countries of the West over the producing ones of the Third World. This occurred because consuming countries experienced social problems as a result of consumption, whereas the producing Third World countries had no such social problems. The latter derived economic benefits from the cultivation and traffic of naturally produced drugs. But the consuming countries' rationale was that ultimately the problems of drug consumption would spread to the producing countries. They argued that economic dependence on drug-related profits would create economic, social and political problems for producing countries. Thus, international cooperation was deemed indispensable for the world community as a whole. These arguments are as valid today as they were fifty years ago.

Notwithstanding these predictions, consuming countries of the West have failed to provide the necessary assistance for economic development to Third World producing countries, and production of drugs has continued to increase. Gradually the consuming countries used treaties to place expanded international controls on the producing countries. At first, efforts were aimed at curtailing and later eliminating the cultivation of natural drugs. As a result, the producing countries had to bear additional costs in law enforcement and divert vital resources to carry out these obligations.

The 1961 Single Convention on Narcotic Drugs is today the most universally accepted Convention in the field of drug control.⁴ It is, after the United Nations Charter and the four Geneva Conventions of August 12, 1949,⁵ the multilateral treaty with the largest number of State-Parties.

1971, 1019 U.N.T.S. 175, T.I.A.S. No. 9725, *reprinted in* 10 I.L.M. 261 (1971); Protocol Amending the Single Convention on Narcotic Drugs, 1961, at Geneva, 25 Mar., 1972 (United Nations Conference to Consider Amendments to the Single Convention on Drugs, 1961, 6-25 Mar. 1972), 976 U.N.T.S. 3, T.I.A.S. No. 8118, *reprinted in* 11 I.L.M. 804 (1972); United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 19 Dec. 1988, U.N. Doc. E/CONF. 82/15. (*See Comment*, 29 HARV. L. REV. 581 (1988)).

Two other international conventions prohibit traffic in drugs: the Convention on the Territorial Sea and Contiguous Zone, Geneva, 29 Apr., 1958 (United Nations Conference on the Law of the Sea, 24 Feb. through 27 Apr., 1958), 516 U.N.T.S. 205, T.I.A.S. No. 5639; Convention on the Law of the Sea (Montego Bay Convention), Montego Bay, 10 Dec., 1982 (Third United Nations Conference on the Law of the Sea), U.N. Doc. A/CONF. 62/122, *reprinted in* 21 I. L. M. 1261 (1982).

4. *See supra* note 3; Status of Multilateral Treaties on Narcotic Drugs and Psychotropic Substances that are Deposited with the Secretary General (United Nations Economic and Social Council, 23 Dec., 1983), E/CN.7/1984/9.

5. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field, Geneva, 12 Aug., 1949, 75 U.N.T.S. 31, T.I.A.S. No. 3362;

However, by 1970 it was obvious that the 1961 Single Convention needed to be strengthened in order to make it more effective. By 1970, the process began by which the 1961 Single Convention would be amended, ultimately culminating in the 1972 Protocol Amending the 1961 Single Convention.⁶

During that same period, the international community came to the realization that some specific controls over chemical and pharmaceutical drugs should also be established. While efforts to amend the 1961 Single Convention to strengthen it were ongoing, a parallel effort was undertaken to develop another convention which ultimately became the 1971 Convention on Psychotropic Substances.⁷ These two efforts which should have logically been integrated into a single convention proceeded along separate paths.

The international community at that time was divided between consuming and producing countries of natural drugs and of chemical and pharmaceutical ones. However, that division did not represent identical parties. With respect to the natural drugs, most of the producing countries, as stated above, were and still are, Third World developing countries. While the consuming ones were, and still are, the industrialized Western countries. With respect to the chemical and pharmaceutical drugs, however, the producing countries were, and still are, mostly the Western industrialized countries (as well as other industrialized countries of Eastern Europe, but they were less active on the international marketing arena) while the consuming countries include the Third World developing countries. In short, the main consumption of natural drugs was in the industrialized West, while consumption of chemical and pharmaceutical drugs included the developing countries.

While the developed countries of the West desired to impose strong controls over the cultivation, production and traffic of natural drugs originating in the developing countries, they were unwilling to impose the same types of controls over their own chemical and pharmaceutical industries.⁸ Because of that imbalance, the obligations of consuming and producing countries (which are largely derived from their relative power positions and their social and economic condition) affected the 1972 Amending Protocol to the 1961 Single Convention on Narcotic Drugs⁹ by

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 Aug., 1949, 75 U.N.T.S. 85, T.I.A.S. No. 3363; Geneva Convention Relative to the Treatment of Prisoners of War, Geneva, 12 Aug., 1949, 75 U.N.T.S. 135, T.I.A.S. No. 3364; Geneva Convention Related to the Protection of Civilian Persons in Time of War, Geneva, 12 Aug., 1949, 75 U.N.T.S. 287, T.I.A.S. No. 3365.

6. *Supra* note 3.

7. *Supra* notes 3 and 4.

8. This also extends to chemicals needed to manufacture drugs deriving from natural products, see *Are Chemical Makers AWOL in the War on Drugs?* Bus. Wk., Sept. 5, 1988, at 80.

9. See *Commentary on the 1961 Single Convention on Narcotic Drugs*, United Nations

producing a much stronger system of control than the one established by the 1971 Convention on Psychotropic Substances.¹⁰

The imbalance that exists between these two systems of control has not yet been redressed. One of the reasons for this situation is that throughout the world a pattern of behavior in chemical drug consumption has become part of daily life. The widespread habituation to the taking of drugs from benign aspirin, cold tablets or vitamins, has generated a culture of pill-taking, which made it much easier and more acceptable to take other types of pills, even though they produce harmful effects. The taking of one pill as opposed to another may be a question of slight difference. This situation made social and legal controls of psychotropic substances more difficult than the control of natural drugs. The type of social and legal controls that derive from a generally unacceptable pattern of behavior involving injecting heroin or snorting cocaine is obviously easier than that of controlling the taking of pills whose apparent use is generally accepted behavior if for no other reason than the difference in the color or shape of the pill is not a significantly distinguishing factor to make it socially reprehensible.¹¹

The differences in patterns of socially acceptable, as opposed to socially unacceptable behavior, as well as what may merge into legitimacy and what may readily appear to be outside social legitimacy, tend to make the disparity in the international perception of the dangers of drugs, as well as the ensuing control mechanism, less readily observable. As a result, what we see is a strong imbalance in the attempt to control the natural drugs in contrast to the chemical and pharmaceutical ones.

It must also be pointed out that the originators of the international narcotics control system were not promoting the complete control of the drugs by eliminating the cultivation of what are called "illicit drugs." Because the international system still recognizes the legitimacy and legal validity of the cultivation of drugs, they are deemed licit if cultivated under the monopoly or control of a state.¹² The international narcotics control system, as well as the system of national control, is one that grants a monopoly of cultivation and processing of natural drugs to the states. The reason is due to the medical purposes of such natural drugs, as in the case of morphine. However, it nonetheless appears incongruous to have a co-existence of a licit system of cultivation and processing under the monopoly of a given state, as well as a licit system for traffick-

E.73 XI.1 (1973).

10. See *Commentary on the 1971 Convention on Psychotropic Substances*, United Nations, E/CN. 7/589 (1976).

11. See *Psychoactive Drug Control: Issues and Recommendations*, International Research Group on Drug Legislation and Programs, United Nations Social Defence Research Institute, S.P. No. 5 (1973).

12. Bogaard, *International Control of the Legitimate Trade in Narcotic Drugs*, 3 NETH. Y.B. INT'L L. 97 (1972); P.D. LOWES, *THE GENESIS OF INTERNATIONAL NARCOTICS CONTROL* (1966).

ing by the state and by chemical and pharmaceutical companies through the dispensing of drugs for valid medical and therapeutic purposes, while at the same time deeming illicit the production and traffic of these substances when they are not under the control of the state and outside state regulation for use. While there is no doubt that a valid distinction exists between what is licit for medical purposes and what is not, it is essentially a qualitative and judgmental distinction. This does not have the same social and socio-psychological impact as banning the cultivation of all drugs because they are *malum in se*.

An alternative to the existing scheme can easily be conceived whereby all natural drugs — the opium poppy, the coca bush, the cannabis sativa — could be banned throughout the world and their eradication collectively decreed by the world community; and in order to provide for morphine and other drugs which derive from the opiates, the United Nations could assign the task of limited cultivation of such a crop to a given country for the benefit of all other countries. In short, an opium poppy farm could be established in a given country under international control and would probably require no more than a thousand hectares to satisfy the world's medical needs. Such cultivation could easily be internationally controlled and there would not be the problem of having different countries grow these crops under local controls to produce that which is ostensibly for their pharmaceutical needs. Experience has clearly indicated that in almost every country where licit cultivation exists there is a portion of it that goes into illicit traffic. There is also no reason why, on such a simple subject, the world community could not agree to abolish cultivation everywhere in the world in order to concentrate it in a single plot of land and develop a worldwide consortium. The costs of such licit cultivation would certainly be low. And there would be no genuine economic interest on the part of different countries — interested in purchasing their needs for legitimate pharmaceutical production — to claim that such a monopoly concentration of the cultivation in one country would effect them detrimentally. The cultivation of a single hectare of the opium poppy would cost approximately \$500 to \$800 per crop. Even if we assume an inflated cost of \$1000 per hectare, the production of 1000 hectares would only be \$1 million per year. If the total needs of the world community in producing morphine based drugs is a total cost of \$1 million for the poppy, there is simply no legitimate economic reason to prevent it.

That such an idea has not taken root, even though it has been suggested, at least by this writer since 1971,¹³ is evidence that an international control effort does not necessarily evidence the will of states to fully cooperate at all levels.

13. Bassiouni, *The International Narcotics Control Scheme — A Proposal*, 46 ST. JOHN'S L. REV. 713 (1977) and Bassiouni, *International Aspects of Drug Abuse: Problems and a Proposal*, 9 J. MARSHALL J. PRAC. PROC. 3 (1975).

The international narcotics control system, as stated above, is predicated on a licit system of cultivation and production and only those activities which exceed the licit quota system become illicit.¹⁴ Under such a system states may produce based on their estimated needs, and could export the surplus to other states based on an import/export certification system. But, in the final analysis, such a system would depend almost entirely on voluntary international cooperation. Without direct international controls it rests only on the ability of those international organizations that supervise such a system to denounce a potential violator to the world community.

In addition to the above, the international narcotics control system is predicated on an indirect control system, by which states undertake certain international obligations arising out of treaty obligations and then assume the task of carrying them out through their national legal system in reliance upon their national implementation measures.¹⁵

In a sense it is almost incongruous to think that an international system, which presumably would operate at the top of the pyramid in the structure of states, ultimately winds up distributing enforcement powers to the bottom of the pyramid, namely to the participating states. Under the present system, international structures established to control drugs are designed only as administrative support, funding, or as monitoring organizations, without any effective enforcement powers.

These various international organs are:¹⁶

1. The United Nations Commission on Narcotic Drugs,¹⁷ was established in 1946 by the Economic and Social Council as the policy-making body of the United Nations system with respect to drug matters. Its membership consists of forty members elected by the Economic and Social Council and it reviews the overall global drug situation and prepares policies, as well as sponsoring international conventions.

2. The United Nations Division of Narcotic Drugs¹⁸ essentially serves as the administrative body, the secretariat and executive arm of the Commission on Narcotic Drugs. It assists members in the implementation of the various drug Conventions and provides services and facilities to the Commission on Narcotic Drugs. It publishes annual and analytical reports, as well as various national reports required by international treaties, and deals with coordinating the work of the United Nations and World Health Organization, as well as various

14. *Supra* notes 1 and 12.

15. *Supra* notes 1, 12 - 13. This is the case with respect to all international crimes. See e.g., 1 M.C. BASSIOUNI, *INTERNATIONAL CRIMINAL LAW: CRIMES* (1986) and M.C. BASSIOUNI, *INTERNATIONAL CRIMES: DIGEST/INDEX OF INTERNATIONAL INSTRUMENTS 1815-1985* (1985).

16. See Declaration of the International Conference on Drug Abuse and Illicit Trafficking and Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Controls (United Nations, 1988) which describes the functions of all United Nations Agencies in this field.

17. *Id.* The Commission also publishes annual reports.

18. *Id.*

governments.

3. The International Narcotics Control Board¹⁹ (INCB) was established under the provision of the 1961 Single Convention on Narcotic Drugs. It was established to limit the cultivation, production, manufacture and use of drugs to the adequate amounts required for medical and scientific purposes. In short, it is the body that establishes the quotas for countries, based on their estimates of need for the chemical and scientific licit purposes. The Board consists of thirteen members elected from the State-Parties. These members serve ostensibly in their personal capacity, but in reality they are genuine government representatives. The INCB works closely with the Commission on Narcotic Drugs and cooperates with other bodies, such as the World Health Organization and the United Nations Fund for Drug Abuse Control. But it must be clearly understood that such cooperative undertakings are purely dependent upon the will of the Board. What is particularly interesting is that this Board is created by treaty and operates with total and complete independence from the Commission on Narcotic Drugs.

4. The United Nations Fund for Drug Abuse Control²⁰ (UNFDAC) is the only multilateral body which was created to provide technical assistance as well as funding relating to crop substitution. In recent times, it has evolved from that narrow role of being a funding agency to one that provides technical assistance for all forms of drug abuse and illicit trafficking, including the field of law enforcement. It was created in 1971 by the Secretary-General and was established as a multilateral body to which a number of countries voluntarily contribute. Because contributions to UNFDAC are voluntary, the projects it undertakes are dependent upon such voluntary contributions of those different countries. UNFDAC operates subject to the control of the Secretary-General of the United Nations, but it does not have any obligation to either work or, in fact, cooperate or correlate its activities with the other bodies mentioned above, just as these other bodies have no obligation towards each other.

In addition to these four main bodies, we find that there are several other agencies within the United Nations that deal with drugs. The World Health Organization is mandated under the 1971 Convention on Psychotropic Substances to provide advice on the chemical and pharmaceutical substances that would fall in the four schedules of drugs established under the terms of the Convention. The Crime Prevention and Criminal Justice Branch of the United Nations also deals with the crime-related aspects of drugs. The Center for Human Rights has certain administrative tasks with respect to human rights dimensions related to drugs. In that respect, two other United Nations bodies also are directly involved, namely The Commission on Human Rights and the Subcommittee on the Prevention of Discrimination and Protection of Minorities be-

19. *Id.*

20. *Id.*, The United Nations Fund For Drug Abuse Control (1987).

cause of their mandate in human rights-related aspects of drug use and abuse. In addition, all the United Nations bodies involved in the area of human rights deal also with criminal justice and law enforcement insofar as there are human rights issues. This, of course, extends to illicit trafficking in drugs.

As a result, it is clear that the international structures that have been established to deal with the problems of drugs are compartmentalized and without effective power. Again, one must marvel at the reasons why the international community would create such a diversity of organizations, each working under different bureaucratic headings at the international level, with separate functions. Little wonder that efforts at controlling both the licit and illicit cultivation, traffic, distribution and use of drugs has not been successful. This raises the question of whether the international community is genuinely interested in the control of the cultivation, manufacture and distribution of illicit drugs, or whether it is merely seeking to express its disapproval of these activities, but unwilling or unable to undertake the necessary steps to make that concern effective.

B. *The Assumptions Underlying International and National Controls*

1. Assessment of Supply and Consumption²¹

It is clear to anyone interested in the subject that there is no adequate way of quantitatively and qualitatively assessing both the supply and the consumption of drugs throughout the world. With respect to supply, the assessment is based on an extrapolation of figures predicated on the amount of drugs seized and a very loose correlation between the number of arrests and seizures of drugs in different countries and the estimated linkage between these arrests on the one hand and supply and consumption on the other. The supply side of drugs has been consistently increasing over the past fifty years and there is no way to assess how much more it can increase or where such increase will come from.

The problem of assessment is the same on the consumption side. In the United States,²² for example, the estimates of occasional cocaine users fluctuates between the figure of under 800,000 up to the figure of 5,000,000. The fluctuation in numbers between the users of marijuana range from 1,000,000 to 5,000,000.²³ The estimated number of heroin users fluctuates from 300,000 to 800,000. The same uncertainty exists in most countries where the estimated number of users, depending upon the type of drugs, varies enormously. There is also a large discrepancy be-

21. See International Narcotics Control Strategy Report (U.S. Dept. of State, Bureau of International Narcotics Matters, INT'L NARCOTICS CONTROL STRATEGY REPORT, Mar., 1989). See also appendix regarding United Nations released figures.

22. *Id.*

23. Decker, *The Official Report of the National Commission Studying Marijuana: More Misunderstanding*, 8 U.S. F. L. REV. 1 (1973).

tween the estimates of occasional users of the cannabis sativa derivative and those of cocaine and coca bush product derivatives.

It is therefore astonishing that the assumptions derived from both the supply and the consumption of drugs are predicated on figures which are so tenuous and uncertain. Surely, if the total number of heroin addicts in the United States was 300,000 and the total number of cocaine users was less than 800,000, the dimension of the problem would be much different than if the higher of the estimated figures were to be taken into account. The same is true for many countries where certainty as to the number of regular users and occasional users is almost totally absent.

What is probably worse in terms of assumptions is the fact that no estimates exist as to the potential capabilities in various parts of the world for additional supply. This might be because few governments are willing to admit the fact that capacity for supply cannot be controlled, let alone eliminated. There is a limitless capacity of supply.²⁴ Thus, for example, if it is believed that the eradication of the coca bush in Bolivia, Colombia and Peru would eliminate the problem of cocaine supply, one would have to realize that this conclusion is entirely wrong because similar geographic and weather conditions may exist, not only in the Andes, but also in the Amazon area of Brazil, in the Indian subcontinent, in the Philippines and in Indonesia. The fact is that coca is already cultivated in all these areas.

These considerations must also be viewed in light of potential expansion of cultivation and increased production in presently producing and consuming countries. An enormous potential for increased cultivation and production in many states not presently producing also exists. Furthermore, increased use and abuse in producing and consuming countries and further potential increase of use and abuse in almost all countries of the world, is a realistic hypothesis that must be taken into consideration when assessing the extent of the problem.

The spread of cultivation in consuming countries to meet the needs of the demand is already well established. Marijuana, for example, is now extensively produced in the United States and, according to some estimates, domestic production is now fulfilling 25% of the needs of U.S. consumption.

If supply cannot be controlled, because there will always be a potential for supply somewhere, how can it be expected that international and national controls can be effective? The assumptions made by both international and national policy-makers are predicated on two erroneous factual assumptions of production and consumption and of supply and demand. Without adequate knowledge of these figures, it is quite logical to conclude that the consequences derived from any assumed figures will lead to erroneous outcomes.

24. International Narcotics Control Strategy Report, *supra* note 21. This is a reasonable projection from the figures indicated previously.

2. The Profit Motive

The supply side of drugs is essentially a world-wide business enterprise which the United Nations estimates to be "a \$500 billion per year business."²⁵ Those who engage in it do so for profit and no other reason, save possibly for some ideologically motivated group seeking to finance its illegal activities from such revenue sources.²⁶

In some cases, those active in the supply side form monopolies of cultivation and exportation, such as in the case of the successor Chinese warlords of the Golden Triangle of Burma-Thailand-Laos, and in the case of Columbia. In Columbia, the Medellin and Cali cartels control cultivation, production and export and also control certain aspects of production and exports from other countries like Bolivia and Peru. These cartels have also developed vertically-integrated business enterprises whereby the cartel's direct control reaches the levels of distribution in other consuming societies, such as in the United States where the Columbia cartels operate in Florida and other parts of the country. Probably the most extraordinary reach of such organizations has been to secure the support of a state through its dictator, as in the case of Panama's General Noriega.²⁷ In that case, the control or neutralization of state organs allowed not only the use of that country as a transit point, but also as a base from which to recycle drug proceeds. Situations like that may still occur in any of the many states with a small population whose economic needs might find it profitable to provide some type of safe haven for production transit or recycling of proceeds.

Other types of organized crime, like the Italian Mafia and Camorra, control production of heroin and export of both heroin and cocaine to the

25. See *Drug Trafficking and the World Economy*, United Nations Department of Public Information, Document DPI/1040B-40076, January 1990, 12M, at 1. U.N. DOC. DPI/1040B-40076 (1990).

26. See A. Beria di Argentine, *Relazione del Procuratore Generale per L'Inaugurazione dell'Anno Giudiziario 1989* (Corte d'Appello di Milano, 14 Jan. 1989) at 69, who links certain forms of terrorism and organized crime. A similar position is taken by Wardlow, *Linkages Between the Illegal Drugs Traffic and Terrorism*, 8 CONFLICT Q. 5 (1988).

Links between organized crime and terrorism is one of the topics of the forthcoming Eighth United National Congress on Prevention of Crime and the Treatment of Offenders to be held in Havana, Cuba, Aug.-Sept. 1990. See UNPOC A/CONF. 144/P.M. 1 and the Report of the Interregional Preparatory Meeting for the Eighth United Nations Congress on Crime Prevention and the Treatment of Offenders, and Report of M.C. Bassiouni, *Effective National and International Action Against Organized Crime, and Terrorist Criminal Activities*, A/CONF. 144 P.M. 1, 11 Apr., (1988), reprinted in 4 EMORY INT'L L. REV. 9.

27. See United States Senate Committee on Foreign Relations, Subcommittee on Terrorism, Narcotics and International Communications and International Economic Policy. *Drugs, Law Enforcement and Foreign Policy: Panama: Hearings pt. 2, February 8-11, 1988*. 100th Cong., 2d Ses., Senate Hearing 100-773/pt. 2. (SD cat. no. Y/4.F/76/2:S.hrg. 1-773/pt. 2). See also Rosenblum, *supra* note 26, wherein he refers to hearings and investigations by this Sub-Committee on U.S. officials having connections with foreign military and other drug traffickers.

United States and Western European states. This is due to the groups' far-reaching power and influence in many segments of the societies where they operate. Some states, like Italy²⁸ and the United States,²⁹ have enacted strong legislation to counteract these manifestations, including forfeiture of assets provisions. It is paramount to understand that the profit motive drives the supply side of drugs as much as profit drives any legitimate business enterprise. Thus, the key to controlling the entire drug business is to control its profits.³⁰ Though that alone, even if possible, can never become a panacea for the many aspects of the problem. Furthermore, it is self-evident that reduction of demand and supply are indispensable to reduce profit-making.

An example of the international community's inability or unwilling-

28. For Italy's anti-Mafia and organized crime confiscation laws, see Italian Penal Code, art. 240, which provides for confiscation of proceeds of crime by judgment of a criminal court after conviction. The "Anti-Mafia" Law No. 646 of Sept. 13, 1982 provides for confiscation of proceeds belonging to persons suspected of being part of a Mafia-like criminal organization which, includes persons who are part of a group living off criminal proceeds such as kidnapping. Other confiscations following convictions under Law No. 646 are in the nature of those provided for by Article 240 of the Italian Penal Code. Also, Article 648 *bis*, of the Italian Penal Code applies to money laundering and permits (in connection with art. 240) its confiscation.

29. The United States enacted the Racketeer Influenced and Corrupt Organizations Statute, Title 18, U.S.C. §§ 1961-68, which allows for 20 year penalties, forfeiture and civil remedies for numerous crimes (normally subject to lesser penalties) if committed as part of a pattern of activity. Various crimes have been added to the enumerated list since the statute was enacted in 1970, and now include murder, kidnapping, gambling, arson, robbery, bribery, extortion, drug trafficking, counterfeiting, theft from interstate commerce, embezzlement from unions or from employee pension or welfare funds, extortion of loans and collections, fraud by mail or other interstate means, obstruction of investigations or court proceedings, public corruption, witness intimidation or retaliation, prohibited payments to influence union officials, money laundering and illegal property, trafficking in contraband cigarettes, interstate prostitution, and obscenity offenses. It should be noted that this enumeration is due in part to the peculiar federal structure of United States law wherein all crime is within the competence of State governments and the Federal government exercises competence only when national or interstate interests are implicated. *See also* 18 U.S.C. § 1963 and art. 416 *bis*, Italian Penal Code (forfeiture of criminal proceeds, interests, licenses and contracts). The United Kingdom has also enacted the Drug Trafficking Offenses Act of 1986 which deals essentially with confiscation of proceeds (§ 1) and investigation of drug trafficking activities (§§ 27-33). *See also*, for France, Loi No. 86-1020 Relative to Combating Terrorism, arts. 44, 257-3, 462, 463-1, and 463-2 of the French Penal Code; and Ottenhof, *Le Droit Pénal Français à l'Épreuve du Terrorism*, 1987 REVUE DE SCIENCE CRIMINELLE 607 and MERLE & VITU, *TRAITÉ DE DROIT CRIMINAL* 273 (6th ed. 1989). For Spain see Law 1988-3 of 26 Dec., 1984 and Law 1988-4 of 25 May, 1988; and J.L. de la Cuesta, *Traitement Juridique du Terrorism en Espagne*, 1987 REVUE DE SCIENCE CRIMINELLE 589.

30. *See The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering*, President's Commission on Organized Crime (1984). Recently the Council of Europe prepared a Draft Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime, PC-R-SC (90) 8 Rev., 25 Apr., 1990, European Committee on Crime Problems. This text incorporates some of the provisions on confiscation of proceeds of crime intended in the 1988 U.N. Convention, *supra* note 3.

ness to effectively cooperate is in the area of financial controls.³¹ Financial controls over the entry into the financial circuit of drug proceeds has proven almost impossible, notwithstanding some occasional successes.³² The bank secrecy laws of so many countries make the tracing of drug proceeds more difficult. To sort out the white, black and gray money that flows through the financial system is next to impossible. Money, as the saying goes, has no odor and thus cannot be closely detected once it enters into the legitimate financial pipeline. Thereafter the investments made with such proceeds are even harder to retrace. The conclusion is that in the absence of a worldwide uniform system of financial control of all funds entering the legitimate financial pipeline, no effective controls can be expected even though some countries, like Switzerland, have made progress in curbing bank secrecy laws.³³ This situation leaves the profit incentive in drugs significantly unaffected by occasional seizures of drug proceeds.

The profits of the drug business have attracted all sorts of offenders from solo operators, such as users supporting their habits to major worldwide organizations. Among such organizations, some, like the Mafia, span countries and continents — their adherents reaching into all strata of different societies. Drug profits also fund these organizations, allowing them to conduct other criminal activities and buy corrupting political influence. The impact of these profits do more to corrupt social systems, damage economies and weaken moral and ethical values than the combined ef-

31. Bassiouni, *Financial Controls and Drug Profits*, Chicago Trib., Sept. 22, 1988, § 1 at 20, col. 1.

32. See Nadelmann, *Unlaundering Dirty Money Abroad: U.S. Foreign Policy and Financial Secrecy Jurisdictions*, 18 INTERAMERICAN L. REV. 23 (1986). For a discussion of the role of international organizations in the enforcement of international money laundering, see Zagaris, *Dollar Diplomacy: International Enforcement of Money Movement and Related Matters — A United States Perspective*, 22 GEO. WASH. J. OF INT'L L. & ECON. 465 (1990); Zagaris and Papavizas, *Using the Organization of American States to Control International Narcotics Trafficking and Money Laundering*, 57 REV. INT'L DE DROIT PENAL 119 (1986); for a discussion of the role of regional organizations see Zagaris, *Inter-American Drug Abuse Commission Progresses on Legal Development Project*, 4 INT'L ENFORCEMENT L. REP. 186 (1988); Zagaris, *Inter-American Drug Abuse Control Commission Holds 3rd Session*, 4 INT'L ENFORCEMENT L. REP. 114 (1988). For the problems of tax evasion and international enforcement see Pansius, *Tax Evasion and Extraterritorial Discovery*, in INTERNATIONAL CRIMINAL LAW: A GUIDE TO U.S. PRACTICE AND PROCEDURE 105, (V.P. Nanda and M.C. Bassiouni eds. 1987).

33. In 1987, the Swiss Bankers Association and its member banks developed new rules and practices on limiting bank secrecy. This agreement takes into account art. 52, § 3 of the Swiss Civil Code concerning companies or legal entities having an unlawful, illicit or immoral scope. For a study on Swiss banking violations see Bernasconi, *Banques et Delinquance Economique: 50 Judgments*, in REVISION BANCAIRE (2nd rev. ed. 1988); and Bernasconi, *Le Recyclage de l'Argent d'Origine Criminelle*, 4 REVUE INTERNATIONALE DE CRIMINOLOGIE ET DE POLICE TECHNIQUE 403 (1981); H. SCHULTZ, *LE SECRET BANCAIRE ET LE TRAITÉ D'ENTRAIDE JUDICIAIRE EN MATIÈRE PÉNALE CONCLU ENTRE LA SUISSE ET LES ÉTATS UNIS D'AMÉRIQUE* (1976). For a Council of Europe study see *Secrecy and Openness: Individuals, Enterprises and Public Administrators*, Proceedings of the Seventeenth European Colloquium, Zargoza, Spain, 21-23 Oct. 1987.

fects of all other forms of crime.

The quick and easy profits from drug trafficking have also attracted organizations and groups dedicated to the pursuit of ideological goals through strategies of violence. Whether by direct involvement in drug trafficking or by extending their protection to those primarily involved in the drug business, such organizations have found it lucrative enough to partake in drug profits, thus expanding the harm to societies. The corrupting reach into government officials, politicians and the business community further endangers the stability of societies and governmental processes, and ultimately threaten political stability and even world order.

3. The Weaknesses of the National Systems³⁴

In addition to the above, one must also consider the weaknesses of the various national law enforcement and criminal justice systems. Within each state there are administrative divisions and bureaucracies which frequently operate in sealed compartments, and at times even compete with each other, resulting in the weakening of the national enforcement systems. The administration of criminal justice in every country does not operate as a single cohesive system. All criminal justice systems have at least four sub-systems: law enforcement, prosecution, judiciary and corrections. Each one of these is frequently divided into further smaller and sometimes competing units. The levels of integration and cooperation between the sub-systems and units of the criminal justice system are usually limited, and as stated above, they also suffer from the syndromes of competition. These organizational difficulties are also at times aggravated by internal political considerations, personal jealousies, animosities and ambitions, which at times seem to supersede institutional and national interests. The drug business, however, no matter how segmented it may be, does not have to operate under such constraints. The national criminal justice systems are presumed to work as a barrier to criminal activity. When it comes to the drug business, however that system resembles a net whose webs are large enough to allow the fish to swim through it uncaught and unscathed.

The free enterprise type of activity that characterizes the drug business is also free of the bureaucracies that hamstring national and international agencies seeking to control the problem. Thus, while states rigidly observe the confines of their territorial jurisdiction, those in the drug business do not, and that permits them to exploit to their benefit the jurisdictional and operational gaps in inter-state cooperation.

34. See Bassiouni, *Criminal Justice Processes and Perspectives in a Changing World*, Report to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/Conf. 121 NGO/36.

4. Connections Between the Drug Business and Other Criminal Activities³⁵

In recent times, some reports indicate a nexus between terrorism, drug trafficking and arms dealing. The logic of such linkages is self-evident, though there is insufficient reliable data on such linkages between specific groups. Some data emerged linking the M-19 Group of Columbia, and *Sendero Luminoso* (Shining Path) of Peru, with drug traffic, while linkages between Castro's secret service and revolutionary organizations also disclosed profit-related linkages with the Medellin Cartel and General Noriega of Panama. Similarly, reports in Italy indicate some linkages between the Mafia and foreign and local illicit arms dealers, and between the Mafia and some organizations engaging in terrorist violence. All these linkages add new dimensions of social, economic and political dangers to a number of countries and to the stability of the international community.

5. Economic Aspects

On the economic plane, certain developing societies whose economies depend on the financial flow of drug-related resources find their economies gradually crippled as their dependency on drug income increases because their other productive means which are less profitable diminish. This is particularly true of agricultural societies, such as Bolivia and Peru for whose *campesinos* the growing of the coca bush is more profitable and less painstaking than, for example, growing coffee or raising livestock. Such a choice is, however, also dictated by the lack of developmental capabilities and weaknesses in the infrastructure of these countries. This situation is a vicious cycle: the production of drugs flourishes in underdeveloped economies, while also preventing development — one problem feeding upon the other.³⁶

The same phenomenon also extends to developing transit states where the income from handling the flow of drugs and recycling its proceeds provides easy and quick profits which detrimentally affect the stability of their economic system. Thus, the economic viability of such states, and hence the social, economic and political stability, are imperiled.

Surprisingly, however, international and national efforts at curtailing supply and cutting off transit routes have not focused on the rather obvi-

35. See *supra* notes 26-27. See also Proceedings of the Eighty-First Annual Meeting of the American Society of International Law on *Drugs and Small Arms: Can Law Stop the Traffic?* pp. 44-59, comments of Blakesley, Penney, Nadelmann, and Zagaris (1987).

36. *La Cuestión de las Drogas en America Latina*, Comisión Nacional Contra el Uso Ilícito de las Drogas, Venezuela (1987). See also Wisotsky, *Exposing the War on Cocaine: The Futility and Destructiveness of Prohibition*, 1983 WISC. L. REV. 1305, and Nadelmann, *Latinoamérica: economía política del comercio de cocaína*, 9 UNIVERSIDAD DE LOS ANDES 27 (1986).

ous need to offer economic development assistance in a significant and comprehensive manner to these developing countries. Production of drugs in developing countries can be measured in direct relationship to the world economy and consequently to the specific national economies of those producing countries. The foreign debt of such developing-producing countries and the falling prices of commodities are directly linked to the economic dependency of these countries on income generated by drug production.

In a recent United Nations report, the world organization noted:³⁷

These bellwethers of the world economy in the 1980s — debt, falling commodity prices, poverty and drug trafficking — are interconnected and mutually reinforcing. The decline of prices for commodities like sugar (64%), coffee (30%), cotton (32%) and wheat (17%) 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 in foreign exchange depleted by falling prices for agricultural goods as well as for minerals, including tin (down by 57% in the 1980-1988 period), lead (28%), crude oil (53%) and iron ore (17%).

The situation was especially desperate in nations burdened with external debt which needed to be serviced with scarce foreign exchange. Indebtedness and declining revenues from export commodities brought on internal budgetary deficits for many countries, and debt-repayment guidelines demanded reduced spending in the public sector. Under these conditions, attempts to stem the tide of drug trafficking through strengthened law enforcement or increased social services were effectively crippled. Programmes for replacing illicit cultivation with food crops or other legitimate cash crops, which had achieved some success during the 1970s, suffered in the 1980s due to falling prices for agricultural commodities. As farmers turned away from food crops, the need for imported foodstuffs increased, further weakening currency reserves and bringing about greater dependence on foreign exchange inputs from drugs.

The constituent elements of the illicit drug economy are found in highest concentration in the western hemisphere. Latin American and Caribbean nations were hurt badly by plummeting prices for coffee, sugar, tin and petrol, among others. Their combined foreign debt will reach \$429 billion in 1990 and is greater than that of any other region in the world.

In the meantime, the burgeoning United States market for illicit drugs was close at hand. Various estimates put its size at from \$50 billion to \$100 billion a year. Cocaine from South America holds the lion's share of the market, but Mexico, Central America and the Caribbean islands are involved as transit points for cocaine traffic as well as the production of cannabis (marijuana). Cultivation of opium poppies for heroin production also takes place in Mexico.

37. *Drug Trafficking and the World Economy*, *supra* note 25.

The cocaine industry is a major employer in the three key nations of Bolivia, Columbia and Peru. Estimates of the number directly employed range between 600,000 and 1.5 million. About three quarters are farmers and leaf pickers; nearly one quarter are pisadores (stompers) who mix leaves and raw chemicals like kerosene with their bare feet; a few thousand work in clandestine laboratories processing coca paste into refined cocaine and 1,000 or so, including cartel billionaires, direct import-export and finances. In addition, many more people owe their livelihood indirectly to the multiplier effect on local economies, although not as many as would be the case with legitimate industries of the same proportions, since most of the locally retained profits are spent unproductively on real estate, luxury goods, status-symbol cattle ranches, private armies and bribery.

What are the returns on their labour for the 99% of the cocaine work-force who grow coca and turn it into paste? A study of the peasant farmers in the Hapare district of Bolivia, largely Andean Indians, looked at the effects of integration into a cocaine economy. The coca leaf boom took off in 1982-1983, at the same time that economic recession and a severe drought wrought havoc in the rural highlands. Bolivia's gross national product declined by 17% between 1980 and 1985, per capita consumption fell by 30%, per capita income by 20% and unemployment doubled. Terms of trade for farmers suffered from inflation of 2,800% in 1985 and 10,000% in 1986. In 1985, producers of coca leaves could earn \$9,000 from 2.2 acres, while those growing the next most profitable crop, citrus fruits, were averaging only \$500 from plots of the same size.

Landless farmers and workers laid off due to the collapse of the tin market found work as pisadores, earning wages six to eight times higher than those for any other skilled or unskilled labour in the legal rural economy. Despite the immediate benefits, including sheer economic survival, there has been a high price to pay. The cost of living, once relatively low in Chapare, rose to greater heights than in any other section of Bolivia, eating away at earnings. Cash exchange replaced traditional forms of barter and mutual support that provided stability and equity within Indian communities. Food crops such as potatoes and maize were in uncharacteristically short supply due to diversion of labour to coca.

As local development corporations did not receive revenues from the illicit coca trade, investments in potable water, plumbing and electrification were not made. The work of the pisador, involving the treading of kerosene-leaf mashes throughout the day, day after day, is unhealthy in the extreme. Finally there is the subjection of local residents to intimidation and brutality — they are simultaneously vulnerable to the coercion of criminal organizations and to police and army crackdowns. For all this, the local population has become dependent on the price of coca, which has been falling sharply since 1985.

An additional impact is the breakdown of tribal, communal and co-operative rural organizations under pressure from traffickers and affiliated terrorist groups. Conversely, in Bolivia and throughout the Andean regions, those areas with the strongest local organizations

have most successfully resisted submersion in the cocaine economy.³⁸

a. Case Study: The Heiron Economy

In its ability to addict consumers and generate multi-billion dollar sales, cocaine is rivaled only by heroin. Heroin is a derivative of opium, which in turn is processed from the sap of the opium poppy. A kilogram of heroin has a wholesale value of about \$400,000 in the United States; cut to six percent purity, its value reaches \$2.2 million. Shadowy warlords operating inside the "Golden Triangle," a mountainous area where the borders of Myanmar (formerly Burma), Thailand and the Lao People's Democratic Republic come together, were estimated to be producing sixty tons of heroin per year in the mid-1980's. Of these, twenty tons were directed to European and North American consumers.

This indicates sales of tens of billions of U.S. dollars in Western markets alone (the remaining forty tons would be divided between sales in Asia, where prices are considerably lower and purity is generally higher, and caches held as hedges against confiscation or poor crop years for the poppy). As is the case with cocaine, only a small percentage of total sales accrue to the producing region. Finance and distribution of Golden Triangle opium, morphine and heroin are handled by various outside consortiums. Most of them utilize the freewheeling Hong Kong financial markets, although Japanese criminal syndicates known as the *Yakuza* also have become involved.

The dominance of the Golden Triangle in production of opiates has been eclipsed in the last two decades by the "Golden Crescent," encompassing lands running through Pakistan, Afghanistan and Iran. As social upheaval and civil strife in Iran and Afghanistan in the 1980's disrupted production and shipping, Pakistan became the world's largest source of heroin. By 1984, European police concluded that seventy percent of the world's supply of high-grade heroin came from that country.

The difficulty of substituting legitimate crops for the opium poppy is indicated by a study conducted in the area around Mahaban Mountain, in Pakistan's north-west Frontier Province. About 125,000 people live on the ridges and valleys of the mountain, most of them cultivating plots of land averaging only half an acre. The opium poppy has been the main crop since the 1800's, when it was legally grown for export under British colonial rule. Thin soil, steep slopes and small plots make profitable cultivation of any other crop difficult. Earnings for poppy cultivation are roughly ten times higher than for tobacco and fruit. Crop substitution programmes have encouraged alternatives such as wheat grown from high-yield seeds, but the international price for the crop has been falling during the 1980's. A relatively undeveloped regional infrastructure provides little opportunity for extra-agricultural income, and longstanding

38. *Id.* at 1.

values of the local Pushtun people place a premium on landowning status. In addition, pressure is exerted on them to continue poppy cultivation by opium traffickers located in the town of Gandaf, at the foot of the mountain. They provide credit to the farmers, intervene in legal disputes and are said to operate well-armed private militias.

b. Case Study: The Crack Economy

In the mid-1980's, when the United States market for powder cocaine was waning, drug entrepreneurs devised a product that resuscitated sales and brought them to even higher levels: crack. This crystalline form of cocaine can be smoked, producing an instantaneous although short-lived euphoria. More importantly, in marketing terms, it could be sold as vial-encased "rocks" costing from five to fifteen dollars each. Sales shot up in low-income inner-city neighborhoods, where powder cocaine was too expensive to attract many customers. In these communities, where unemployment is high, the education system in crisis and economic opportunities few, crack offers an avenue of psychological escape for users and a source of income for sellers.

Burgeoning crack sales in urban neighborhoods gave rise to the image of formerly impoverished youths turned dealers who earn fantastic sums of money, sport expensive clothes and jewelry and cruise the streets in luxury automobiles. A recent investigation of the crack economy in New York City revealed that such benefits are obtained by only a handful of dealers. For most of those in the crack trade, earnings are at the minimum-wage level or below. In return, they work long hours and live under the threat of violence from superiors or rival gangs.

At the same time, violence and criminality associated with the drug and its distribution are taking a heavy toll on neighborhoods already in the grip of economic stagnation.

Attempts to start neighborhood businesses are discouraged, schooling is routinely disrupted, hospital emergency rooms overflow with victims of overdoses and shootings, and residents with skills and ambitions which could be put to use productively are wasted in the illusory pursuit of quick profits from the drug traffic.³⁹

The economic dependency of producing countries on drug-produced income which is spurred by the market prices of consuming countries are the most fundamental aspect of this entire problem. But it has yet to be addressed by the international community and particularly by the developed consuming countries.

6. The Crime Problem

It is unequivocally established that the problems of crime related to drugs derive from the fact that drugs are illicit. As a result, the argu-

39. *Id.* at 2-4. See also Nadelmann, *supra* note 36.

ments made by the proponents of decriminalization cannot be taken lightly. This is particularly so because it is easily demonstrable that the political will of states in creating an effective and integrated international control scheme for the complete eradication and control of drug cultivation and traffic does not exist, nor is it demonstrated by the actions of governments up to now. Similarly, the divisions between various international organs, as well as the lack of direct enforcement powers given to them, and the lack of a truly integrated international legal control and implementation system, once again demonstrates the lack of will of states to effectively control that phenomenon.

It is also well established that the national systems of criminal justice have not been able to develop the types of mechanisms for bilateral and multilateral cooperation in such a way as to render their international cooperation effective. Internally, the national systems of criminal justice, subject to their traditional divisions of law enforcement, prosecution, judiciary, and corrections, with all the sub-systems or sub-administrative and bureaucratic divisions that exist between them render these systems ineffective at controlling the problem of drugs at the national levels, let alone of being effective in controlling the problem at the international level.

The problem of drug-related crime derives essentially from the criminalization of the use of drugs. It must therefore be clearly understood that the policy choice of criminalizing the use of drugs is predicated on a moral-social judgment by a given society and by the international community as a whole which contributes to producing these criminal outcomes. While certainly deference must be given to the moral and social policy choices of societies, it must also be re-examined in light of its ineffectiveness, as well as its costs. In short, if a moral-social choice is made, but is ineffective, what good is it to make such a choice? This is not to say that moral-social choices must be measured only on an economic cost benefit analysis. In a society like the United States, for example, the expenditure of an estimated ten to fifteen billion dollars a year on drug control and the administration of justice as it relates to drug matters must be weighed against other options. These options will, however, depend on as yet uncertain facts. If, for example, the heroin user population is 200,000 persons, that of cocaine 500,000 persons, and that of marijuana 1 million persons, would these numbers justify the saving of ten to fifteen billion dollars in criminal justice costs devoted to enforcing their prohibition?

Such a cost benefit analysis must also take into account all the human costs related to crime victimization and the loss of human life as a result of the criminalization process. An analysis of this sort may appear callous to some and in particular to those for whom this type of activity violates their sense of morality or social ethics. For them, it would be similar to decriminalizing prostitution, obscene and pornographic material or gambling. Nevertheless, what is particularly interesting is that in all of these areas, just as in the area of drugs, there has been a substantial

de facto decriminalization. This is particularly true with respect to marijuana in the United States and many other Western European countries.

Criminalization of drug usage has remained essentially a matter of legal opprobrium with limited effectiveness in its application. Proponents of decriminalization have amply made their case in that connection and it is not the purpose of this paper to reconsider or re-examine these arguments, but merely to highlight the problems of ineffective international control which seems to ignore that the unfortunate reality will not be cured by more spending and harsher penalties.⁴⁰ The various international and national control systems will first need substantial changing to render them effective in controlling the problem.

7. International Cooperation Modalities⁴¹

There are a number of international modalities which have been relied upon in all aspects of international cooperation in crime-related matters. They are:

1. extradition;
2. judicial assistance and cooperation in the area of securing tangible and intangible evidence;
3. transfer of criminal proceedings;
4. transfer of prisoners; and
5. recognition of foreign penal judgments.

It is interesting that so far these various mechanisms of international cooperation have remained at a very primitive level. Only three countries have enacted integrated national legislation on inter-state penal cooperation: the Federal Republic of Germany,⁴² Switzerland⁴³ and Austria.⁴⁴

40. Bassiouni, *Needed: A new approach to the war against drugs*, Chicago Sun Times, Oct. 28, 1988, at 46, col. 1.

41. See 2 M.C. BASSIOUNI, *INTERNATIONAL CRIMINAL LAW: PROCEDURE* (1987); E. MULLER-RAPPARD & M.C. BASSIOUNI, *INTER-STATE COOPERATION IN PENAL MATTERS: THE EUROPEAN CONVENTIONS* (3 vols. 1987-88).

42. F.R. Germany, Gesetz über die Internationale Rechtshilfe in Strafrecht, (Act Concerning International Mutual Assistance in Criminal Matters) of Dec. 31, 1982, entered into force Jan. 7, 1983, BUNDESGESATZBLATT 1982, Teil I, No. 2071. (Federal Official Gazette 1982, p. I, at 2071). The act replaced the German Extradition Act of 1929 and provides for comprehensive measures of extradition and other forms of mutual assistance in penal matters, including execution of foreign sentences. See also O. LAGODNY, *DIE RECHTESSTELLUNG DES AUSZULIEFERNDEN IN DER BUNDESREPUBLIK DEUTSCHLAND* (1987); T. VOGLE, *AUSLIEFERUNG-SRECHT UND GRUNDGESETZ* (1970); Vogler, *The Expanding Scope of International Judicial Assistance and Cooperation in Legal Matters*, *DIE FRIEDENS-WARTE* 287 (Band 66, Heft 3-4, 1986).

43. *Entraide Internationale en Matière Penale* (Swiss Federal Law on International Cooperation in Penal Matters) Mar. 20, 1981, which also applies to international terrorism, arts. 3(b) and 12.

44. Bundesgesetz vom 4. Dezember 1979 Über die Auslieferung und die Rechtshilfe in Strafsachen (Auslieferungs und Rechtshilfegesetz -ARGH) (Austrian Law on Mutual Assis-

These integrated national approaches provide more flexibility than is available in countries that use these modalities in an uncoordinated and disparate fashion.

Most countries still believe that bilateralism is better than multilateralism. Yet it is quite clear that 165 countries cannot all have the same legal capabilities of being able to know of all of the other legal systems of the world, as well as the various requirements in order to process such requests and to receive them and act upon them. Least of all, the personnel necessary to staff such offices is either nonexistent or woefully inadequate. That is not to speak of the technical personnel needed to know the different languages in which such applications and requests are made and received. In effect, there is a very primitive system of bilateral and, in some cases, regional cooperation involving small staffs in the various ministries of justice that deal with all these various modalities as well as they can.

The problems here range from the macro to the micro. At the macro level there are no integrated multilateral agreements that take into consideration all these different forms of cooperation. As a result, each one of these forms operates separately instead of being integrated together. An appropriate analogy is that of a gear box and the ability to shift gears. For example, if extradition cannot be granted because one country denies extradition of its nationals, there is the opportunity to shift into the gear of transfer of criminal proceedings, and then the individual would not escape prosecution simply because nationals are not extradited by that requested state. However, the separate compartments in which these mechanisms are kept have largely reduced their effectiveness. Government bureaucrats representing their governments at international and regional organizational meetings are somewhat reluctant to go ahead with making such a new step into integrating these mechanisms. Yet their timidity is reflective of the same timidity that all bureaucrats and government representatives have when they meet at regional and international levels. The politics of international relations always seem to prevail over the common sense and good judgment that jurists would have if they were not subjected to those considerations which are due in large part to the lack of a genuine and effective will by governments to engage in international cooperation. In short, governments would prefer to adhere to rigid conceptions of national sovereignty and the ensuing jealousies that result therefrom rather than to engage in effective international cooperation. Thus, the will, as manifested by governmental conduct, does not match the rhetoric.

At a different level, it must be noted that there are no new international or regional organizations that have been created to operate in the field of international cooperation in penal matters, though international

tance in Criminal Matters) BGBl.Nr. 529/1979. See also R. LINKE, H. EPP & R. FELSENSTEIN, INTERNATIONALEN STRAFRECHT (1981).

cooperation has indeed increased.⁴⁵ However, specific undertakings are yet to be developed. For example, there could be regional informational clearing houses for law enforcement cooperation and sharing of data and information about international, regional and even local organizations engaging in drug-related crime. At present there is no central database or central office to provide technical assistance to one another. It would be simple, for example, to establish in a given region a centralized library containing all the laws and regulations of the different regional countries concerning international cooperation in penal matters and criminal laws. The library staff would be capable of providing such technical assistance to the different requesting countries. Such a centralized legal reference service would clearly have no political implications and no political liabilities for the participating governments but would certainly provide an enormous resource to the various government offices seeking to prepare applications and requests for the various modalities of international cooperation in penal matters. Why such a central legal reference system has not been established is another clear indication of the governments' lack of interest in making effective use of these mechanisms. It might not be the lack of will of governments, but the low level of imaginative thinking of governments that prevent such basic and simple ideas from being implemented. There are, of course, a number of proposals such as the establishment of an international criminal court and the establishment of regional international courts yet to be implemented.⁴⁶ At the national level, criminal courts can specialize in handling mechanisms for international

45. INTERPOL, however, has become consistently more involved in drug matters. Groups like the "Pompidou Group" of the Council of Europe and the "Trevi Group" of the European Economic Community have engaged in interchange of intelligence information. The United Nations sponsored in 1989 a consortium of Heads of National Drug Law Enforcement Agencies (HONLEA). The Customs Cooperation Council (CCC) has also become more active. As stated in a recent United Nations report:

Regional co-operative agreements recently reached include those among the governments of Central America in 1989, of five Eastern European countries in 1988, the Balkan States in 1989, five Nordic countries in 1987, four African countries in 1989, and countries belonging to the South Asian Association for Regional Co-operation (HONLEA report, 1989). Regional Co-operation is also bolstered by the South American Agreement, the Colombo Plan, and the Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States.

See *Law Enforcement and Drug Trafficking*, United Nations Department of Public Information, 12M at 2, DPI/1040C-40076 (Jan. 1990).

46. One of the proposed solutions advocated before the General Assembly in 1989, G.A. Res. 44139, 4 Dec., 1989, and subsequently discussed at the 21-25 Feb., 1990 Special Session is that of establishing an international criminal court. The idea for such a court has long been advocated by this writer and others. See M.C. BASSIOUNI, *A DRAFT INTERNATIONAL CRIMINAL CODE AND DRAFT STATUTE FOR AN INTERNATIONAL CRIMINAL TRIBUNAL* (1987). The International Law Commission at its 1 May - 20 July, 1990 session will examine this question, as will a committee of experts organized by the International Institute of Higher Studies in Criminal Sciences (Siracusa) in cooperation with the United Nations Crime Prevention and Criminal Justice Branch, 24-28 June, 1990. The General Assembly's regular 1990 session will also consider the proposal.

level cooperation, but unfortunately, none of these practical measures have as yet developed. Once again, it is important to question the will of governments to make more effective international cooperation.

8. Suppression of Illicit Traffic

As indicated above, the assumption that illicit traffic can be suppressed is largely unfounded, since total or even substantial control of supply or demand cannot be achieved.⁴⁷ Furthermore, the international narcotics control system has not developed the necessary international legislative measures for effective control.

As stated above, international cooperation in penal matters depends upon the voluntary compliance of states whose national systems of domestic controls and inter-state cooperation are overburdened and limited in their capabilities. National criminal justice systems are unable to cope with both the domestic as well as the international dimensions of the problem.

III. CONCLUSIONS

Over the years, international, regional and national efforts have only resulted in more seizures of drugs, more arrests of drug offenders, more arrests of drug users, more costs in law enforcement, and significant burdens on the criminal justice systems. Worse yet is the added human and social costs, particularly the increased levels and incidences of violence and victimization. Yet production of drugs increased more significantly than the number of offenders and users. The bottom-line remains negative, and that negative balance also is on the increase. Some see the ultimate conclusion of this process as the decriminalization of the use of hard drugs, much like the *de facto* decriminalization via nonenforcement of marijuana usage in the United States and many Western European societies. Some countries, like the Netherlands, have embarked on that course of conduct for over a decade. Others, like Switzerland and the Federal Republic of Germany, have allowed certain areas of some cities to be free from law enforcement activities. In Zurich's main park there is even free distribution of needles to heroin addicts as a way of reducing AIDS and other health hazards. While in Frankfurt an area of the city operates free of police interference with the sale and use of drugs.

The overall approach to international control of drugs is woefully deficient as is the national control in most legal systems of the world. It is unlikely that the present trend of existing controls will succeed. Whether or not the world community can think of a more integrated and effective international system that would provide greater opportunities for the

47. Cf., Resource Book on Measures to Reduce Illicit Demand for Drugs (United Nations, 1979); *International Strategy and Policies for Drug Control* (United Nations 1982); *Combating Drug Abuse and Related Crime*, (United Nations Social Defence Research Institute, 1984).

control of supply and demand, as well as for an effective system of suppression of traffic, is very much in doubt. To suppress any form of trafficking, one must assume the ability to control both supply and demand or to control either supply or demand or, at least, to be able to disrupt major trafficking networks. None of these exist. So how could there be a continued criminalization if neither supply nor demand nor suppression of trafficking can be effectively achieved?

My own conclusion is that the world community is at this point interested in making an apparent "good faith" effort. But, after a period of time, *de facto* decriminalization is likely to occur.

The schemes and scenarios for decriminalization are supported by an objectively defensible cost-benefit analysis of the costs of drug control versus results obtained.⁴⁸ Some of the research also attempts to quantify the human and social costs and hypothesize as to what would occur in the event of decriminalization. The outcome is clearly unfavorable to the existence of a controlled approach. However, no one can assess the human and intangible social costs resulting from decriminalization. For others, the effort at controlling the harmful effect of drugs should not be abandoned before genuine and effective integrated international and national efforts are undertaken. They too are correct because such efforts have never been undertaken, even though they are the common subject of political pronouncements.

The prospects for effective international controls are so remote, however, that one can only agree with the principle of control with the knowledge that its effective implementation is unlikely, and one must consider other alternatives. Neither control of supply or demand, or both, will ever eliminate a problem which, by its very nature, cannot be totally eradicated—history teaches us that much. The goal therefore has to be to control or limit the harmful consequences. But levels of social tolerance are subjective and depend within each society on different factors, particularly psychological perceptions based on value judgments, which will also vary in time.⁴⁹ A new approach must be found, if for no other reason than it may be dictated by the exigencies of objective (and quantified subjective) cost-benefit analysis. The search may well be for a new balance between advocates of total criminalization and those of total decriminalization. But in the final analysis, any new approach will have to depend on the willingness of all states to cooperate effectively at many levels. Whether it is possible to have faith in this prospect will depend on the degree of one's optimism about a process which has for so long failed to attain its avowed goals.

The experience of the 1960's in Western industrialized societies with respect to marijuana is indicative. While I do not think that legalization

48. See Nadelmann, *U.S. Drug Policy: A Bad Export*, 70 FOREIGN POL'Y 83 (1988).

49. *The War on Drugs: Is It Time to Surrender?*, Report from the Institute of Philosophy & Public Policy (Vol. 9, 1989).

of the use of drugs will occur in the next quarter century, I would venture to guess that decriminalization will nonetheless occur in a *de facto* sense. This has been the experience with marijuana. It seems possible that the same will occur with respect to the use of cocaine and heroin and heroin-related products. Somehow, after major consuming societies have expanded significant resources, which will be wasted under the present system, there will soon come an implicit realization that the waste of such resources is no longer a valid social and economic choice. The consequence will be that consuming societies will become habituated to the use of drugs by some of its members, just as those societies have become habituated to a certain level of crime, as well as to a certain level of damage to the environment. As with all social ills, societies have a way of habituating themselves and adjusting to their existence. They merely lower their expectations while increasing their levels of tolerance.

There is no doubt that an integrated series of strategies operating at different levels can be developed nationally and internationally to cumulatively achieve a reduction of the levels of harms of this problem in order to render it more manageable and more tolerable by the states directly affected and by the world community as a whole.⁵⁰ Most observers of this phenomenon, however, would agree that these results are not likely to occur. The only hope would seem to be a natural process of use reduction that could occur as a result of greater worldwide awareness of the dangers and harmful effects of drugs. Where governments have failed, perhaps the good judgment of peoples all over the world can partially succeed.⁵¹

50. A World Ministerial Summit to Reduce Demand for Drugs and to Combat the Cocaine Threat was convened in London on 8-11 Apr., 1990 and essentially urged reduction of demand. See Council of Europe, Parliamentary Assembly Doc. 6218, 3 May, 1990, which also contains the "Pomjudou Group" recommendations. Both the London Summit and the "Pomjudou Group" meeting followed the same approach embodied in Council of Europe Committee of Ministers Resolution (73)6, 19 July, 1973 on *The Penal Aspects of Drug Abuse*, though without reference to it. This shows that no new ideas have been developed, only old ones in new forms are re-argued.

51. See di Gennaro, *Droga: Cultura Antica e Cultura Moderna*, 6 TRIMESTRALE DI CULTURA ED ESPERIENZE GIOVANILI 11 (1986), wherein he compares different "drug cultures" and expresses the hope that the contemporary "drug culture" may be a passing fad.

APPENDIX

The following figures have been released by the United Nations Division of Narcotic Drugs. They indicate approximate quantities of drugs which have been reported as seized from 1979 through 1988.

WORLD TOTALS OF DRUGS SEIZED

1. *Cannabis Herb/Plants*

1979: less than 10,000 tons.

1983: approximately 25,000 tons.

1987: over 50,000 tons.

1988: approximately 20 tons.

2. *Opium*

1979: approximately 60 tons.

1983: approximately 65 tons.

1987: approximately 50 tons.

1988: over 70 tons.

3. *Heroin*

1979: less than 3 tons.

1983: approximately 12 tons.

1987: approximately 17 tons.

1988: over 22 tons.

4. *Cocaine*

1979: less than 20 tons.

1983: approximately 50 tons.

1987: approximately 150 tons.

1988: over 175 tons.

