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Police and Courts Need to Focus on Top Drug Dealers, Says International Narcotics Control Board

Drug law enforcement in 1997 faces a major challenge: while drug trafficking has gone global, police and customs agencies can operate only under their respective jurisdictions. The organizers of a criminal network may be in one country, the producers in a second and the distributors in a third, with the proceeds of crime being laundered in a fourth. Thus, catching drug producers or dealers in one country or another is like cutting of some branches of a tree while leaving the roots intact.

Under international law, country A cannot enforce its law within the territory of country B without the express consent of the latter.

How countries can overcome this obstacle in order to destroy the whole structure of a trafficking network and seize the proceeds of crime is a key focus of this year's Report of the International Narcotics Control Board (INCB). In a chapter reviewing the strengths and weaknesses of the world's criminal justice systems in the fight against drugs, the Board also looks at how police and court systems might be improved to handle more effectively drug crime within their jurisdictions.

The Board finds many law enforcement systems overwhelmed by the dimensions of today's world-wide drug abuse epidemic. It notes that with the expansion of production, trafficking and abuse into regions not previously affected many police agencies and courts are flooded with cases, particularly involving low-level offenders, leaving little or no resources for authorities to go after higher-echelon traffickers.

When drug kingpins go unpunished, the Report points out, public confidence in the criminal justice system is undermined.

The Board sees drug-related corruption, bribery and intimidation as threatening police, judicial officers, politicians, tax authorities and customs officers, through the "immense economic power" of drug traffickers. The Report urges that corruption be recognized as a problem before Governments introduce countermeasures and safeguards, and that the conditions of service of public officeholders be substantially improved.

It also notes the obstacles posed to drug law enforcement by such recent changes as reduced border controls, advances in communications and transportation and the development of high-yield agricultural methods. At the same time, the Board sees the global rise in drug-related seizures (opiate

seizures increased fivefold and cocaine seizures tenfold since 1980), arrests and convictions as indicators, not only of growth in the world's drug problem, but also of better law enforcement and training.

The Board suggests that countries set a higher priority on apprehending and punishing high-level drug criminals. For persons convicted of possessing small amounts of illicit drugs, alternatives to prison sentences should be considered.

Also recommended are stepped up mutual legal assistance among States in investigations, prosecutions, extraditions and judicial proceedings; initiatives at the international level, such as joint task forces to combat transnational crime syndicates; and channelling of seized criminal proceeds to help finance international drug control. Countries are urged to make more use of joint teams to conduct cooperative drug control investigations.

Regarding ongoing United Nations efforts to establish an international criminal court, the Board says that if such an institution is set up, it would like to see international drug trafficking included as an international crime under the new court's jurisdiction.

Areas identified as needing improvement include:

-- **Extradition.** The time has come, says the Board, for States which continue to refuse to extradite their own nationals to consider such alternatives as surrendering the accused person to the requesting country for trial on the condition that he or she be returned to serve any sentence. States are advised that in the absence of suitable agreements, the 1988 United Nations drug control treaty can itself serve as a basis for extradition.

-- **Immunity of fiscal offenders.** Despite their treaty obligation to penalize money launderers, many States continue to exclude tax and fiscal offences from coverage by extradition regimes. The Board argues that because cutting off money laundering is essential to shutting down the drug cartels, fiscal officers should no longer enjoy immunity from extradition.

-- **Power of "black money".** The investment by drug traffickers into otherwise legitimate businesses gives those enterprises an unfair advantage over competitors who play by the rules. The Board wants States to apply the provisions of the 1988 Convention by setting up procedures to monitor financial transactions and seize ill-gotten gains.

-- **Lack of resources for criminal justice.** The Board suggests that States within a region or subregion consider establishing a regional court to try major drug cases and ensure access for participating countries to at least one high-security prison capable of holding a drug kingpin. Smaller jurisdictions might be offered the option of transferring drug criminals to States that are better able to deal with them.

-- **Obstacles to apprehending large-scale drug dealers.** The Board says that in order to go after the organizers of drug trafficking organizations, it is vital that police forces adopt a more international outlook and that they become more able to work comfortably with their counterparts in other countries.

-- **"Reservations" to essential treaty provisions.** The Board questions the validity of certain far-reaching reservations made last year by Lebanon and the Philippines to anti-money-laundering provisions of the 1988 Convention, which it says go to the core of the Convention itself.

-- **Too-high standard of proof.** It is the Board's view that Governments should consider making convicted drug criminals instead of prosecutors responsible for proving the origin of goods or funds liable to confiscation. Such a reversal of the prevailing principle would make it easier to confiscate property by requiring a convicted offender to substantiate that the funds money or goods in question had *not* been derived from drug trafficking.

-- **Overly complicated evidentiary requirements.** One reason most countries arrest more people for possession of illicit drugs than for drug trafficking is that possession is simpler to prove in court. The Board would like to see the rules of evidence simplified in certain cases to help keep drug traffickers from going free. The Board also calls for legislation to allow for the prosecution of persons organizing or supporting drug trafficking groups who do not come themselves into direct contact with the drugs.

-- **Reluctance of witnesses.** The Board would like to see more countries adopt laws to encourage witnesses to give evidence, including witness protection programmes and monetary rewards.

-- **Disproportionate penalties.** The Board expresses "great concern" at the short sentences served by some major drug traffickers, often as a result of plea agreements or amnesties. The Board points out that some higher-level offenders are serving far less time than the average sentences imposed in many countries on small-time drug dealers.

-- **Overcrowding in prisons.** Both the high number of drug-related convictions and an increasing length of prison sentences can adversely affect prison conditions, says the Board. Increased availability of drugs in prisons, the related risk of HIV and other infections, and the exposure of young offenders to the "school of crime" in prison are cited as "side effects of law enforcement and criminal justice policies that require close consideration". The Board invites States to consider dealing with low-level offences via shorter sentences and non-custodial alternatives.

-- **Lack of rehabilitation for drug abusers.** The Board asks that States consider offering medical, psychological and social treatment programmes to some drug-dependent offenders. Drug treatment, says the Board, can be a cost-effective alternative to imprisonment. And, arrest and conviction may serve to motivate an abuser to undergo treatment before becoming more deeply involved in criminality. At the same time, the Board stresses that *in no way* is it suggesting that drug-related offences be decriminalized.

-- **Loopholes on the high seas.** In calling for measures to prevent illicit drug trafficking by sea, the Board sees a need to amend the 1982 United Nations Convention on the Law of the Sea to permit the boarding of a foreign ship suspected of being engaged in drug trafficking. Article 110 currently mentions only piracy, slave trade, unauthorized broadcasts and flying the wrong national flag. "Today these kinds of activities are no more relevant and dangerous than illicit drug trafficking", the current Report states.

The Report cites a number of examples of how Governments are diverting low-level drug offenders from conviction and imprisonment:

-- In France, completion of a prescribed course of treatment can provide grounds for not prosecuting a drug offence; alternatively, addicts may present volunteer anonymously for treatment.

-- In Malaysia, if an arrestee tests positive for drug dependency, a magistrate may order him or her to attend a rehabilitation centre under strict conditions.

-- In Portugal and Cape Verde, when drug-dependent offenders sentenced for certain drug crimes voluntarily seek treatment, the court may suspend the punishment; if the addict fails to take the required treatment, the suspended punishment may be imposed.

-- Some states of the United States have established drug courts to cope with the large number of minor drug offenders entering the criminal justice system. The special courts, while retaining the power to deal with offenders, send those charged with relatively minor offences to education, treatment or vocational assistance programmes. At the end of the programme, the person could have the charge dismissed or could be placed on probation.

-- In Venezuela, a person possessing a small quantity of an illicit drug for personal use, but not having been arrested for any crime, is tested in a prevention centre. If found to be an addict, he or she must undergo compulsory treatment.

The Board calls on all Governments to develop strategies and measures to make their criminal justice systems more efficient in combating drug crime and suggests that the General Assembly's forthcoming special session on drugs in 1998 could serve as an occasion to determine principles relating to good management of criminal justice systems.

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