

IV. Prevention of chemical diversion beyond regulatory controls: the role of law enforcement

181. In its 2014 report on precursors, INCB provided a critical review and a strategic outlook of precursor control as a shared responsibility.²⁹ At that time, INCB identified preventive actions (in the form of industry cooperation and domestic controls) and law enforcement actions (stopping or seizing shipments of chemicals destined for illicit purposes) as central components of precursor control strategies that would be fit for the future. In its 2015 report on precursors, INCB elaborated on the merits and potential of public-private partnerships in preventing the diversion of chemicals. The present chapter aims at exploring the role of law enforcement actions in chemical diversion prevention and its interaction with regulatory controls.

Legal framework

182. The concept of precursor control as a complementary element of international drug control efforts was introduced some 25 years ago, by article 12 of the 1988 Convention. Because the substances that can be used in illicit drug manufacture have legitimate uses and are traded extensively and legitimately for those purposes, trade monitoring is the centrepiece of the international precursor control system.

183. In terms of law enforcement action, the 1988 Convention requires Governments to provide for the seizure of any substance in Table I or Table II if there is sufficient evidence that it is for use in the illicit manufacture of a narcotic drug or psychotropic substance (art. 12, para. 9 (b)). Governments are also obliged to provide INCB annually with the aggregated amounts of the seized substances and their origin, when known; information on any substance not included in Table I or II that has been identified as having been used or as being intended for use in the illicit manufacture of drugs or precursors; and information on methods of diversion and illicit manufacture (art. 12, para. 12).

184. For Governments to be able to comply with those obligations, they must be in a position to gather and consolidate the relevant information at the national level and hence have in place domestic legislation that provides for the seizure of substances listed in Tables I and II of the 1988 Convention as well as of substances not included in those tables when there is evidence that they are intended for use in

illicit drug manufacture. In order to be able to have a comprehensive national situation report, Governments must also have in place a mechanism that enables full cooperation and information-sharing between all agencies responsible for precursor control. There is, however, a lack of national cooperation and coordination in many countries. In order to be effective, Governments must also be committed to precursor control in its entirety, that is, including not only regulatory elements but also law enforcement and investigative components. And, for the latter components to be effective, Governments must provide their enforcement authorities with the legal framework to take appropriate action, including the seizure of chemicals.

185. The international framework to establish a number of activities as criminal offences under domestic law is provided for in article 3, paragraph 1, of the 1988 Convention. With regard to chemical diversion control, the establishment of offences of manufacture, transport or distribution, knowing that they are to be used for illicit purposes, is mandatory on all parties (art. 3, para. 1 (a)(iv)), while the Convention leaves some latitude for the criminalization of mere possession of listed precursors (art. 3, para. 1 (c)(ii)).³⁰ In both cases, the Convention does not only refer to substances listed in Tables I and II but covers also equipment and materials. The provisions to establish criminal offences in article 3 therefore form a counterpart to the regulatory provisions of articles 12 and 13.

186. Nevertheless, INCB has noted that national authorities are looking for guidance, especially to address chemicals not under international control (“non-scheduled chemicals”). INCB has therefore compiled the provisions of the 1988 Convention that may be applied to address non-scheduled and substitute chemicals as part of its information package on the control of precursors, which is available for competent national authorities at the INCB secure web page. The compilation also includes the complementary measures requested by relevant resolutions of the Commission on Narcotic Drugs, the Economic and Social Council and the General Assembly.

²⁹ E/INCB/2014/4, paras. 7-35.

³⁰ The 1988 Convention also provides for the criminalization of the organization, management or financing of any of these offences, and to participation in, association or conspiracy to commit, attempts to commit, and facilitating the commission of any of the offences established in accordance with article 3 (art. 3, para. 1 (a)(v) and (c)(iv)).

Precursor law enforcement in practice

187. When a proposed shipment (through PEN Online) or actual shipment of precursors is suspended or stopped, a diversion attempt is discovered, a seizure is made, or an illicit laboratory is dismantled, the collection and timely dissemination of all information collected and intelligence generated, is critical. This will prepare the grounds for an effective follow-up investigation. The goal of such an investigation is to determine the source of the diverted precursors, the point and method of diversion, the method and route of transport and the criminal organizations involved in those activities. Competent national authorities are then in a position to shut down the particular route or method and prevent similar diversion attempts in the future. When the findings about diversions and attempted diversions are shared globally, alerting authorities worldwide, it helps to prevent future diversions that use the same or similar modus operandi.

188. Seizures of precursors, the stopping of shipments and the identification of cases of diversions and attempted diversions are therefore the beginning of a process — not the end. While seizure and other statistics may be a reflection of the level of law enforcement or regulatory activity and help to prevent a particular consignment of chemicals from reaching illicit laboratories, only complete and prompt follow-up investigations which lead to the discovery of relevant information will provide the means to address the gaps and weaknesses in control systems which, when closed, will ensure the long-lasting denial to traffickers of the chemicals they require.

189. The timely sharing of information on any chemical that is suspected of being used or that has actually been used in illicit drug manufacture, or information on attempts to divert a chemical into illicit channels, is critical to understanding, and addressing, new developments in the diversion of precursor chemicals and their use in illicit drug manufacture.

190. The systematic sharing of intelligence about seizures or suspected transactions also helps to build up evidence on the sources of supply and the methods of diversion of non-scheduled chemicals. This in turn enables the authorities of the alleged source countries to take action in the spirit of shared responsibility.³¹ Significant reductions in seizures at Mexican and Central American ports of non-scheduled

derivatives of phenylacetic acid, which can be used as pre-precursors of P-2-P (see Operation Phenylacetic Acid and its Derivatives (Operation PAAD), para. 194, below) and of methylamine (see Operation MMA, para. 194, below), provide evidence of the effectiveness of measures taken to limit exports of these chemicals to risk countries.

191. Diversion may happen at all stages of the distribution chain. Chemical diversion may affect all countries in which chemicals are manufactured, exported, imported, transited and used.

192. There is a shared responsibility to ensure that each and every national precursor control system is fit for its purpose and does not present a target for traffickers. There is also a need for full cooperation and willingness to investigate and share the results of law enforcement activity so as to develop a case and eventually identify the point of diversion, bring to justice those behind the diversion and prevent future diversions. Above all, the ultimate goal of precursor control remains effective diversion prevention, whereas seizures are, in fact, only indicators of known diversions that have been successful.

Role of the International Narcotics Control Board

193. To advance the law enforcement component of chemical diversion control in a practical manner, INCB has gathered focal points from 134 countries under Project Prism (focusing on synthetic drug precursors) and from 92 countries under Project Cohesion (focusing on precursors of cocaine and heroin). The two projects are steered by the Precursors Task Force with a view to soliciting direct, practical collaboration among nominated focal points, on an ongoing, ad hoc basis, on specific precursor aspects for limited periods of time, that is, during time-bound operations.

194. Recent Project Prism and Project Cohesion activities have helped to shed light on the use of a number of non-scheduled chemicals in illicit drug manufacture. These activities included a survey of the types of non-scheduled chemicals used for illicit drug manufacture (in 2014), and two operations focusing on esters and other non-scheduled derivatives of phenylacetic acid (Operation PAAD, in 2011) and on methylamine (Operation MMA, in 2015). Two additional operations focused on intelligence gaps in Africa with respect to ephedrine and pseudoephedrine (Operation Ephedrine and Pseudoephedrine Intelligence Gaps in Africa (Operation EPIG), in 2012) and on intelligence gaps related to acetic anhydride and glacial acetic acid, a

³¹ Often, the chemical in question and the drug manufactured illicitly from it do not affect the source country's domestic market, and any action to prevent those chemicals from reaching clandestine laboratories elsewhere is therefore taken in the spirit of shared responsibility.

chemical that may be used to disguise smuggled acetic anhydride (Operation Eagle Eye, in 2013 and 2014).

195. Operation Eagle Eye was conducted in two phases: the first phase was collecting information on domestic movements of acetic anhydride and reviewing the legitimacy of domestic commerce in, and end use of, the substance, as well as the bona fides of companies involved, with a view to developing dedicated risk profiles; the second phase consisted of the identification and interdiction of trafficking of acetic anhydride to Afghanistan, inter alia, through the application of the risk profiles developed in the first phase.

196. It is clear from the above-mentioned examples that regulatory controls and trade monitoring cannot be separated from law enforcement action, as one feeds, and benefits from, the other. Precursor control is therefore a continuum which begins with a proper understanding of the legitimate market and the operators in that market, and up-to-date knowledge of trafficking trends and modi operandi, and which extends to the effective use of backtracking investigations, controlled or monitored deliveries, financial investigations, and other enforcement tools. Central to all this is the collection, sharing and utilization of intelligence. The Precursors Task Force, through INCB, operates as the global focal point for the exchange of such information and the coordination of international operational activities that cut across regulatory and law enforcement components of precursor control.

197. Cooperation with industry plays a critical role in the early identification of suspicious inquiries, orders and transactions based on unusual trade patterns or patterns incompatible with the inquirer's business model. The information from such industry alerts, when it is collated at the global level, can help to establish new global trends for the chemicals, including non-scheduled chemicals, in the focus of traffickers at a given time. That information subsequently feeds back into the work of national law enforcement authorities. More than 99.9 per cent of trade in chemicals is legitimate, and a suspicious inquiry may constitute an important piece of intelligence that can help to prevent a chemical from being used in illicit drug manufacture, even if there is not yet any criminal activity involved at that stage.

198. The participants in Project Prism and Project Cohesion also benefit from regular alerts that draw attention to diversion cases or new developments in terms of substances, modi operandi or trafficking trends, including companies involved in suspicious or illicit transactions. INCB facilitates the exchange of such intelligence at the global level, taking the necessary precautions to ensure there is no inappropriate condemnation of industries or countries that may have been the target of traffickers.

199. Since its launch in March 2012, PICS has become an important tool for participating Governments to communicate precursor information in real time with a view to launching joint investigations. As it is able to register users from multiple agencies, PICS also contributes to enhancing inter-agency communication at the national level. INCB also facilitates precursor case meetings between representatives of the countries concerned in order to aid intelligence-sharing and cooperation in backtracking investigations.

200. Based on information available, INCB facilitates international operational cooperation and shares strategic findings globally. This also includes information on legitimate uses, estimated annual legitimate requirements, non-scheduled substances that have been used in illicit manufacture of drugs or precursors, and information gained from stopped shipments and on thefts.

V. Conclusions

201. The present chapter contains broad conclusions and recommendations to address challenges to, and existing gaps in, the international precursor control system that have implications at the global level. A summary of the more detailed, technical recommendations, a number of which have already been made in previous years and are still valid, is available at the Board's website (www.incb.org).

Levels of international cooperation, communication and information-sharing between Governments and with INCB and the Precursors Task Force

202. Communication with some Governments remains problematic. In some cases, contact information for competent national authorities has never been provided or is outdated, inquiries about potentially suspicious transactions or seizures go unanswered, and the rate of participation and information exchange with INCB and the Precursors Task Force is insufficient. However, there are also encouraging examples of communication, such as when the liaison officers of Task Force members actively engage with the authorities of their host countries in the framework of Project Prism and Project Cohesion. **INCB commends such efforts and encourages all Governments to improve operational cooperation at all levels. INCB also wishes to call on the Precursors Task Force members that are representatives of relevant international and regional organizations, such as**