

# International drug control strategies

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## **1 The lack of consensus on international drug control policies**

The fight against drug trafficking and abuse requires from the international community a common understanding of the problem, and a shared vision of the appropriate strategies and responses. This agreement on the analysis and on policies is unfortunately far from being reached. States continue to oppose themselves on the means to reduce the availability of illicit drugs; on the legal response to the illicit use of drugs; and even sometimes on the objectives of drug control.

### ***1.1 Demand reduction or supply reduction?***

The main source of conflict still remains the analysis of the root causes of the development of drug abuse: is it due to the widespread availability of drugs, or are drugs available because of a strong demand? The answer to this question has a direct impact on the analysis of the chain of responsibilities in the development of drug abuse, and on the counteraction to be taken: if the root problem is the demand for drugs, consumer States have to take responsibility for the emergence and the expansion of the phenomenon; they have to analyze what in their economic and social policies, and sometimes in the choice of society, led to that situation; they have to take strong and costly measures to solve the root problem(s) and to prevent abuse; they have to make the difficult choice between prohibition of use or the acceptance of drug abuse as a choice of life.

If the analysis shows that the root problem is an unlimited availability of drugs, the blame is then on producer countries; countermeasures include the eradication of illicit cultivation, which proves to be difficult if not impossible, when cultivation of narcotics is the only possible source of income for peasants; and the costly fight against drug trafficking and criminal organizations.

Against this, has developed the concept of shared responsibility and balanced approach. States begin to agree on the fact that the truth is not necessarily in one camp; that responsibility of the development of the phenomenon is on both sides. Responses to it must be balanced between policies aiming at preventing drug abuse, and those aiming at fighting against supply. But even though there is more or less consensus on these concepts, producer States would like to see more action against demand in consumer countries, to alleviate their own burden of suppressing a continuously profitable illicit production and trade. Consumer States are sometimes discouraged to see their internal efforts to limit drug abuse jeopardized by the

attitude of some producer countries which take no real action against the development of production and trafficking, when they do not actively participate in or instigate trafficking<sup>1</sup>. Other consumer States make tremendous prevention efforts, but at the same time have a lax policy against trafficking, and even sometimes tolerate, authorize or organize the supply of some drugs.

The sometimes contradictory policies of States against supply and demand of drugs show that the agreement in principle on the need for a balanced approach is far from being applied in practice. States are confronted to the political need to take measures that have short-term impact, or at least short-term visibility, to respond to a pressing demand from their citizens -and voters. Policies are too often aiming at showing short-term results, and not long-term impact on the phenomenon: people have no care for long-run measures aiming at, for example, defeating the “drug culture”, i.e. the positive image of drug use amongst youngsters. They demand immediate responses to their family tragedies, or to an increasing drug-related violence. The consequence is the current development of two opposite kind of policies: strong repressive action against trafficking: the “war on drugs”; and policies aiming at hiding drug trafficking and abuse: the legalization policies.

The “war on drugs” policy will not have a long-term impact on drug trafficking, especially if it is not complemented by a sustainable prevention policy. Dismantling a drug cartel will result in the business taken over by others. Hectares of illicit crops eradicated somewhere will be quickly replaced by hectares flourishing elsewhere. Everybody knows that the long-term impact is limited, but this is not what is important for politicians. The “war on drugs” gives to people the image of a Government which reacts strongly, and it is reassuring. The TV image of soldiers arresting gangs, destroying crops or laboratories relieves people -voters- who have been victims of drug abuse or trafficking in their family or community.

The legalization policies follow the same objective of immediate responses rather than long-term approaches. Confronted to the absence of immediate impact of combat measures, and a growing demand for visible outcomes, some States are now moving to a policy which does not aim at limiting drug abuse, but at limiting the visible effects of abuse and trafficking. The policy currently implemented in Switzerland following the “Zurich” experience is a perfect illustration of this dangerous move<sup>2</sup>. As the abuse of injected drugs (heroin mainly) was resulting in an

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<sup>1</sup> The organization of drug trafficking by States themselves is emerging as a new form of “State terrorism”. It is used as a financing of terrorist activities (Bulgaria, in the former soviet times, was exporting tons of psychotropic substances to Africa to finance the organization of terrorist campaigns), or simply to fragilize target countries.

<sup>2</sup> Christian Huber, *Needle Park: What can we learn from the Zurich experience?*, *Addiction*, (1994)89, 513- 516; A.M. Buchholz-Kaiser and F. Haller, *Swiss Drug Policy: the present situation*, presented at the 11th PRIDE Conference, Houston, Texas, 28/04/1992; P. Grob, *The needle Park in Zurich: the Story and Lessons to Be Learned*, *European Journal on Criminal Policy and Research*, 1 (2) 1992, p.60.

increase of HIV infection among drug users, and as a prevention policy could not impact immediately, the policy of “harm reduction” was elaborated, based on (1) acceptance of the abuse of injected drugs, and (2) support given by the community for a “clean” use of these drugs, through a supply of syringes, and of on-site medical care. In the Zurich case, the direct adverse consequence was that drug abuse became more visible to the population, and users were then suggested to group in a park in the city center, the now famous *Platzspitz*. The concentration of drug addicts in that park resulted in an increase of drug-related crime around the park, but also in a serious health problem: up to 40 addicts were admitted in the hospital intensive care per day. Decision was then taken to close the park, and still within the framework of the harm reduction policy, to open community houses<sup>3</sup> for drug addicts, where they could be taken care of. But the supply side of the problem was not solved, and immediately following the new drug policy developed by Zurich authorities, drug trafficking rose sharply in the city. In line with the objective of limiting effects of drug abuse rather than drug abuse itself, Swiss authorities have now moved towards the direct supply of heroin to drug addicts, to try to break the illicit distribution chain. Some intellectuals, not only in Switzerland, call now for a total legalization of production, supply and use of drugs. Legalization would ruin the illicit traffic, enable a safe use of drugs and limit drug-related crime, they say. The objective of preventing drug abuse is left aside, and considered anyhow as non attainable. Advocates of legalization prefer to focus on the limitation of side effects of drug abuse and trafficking, which is more feasible.

Both short-term policies of “war on drugs” and of legalization are strongly criticized by a growing number of experts in this field<sup>4</sup>. They consider that only long-term policies, based on in-depth prevention and education efforts, sustainable development endeavors in producer countries, wider criminal policies against organized crime, effective treatment and rehabilitation programmes for drug addicts, can really impact on the problem.

However, legalization arguments are gaining acceptance in public opinions desperately looking for miracle solutions to solve the drug problem.

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<sup>3</sup> Called “acid houses” or “shooting galleries” by drug users themselves.

<sup>4</sup> See A. Goldstein and H. Kalant, *Drug Policy: Striking The right Balance*, Science, 28/09/1990. James A. Inciardi and Duane C. McBride, *Legalization, a High Risk Alternative to the War on Drugs*, American Behavioral Scientist, Vol. 32, Jan-Feb. 1989, 259-289; International Narcotics Control Board, *Report for 1992*, E/INCB/1992/1, United Nations publications, sales No e.93.XI.1; James A. Inciardi, *The war on drugs: heroin, Cocaine, crime, and public policy*, Palo Alto, CA: Mayfield; William G. Nelson M.A., *The War on Drugs: an Alternative Strategy*, Royal College of Defense Studies, 1993; Center on addiction and Substance Abuse at Columbia University, *Legalization: Panacea or Pandora’s Box*, CASA white Paper No1, September 1995; James Inciardi and Christine A. Saum, *Legalization madness*, in *The Public Interest*, No 123, 72-82, Spring 1996; Harold Kalant, *Drug policies for Canada in the 21st Century: Government controls or individual responsibility?*, Drug use and Substance Abuse, 2nd edition, Montreal, 1994.

## 1.2 *The legalization debate*

A great deal of controversy is developing at present about the role which the law should play in connection with drug use and drug trafficking<sup>5</sup>. The attraction which certain countries feel for the idea of decriminalizing (in effect legalizing) drug use shows how confused they have become when confronted with drug problems. They tend to be led astray by seductive arguments of those who object the drug control regimes and propose magic solutions to the drug trafficking and abuse problems<sup>6</sup>.

According to a growing number of popular theories, the role of the law in confronting drug abuse in his widest meaning must be questioned because it has proven not only inefficient but outright dangerous and illegitimate. According to this school of thought it is felt that the possession and use of drugs belongs to the realm of free choice and liberty of the individual; the right of individuals to exercise this liberty must be recognized. In short, the proponents of this "philosophy" want to see the triumph of this particular vision of man and of human life in society.

Others are opposed to the use of drugs but feel that the most effective ways of dealing with drug abuse problem are to be found in areas other than the law.

It is claimed that the law has failed to reduce the problems caused by drug abuse. Certain practical evidence is marshaled in support of this claim: the massive, increasing, availability of drugs in the large cities; that the situation has become increasingly unmanageable for those in responsible positions; the increasing complexity of controlling the international traffic in drugs; the menacing growth of the power wielded by criminal organizations, notably through the possession and use of drug money; etc. Drug abuse is said to be a social phenomenon which has now attained such proportions that the idea of abolishing it through the law is no longer relevant nor realistic. In fact, repression exercised via the law has proved worthless and is now losing all credibility.

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<sup>5</sup> See A. Clark, *Adding Up the Pros and Cons of Legalization*, Druglink, Sept/Oct. 1993

<sup>6</sup> Some legalization advocates, such as the Drug Policy Foundation, find in drug legalization a remedy to all kind of problems: "What would the world look like if peace broke out? The world would be healthier, safer and more human. Drug use would not disappear, but that cannot be promised under any policy option. Drug use would be more controlled and safer. We would be able to walk virtually any street at night as crime would be significantly reduced. Our criminal Justice system would no longer be in gridlock. Our police could spend their time becoming members of the community rather than being at odds with a large percentage of it. [...] Researchers would be able to conduct research with currently banned drugs so that the secrets of their healing powers could be discovered. [...] Doctors would be able to treat addicts as human beings rather than criminals. They could help prevent the dangers of drug abuse by telling their patients how to use drugs safely and warning them of the importance of using clean needles. Social controls would be allowed to develop. Parents and children will be able to talk to each other about drug use. Employers will not have to play the role of the police. [...] The constitutional foundations of American society would be restored..." The world after repeal, Kevin B. Zeese, Vice President of the Drug Policy Foundation, in "Drug policy 1989-1990: A reformer's catalogue" Drug Policy Foundation, Washington.

For those who refuse to regard the possession and use of narcotic drugs as a criminal offence, there can be no real legal justification for suppressing their use; the law must not be allowed to prevent people from using their bodies as they wish. Furthermore, the proponents of this approach feel that those who have succumbed to drug addiction are to be considered as medically ill people, not delinquents. They should thus be considered, and treated, accordingly; any form of legal repression is out of place.

It is sometimes claimed that decriminalization would make it more difficult for peddlers to win new clients, would reduce drug prices drastically by legalizing their sale, and would ruin the traffickers even while providing possible revenues for the peasants who produce the drugs in developing countries.

In short, the anti-prohibitionists envisage solutions relying on the following options, depending on their school of thoughts:

- Liberalization. The principle of a prohibition combined with legal sanctions would remain intact. The sanctions would normally not be applied however (an option already adopted by many countries, particularly in Europe);

- Non-criminal Prohibition. The use of drugs would remain prohibited. Penal sanctions would however be replaced by civil or administrative measures;

- Decriminalization. The possession and use of drugs would no longer be prohibited or subject to legal control (i.e. laissez-faire approach);

- Legalization. Not only would the use of drugs no longer be prohibited but activities associated with drug production and marketing would in fact be organized legally with the following options :

*(I) Drug trade with no restrictions*

In this case the production and use of all kinds of drugs would be free and trade would not be subject to any restrictions. This idea, which is not in fact being applied in any country at present, is based on the assumption that deregulation of drugs would reduce drug prices drastically and therefore ruin the traffickers.

*(ii) Passive trade*

The organization of a drug trade State monopoly, with authorized and unrestricted use of drugs, would satisfy demand and avoid the undesirable effects of the present trade thanks to the absence of competition and publicity, the traffickers would be ruined, or,

*(iii) Controlled distribution*

This would enable registered drug users to obtain their supplies with medical prescriptions.

For those who think that prohibition should remain, the law makes a decisive contribution to the struggle against drug abuse. It is important not to lose sight of the reasons for which the international community and individual States have relied increasingly on prohibition, i.e. the law, as a tool to counter the growth of drug abuse and drug trafficking. Prohibition is not a random option; nor is it an *a priori* choice, or one made on an ideological basis. According to this school of thought, prohibition is based on a long-term experience with different approaches. It is a realistic, pragmatic solution. It is the most effective to confront the phenomenon of drug taking.

According to the prohibitionists, the law has proved its worth, because the criterion of its effectiveness is not an unrealistic hope of total elimination of drug abuse but rather the limitation of a phenomenon with which we must inevitably live. They argue that the best evidence of this achievement are the figures of drug-related deaths, compared to those due to other substances of addiction which are not under control such as tobacco and alcohol.

In response to their opponents' practical arguments based on the economic situation, the proponents of prohibition point out that, whereas we are familiar with the present situation, the situation which would emerge if the anti-prohibitionists' theories were put into effect is likely to be far worse - in particular if we look back at various experiments with an anti prohibitionist angle. It is undeniable that the existence and application of the law does impede the activities of the drug traffickers considerably and helps limiting the growth of drug addiction. This being so, why should one say that the battle has already been lost ?

At the political level, the prohibitionists recall the State's mission in respect of civil liberties, public order and public health, and ask the question whether refusal to confront a problem can possibly constitute a government action programme. They, further more, want to witness the victory of a particular vision of mankind and of society. Therefore, confronted with drug consumption which amounts to a cry for help, they refuse to accept that the State should consciously, deny its people help in overcoming the underlying, basic problems and decide to cultivate its blindness regarding these vary problems and actually "organize" the intoxication of part of its population.

The prohibitionists believe that decriminalization would substantially increase the risk of drug traffickers gaining control of the economy and of political power, particularly in view of the new possibilities offered by drug trading with neighboring prohibitionist countries which would become obvious targets for organized crime as is happening with the Dutch experiment.

Moreover, they have already control over the supply chain and distribution networks, and this would not change in case of legalization: no legitimate and renown company would enter this business. Therefore, the only difference between today and tomorrow is that drug traffickers would continue trafficking and selling dangerous drugs, in a quasi-monopoly situation, but could not be prosecuted or even inquired for the harm caused to people and society.

The economic arguments of the anti-prohibitionists to the effect that removal of the prohibition would send drug prices into the cellar are based, the prohibitionists believe, on a mechanistic and utopian concept which assumes a kind of perfect economic fluidity that is impossible in a world where the chances of all States adopting decriminalization together are nil. Drugs are costly, and that in itself makes it difficult to obtain them and limits their use. The costlier drugs are, the more difficult the addict will find it to satisfy his craving; in the long term he may come to the conclusion that his habit is simply not worth the price. Thus the high cost of drugs does after all have a dissuasive effect...

To suppose that with reasonable prices, addicts would no longer be delinquents, seems, at last, illusory : experience shows that delinquency practically precedes drug use. Delinquency is thus as much a symptom of malaise as is drug consumption itself. The marginalization of drug addicts has just as much to do with the style of life they have chosen as with the application of the law prohibiting the use of narcotic drugs. Moreover, drug-related crime is far from having economic purposes only, but is in most cases the consequence of the violence induced by the abuse of powerful drugs. This violence would of course dramatically increase if all sorts of drugs were accessible to anybody.

Prohibitionists furthermore think the abolitionists are wrong in claiming that it would take the drama out of the situation and reduce public focus on the problem. The law effectively dissuades millions of potential users from start taking drugs; the number of potential users is incomparably larger than the actual number of users of illicit substances. The removal of drug control law would lead to a substantial increase the number of users and in delinquent behavior, health problems, mental illness and death due to overdoses. A large part of our youth would be put out of action.

What the prohibitionists wish to do is to say a firm "no" to all solutions which focus entirely on the substance. They wonder whether it is possible to utter words of caution and even to institutionalize the functioning of a system if one believes that the answer to everything is to be found in the product itself. They feel that the first and most important stake in international action against drugs is to save the largest possible number of people from slavery to drugs - an objective which interestingly seems to have been lost by the anti-prohibitionists. Thus, the important thing is to focus on the causes, i.e. the true problems and to get away from superficial misguided arguments rooted in ideology or demagoguery. Reliance on drugs is a complex phenomenon resulting from many causes, something which in itself rules

out simplistic and demagogic reactions. Thus only a combination of responses covering the different aspects of the phenomenon will help us to gain control over it.

### *States hesitations between policy options*

The temptation which Governments sometimes feel to accept the arguments of the decriminalization enthusiasts stems more often than not from ignorance and confusion: ignorance, because most of them do not have the information or the data needed to evaluate the consequences of this change of policy; and confusion, because they are familiar only with their present situation as regards the problem of drug addiction, a situation in which the population is clamoring for a solution and in which the Government feels less and less able to control the problem. According to Peter Reuter, the debate has been driven by “despair about existing policies”<sup>7</sup>.

This being so, they cannot give a useful public reply to the proponents of decriminalization, who have developed a line of argument which is admittedly stereotyped but nevertheless seductive, giving Governments the unhappy impression, in the view of the electorate, that they have no arguments to offer in return.

The consequence of all this is that States, not really knowing what to do, may be tempted to settle on a policy of doing nothing/- in other words, of decriminalizing the use of drugs rather than continuing the struggle against it. The attraction of decriminalization is in a certain sense an avowal of impotence, a kind of resignation.

Though, the analysis of past experiences would have helped to come back to more sensible reasoning about the problem. More, the constant reference to the ultimate objective of drug control policies -namely to limit drug abuse- would help keep things on track.

### *The past experiences*

The proposals that legalization advocates make have been, for many of them, experienced in the past<sup>8</sup>, and the lessons of the experience could provide some guidance when drawing up policies on drug use.

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<sup>7</sup> Peter Reuter, *The Legalization Debate: a Brief Survey*, paper prepared for the Conference for Drug Policy in Europe, Florence, Dec. 11-13 1993

<sup>8</sup> See David F. Musto, *The American Disease. Origins of Narcotic Control*, Oxford University Press, 1973; *Opium, cocaine and Marijuana in American History*, Scientific American, July 1991; J. Dugarin and P. Nominé, *Toxicomanies: historique et classification*, Confrontations Psychiatriques, No 28, 1987; Pacific Studies in Public Policy, *Dealing with drugs. Consequences of Government control*, Edited by R. Hamowy Lexington books; A. Coppel, *Usage et contrôles des drogues: les enseignements de l'histoire*, Psychotropes, vol. VII, No 2, 1992; G. Di Gennaro, *Antidrug legislation in Italy: historical background and present status*, The Journal of Drug Issues, 24(4), 673-678 1994; Eric W. Single, *The impact of Marijuana Legalization*, Journal of Public Health Policy, winter 1989.

### *The experience of total legalization*

The total legalization of production, trade and use is actually the situation which existed at the beginning of the century. Opium was widely available in China, and workers in European countries liked to use cocaine-based medicines and liqueurs (in France) and opium or opium derived medicines (United Kingdom) to help them face the hardship of their work<sup>9</sup>. In the USA, opium consumption rose gradually during the 1800s, reaching a peak in 1895<sup>10</sup>. In 1910, cocaine had taken over heroin and morphine, and President Taft sent to Congress a report according to which cocaine posed the most serious drug problem America had never faced<sup>11</sup>. Some experiments of drug prohibition in China in 1906 and in the Philippines in 1909 showed that prohibition could be the right response to the abuse problem. As a matter of fact, drug abuse declined progressively worldwide after the organization of international controls under the 1912 convention and the subsequent national laws restricting production and trade to medical needs only.

### *The Narcotics clinics experience*

Right after the enactment in the USA of the Harrison Act of 1914 implementing the 1912 convention, and prohibiting the dispensing of drugs except for medical purposes, medical practitioners and some forty clinics, on the request of the Health Department, began to distribute, on medical prescription, heroin to drug addicts. This experiment of maintenance programmes<sup>12</sup>, similar to those that Switzerland wants now to experiment, was stopped under pressure of the American Medical Association in 1923. It did not prove to have any impact as a treatment, especially because the access to drugs was easy, and addicts did not have any incentive to reduce their use.

### *The British system*

The same kind of experience was carried out in Great Britain in the 1960s, when medical doctors were allowed to prescribe heroin to drug addicts. The system worked for few years, but due to the behaviors of some unscrupulous practitioners, prescribed drugs became readily available in the streets, adding to the existing drug problem. Cindy Fasey, while defending what was called later “the British system”, acknowledged that many of the registered addicts would come to the clinics only when they could not afford their habit on the street, or when heroin was scarce, but would not stay into treatment<sup>13</sup>.

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<sup>9</sup> J. Dugarin and P. Nomine, *Attribution, intransitivation, substantivation*, Psychotropes, Vol. VI, No2, 1990

<sup>10</sup> David Musto, *Opium, cocaine and Marijuana in American History*, op.cit.

<sup>11</sup> Id.

<sup>12</sup> *The Narcotic Clinic Era*, in David Musto, *The American Disease*, op.cit.

<sup>13</sup> Cindy Fasey, *The British System has not failed*, in *Drug policy 1989-1990: a Refomer's catalogue*, op.cit

### *The Swedish experience*

In Sweden, an experiment of distribution of drugs on medical prescription was also tried between 1965-1967, leading to the same conclusions<sup>14</sup>. The idea was to limit the harmful effects of drug abuse on the society and on abusers themselves, to allow access to medical care and curb the drug-related crime rate induced by the economic needs of the addicts. In this programme, drug addicts could request to the physicians taking part in the project the drugs and doses of their choice. According to Swedish authorities, many of the patients were supplying a parallel market of prescribed drugs, and crime of all types (except crime committed to procure drugs) by the patients population increased during the experience<sup>15</sup>. The study undertaken during the period of changes in policy (1965-1970) among drugs users arrested by the Police showed “a dramatic increase in intravenous abuse during the permissive period” as well as an expansion of drugs abusers among the arrested persons. This proportion fell during the “extra-restrictive policy” period that followed, which must be seen as a result of reduced availability of drugs. The study mentioned also that the turn to a “restrictive policy had not, as often been stated in the media, filled the prisons with drug abusers, but had instead accompanied an absolute and relative decrease in drug abuse among inmates of penal institutions and arrestees in Stockholm”<sup>16</sup>.

### *The Zurich experience*

The results of the Swedish experience did not prevent the Swiss municipal authorities of Zurich to make their own try. Although distribution of drugs is not made (yet) on the same scale, the permissive policy which has been carried out<sup>17</sup> led to the same problems: increase in crime rates, health problems, development of drug trafficking, etc. Subsequently, in 1995, Zurich authorities closed the last open drug scene, the Railway station “Letten”, and moved to a more restrictive policy. At the same time, they initiated harm reduction programmes including distribution of drugs to registered drug addicts, programmes which have been described as “*a risky undertaking*” by the INCB, as it was “*not taking into account the long-term effects that it will have on the individual and on society as a whole*”.<sup>18</sup>

### *The Netherlands experience*

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<sup>14</sup> Nils Bejerot, *Drug abuse and Drug Policy: An epidemiological and methodological study of drug abuse of intravenous type in the Stockholm Police arrest population 1965-1970 in relation to changes in drug policy*, Acta Psychiatrica Scandinavia Supplementum 256, 1975

<sup>15</sup> In *A restrictive drug policy: the Swedish experience*, National Institute of Public Health, Stockholm, 1993

<sup>16</sup> Nils Bejerot, *Drug abuse and Drug Policy*, op.cit

<sup>17</sup> See above

<sup>18</sup> International Narcotics Control Board, Report for 1994. United Nations Publications, E/INCB/1994/1, sales No E.95.XI.4

The last on-going legalization experiment concerns the Netherlands, where cannabis use and retail trade is tolerated and *de facto* legalized, but production and wholesale trade still unlawful. The underlying policy is to establish clear lines between “soft drugs” and “hard drugs”, to avoid the involvement of youngsters who would like to take cannabis in drug networks. Dutch authorities claim that the prevalence of cannabis use is not higher than in other European countries, as well as heroin use, which is documented by surveys which have been undertaken. The side effect of this policy is however twofold: very potent cannabis was developed and is readily available. The “niederwiet” species has a rate of psychoactive substance much higher than any other. The other side effect is an unexpected development of trafficking in cannabis, but also of all sorts of drugs which continue to be prohibited. The Netherlands is used as a main port of entry in Europe for many other drugs and in particular synthetic drugs, LSD and cocaine. Seizures of drugs from the Netherlands rose sharply in recent years in neighboring countries<sup>19</sup>. In the country itself, a report of the Dutch National Board of Drug Prevention shows that between 1988 and 1993, seizures of drugs increased in proportions going from 79% (heroin) to 39,800% (LSD)!<sup>20</sup> Criminal organizations were quick to organize the illicit market of cannabis and other drugs, and many of the so-called “coffee-shops” where cannabis is sold belong to them. These organizations are now so powerful that they succeeded in infiltrating the Government, leading to a scandal which provoked in 1994 the resignation of the Ministers of Justice and Interior. The International Narcotic Control Board, in its report for 1994, stated about the Dutch experience that it was “questionable whether the theory of separation of markets has ever demonstrated its practicability. Places where cannabis distribution is tolerated have attracted traffickers of other drugs and abusers, as well as potential abusers; thus all types of drugs seem to be readily available at such places. That situation might have influenced the attitude of advocates of legalization. The emphasis is no longer on separating the use of cannabis from the use of other drugs; instead, it is on mitigating or reducing the harmful consequences of drug abuse, as opposed to preventing drug abuse, because in their opinion the non-medical use of all drugs should be accepted by society. That philosophy does not differentiate any more between so-called “soft” and “hard” drugs, the aim is the acceptance of the use of drugs in general in European society.”

In 1995<sup>21</sup>, the INCB reported with concern that the Netherlands was continuing “the failed policy of “separation of markets”, tolerating the continued cultivation of *Niederwiet*[...], permitting the operation of so-called coffee-shops, many of which have fallen under the control of criminal elements...”. The pressure of the international community led the Dutch Government to review its policy. In a document called “Dutch Drug Policy in the Years to Come - continuity and change”, Dutch authorities acknowledged that “drug use and everything associated with it

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19 50% of heroin seized in France come from the Netherlands (1994)

20 Cited in J.-P. Chenaux, *La drogue et l'Etat Dealer*, Etudes et enquêtes, Berne, 1995

21 INCB Report for 1995, United Nations Publications, E/INCB/1995/1, sales No E.96.XI.1

have given rise to great social and administrative problems”. While continuing to plea for the policy of separation of markets, they decided to close half of the existing coffee-shops, to limit to 5 grams the maximum quantity of cannabis tolerated per person, and more generally to “contain the nuisance drug use causes to society”.

#### *Legalization and objectives of drug control.*

The legalization debate has become so emotional that people tend to forget that behind any drug control policy, there should be only one ultimate objective: to suppress drug abuse or at least to limit the number of drug abusers. Unfortunately, the legalization debate(s) are following many other purposes: some argue on the best solutions to ruin drug traffickers or limit the harmful consequences of drug abuse, other debate on the danger or absence of danger of the use of some substance, the rights of individuals to use the drug of their choice, etc. Few only try to find the right answer to the right question: what is the best way to prevent youngsters from using drugs? If one analyses the pro and con arguments in the light of this fundamental question, many proposals or assertions appear then to be totally out of purpose. Every proposal should be scrutinized through its possible/probable impact on drug abuse. It is not always easy to have a clear idea as far as cannabis is concern: surveys of the legalization experiences of cannabis in the United States did not evidence a significant impact on drug use<sup>22</sup> in many States which decriminalized the use of cannabis, except in Alaska. As far as “hard drugs” are concerned, the situation is of course much different, and one can expect that the increased availability of drugs will lead to a stronger demand, because of the dependance inferred by the use of such drugs.

## **2 The lack of consensus for a compelling drug control system**

Can we continue to rely on a system based on the willingness of States to enforce drug controls at the international level? The main weakness of the international machinery is the absence of coercive powers delegated to UN bodies to ensure a proper implementation of the conventions. Such a delegation of authority from the part of States is possible; it has been done within the framework of the anti-nuclear international control system, and more recently, within the framework of the Comprehensive Nuclear Test Ban Treaty. The International Atomic energy Agency has a corps of inspectors who are empowered to visit every State party, check its nuclear plants and investigate on any case of diversion of nuclear material at the international level. The newly established Comprehensive Nuclear Test Ban Treaty Organization (CTBTO) is installing technologies to detect in every Member State possible nuclear explosions. At the diplomatic level, there is *a priori* no problem as well; the commitment to fight against the scourge of drug abuse and trafficking has

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<sup>22</sup> Eric W. Single, *The impact of Marijuana Decriminalization: An Update*, Journal of Health Policy, Winter 1989.

been repeatedly claimed by all nations in all international conferences on this issue; the international conventions have been signed by an overwhelming majority of the UN Member States (160/185 for the 1961 Convention). Nobody objects the need for a more efficient drug control scheme and proposals are made from time to time to take more coercive measures. Recently, the President of Colombia proposed that an international tribunal for drug and money laundering offences be established under the auspices of the United Nations. The US President Bill Clinton proposed to establish a black list of States which are involved in money laundering, in a view to exclude them from international trade and financial markets.

The problem arises when it comes to adopt practical measures at the international level. States are as determined to accept powerful measures as to kill any initiative that would restrain or limit their sovereignty. In other words, all States agree on the need for forceful measures, as long as they apply to other States only.

The options to move from a conventional to an operational drug control system are twofold: the institution of a system of sanctions against States that would not apply, or violate, the convention-based system; or/and the creation of an international body to investigate, prosecute and sentence drug traffickers.

## **2.1 For an international tribunal for drug trafficking offences?**

It is symptomatic to notice that the Colombian proposal to institute an international tribunal for drug offences had absolutely no echo at the international level. Many States have been complaining about the behavior of Colombian Authorities, which are openly -and sometimes unjustly- accused to collaborate with drug traffickers, even though recent legislative measures<sup>23</sup> showed that the Government is now genuinely committed to address forcefully the drug trafficking problem. In the past, and in particular during the “war on drugs” period, it was proposed in western countries to take military measures on the Colombian soil, by international forces or even by bilateral forces, to fight against trafficking and eradicate illicit crops. Now that the Colombian Government suggests to the international community to help them arrest and prosecute international drug traffickers, even on their territory, the rest of the international community seems to be very prudent, not to say reluctant, to do it. No need to say why: there is a major difference between the two situations. The proposal for an international tribunal would apply also for drug traffickers who are located in other countries, and not only in Colombia.

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<sup>23</sup> Penalties for drug trafficking were increased by law NO 365 of 1997, and the legal possibilities for sentenced person to benefit of reduced penalties, which were introduced at the time of the negotiated arrest of Pablo Escobar, chief of the Medellin cartel, have been suppressed. A new system of confiscation of assets, along the line with the American *in rem* action has been introduced and adopted by the Congress (law 333 of 19 December 1996). The Government recently proposed to envisage a modification of the constitution to enable the extradition of nationals (although contrary to *civil-law* principles)

There are multiple arguments pleading for the institution of such a body. Drug crime is international by nature, as discussed above. In most cases, the various elements of the offence have been committed in different countries, and national legislative provisions do not give jurisdiction to prosecute offences which have been committed abroad, and when only one element of the offence has been committed on the national territory. Extradition and mutual assistance procedures are obviously not adapted to quickly and efficiently permit the investigations and arrests in drug trafficking cases. Criminal assets are usually disseminated worldwide by drug traffickers, first for investment purposes, but also to prevent their confiscation (traffickers know exactly the weaknesses of the international penal law). But States are also facing tremendous difficulties to prosecute at the national level. Apart from the difficulties to gather evidence of the offences, States are confronted to the attempts made by traffickers to impeach justice bodies to carry out their duties through threat, blackmail, terrorism or assassination. The Colombian Government instituted a series of measures to ensure secrecy of the identity of judges, following periodical assassination of judges and prosecutors in charge of drug cases: Special drug Courts<sup>24</sup> are now equipped with tinted windows, electronic deformation of voice and various equipments to protect judges and witnesses. More and more States, like Italy, are establishing witness protection programmes and witness protection laws to try and solve the situation of witnesses threatened by traffickers. In this context, an international penal court to try drug traffickers would take drug cases out of their national context and avoid that kind of situation, and would solve all problems linked with the difficult execution of mutual legal assistance between States, as well as those linked to extradition rules. It would imply the setting up of international teams of investigators who would relay, at the international level, the action of national law enforcement services.

## 2.2 Sanctioning “bad” States

By virtue of the Foreign Assistance Act of 1961<sup>25</sup>, the United States Government instituted a rule by which bilateral assistance and cooperation to foreign countries would be subordinated to a strict compliance to international drug control efforts and the implementation of the conventions. Every year, on the suggestion of the Department of State’s Bureau for International Narcotics and Law Enforcement Affairs, a list of “major illicit drug-producing or drug-transit countries” is updated and published. In March of the following year, the US President certifies which of these countries have “fully cooperated with the United States, or taken adequate steps on their own, to achieve full compliance with the goals and objectives of the of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances”. Those which are denied certification cannot benefit of US bilateral assistance.

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<sup>24</sup> called “regional courts”, and which have jurisdiction in drug cases, terrorism and sequestration.

<sup>25</sup> “FAA”, 22 U.S.C. §2291.

The idea of a conditional bilateral aid is fair, especially if it relates to compliance to the efforts deployed by the international community to address the drug issue. It puts a lot of political pressure on concerned States and achieves some good results. After some years of experience, it appears however that it has three main weaknesses: it is bilateral, it is political, and it is American.

- American: the idea is not to distribute good or bad marks to States which fought properly against drugs, but to States which fought against drugs *entering on the American territory*. Therefore, States which are traditional suppliers of drugs for the USA are mainly concerned, and the other countries could continue to be strongly involved in drug trafficking and be considered as respectable States under the American law.

- bilateral: Although the release of “certification” and “decertification” notices have tremendous media echo worldwide, it has little impact at the international level as it concerns bilateral relations between two States. It does not of course bind other States, which can -and do- continue bilateral assistance, and has no official recognition among the international community.

- political: the issuance of the certificates is not made in the vacuum, but takes more and more into consideration the overall status of economic and political relations between the USA and the concerned country. The political tensions relayed by medias between the Colombian President and the US Government were not absent when “decertification” was delivered to Colombia for the second time in 1997, despite the legislative efforts and law enforcement achievements against the Cali Cartel undertaken the year before. At the same time, Mexico was delivered a “good mark” whereas the Head of the drug enforcement administration was arrested for corruption and conspiracy with drug traffickers... To enable this subjective approach of certification, the law provides that, when a country does not meet the standard set out to be granted certification, it can be however certified on the ground that “vital national interests of the United States require it”<sup>26</sup>. It is a pragmatic point of view, but it obviously weakens the impact of the certification scheme...

The issue there is to know whether the American certification mechanism should be taken over by an international body. It would certainly give more impact to certification or denial of certification, and avoid the political misuse of the system. It would also gain in credibility, but this implies that the task is undertaken by an independent body and is not, for obvious reasons, the result of negotiations between States in an international forum. The only possible organ that could be empowered to do it is the International Narcotics Control Board. Such a mandate is actually close to the one given by the conventions to monitor the world situation and address to States (even when not parties to the conventions) the necessary remarks on compliance to the international system. The proposal was made during the 39th

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<sup>26</sup> F.A.A. § 490 (b)(1)(B)

session of the Commission on Narcotic Drugs, in 1996, by the Colombian delegation, upset of the constant and somehow unjustified attacks by the Americans. Such a proposal was obviously strongly opposed ... by the US delegation, and the conflict was solved through a pale resolution adopted at that session and acceptable by both parties, by which States acknowledged that “the International Narcotics Control Board is the competent independent international authority, as specified in the United Nations Drug Control Conventions, for the evaluation, in an objective and balanced manner, of the efforts of States to facilitate the consolidation of a worldwide policy on drug control and the development of effective international cooperation”<sup>27</sup>.

### 3 Strategies for the future

#### *A long term and balanced strategy*

Balancing between policy of good intentions and search for miracle solutions, the international community is unable to have a clear vision of what should the endeavor for the future. Many things have been tried, from legalization experiences to “war on drugs”, coffee-shops, harm reduction policies, zero-tolerance policies, negotiations with traffickers, like with the Colombian Medellin Cartel in the 1980s, alternative development, crop substitution, forced eradication, separation of markets of “hard” drugs and “soft” drugs, but nothing proved clearly to be a possible alternative to the existing international drug control policy. The reason is that legislators are looking for short-term options, none of which really addressing the root problem: why people are taking drugs? Many think that by eliminating the product, they will eliminate the cause of drug abuse. Other think that the product is attractive only because it is prohibited, and abolishing prohibition would abolish the cause of the problem. But few only believe that the root cause is not necessarily the substance itself. And if they were right?

Taking the risk of a tautology, we think that drug abuse is a complex and multifaceted problem, touching on the economic, social, cultural, educational and political environment, and still a medical, chemical, and psychological enigma. A balanced policy must address all these factors, and include development, education, prevention, health care, social care, and repression efforts, and take into account the time dimension of the problem: drug abuse is a recurrent scourge, which come and go under pressure of the above mentioned environment<sup>28</sup>. No policy can have a direct and definitive impact on the problem -men never succeeded in controlling sea tides-, but can, on the long run, inflect its amplitude and frequency.

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<sup>27</sup> Commission on Narcotic Drugs, 39th Session, Draft resolution No 5 for consideration of the Economic and Social Council (ECOSOC).

<sup>28</sup> See David Musto, *Perception and Regulation of Drug Use: the Rise and Fall of the Tide*, *Annals of Internal Medicine*, sept. 1995, vol. 123, No 6.

New international drug control strategies should also:

- better take into account new challenges
- equip the international community with operational tools.

#### *Taking into account new challenges*

The drug abuse and traffic phenomenon will be affected in the next future by four new factors:

- the emergence of new, powerful and accessible drugs: the amphetamine-type stimulants. As discussed above, this new challenge will force to a completely new assessment of drug abuse and trafficking, and new approach to drug control.
- the “cyber-environment” in which drug traffickers have already found some room for their illegal business, and drug users for sharing and promoting their experiences.
- the standardization of drug-taking, be they licit or illicit drugs, and the relevant difficulty to promote health-safe behaviors.
- the new design, structure, and networking of trans-national organized crime, in particular with the emergence of a powerful Eastern Europe component of it.

More than ever, the international community must take the appropriate steps to identify, update and increase knowledge about drug new threats, to find relevant responses, to anticipate new trends, and to equip itself with adapted means.

#### *Building up an operational machinery at the international level*

The main focus of international drug control has always been, since the signature of the 1912 convention, to control the licit trade of drugs. The approach was to ensure that production of drugs serves only the pharmaceutical needs, and that supply for other purposes be therefore discontinued. Such a policy was perfectly valid at a time when the drug market was completely open and free, and the only realistic way to reduce drug abuse was to reduce production. It was based on a mutually agreed implementation by those States which had wished and signed the convention, and therefore did not contain any compelling provisions. The same principles were applied to the 1961 Single Convention, which updated the international controls without re-orienting the strategy. The contribution of the 1936 convention and, on second half of the century, the 1988 convention, was to address the illicit drug production and trade that had emerged as a consequence of that policy, without questioning it.

The “licit control” policy was completely successful, and the licit production of drugs by States is now strictly limited to the only medical needs. But the problem today is not any more the same issue. Drug trafficking cannot be addressed the same way as the free drug market problem was addressed at the beginning of the century. Drug traffickers have perfectly understood the weaknesses of the international control mechanisms, and make use of it. While enforcement agencies put a lot of efforts in implementing the “licit control” policy, they operate in a totally parallel market, where the provisions of the existing treaties, except the 1988 convention to a certain extent, have no relevance. A new international policy should now be elaborated, building on achievements and failures of the current one, and on the new challenges to face. The trans-national nature of drug trafficking and organized crime should be at the heart of the new policy, which should aim at more operational and coercive measures against criminal organizations, putting into action united international efforts rather than isolated national enforcement.

The need for operational mandates for the UN bodies has been described above. It requires the endorsement by States of an autonomous, forceful and compelling international drug control policy.

New means provided to the UN agencies to combat drug trafficking could include:

- a considerable increase in the development and provision of research technologies and tools, to have a clearer picture of the drug production situation, a better knowledge of human and social consequences of drug abuse, and an constantly up-to-date image of drug trafficking trends, techniques and routes.
- the strengthening of the UN laboratory on drugs, which should become the scientific reference on drugs analysis, studies on craving mechanisms, and physiological short-term and long-term effects of drugs.
- the setting up of a multi-disciplinary research and analysis team, able to analyze all possible scenarios for the future, in terms of foreseeable trends, and of possible consequences of policy options, to provide States with facts for the determination of domestic and international strategy.
- the institution of an international intelligence agency against drug trafficking and money laundering;
- the establishment of an international criminal offence of drug trafficking and related offences;
- the setting up of a team of inspectors, empowered to monitor country drug situation, under the supervision of the INCB;

- the setting up of an international team of investigators, with jurisdiction to operate in every party to the UN drug conventions
- the institution of an international criminal court for drug offences and organized crime offences.