

Recent Developments in Combating Drugs Trafficking

DRUG ABUSE AND ILLICIT TRAFFICKING — A COMMONWEALTH INITIATIVE

A memorandum by the Commonwealth Secretariat and a paper by
Dr S K Chatterjee of The City of London Polytechnic

The attached paper consists of a brief discussion of the main issues in combating illicit trafficking in drugs. Dr Chatterjee then makes certain proposals for a Commonwealth initiative against the assets of such criminals. At their 1983 Meeting, Commonwealth Law Ministers stated in their communique that:

"19. There was compelling evidence that one of the most effective methods of attacking serious crime was through the seizure of profits derived from crime. Judicial forfeiture and confiscation were particularly appropriate in such crimes as drugs trafficking and fraud. However, such orders could give rise to constitutional questions stemming from protected rights to property and where the proceeds had been removed from the jurisdictions in which the offence had been committed. Mechanisms for tracing assets which depended on co-operation by the offender had been found wanting by those who had introduced them. Alternative mechanisms would need to be cost effective."

Commonwealth Heads of Government meeting in Nassau in October 1985 stated in their communique that:

"66. Heads of Government were deeply concerned at the rising incidence of drug abuse and illicit drug trafficking that was seriously threatening the social fabric and security of many countries. They recognised that it called for a wide range of responses, including urgent attention to problems affecting young persons and to the rehabilitation of its victims. They agreed that governments should co-operate, both to counter the international traffic in illicit drugs and to deny to those convicted of drug trafficking the proceeds of their crime, and looked to the early implementation of a scheme for enhanced co-operation between Commonwealth countries in this regard.

"67. Heads of Government were also disturbed by the extent to which the profits made by drug traffickers were used in criminal and subversive activities often across international borders. They invited Commonwealth Law Ministers to explore measures to counter this trend. While supporting the work of existing international organisations in the field of narcotic control, Heads of Government welcomed the proposal of the United Nations Secretary-General for the convening of an international conference at a high political level in 1987 to deal with all aspects of drug abuse and trafficking and expressed the hope that action would be expedited on the related proposed new Convention.

Ministers may wish to consider Dr Chatterjee's proposals in conjunction with the paper prepared by Professor David McClean LMM(86)12.

DRUG ABUSE AND ILLICIT TRAFFICKING - COMMONWEALTH INITIATIVE

A paper prepared by Dr S K Chatterjee, Senior Lecturer in Law,
City of London Polytechnic

THE PROBLEM

There can be no need to emphasise the importance that combatting illicit trafficking in narcotic drugs, and more recently psychotropic substances, has been accorded at both national and international levels. It here suffices to identify the broad areas of special concern recognised as emanating directly and indirectly from this evil, as well as the illegal and uncontrolled production and manufacture of these substances:

- (i) the impact of illicit production and trafficking on the political, social and economic stability and security of societies;
- (ii) the recognition that trafficking in such substances is a primary activity of organised crime, with proven and in many instances substantial connections with other criminal and terrorist activities;
- (iii) the direct and indirect impact on economic efficiency, integrity and stability of the vast, and often 'unaccountable' proceeds of this illicit traffic;
- (iv) the strain on resources involved in combatting illicit trafficking and in dealing with offenders;
- (v) the problems associated with treatment of drug addicts;
- (vi) the terrible and indefensible waste that this activity generates in terms of social and human terms.

It is now appropriate to briefly discuss these perceived areas of special concern in a little more detail.

(1) Political, Social and Economic Destabilisation

The Draft Convention Against Traffic in Narcotic Drugs and Psychotropic Substances and Related Activities (1984), consequential upon the United Nations General Assembly Resolution on the Control of Drug Trafficking, has summarised the impact of illicit trafficking in drugs on societies. It states, inter alia, that 'illicit traffic in and use of narcotic drugs and psychotropic substance transcend the sphere of the physical and moral well-being of mankind and are detrimental to the identity and integration of peoples, since they constitute a factor of dependence and corruption which undermines their spiritual, cultural, social and economic values, and that such problems must be dealt with within the framework of international co-operation and global geopolitics, since drugs are goods used to weaken the legislative economies of the countries and to undermine their sovereignty'.¹

Commonwealth Heads of Government at their meeting in Nassau in October 1985 recognised the dangers in similar terms.² Other organisations, at an international level, such as the World Health Organisation and the International Criminal Police Organisation (Interpol) have also been equally perceptive in their recognition that in many instances it is the very security and sovereignty of states that is in jeopardy. It is sadly not difficult to identify states, involved in production, transit or consumption of this evil product, where the essential social and political fabric has been so undermined by corruption and other wholly anti-social aspects that its very existence as a sovereign state, entitled of international respect, becomes a matter for debate.

More recently, the grave dangers consequent on facilitating, either knowingly or recklessly, the operations of evil men peddling an evil product, through the 'washing' and transmission of the profit associated with this 'trade' has been recognised.³ The social and political perversion that states, often those least able to defend their integrity and reputations, risk by carelessly providing a facility for criminals and others associated with this illicit trade to launder and, thus, to some extent legitimise their illgotten gains, has been well documented in recent years.

(ii) Drug Trafficking as an enterprise of Organised Crime

Whilst it is axiomatic that not all organised crime is involved in illicit trafficking in narcotics and psychotropic substances, it is virtually the case that those that do engage in such activities can accurately be described as organised crime. Of course, it is wrong to sensationalise or over-estimate the seriousness and impact of organised crime both at the national and international level, and sort to isolate and minimise those areas of high risk. Naturally, illicit trafficking in contraband, and in particular in narcotics and other such substances, provides a most attractive 'investment'. The rewards are still disproportionate to any risk of disruption, and such factors as have contributed in some measure to an increased risk of discomfort or loss, have simply persuaded these criminal entrepreneurs to move higher up the 'illicit corporate hierarchy' or into merely financing the activity, leaving the higher risk aspects often to 'expendable' ethnic crime groups.

Given the resources, structure and modus operandi of modern organised crime and its essential ability to infiltrate the systems at all levels, in its aim to achieve the maximum degree of immunity and protection from law enforcement - and other competitors it is not surprising that few national law enforcement agencies are in a position to clearly see the true picture, let alone adequately combat it. Organised crime in the protection of its enterprise will corrupt, extort, penetrate and undermine competition - whether legitimate or illegitimate. There are states where this has occurred to a noticeable extent, and there are others where the results and influence of this form of criminality are only perceived to a lesser degree. The desire to obtain virtual immunity from prosecution and other forms of disruption has resulted in organised crime attempting to virtually take over the control of governments and subvert those very institutions that society has created to protect the integrity and well-being of its members.

Apart from the more obvious abuses of corruption and extortion the desire to 'legitimate', or at least obscure the illicit origin of its power - in other words its vast profits, has inevitably led organised crime directly into the financial and business infrastructure, so that through a process of penetration, subversion and outright extortion that system itself becomes tainted leading to loss of respect, confidence and efficiency. To this extent, those connected with combatting commercial crime and protecting the economic institutions of the state are directly in the fight against organised crime. It is no coincidence that the Commonwealth Secretariat's own Commercial Crime Unit has on a number of occasions specifically underlined this grave danger, as has the Secretariats of the United

Nations Conference on Trade and Development (UNCTAD), Customs Co-operation Council, International Criminal Police Organisation (Interpol) and International Chamber of Commerce. In this context the resolution dealing with organised crime of the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders should be specially noted.

Having regard to the nature of organised crime as a business, often a transnational and highly diversified business, it is clear that illicit trafficking in drugs will often be merely part of such an organisations activities. In other words, most organised crime groups engage in a host of potentially profitable operations, not only to spread the risk, but also to support and fund each other. The integration of diversified business is not, of course, a phenomenon confined to the world of illicit activity. Furthermore, to successfully operate in certain areas, or to 'launder' and maximise the return on such investments, it is often necessary for drug traffickers to resort to other forms of criminality, and in particular various forms of commercial and economic crime.

There is also unfortunately increasing evidence of organised crime involvement with terrorist type organisations throughout the world.⁴ There have been instances where in return for providing its expert services in 'laundering' money required for terrorist activities, or merely moving funds - secretly and safely through unaccountable channels, organised crime groups have sought the assistance of terrorist organisations in 'protecting' their propriety interests, reducing the burden of competition and in checking the more disturbing activities of law enforcement. On the other hand, terrorists organisations always concerned to secure and in particular store funds from relatively unaccountable sources, inevitably find traditional areas of organised crime business attractive as means of providing them with this finance. To this extent organised crime and terrorism are in competition, but it would be a forlorn and dangerous hope to think that this will substantially impede the effectiveness of either.

(iii) Organised Crime's Money

The estimates and 'guesstimates' of the money produced by illicit trafficking in narcotics and psychotropic substances are truly enormous. Suffice it to say that many experts, and some official agencies, have put the annual figure for the United States of America, far beyond the total national gross product of virtually every Commonwealth country and, indeed, a good proportion in aggregation. The incredible amounts involved in this illicit trade, and its related activities gives criminal organisations and their 'associates' the practical ability, should they wish, to penetrate and play havoc with the national economies or virtually every country in the world. Of course, rarely would it be advantageous for a particular group to assume such visibility, or to step beyond the 'immunity' that the present system affords to achieve the ultimate goal of simply enjoying the profit and securing a desired lifestyle.

According to the traditional, and in practical and pragmatic terms, accepted, process of legitimisation of these profits a very high proportion of this money will simply remain in some form or other in the relevant economy and operate in a manner not substantially different to other funds. However, a proportion - and no agency has ever felt able to do more than guess at what level, will be used for the maintenance and advancement of the criminal organisation, the funding and financing - often indirectly, of other criminal enterprises, the support of other organisations and activities with which those criminals are in 'sympathy' and the attainment of an acceptable degree of 'security' if not immunity through the corruption of politicians, officials and institutions. Even where this money is used to penetrate legitimate business, in the sense of merely amounting to some kind of direct investment in an otherwise unobjectionable activity, the implications for others competing in that activity, who will not enjoy the various 'privileges' of organised

criminals, are serious.⁵ Those who make their money through drug trafficking and arms trafficking are not likely to be as sensitised to the dictates of good business and the observance of general fiscal and other constraints within the business world as the ordinary and law abiding businessman. The implications for economic stability, integrity and efficiency should be obvious.

Apart from penetration and funding other criminal enterprises - through this pipeline of 'unaccountable' money, organised crime will generally need to 'wash' or 'launder' its illgotten gains. The devices that are employed for this are legion,⁶ but all have in common the importance of obscuring the original source, confusing ownership, confounding investigation and where possible ensuring the safety of and accessibility to, the money. Of course, it is common knowledge that so called tax havens and off-shore financial centres, often boasting some form of banking secrecy law or business confidentiality law which either in form or application can be assured to frustrate even the most dedicated, resourced and knowledgeable foreign investigator are often employed at some stage in the laundering process. Unfortunately, those jurisdictions, which invariably for wholly commendable reasons, provide offshore financial and other services, do not always realise the implications of allowing organised crime and other such groups to launder this money. In providing such a facility they are essentially condoning the very activity which generated the profit in the first place. Of course, many of these jurisdictions are well aware of the dangers. Most have taken steps to ensure that those setting up businesses, and in particular banks, within their territory are honourable. But there is no assurance that they will remain so or that they will not hand over control to persons who would never have been accepted in the first place.

However, it has to be admitted, as has been recognised specifically at the last two meetings of Attorneys-General and Senior Officials of Commonwealth Small States, that in reality there is little that can be done to assure the requisite degree of integrity without vastly increased international co-operation.⁷ Organised crime realising the plight that many developing countries find themselves in when they attempt to obtain necessary funds from, perhaps less usual sources, have stepped into the market, and offer funding to such countries at comparatively attractive rates. Of course, in the majority of cases the government concerned will be unaware that the funds with which it is building its schools and hospitals are a direct product of the misery caused by this illicit trade in drugs. However, whether that government is aware or not, the result is that the organised criminals will receive back principal and interest in a form which is practically unimpeachable. Unfortunately, given the greed and arrogance of these criminals, it is rarely the case that they will stop at simply 'investigating' in such a jurisdiction. Once the lines of communication, if not infiltration, have been established, it is relatively easy to penetrate more attractive areas of the state. Indeed, they are only protecting their investments.

(iv) Strain on national resources

Combating any abusive, or illicit activity, inevitably requires the deployment of resources at a local, national and occasionally at a regional or international level. In the field of drugs control, the expenditure of what are, and will always be a scarce resource, has traditionally, in most countries, been more generous than in other problem areas. Unfortunately, in the vast majority of jurisdictions this expenditure has not been well planned, the programmes that have developed have not always been well conceived and structured, and in the main it is the sad but usual story of 'too little too late'! A reactive stance, invariably stimulated by public and thus political concern, to a problem that has more or less assumed sensational proportions. There would appear to be widespread agreement that such resources, as are made available for enforcement in this context, could both at strategic as well as at tactical level be significantly better deployed. Whilst law enforcement agencies have inevitably to be concerned with obvious and immediate crime, it is

only recently that adequate attention has been given to combating this form of organised crime through the application of intelligence, financial investigations and integrated law enforcement techniques. At the international level, although the role of the General Secretariat of ICPO-Interpol must be commended, especially in regard to its Drugs Liaison Officer Scheme the level of resourcing is extremely limited. The Commercial Crime Unit of the Commonwealth Secretariat has, especially in the context of integrated intelligence and money tracing, developed a facility for international co-operation which certainly has considerable potential, but which at present is exceedingly limited in resources.

It is generally accepted that training of officers concerned with enforcement in regard to illicit trafficking in narcotics and psychotropic substances is of considerable importance. The United Nations has provided programmes for training since 1972, through a Central Training Unit for Law Enforcement Officers. In recent years the General Secretariat of ICPO-Interpol has worked closely with this Unit and a number of courses and workshops have been organised throughout the world. The Commonwealth Secretariat through the Commercial Crime Unit has itself, or in association with other agencies and national governments, initiated ad hoc training programmes for law enforcement officers in regard to the identification, tracing and forfeiture of property associated with organised crime and in particular illicit trafficking in narcotics. To date the Unit has held courses involving these issues in Malaysia, Singapore, Hong Kong and India. Of course, the general training mandate of the Unit is relevant, insofar as many aspects of anti-drugs enforcement impact on procedures designed for combating commercial crime. There is, however, despite these and other initiatives, such as by the Customs Co-operation Council and the Association of South East Asian Nations (ASEAN), considerable scope for more training and in particular the funding of exchange and other programmes for law enforcement officers.

The United Nations in 1971 established a fund called the United Nations Fund for Drug Abuse Control (UNFDAC) for the specific purpose of assisting states in their efforts to eradicate drug abuse. It has also established various institutions to cater for the needs of affected areas.⁸ The question remains whether all states, especially those most afflicted with these problems, in view of the possible incapacity or shortage of resources are able to implement these programmes sufficiently successfully.⁹

The question of resources is not only important in the context of law enforcement, but also in regard to the sentencing of offenders and the treatment of those who become addicted. The World Health Organisation in the context of its programme for developing national guidelines for combating drug and drug-related problems has emphasised the importance of an integrated approach and consequently it is desirable to consider here the position of the offender as well as the addict.

Generally speaking, sentencing policy in relation to crimes is based on the assumption that the alleged criminal must experience the sanctions of law. The following are the grounds on which this assumption is based:

- (a) that society should be protected from criminals; and
- (b) that sanctions of law will deter the criminal from committing crimes in the future.

Legal sanctions are usually determined by public authorities prompted by considerations of general deterrence and the avowed duty of law enforcement officers to uphold the morality of deterrence. Thus, sanctions of law may not necessarily be based on scientific principles or precepts. Punishments does not need any legal justification. However, societies being as they are, sanctions are necessary; they serve a purpose. Sanctions should ensure not only obedience to the law but also a standard of behaviour.

Article 22 of the Convention on Psychotropic Substances, 1971, deals with the penal provisions which may be applied in the event of any breach of Convention obligations undertaken by the Parties. According to paragraph 1, sub-paragraph (a) of this Article, 'subject to its constitutional limitations, each Party shall treat as a punishable offence, when committed internationally, any action contrary to a law or regulation adopted in pursuance of its obligations under this Convention, and shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other deprivation of liberty.' This paragraph bears a close resemblance to Article 36(1) and Article 14 of the Single Convention on Narcotic Drugs and the 1972 Protocol respectively.¹⁰

According to paragraph 2 of this Article, an offence, if committed in different countries, becomes a multi-effect offence, that is, each of them shall be treated as a distinct offence, and obviously punished according to the law of the country in which it has been committed. Additionally, paragraph 2, sub-paragraph (a) clause (iii) of the Article provides that 'foreign convictions for such offences shall be taken into account for the purpose of establishing recidivism.'¹¹

As in the Single Convention, offence in the context of this Convention extends to include conspiracy to commit and attempts to commit any act deemed to be an offence, as well as preparatory acts and financial operations in connection with the offences referred to in this Article.

The Fifth Congress on the Prevention of Crime and the Treatment of Offenders, 1975,¹² considered measures to be taken against drug offences and identified the following areas as deserving the urgent attention of States:

- (a) consideration of illicit drug traffic as a transnational crime;
- (b) appropriate sentencing policy pursued by States;
- (c) the sharing of expertise in drug law enforcement and exchange of intelligence;
- (d) improvement of the mechanism for promptly disseminating and receiving evidence concerning drug offenders;
- (e) strengthening of border control;
- (f) increasing the degree of penalties for illicit traffickers;
- (g) development of means to ensure that convicted drug traffickers do not take refuge in other countries; and
- (h) destruction of seized drugs and material connected with illicit activities.

The United Nations initiatives in drawing the attention of the international community to the problems relating to youth and drugs have been consistent and timely.¹³ However, it is up to States to take necessary action in this regard. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders¹⁴ indicated that:

"... success in crime prevention can be achieved only through a specific analysis of crime trends inherent in a given country and region, as well as through the use of the means and methods of crime prevention which correspond to the country's historical, socio-economic and cultural peculiarities.'

One study has very clearly identified the intricacy of the relationship between drug abuse and crime:

'Clinical experience and direct research confirm the existence of an association between drug abuse and crime, although the nature of the relationships is not clear.

The relationship between drugs and crime is not only interesting from a purely scientific standpoint, but may also be useful in identifying and adopting an adequate crime and drug control policy in society.

It is obvious that for the legislator and administrator it is important to understand if, how and to what extent crime favours drug abuse, or drug abuse causes crime, or whether both behaviours are caused or facilitated by other intervening factors.

A final answer to these questions has so far not been found. Very important studies recently carried out suggest a probability of a casual relationship between drug abuse and crime, but do not exclude a purely correlational link between the two phenomena. In any case, countries with different drug legislations show very different crime rates in their population of drug addicts.¹⁵

The punishment of drug-traffickers and forfeiture of ill-gotten gains although an important aspect of the sentencing policy, is not its only and total aspect. Moreover, sentencing policies vary from legal system to legal system.

The absence of mutual recognition of offences and the lack of uniformity in sentencing policies present a crucial problem. In this respect the involvement of an institution such as the Commonwealth Secretariat as an agent of harmonisation of programmes would appear to be important. Uniformity in the degree and nature of punishment would eliminate 'forum shopping' by drug traffickers. Given the nature of the problem, a common pool of resources seems urgently required.

(v) Problems associated with treatment

Although the treatment of addicts is naturally of the utmost importance, in the context of this paper it is sufficient to emphasise that this is only one element in what should be an integrated policy to drug abuse control and eradication. It cannot be an end in itself and should not be perceived as isolated and distinct from those aspects of law enforcement and supply and demand reduction that are discussed elsewhere in this paper. In the context of treatment there appears to be a crying need for drug education both at home and at educational institutions. Article 20 of the Convention on Psychotropic Substances, 1971, details measures against the abuse of psychotropic substances. Paragraph 1 of Article 20 provides that, in addition to their taking all practical measures for the prevention of abuse of psychotropic substances, the Parties shall co-ordinate their efforts for early identification, treatment, education, after-care, rehabilitation and social integration of the persons involved. The implementation of this provision is fraught with difficulties in view of the fact that 'standard measures' for the prevention of abuse, treatment or education

etc, depend primarily on the availability in the country of effective machinery for these purposes and/or on the socio-economic conditions. Paragraph 2 of the same Article provides that the 'Parties shall as far as possible promote the training of personnel in the treatment, after-care, rehabilitation and social integration of abusers of psychotropic substances'. 'Social integration' being part of their objectives, the Contracting Parties are required to ensure that persons involved in this process, e.g. police officers, social workers, psychologists, judges, prison officers, doctors, etc. receive appropriate training. In this connection the limitations of legislation should however be borne in mind. Law alone cannot improve the value-standards and integration process in a society.

(vi) Waste of human resources

The degree of waste, in social and human terms, in the context of drug abuse is both self-evident and indefensible. It is universally accepted that drug addiction, unrelated to approved medical treatment, is an evil of horrendous proportions to the individual, his family and his society. Consequently no effort should reasonably be spared in combating this problem at all stages and all levels.

AN OVERVIEW OF THE TRADITIONAL SENTENCING POLICY APPLIED TO
DRUG TRAFFICKERS

The primary purposes of a sentencing policy are correction and deterrence. Where the economic gains are enormous, no sentencing policy however stringent it may be, will fulfil these two purposes. Such is the case with illicit drug traffickers.

The laws of the countries mentioned below have made provision for either severe punishment of drug traffickers and or seizure and forfeiture of proceeds of drug-related crimes.

Antigua, Austria, Bermuda, Bolivia, Canada, Colombia, Gambia,
Hong Kong, India, Ireland, Italy, Japan, Kenya, Malaysia,
Mauritius, Mexico, New Zealand, Nigeria, Pakistan, Portugal,
Singapore, United Kingdom, United States, Zambia.¹⁶

Punishment is not only permissible but also desirable. It is socially necessary too. Nevertheless, punishment must be consistent with its aim. It is common knowledge that there are three main approaches to crime prevention: individual deterrence, individual incapacitation and general deterrence. Sentencing policies in most legal systems are based on the belief that "to allow the offender to get away with impunity would undermine the point of having rules in the first place; it may engender a sense of unfairness in the law-abiding members of the community and so undermine the general attitude that the law is to be obeyed. The offender for his part does not have good grounds for feeling unfairly treated if the community responds to his breaking the law in some way which is to his disadvantage".¹⁷ How much punishment and on what principles the degree of punishment should be set will remain debatable for some time to come.

Then there are problems both as to procedural and substantive aspects of law: when to seize and forfeit; how to seize and forfeit; how to take evidence or cross-examine a witness; does the power of the judge to order confiscation need to cover conspiracy and other inchoate offences; how to define proceeds, etc.

Effective forfeiture of assets derived from criminal acts depend on two important conditions: first, an appropriate legislation and effective law enforcement machinery; and second, promptness of punishment. Delay of punishment is probably largely responsible for the apparent ineffectiveness of the current penal systems.¹⁸

No appropriate legislation can be enacted however unless certain important legal concepts have been satisfactorily settled. Forfeiture presupposes enquiry and search; these two procedures involve aspects of present day human rights law, which seems to be implicated at almost every stage of the process concluding in forfeiture. Time and the procedure for execution of judgments seem to be two significant factors in the successful enforcement of forfeiture judgments. Additionally, in imposing sentences the concepts of recklessness, negligence or liability are controversial, but they seem to be the determining factors or at least play an important role in most legal systems. What should be done if a drug addict is himself an illicit trafficker in large quantities of drugs?

LEGAL DEVELOPMENTS AT NATIONAL AND INTERNATIONAL LEVELS

(a) Legal Development at the National Level

The initiative taken by some of the States in regard to the eradication of drug-related problems has been varied and the following brief survey does not pretend to be other than illustrative:

Australia

Under the Customs Act as amended the Australian authorities have introduced stringent methods of seizure and confiscation in drug offences, which extend to ill-gotten gains acquired outside Australia and the courts have been empowered to investigate the financial position of accused both before and after a transaction has been completed. Under this legislation, penalty relates to turn-over and not to net profit.

Austria

In Austria, penal sanctions relating to drug offences are governed by the Narcotic Drugs Act, 1951 (Bundesgesetzblatt No 234), as amended by the Narcotic Drugs Amendment Act, 1971 (Bundesgesetzblatt No 271), the Penal Code Adaptation Act (Bundesgesetzblatt No 1974/22) and the Narcotic Drugs Amendment Act, 1977 (Bundesgesetzblatt No 1978/532). Section 6 of the Act provides that:

- '(1) Persons who wittingly and in violation of these provisions produce, import, export or trade in narcotic drugs in such quantities as to constitute a general danger to human life or health shall be guilty of an offence against the public health and shall be liable to terms of imprisonment of from one to five years, or in the case of aggravating circumstances, and in particular when the offender is a member of a ring, two terms of imprisonment not exceeding 10 years. Fines not exceeding 225,000 shillings may be imposed in addition to such imprisonment.

- (2) The amount of the fine shall be so assessed as to exceed the profit which was derived or was intended to be derived from the punishable act. If the maximum fee imposable by law does not suffice, it may be exceeded, but shall not exceed twice the amount of the profit. A term of imprisonment imposed in default of payment of a fine may not exceed one year.
- (3) The objects used in the punishable act or the proceeds therefrom shall be declared confiscated if they are owned by the offender or an accomplice or accessory to the offence or if they were owned by such persons at the time of the seizure. In other cases, they may be declared confiscated. Similarly, materials and apparatus used for manufacture or processing may be declared confiscated, and also vehicles used for transport other than vehicles owned by a public transport undertaking if the owner of the vehicle was aware that it was to be misused for unlawful purposes.
- (4) If the objects of their proceeds cannot be seized or are not declared confiscated, a fine equal to the value of such objects or their proceeds shall be imposed. The fine shall be imposed in the judgment, but if it only subsequently transpires that the confiscation cannot be executed, the fine shall be imposed without argument in court. The parties shall be informed of the decision, and appeal may be lodged within three days.
- (5) The term of imprisonment imposed (in addition to the sentence for the offence) in default of payment of fine, and the term of imprisonment imposed in default of payment of a fine imposed in lieu of confiscation, shall not in the aggregate exceed a total of 18 months.'

Canada

Recently, in Canada, it has been made an offence to receive or possess the proceeds of crime irrespective of whether the relevant crime took place in Canada.

Ireland

In Ireland, the Misuse of Drugs Act 1971 has made elaborate provisions for penalties for various drug-related offences. This Act has made provisions for penalties in respect of drug-related offences committed by a person presumably of Irish nationality outside the territorial jurisdiction of Ireland.

Italy

In September 1982, the Italian authorities enacted Law No 646 (popularly known as La Torre Law, named after one of its initiators, Pio La Torre, a member of the Italian Parliament who was assassinated at Palermo by the Mafia) to introduce to the Italian legal system a new crime called the Mafia conspiracy and to empower the courts to seize and confiscate goods of the persons belonging to the Mafia conspiracy. 'Persons' in this context includes relatives, partners and cohabitants who in the five years previous to the commission of a crime played the role of 'front man'. La Torre has already been successfully enforced in Calabria, Campania, Lombardy and Sicily.

New Zealand

The law in this regard seems to be quite elaborate in New Zealand. The levels of punishment for drug-related offences have been increased by the Misuse of Drugs Order (No 2), amending the Misuse of Drugs Act 1975. The most important provisions can be found in sections 38-47.

Section 38: 'Fine may reflect illicit gains. In any case where any person is convicted of a drug dealing offence and the court by which he is convicted is satisfied on the balance of probabilities that any money or assets owned by the offender at the date of his trial has or have been acquired by him directly or indirectly from the offence, the court may, having regard to the amount of such money or the value of such assets, impose a fine greater than it would otherwise have imposed on the offender for the offence.

Under Section 39, the Court has the power to impose a greater fine having regard to previous dealings.

Section 41: 'Inability of the offender to explain the source of money or assets may be evidence:

- (i) Where, in any case to which section 38 of this Act applies, the offender fails to explain to the court's satisfaction the source of any money or assets owned by him, the court may accept that as evidence that the money or assets was or were derived by the offender from the offence.
- (2) Where, on any application for the exercise of the court's power under section 39 of this Act, the court is satisfied in accordance with sub-section (1) (a) of that section that the offender has committed any previous drug-dealing offence, and the offender fails to explain to the court's satisfaction the source of any money or assets owned by him, the court may accept that as evidence that the money or assets was or were derived by the offender from that previous drug-dealing offence.

Under Section 42 of the Act, the court may treat alienated property as the offender's property.

Section 46(1) Garnishee Proceedings: For the purpose of enforcing the payment of any fine imposed by any court on conviction of an offender of a drug-dealing offence, a sum that stands to the credit of the offender with any person (including a bank or savings bank) and that is on deposit with that person or is held by him in a current or other account (including a deposit account) shall be deemed to be a sum due or accruing to the Registrar enforcing the fine and shall be attachable accordingly, notwithstanding that any of the following conditions applicable to the deposit or account, that is to say,

- (a) Any condition that notice is required before any money is withdrawn;
- (b) Any condition that a demand for payment must be made;
- (c) Any condition that a personal application must be made before any money is withdrawn;
- (d) Any other condition (other than a condition that a deposit book, receipt for money deposited, or other like document must be produced before any money is withdrawn),

has not been satisfied.

Poland

Article 29 of the Law of 8 January 1951 provides that:

'Any person manufacturing, converting, importing, exporting, transporting, storing or marketing a narcotic drug without a licence shall be liable to imprisonment for a term not exceeding five years and to a fine.'

Under Polish Law, confiscation of narcotic drugs as objects of crime along with the tools and equipment used for its commission is permissible.

United Kingdom

In England, specific powers to order forfeiture of goods and gains connected with drug offences are contained in several Acts. Section 27(c) of the Misuse of Drugs Act provides that:

'The court shall not order anything to be forfeited under this section, where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.'

This section does not indicate whether the order to forfeit shall be made at the time of conviction. Sections 32 and 43 of the Powers of the Criminal Courts Act 1973 have conferred on the English courts a general power of forfeiture which must be exercised within 28 days after conviction. In R v Menocol the House of Lords ruled that 'Because the forfeiture order made against the appellant had not been made within 28 days of her original sentences, it was therefore invalid'.¹⁹

The Operation Julie case²⁰ (R v Cuthberton) shows us another weakness in English law in this regard. In this case three appellants manufactured and supplied an hallucinogenic drug for several years and made enormous profits. Two of them transferred a substantial part of their share in the profits to bank accounts in France and Switzerland. They were convicted of conspiracy in contravention of s.4 of the Misuse of Drugs Act 1971. The trial judge ordered forfeiture of their ill-gotten gains under s.27 of the Misuse of Drugs Act. The appellants contended that the power of forfeiture under the Act applied where 'a person is

convicted of an offence under the Act and not to a conviction for conspiracy to commit under the Act.' They also contended that the power of forfeiture extended only to anything shown 'to relate' to an offence. The Court of Appeal dismissed their appeal. The House of Lords, however, allowed the appeal in support of the contention of the accused.

National legislation must encompass an international dimension covering problems relating to forfeiture of assets held abroad. In England, the Hodgson Committee in its Report on the Profits of Crime and Their Recovery made a number of recommendations relating to forfeiture and confiscation of the proceeds of crime, but it did not make any recommendations on transnational questions. Courts cannot make a personal order for the payment of compensation or a pecuniary penalty out of assets held abroad.

The Drug Trafficking Offences Bill (1985)²¹ has made provisions for confiscation of proceeds of drug trafficking. In making a confiscation order the court shall first determine whether the drug-offender has been benefited either in the form of any payment or other reward in connection with drug trafficking carried on by him. It is believed that 'benefit' will be determined only by referring to economic gains, apparent or real, present or future. The court may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of the proceeds of drug trafficking by him, make the following assumptions:

- (a) that any property appearing to the court -
 - (i) was held by him at the time of his conviction, or
 - (ii) was transferred to him in the period of five years ending with his conviction and was received by him as a payment or reward in connection with drug trafficking carried on by him, or
 - (iii) any expenditure of his in that period was met out of payments received by him in connection with drug trafficking carried on by him.

The Bill has substantially increased the amount of fines and the term of imprisonment of drug offenders. Section 6 of the Bill provides for restraint orders where the court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking and hence may by order prohibit any person from dealing with any property available in respect of the defendant, other than property for the time being subject to a charge under section 7 in respect of land, securities, etc. The Bill authorises police constables, under authorisations from the appropriate court to obtain evidence which may appear to be relevant to the investigation against a drug offence. Police constables have also been empowered to seize and retain any material which is likely to be of substantial value to the investigation for the purpose of which the warrant for search was issued. The Bill also provides for disclosure of information held by government departments and not by others, such as, banks and finance houses. One of the interesting aspects of the Bill is that the High Court may, on an application by or on behalf of the government of a designated country, register an external confiscation order made there and enforce it. Incidentally, this provision will immensely facilitate drug investigation work particularly within the Commonwealth.

United States

The United States seems to be far ahead of others in respect of preventive and curative legislation. In 1970, the US Congress passed two Acts: the Racketeer Influenced and Corrupt Organisations Act (RICO) and the Controlled Substances Act, Continuing Criminal Enterprises Offences (popularly known as s. 848). Whereas the former aims at widening the provisions of forfeiture, the latter is particularly concerned with organised crimes in relation to drug industry. Under both RICO and s. 848 forfeiture of assets is mandatory and it covers profits, any interest in, and anything that may afford a source of influence over the enterprise. Forfeiture does not alter the presumption of innocence under either of these Acts.

The Forfeiture Act of 1984, which came into force on 12 October 1984, strengthened, inter alia, the existing RICO forfeiture provisions. The new legislation has not only expanded the definition of property in order to allow the criminal forfeiture of proceeds of various types from racketeering activity but also extended the doctrine of 'relation back'. The new legislation has many dimensions, for example, it has given the Attorney-General the authority to transfer, if necessary, the custody or ownership of forfeited property to any Federal, State or local agency; it has also created a Department of Justice Asset Forfeiture Fund. In addition to this new legislation, the amendments to the Customs Law, which came into force on 12 October 1984, permit administrative forfeiture of property of a value up to US\$100,000 compared to the previous ceiling of US\$10,000. This forfeiture can be enforced in addition to the administrative forfeiture of contraband articles, and vessels or any means of transportation used in the process of trafficking.

Even a perfunctory and arbitrary study of legislation in various countries reveals a number of gaps: the tradition of bank secrecy preventing disclosure without the approval of the central bank or other competent authorities; non-disclosure of information filed with the Inland Revenue authorities; lack of stringent foreign exchange regulations, etc. Lack of intelligence in many cases stands in the way of the prompt detection of criminals and also of methods of trafficking in drugs. It is not by law alone that effective machinery as to the collection of useful intelligence may be achieved; constant vigilance over drug-related matters, training of personnel (police force, customs officials, judges, magistrates, etc), monitoring of production, manufacture and trade in drugs by national authorities are the prerequisites of informed intelligence acquisition. These are some of the important issues to which national authorities should pay urgent attention.

(b) Legal Development at the International Level

This should be discussed from two standpoints: (i) legal development through inter-state relationship; and (ii) legal development through international and inter-governmental institutions.

(1) Legal Development through Inter-State Relationship

There are a number of possible situations in which assistance may be required from a foreign jurisdiction:

- (a) in the detection of a crime;
- (b) in obtaining evidence which may be recognised by the domestic courts of the requesting State;
- (c) in returning the accused to the jurisdiction requesting assistance; and
- (d) in securing an effective criminal law sentence.

What is required is 'international judicial assistance' rather than 'international legal assistance' because the former entails, in addition to co-operation of States in the enforcement of law, such extra-legal co-operation between States as the collection and dissemination of criminal intelligence, and informal investigations without taking resort to legal process.

This is not only a politically sensitive area, but also entails delicate human rights issues. The US practice of providing judicial assistance to external courts despite the lack of a reciprocal action by the external authority may not find support in many other jurisdictions. Therefore, it is essential to conclude either bilateral treaties or multilateral treaties between States. It would be inappropriate solely to rely on the specific provisions of any particular statute; a general enabling statute at the national level implementing the provisions of such treaties would be required. Otherwise, the prospects of success would be remote. Under the Companies Act 1980 in England, although a Department of Trade Inspector enjoys a significant investigatory powers, these powers do not extend beyond the territorial jurisdiction of the United Kingdom.²² However, in practice, it is not possible for a State to empower the officials of another State to conduct investigations on behalf of the first State. In 1982, the Government of New Zealand appointed the Australian Government's Royal Commission on Drug Trafficking as a Commission of Inquiry in New Zealand. This should be considered as a significant breakthrough in judicial assistance on a bilateral basis. Otherwise, generally speaking, collection of evidence from a foreign jurisdiction still poses considerable difficulties. To this must be added the costs involved in collecting admissible evidence from foreign jurisdiction.

Given these difficulties, collection of information from a foreign jurisdiction may follow two procedures - voluntary and involuntary. Success in the voluntary method of collecting information primarily depends upon the nature of the relationship prevailing between the two countries concerned; but it must be maintained that no municipal statute can have a provision which could compel a witness to attend before a consul. If the offence admits of a political dimension, it may be extremely difficult to extract any information from a foreign jurisdiction on the basis of a letter of request (letters rogatory). Letters of request are subject to different uses in common law and civil law jurisdictions. (Under the common law system, the letters rogatory procedure is primarily intended to assist parties who have difficulties in obtaining evidence. In the civil law system this procedure is used for investigations into cases which have not yet come to court). It is common knowledge that the letters rogatory procedure is slow, expensive, involves numerous formalities and technical legal issues. Additionally, there is the enormous problem of formulating or concluding extradition treaties between countries.

Some of these problems may be resolved by means of bilateral forms of co-operation or multilateral forms of co-operation. On the bilateral side, the Swiss-US treaty of co-operation may exemplify. It combines the common law evidentiary system with that of the civil law system. This treaty provides wide ranging compulsory assistance measures to include, among other things, taking of testimony or statements of persons, service of judicial and

administrative documents and the preservation of items of evidence. Under this treaty legal assistance includes the disclosure of banking information. This treaty has proved to be particularly helpful in detecting corporate fraud, and in narcotics investigations. One can only hope that other countries may follow suit and conclude treaties between themselves along the same lines.

The Agreement of 26 July 1984 between the Government of the United Kingdom and the Government of the United States concerning the Cayman Islands, which provided that, in disregard of the Cayman laws, confidential relationships should not protect narcotic traffickers, is a remarkable step forward in the appropriate direction. Under this Agreement, the Cayman Islands authorities shall produce business and bank records if so requested by the Attorney-General of the United States for purposes of investigation or proceedings connected with narcotics activity.

Bilateral and multilateral co-operation can only be successful if the States are able to co-operate meaningfully. Appropriate steps may be taken to restrict the operation of the system of bank secrecy in respect of non-residential accounts and to restrict the operation of free ports, free zones and tax havens. In respect of forfeiture of proceeds of drug-related crimes, the principle of Mareva injunctions and Anton Pillars could be usefully explored.

(ii) Legal Development through International and Inter-governmental Institutions

The UN initiative in the prevention and eradication of drug-based crimes and problems has been consistent since the 1960s. Both the International Narcotics Control Board and the Division of Narcotic Drugs in conjunction with the UN Crime Prevention Office are engaged in formulating policies as to how to prevent and eradicate crimes based on drugs. Practical support to the prevention of illicit drug traffic and related matters are given by the UN Fund for Drug Abuse Control (UNFDAC).

The principal inter-governmental and regional institutions involved in the eradication of drug-trafficking and related criminal activity are the international Criminal Police Organisation (ICPO/INTERPOL), the Customs Co-operation Council, the Council of Europe Co-operative Group to Combat Drug Abuse and Illicit Trafficking in Drugs (the Pompidou Group) and the Commonwealth Secretariat in London.²³ Of these institutions the contributions of INTERPOL and the Commercial Crime Unit of the Commonwealth Secretariat should be emphasised from a practical law enforcement standpoint.

INTERPOL

The aims of the organisation are stated in Article 2 of its Constitution.

Article 2(a): 'To ensure and promote the widest possible mutual assistance between all criminal police authorities, within the limits of the laws existing in the different countries and in the spirit of the Declaration of Human Rights.

- (b): To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.'

Interpol acts as inter-police force clearing house into which member police forces feed information, and from which they receive assistance, when requested. It acts exclusively through the police agencies of the various member states. The success of Interpol in regard to crime detection and crime prevention very much depends on the degree of promptness and efficiency a country has attained in supplying information to it. An effective communication system is a sine qua non of an effective system of data supply. The services of Interpol may therefore be appropriately and effectively enjoyed only by those countries that have attained sophistication in acquiring and delivering information and intelligence. It must, however, be pointed out, that the degree of co-operation between various international and inter-governmental institutions, e.g. the United Nations (UN Division of Narcotic Drugs) and the Commonwealth Secretariat is appreciable and, indeed, remarkable.

The Role of the Commonwealth Secretariat

A solution of the drug-based problems and commercial crimes would require a thorough understanding of the economy, societal conditions and attitude of peoples in various countries. The Commonwealth is based on the common understanding of its members and, indeed, bound within the association by common ties. Additionally, the common legal traditions operate as one of its foundations. There exists a formidable degree of affinity among its members. No special efforts require to be made to attain homogeneity and integration. Unlike other inter-governmental institutions, the Commonwealth is already in a position to anticipate a degree of co-operation and understanding from its members over matters of common concern and importance.

At the Commonwealth Law Ministers' Meeting in Winnipeg, Canada, in 1977, Ministers expressed concern about the growing rise in transnational commercial crime which were undermining developing countries' economies leading in turn to political and social instability. They recognised that the problems were compounded by the increasing sophistication of criminals operating at a transnational level and in a highly organised manner. Consequently, Ministers requested the Commonwealth Secretary-General to consider ways in which the special bonds between Commonwealth countries could be utilised to combat commercial crime. The recommendations contained in the report prepared by a consultant on the promotion and development of international co-operation to combat commercial and economic crime was endorsed at the Commonwealth Law Ministers' Meeting in Barbados in 1980. At the regional meeting for Asia and the Pacific of the Commonwealth Heads of Government in Sydney in February 1978, it was acknowledged that illicit traffic in drugs was a growing problem within that region and therefore the meeting called for the establishment of a special working group in illicit drugs to facilitate co-operation among the Commonwealth countries. In November 1981 the Commonwealth Secretary-General appointed an Assistant Director to head a Unit within the Legal Division, with special responsibility for developing this Commonwealth initiative against commercial crime. In February 1983, the Commonwealth Law Minister' Meeting in Sri Lanka not only extended the terms and reference of the Commonwealth Fraud Liaison Service to include commercial crime intelligence, but also resolved that the Commonwealth Secretariat should continue its work in encouraging countries to attack transnational organised crime, especially in relation to drug trafficking, through the means of seizure and forfeiture of proceeds on drug-related crime. At the same meeting, the Ministers after comprehensively reviewing the work of the Commercial Crime Unit, called upon the Commonwealth Secretary-General to strengthen the facility by the provision of additional resources and personnel, and to 'extend the service specially in regard to the development and deployment of intelligence orientated to commercial loss prevention'. A meeting of senior law officers of small Commonwealth jurisdictions held in the Isle of Man in July 1983, expressed the view

that small off-shore financial centres should not be used to facilitate financial transactions related to drug-trafficking. At the subsequent meeting of Senior Law Officers of Small Commonwealth Jurisdictions in July 1985 in Vanuatu, Ministers reiterated their concern and called for urgent action to establish a viable intelligence facility within the Unit.²⁴

Since November 1983, the nomenclature - Commonwealth Commercial Crime Unit - has been in use, and the Unit, under the Assistant Director, functions within the Legal Division under the supervision of the Director of that Division and reports to the Deputy Secretary-General (Political) of the Commonwealth.

Although relatively recently established, the Commercial Crime Unit has already been involved in numerous cases in which its aid has been sought in detecting criminals, and in guidance to its member States as to the prevention, including training of personnel, of crimes, including drug-based crimes. The Unit's terms and reference are wide:

- (i) to develop criminal financial and other intelligence systems between Commonwealth law enforcement agencies and between Commonwealth and such other law enforcement agencies as may be appropriate and to this end in a catalytic manner engender and enhance the flow of information to and between Commonwealth law enforcement agencies from both official and unofficial sources;
- (ii) to liaise with ICPO/Interpol and such other organisations, as may be appropriate, and work closely with the liaison officers within the organisation concerned with the same fields of crime;
- (iii) to gather and disseminate relevant information;
- (iv) to assist in the development of appropriate training programmes, exchange of personnel, and the publicising of existing training opportunities both within countries and organised by other international agencies;
- (v) to undertake and assist in the facilitation of international investigations, inter alia, with a view to eliminating duplication of effort; and
- (vi) to assist in the creation of a Commonwealth Panel of Experts and to liaise as necessary between individual Commonwealth governments and members of the Panel.

This Unit is not restricted to liaising only with Commonwealth agencies; it has established rapport with various non-Commonwealth countries and international agencies. In this context a strengthened intelligence role by the Unit, oriented to loss prevention, was advocated by many distinguished speakers at the Seventh Commonwealth Law Conference in Hong Kong in 1983 and at a variety of official and unofficial meetings in Commonwealth and in certain cases non-Commonwealth countries. The Unit's work has been noted with approval by a number of international and inter-governmental agencies, such as the World Health Organisation, UN Division of Narcotic Drugs, UNCTAD, Commission of the European Communities, ASEAN and UN Congress on Crime Prevention.

The Unit is not limited simply to dealing with police or official agencies, which is in sharp contrast to ICPO-Interpol which works only through its official National Central Bureaux. Law Ministers have emphasised that the traditional methods of police co-operation, in particular, through ICPO-Interpol, are not wholly adequate for combating criminal and abusive activity. The Communique of the 1980 Law Ministers specifically stated that 'co-operation on a police basis was felt not to be complete answer', and this sentiment was reiterated at the meeting in 1983. The communique also stated that 'the Commonwealth Fraud Officer had a unique role to play ... and in this there was no overlap with any other international agency.' The Unit has developed effective working relationships with authorities such as stock exchanges, professional bodies and other self-regulatory authorities. This underlines the flexible nature of the Commonwealth initiative, and its ability to seek and obtain assistance and information from sources normally well beyond the scope of traditional co-operation in law enforcement.

The Unit is authorised to facilitate and co-ordinate transnational investigations. Its authority to co-ordinate and develop criminal intelligence and also to co-ordinate transnational investigations provides it with a unique authority to 'target' criminals. The status of the Secretariat as an inter-governmental organisation allows it to have direct access to governments at the highest level. In relation to day-to-day liaison, Commonwealth Governments have already designated an official to work with the Unit. In many cases it has been instrumental in preventing the commission of a crime. The Unit is sufficiently cautious not to encroach upon the jurisdiction of ICPO-Interpol. There is no duplication of efforts if a matter is pursued by the Commonwealth Commercial Crime Unit, and ICPO-Interpol have recognised and endorsed that.

At the Commonwealth Law Ministers' Conference held in Sri Lanka (1983) the Law Ministers themselves called for a strengthening of the Unit and in particular development of a criminal intelligence facility. Given the limited resources of the Unit, this has been compiled on an ad hoc basis, although it is already producing valuable strategic and tactical intelligence for law enforcement agencies. The Unit exercises considerable caution and circumspection in both the development of its intelligence and in its deployment.

Of course, the Legal Division, of which the Commercial Crime Unit is part, has been concerned to promote co-operation on a somewhat broader basis through the improvement of the Commonwealth Scheme for the Rendition of Fugitive Offenders, the development of a Commonwealth Scheme for Mutual Legal Assistance in Criminal Matters and the preparation of model legislation for the forfeiture of property associated with serious criminal activity. When the work of the Division and in particular the Unit is considered it is already tolerably clear that the role of the Secretariat in combating, inter alia, illicit trafficking in narcotics is already recognised.

THE COMMONWEALTH INITIATIVE

Irrespective of the Heads of Government's concern over the extent and implications of illicit trafficking in narcotics it is clear that the Commonwealth Secretariat - has long been concerned with matters directly relevant to this subject as, of course, it should given the nature of the problem.²⁵ Invariably, this concern which has always been directly referable to a political mandate given by a ministerial or regional meeting, has been ad hoc and pragmatic. The expertise and respect with which this expertise is regarded throughout the world, developed within the Secretariat in many areas should not be dissipated and consequently there is need for a Commonwealth programme in this area. It would be wrong for the Commonwealth, even considering its special status and the headway that has been made for example in the field of legal co-operation, to attempt to emulate or duplicate the work of other international and regional agencies. It should rather build upon those aspects of its

work which are clearly recognised as representing an almost unique facility for co-operation and which cannot reasonably be duplicated or emulated in other organisations. It is better to build where sound foundations have already been laid than to seek to risk an edifice on sand.

It is undoubtedly helpful to set out here the relevant paragraphs from the Communiqué of the last Commonwealth Heads of Government Meeting in Nassau in October 1985:

Drug Abuse and Illicit Trafficking

66 Heads of Government were deeply concerned at the rising incidence of drug abuse and illicit drug trafficking that was seriously threatening the social fabric and security of many countries. They recognised that it called for a wide range of responses, including urgent attention to problems affecting young persons and to the rehabilitation of its victims. They agreed that governments should co-operate, both to counter the international traffic in illicit drugs and to deny to those convicted of drug trafficking the proceeds of their crime, and looked to the early implementation of a scheme for enhanced co-operation between Commonwealth countries in this regard.

67 Heads of Government were also disturbed by the extent to which the profits made by drug traffickers were used in criminal and subversive activities often across international borders. They invited Commonwealth Law Ministers to explore measures to counter this trend. While supporting the work of existing international organisations in the field of narcotics control, Heads of Government welcomed the proposal of the United Nations Secretary-General for the convening of an international conference at a high political level in 1987 to deal with all aspects of drug abuse and trafficking and expressed the hope that action would be expedited on the related proposed new Convention.

The Second Expert Group Meeting on the Forfeiture of the Proceeds of Drug Crimes, held in Vienna under the auspices of the UN Division of Narcotic Drugs between 29 October and 2 November 1984, rightly re-affirmed that there is a need for further co-operation and co-ordination at national level to support bilateral, regional or international efforts. It also provided that as far as drug trafficking and associated phenomena are concerned, the broadest possible interpretation should be placed by State Parties on those provisions of Article 35 of the Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol and Article 21 of the Convention on Psychotropic Substances relating to co-ordinated action against the illicit traffic. Such arrangements at the national level could usefully include the involvement in any co-ordinating agency of officers with specialised experience in the investigation of economic crimes. This could be done either by the establishment of 'economic crime units', by setting up broad-based task forces, or by the attachment to national drug law enforcement units or agencies of officers with specialised experience in the investigation of such crime.²⁶ Of course, task forces are already in operation in the United States.

As has been recognised by the United Nations the area where the Commonwealth Secretariat has to date made most impact in the field of combating illicit trafficking in drugs, is through the work of the Commercial Crime Unit. It has already been pointed out that there is a close relationship between various forms of organised crime, of which illicit trafficking is but a manifestation, and commercial crime. The techniques developed, particularly at an international level by the Unit, for preventing and combating economic crime and destabilisation are highly relevant in the field of organised crime and in particular drug-related activity. Indeed, establishing the 'audit trail' for forfeiture and similar

laws to operate requires the skills which have been developed within the Unit. Indeed, at an international level the investigatory experience of the Unit is unique. The FOPAC Unit in ICPO-International being circumscribed by both exceedingly limited resources, and the constitution of that organisation. Furthermore, rendering money laundering a specific criminal offence and creating various reporting and other devices to assist in tracing and identification of suspicious money flows are essentially commercial crimes.

It is estimated that at least 40 per cent of the cases referred to the Unit involve the identification and monitoring of money flows. Of course, not all such cases involve illicit trafficking in drugs, but the reasons for laundering money from other crimes and in particular to escape taxation or evade exchange control are more or less identical. The Unit has had a number of cases where it has proved possible to establish a clear 'audit trail' and the flexibility of its network and procedures has often allowed it to secure co-operation and assistance in circumstances where other agencies, whether national or international, would certainly have failed. In not a few instances the Unit has been able to assist in action being taken to neutralise the relevant funds, and in one or two instances actually facilitated their recovery. The intelligence and information base that has been established to assist in its general loss prevention role has proved extremely useful, especially in regard to off-shore banks and other financial institutions. Indeed, in several cases mere intelligence analysis has allowed the identification of money laundering and related operations unrelated to a specific request for assistance. It is this particular aspect of the Unit's work that has been most noticed and applauded outside the Commonwealth. The Unit enjoys excellent co-operation from many agencies whose primary mandate is combating drugs trafficking.

The reasons why the Unit has been able to achieve the success it has are many, but it is possible to discern a few considerations which would be relevant should the same approach with suitable modifications be used for combating illicit trafficking in narcotics. The nature of the Commonwealth and the special position of the Secretariat are extremely significant factors. The close and dedicated network through which extremely efficient liaison is possible on a very timely basis characterise the work of the Unit to an extent which in terms of traditional law enforcement is unique. The flexibility and expertise with which inquiries can be made and the information evaluated are critical. The tasking approach and the ability to interface with agencies not normally accessible to ordinary law enforcement agencies, and the ability to, in appropriate cases, invoke a political dimension by securing access to ministers and senior officials is particularly important.

Having regard to the importance that Heads of Government have attached to combating organised crime and illicit drug trafficking through an attack on its assets, it seems logical and cost effective to build upon the services that have already been developed within the Legal Division of the Commonwealth Secretariat.

The establishment of a facility within the Secretariat for the co-ordination or the servicing of an international inquiry at an investigatory or purely intelligence level of the financial and related aspects of illicit drug trafficking would represent a most significant and practical step forward. It would not in any way adversely impact on the work of any other agency or organisation and would not amount to a duplication of work or diversion of resources. It would have all that the establishment of the Commercial Crime Unit had to commend it, but in addition would given its narrower mandate, achieve through a process of targetting and case selection a degree of practical significance of unquestionable value. It could build upon the experience, expertise and network that the Commercial Crime Unit has built up and if necessary work as an integral aspect of that wider facility.

This programme could be run as an adjunct to that of the Commercial Crime Unit, or as integral to it, given the importance that organised crime assumes in both areas and the common investigatory and intelligence problems. Apart from providing a facility for co-ordination and the servicing of international inquiries, it would assume a teaching and training role for financial investigators. It is important to appreciate the degree of expertise that has already been built up within the Secretariat in this area. The General Secretariat of ICPO-Interpol has drawn upon this expertise in the development of its own programme for police officers and national agencies that have long struggled with enforcement in this area, such as the Anti-Narcotics Commission in Malaysia and the Customs and Excise Department of India have called in the Unit for training. The Unit has also participated in expert working groups at the UN Division on Narcotic Drugs and the World Health Organisation's national guidelines programme.

Assuming that co-operation at a legal level will increase with recent moves in the Commonwealth, and through the United Nations, and the various national initiatives especially to combat the problem through attacking financial assets, there will be an even greater need for the co-ordination of inquiries and this will not be adequately discharged through mere police force to police force communication. Indeed, this has already been recognised in the context of the work of the Commercial Crime Unit and the Commonwealth Scheme on Legal Assistance in Criminal Matters. A facility in the Secretariat for the co-ordination of inquiries would therefore be a material benefit to law enforcement and related activities. It is contemplated that only a modest investment would need to be made in establishing this service, provided it was adequately interfaced with the work already being undertaken by the Unit. A single officer, at diplomatic level, supported by a professional officer, with adequate secretarial and clerical support would, on the experience of the commercial crime initiative, be adequate to establish the facility. Consequently the cost would be in the order of about £75,000 a year. The facility given its narrower and more 'dedicated' role than the Commercial Crime Unit would be able to interface and therefore rely much more on national and other agencies. It would not require the same ability as the Commercial Crime Unit to assume responsibility for inquiries due to the absence of any adequate facility within a member country.

It is important to emphasise that the proposed facility for co-operation within the Secretariat would not become involved in the operational work of police or other agencies, but would simply provide a co-ordinating and facilitative role as does the Commercial Crime Unit in the vast majority of matters referred to it. It would supplement, through the network that already exists and which it would be charged with further expanding and dedicating, the work of traditional law enforcement agencies and would foster access to information germane to financial and asset investigations from organisations and bodies that would not be accessible directly or generally indirectly to police agencies working through the ICPO-Interpol network or otherwise.

Footnotes

1. U.N GA Res A/Res/39/141 of 26 February 1985.
2. Nassau Communique, October 1985 paras 66 and 67.
3. Supra at 2, para 67.
4. Note the concern expressed by Commonwealth Heads of Government about this menace, supra at 2, para 46.
5. See generally, Rider, The Promotion and Development of International Co-operation to combat Commercial and Economic Crime LMM(80)2.
6. See Chaikin, Money Laundering Techniques and Bank Secrecy (1984) CCU, Commonwealth Secretariat.
7. Meetings, July 1983, Isle of Man and July 1985, Vanuatu.
8. For example, the Narcotics Foundation of the Phillipines.
9. UNFDAC has assisted the Afghan Government considerably in the latter's plan to plough back a higher proportion of profits into providing law enforcement. The Fund has extended assistance to many countries, notably, Bolivia, Burma, Peru, Portugal, Thailand and Turkey.
10. See Chatterjee, Legal Aspects of International Drug Control (1981) Martinus Nijhoff at 483.
11. See supra at 10.
12. Report of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1975.
13. See supra at 2, para 66 for comments of Commonwealth Heads of Government.
14. Report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1980, Ch I sec. B, Resolution I.
15. T Asuni and F Bruno, Survey of an Eleven-Country Study of Socio-Legal Measures to Combat Drug Abuse and Related Crime Bulletin on Narcotics, vol. XXXVI No 3 (1984).
16. See generally Chatterjee, Forfeiture of Proceeds of Drug-Related Crimes: A Commonwealth Perspective Bulletin on Narcotics vol. XXXV, No 2 (1983) and Liverpool, The Seizure and Forfeiture of Property Associated with Criminal Activity LMM(83)22.
17. Galligan, 'The Return to Rehabilitation' in Crime, Proof and Punishment, Taper (Ed) 1981 London.

18. See supra at 16 and Report of the Second Expert Group Meeting on the Forfeiture of the Proceeds of Drug Crimes (1984) U.N Doc MNAR/1984/13 dated 2 November 1984.
19. (1979) 2 All E.R 510.
20. (1980) 2 All E.R 401.
21. See generally Kerrigan, Drug Forfeiture Bill in UK (1986) CXCU, Commonwealth Secretariat.
22. It has been proposed that a single inspector could be appointed under the relevant laws of a number of Commonwealth countries: see Rider, supra, at 5, and Seally, The Enforcement of Civil Liability in regard to Commercial Crime and Corporate Abuse LMM(83)17.
23. See Appendices I and II.
24. See Appendix III.
25. See Appendix I.
26. Report of the Second Expert Group, supra at 18.

The role of the Commonwealth Secretariat in the fight against illicit drug traffic

B. A. K. RIDER

*Commonwealth Fraud Officer, Assistant Director, Legal Division,
Commonwealth Secretariat, Marlborough House, London, United Kingdom
of Great Britain and Northern Ireland*

ABSTRACT

The Commonwealth Secretariat is an international diplomatic agency servicing the Commonwealth, an association of some 47 independent countries that derive a common heritage from the former British Empire. Although the Commonwealth Secretariat's role in combating the illicit traffic in drugs has developed pragmatically in response to specific needs, it reflects a deep concern on the part of member countries to do everything within their power to further the fight against this serious criminal activity. To this end the various divisions of the Secretariat have commissioned studies, facilitated training, prepared model legislation, promoted the exchange of information, participated at international forums and made a determined effort to concentrate enforcement at an international level against the resources and property of those engaged in this illicit traffic.

The Commonwealth

When discussing the role of the Commonwealth Secretariat in the fight against illicit drug trafficking it is appropriate to first describe the Commonwealth. It is a voluntary association of some 47 independent countries. These countries, with their various dependencies, contain more than one quarter of the world's population. Although independent, each member of the Commonwealth is bound within the association by common ties. While these bonds are complete and numerous, perhaps the most noticeable are the common language—English—and the sharing of a common heritage derived in large measure from the old British Empire from which the association has grown. The Commonwealth's strength is in its members' enthusiastic desire to approach problems in a spirit of co-operation and mutual understanding.

Playing a pivotal role in servicing this association, and its members, is the Commonwealth Secretariat. The Secretariat, which is based in London, is an intergovernmental organization with full diplomatic rights and immunities within the Commonwealth.

Recognition of the problems

The problems related to drug abuse have been discussed at all levels within the Commonwealth association and in many contexts. However, no single organ of the Commonwealth or division of the Secretariat is charged with special, let alone exclusive, responsibility for these matters. At first glance it may be difficult to identify a constructive contribution to the solution or mitigation of these problems on the part of the Secretariat. A more careful examination of the concern expressed within the Commonwealth family and the positive steps taken, especially in the last few years, would show this first impression to be misguided.

Heads of Government, ministers and senior officials hold regular meetings within the Commonwealth. On a number of occasions the problems associated with drug abuse and in particular the control of illicit supply have been discussed. For example, at the regional meeting for Asia and the Pacific of the Commonwealth Heads of Government at Sydney in February 1978, it was acknowledged that illicit drug traffic was a growing problem for a number of Commonwealth jurisdictions in the region. The meeting called for the establishment of a special working group on illicit drugs to facilitate co-operation. More recently, the Commonwealth law ministers, meeting in Sri Lanka in February 1983, resolved that the Commonwealth Secretariat should continue its work in encouraging countries to attack international organized crime, especially where drug trafficking is involved, through the seizure and forfeiture of assets and property related to criminal activity. A meeting of senior law officers of small Commonwealth jurisdictions, held in the Isle of Man in July 1983, expressed concern that off-shore financial centres should not be used to facilitate commercial and financial transactions related to drug trafficking and other types of serious crime. The meeting of Commonwealth Finance Ministers in September 1982 in London received a paper from the Commonwealth Secretariat making the same point.

Therefore, it is clear that the problems have been recognized in the Commonwealth, at all levels, and there is a desire within the Commonwealth to foster co-operation, both inside the association and on a world-wide basis, to combat illicit traffic and mitigate the level of abuse.

Activities of the Commonwealth Secretariat

Activities at the divisional level

Within the Commonwealth Secretariat a number of divisions and offices have responded to this desire and are now actively engaged in facilitating co-operation and especially the exchange of information in their various areas. For example, the Medical Division is concerned with the problem of abuse

specifically in the context of overall health promotion and care. The Youth Division is especially mindful of the appalling consequences that illicit trafficking may have on the most precious natural resource of each nation—the youth. The Office of the Special Adviser on Women and Development has been concerned with the special aspects of the problem relating to women and their role in society. Of course, within the Commonwealth Secretariat and the various other organs and arms of the Commonwealth there is a high degree of co-operation, and it would be wrong to assume that these various programmes and areas of concern are exclusively the preserve of one particular division or office.

It is perhaps the Legal Division that has become most actively involved in the fight against illicit traffic. The Legal Division has co-operated closely in the programmes of the other sections of the Secretariat, but in a number of areas it has proceeded in close association with international organizations. For example, the Legal Division has maintained a close relationship with the Special Working Party of the World Health Organization (WHO) in the preparation of the Guidelines in the Context of the International Treaties for the Control of Narcotics and Psychoactive Substances. The Division has also co-operated with the General Secretariat of ICPO/Interpol in the preparation of a study on the development of provisions in the law to facilitate the seizure and forfeiture of property associated with criminal activity and in particular illicit drug trafficking. Similar co-operation has also existed in regard to the refinement of the Commonwealth Scheme for the Rendition of Fugitive Offenders.

In November 1981 the Commonwealth Fraud Liaison Service became operational. This office within the Legal Division of the Commonwealth Secretariat enjoys a wide mandate to *inter alia* co-ordinate and facilitate the fight against international commercial and organized crime within the Commonwealth. Its terms of reference were extended at the meeting of Commonwealth law ministers in Sri Lanka in February 1983 to the development of commercial criminal intelligence. The Service works with police and law enforcement agencies throughout the world, not only in the Commonwealth. Although its primary concern is serious commercial crime, given the relationship between this type of criminal activity and other forms of organized crime—especially illicit traffic in drugs—the Office has not taken an over-restrictive attitude to the scope of its mandate. Money laundering and other financial transactions whereby organized crime's operations are facilitated or obscured are within its purview.

Studies

The Commonwealth Secretariat has commissioned studies on various topics related to illicit trafficking in drugs. For example, studies have been prepared on the relationship between illicit trafficking and other serious crimes; the seizure and forfeiture of property associated with serious

criminal activity; the use of intelligence and money tracing techniques in combating serious organized international crime; and the abuse of children and young persons in regard to illicit trafficking. Perhaps the most significant initiative in this respect is the preparation of a detailed report on the position of Commonwealth jurisdictions in regard to their obligations under the various treaties relating to the control and suppression of illicit traffic in drugs. A "model bill" for the accession to these treaties and the enactment of their obligations has been prepared and appended to the report. This "accession kit" will be particularly useful for the smaller jurisdictions where legal resources are not as plentiful as they are in the larger and more developed member countries.

Regional co-operation

It would be wrong to create the impression that the Commonwealth Secretariat has itself been solely responsible for these initiatives. In some cases the impetus has come from member countries and regional assemblies. Reference has already been made to the meeting of Commonwealth Heads of Government of Asia and the Pacific in February 1978 and the Special Working Group of officials that was consequently set up to facilitate international co-operation in the fight against illicit traffic of drugs on a regional basis. This Special Working Group met on several occasions and was served by a special consultant supplied by the Commonwealth Secretariat. At these meetings observers were invited from a number of non-Commonwealth countries in the region and interested international agencies such as ICPO/Interpol, the Colombo Plan Bureau and the United Nations Division of Narcotic Drugs.

The Special Working Group on Illicit Drugs was concerned that the regional initiative should complement and strengthen the co-operation that already existed in the region and particularly through and with the relevant international agencies. It was accepted that the main contribution of the Special Working Group was in the identification of major policy issues. At the First Meeting of the Group in June 1979 at Kuala Lumpur, which was attended by a representative of the United Nations Division of Narcotic Drugs, it was resolved that a series of country status reports would be prepared on matters ranging from demand reduction to intelligence. These reports were received and reviewed at a meeting at New Delhi in September 1980. The Working Group made a series of recommendations which included the fostering of a basic common attitude in legislative and judicial action against drug trafficking within the region; improvement in the flow of intelligence and the maximization of its use through the establishment of a central data base; and the use of legal provisions to attack the financial assets of traffickers. The constructive deliberations of this Working Group has provided a basis for other initiatives in different regions of the Commonwealth.

Training

Finally, the Commonwealth Secretariat and other agencies and organs of the Commonwealth, such as the Commonwealth Fund for Technical Co-operation and the Commonwealth Foundation, stand ready to assist in training persons in various skills and procedures that might facilitate the fight against illicit trafficking and in certain cases there is the possibility of providing expertise and advice directly.

Conclusions

It cannot be said that the Commonwealth Secretariat's role in combating illicit trafficking in drugs is based on a decided and refined programme of action; in truth, its various initiatives appear pragmatic according to the special exigencies. Nevertheless, its concern in assisting others in resolving or at least minimizing the impact of the problem is clearly manifest. The Commonwealth Secretariat stands ready to assist any Commonwealth Government in this important battle and is prepared to co-operate as fully as it can with any other international agency in this endeavour.

Commonwealth initiatives in the tracing, seizing, freezing and forfeiture of drug proceeds

D. A. CHAIKIN

Commonwealth Fraud Officer, Commonwealth Commercial Crime Unit, Commonwealth Secretariat, Marlborough House, London, United Kingdom of Great Britain and Northern Ireland

ABSTRACT

Commonwealth Law Ministers have recognized that improved domestic measures for tracing, seizing, freezing and forfeiting illegally acquired assets, including the proceeds of drug trafficking, should be complemented by international initiatives. To this end, the Commonwealth Secretariat is formulating a Commonwealth scheme for mutual judicial assistance in criminal matters to strengthen the ability of national authorities to investigate, prosecute and convict international drug traffickers. Work is also being done to develop model legislation governing the attachment of assets believed to have been illegally acquired. In addition, the Commonwealth Commercial Crime Unit has for the past three years been developing intelligence on illicit money operations relating to drug traffickers and other organized criminals. The Commonwealth Secretariat considers that the fight against organized drug crimes requires a wide-ranging response, including improved laws, greater training and education and increased international co-operation.

Introduction

Since 1977, Commonwealth Law Ministers have considered the efficacy of laws for seizing, freezing and forfeiting assets engaged in illicit drug trafficking and also those relating to serious white collar crimes and the organized criminal enterprises. More recent Commonwealth Law Ministers meetings have recognized that improved domestic measures for tackling the problem of organized drug-related crimes should be complemented by international initiatives.

International aspects

The commission of drug trafficking offences often involves two or more jurisdictions. Similarly, the proceeds of drug trafficking are, except for casual or small-scale drug trafficking, inevitably transferred out of jurisdic-

tion and laundered so as to become untraceable. It thus follows that if law enforcement authorities are to combat illicit trafficking in drugs and laundering of moneys derived from such trafficking, they will require assistance from a foreign jurisdiction.

International judicial assistance is usually granted to foreign authorities on the basis of comity, declarations of reciprocity, bilateral treaties or multilateral conventions. Co-operation is based on mutual trust and confidence. Diplomatic and political considerations are crucial. In regard to the forfeiture of property associated with criminal activity there would seem to be at least three common law principles which need to be highlighted. They are as follows:

- (a) The lack of a domestic power to order the preservation of property pending the outcome of a foreign proceeding;
- (b) The want of jurisdiction to transfer title to movable property situated abroad;
- (c) The inability of courts of one country to enforce the criminal judgements including forfeiture orders of another country.

The compound effect of these principles is that even if the profits arising from drug trafficking are identified and traced, it may be difficult to freeze them and it may not be possible to forfeit the illicit moneys to a foreign jurisdiction.

Commonwealth scheme and model legislation

There is a common legal tradition within the Commonwealth of providing mutual assistance in the administration of justice. The Legal Division of the Commonwealth Secretariat is at present formulating a Commonwealth scheme for mutual judicial assistance in criminal matters which is, *inter alia*, intended to strengthen the ability of national authorities to investigate, prosecute and convict international drug traffickers. The Commonwealth scheme may include a provision for the recognition and enforcement of criminal court orders. Such a provision would mean that a forfeiture order in one country would be enforced in another Commonwealth country and that there would be no safe haven in the Commonwealth for drug-generated money.

At the Law Meeting in February 1983, Commonwealth Law Ministers recognized that one of the most effective methods of attacking serious crime was through the seizure of profits derived from crimes and that this was particularly appropriate in such crimes as drug trafficking and fraud. They requested the Legal Division to study the matter further and to prepare model legislation. The Legal Division is at present giving attention to the development of model legislation for the attachment of assets derived from a broader spectrum of offences than merely those relating to narcotics.

Commonwealth Commercial Crime Unit

The Commonwealth Law Ministers have given the Commonwealth Commercial Crime Unit (CCCU) an extensive mandate, *inter alia*, to combat organized crime through the strategic and tactical use of intelligence. CCCU has for the past three years been concerned with developing intelligence on illicit money operations of drug traffickers and other organized criminals. Of the 500 cases in which CCCU has provided direct investigatory and intelligence assistance, a substantial number have involved the laundering of moneys derived from drug trafficking. The seriousness of some of these cases may be illustrated by the following cases:

(a) Letters of credit were found in the possession of a courier arrested in a Commonwealth country. Inquiries pursued by CCCU established that these letters of credit were falsified and had been issued by a bank in the Pacific, which was controlled by an organized crime figure in North America. The documents were part of a scheme to launder substantial amounts of money representing the profits from illicit narcotics trafficking. Appropriate action was taken against the bank. Confirmation that this individual was still involved in this “business” convinced the authorities to reactivate their inquiries that led to prosecution and conviction.

(b) A jurisdiction in a developed Commonwealth country seeking a substantial investment in a specific project, entered into agreements with several companies in North America and Europe. Although those companies had been given a clean bill of health by various official and unofficial bodies, CCCU inquiries revealed that one of the main companies involved in the transaction was operated by a known mafia drug launderer and that his associates had been involved in major fraudulent schemes. The companies in North America that entered into those agreements also had connections with various organized crime activities. The Government was duly warned.

(c) CCCU received a request from the Government of a country that was not a member of the Commonwealth for assistance in tracing the whereabouts of the daughter of a wealthy politician who had allegedly been kidnapped and brainwashed by a socio-religious cult. After five days CCCU confirmed the location of the daughter and received intelligence that the cult had unaccountable income. After placing an informant in the cult, CCCU was able to verify that the cult was controlled by an organized criminal syndicate and was being used to launder money derived from illegal drug-related activities. Information was passed to the appropriate authorities and action has been taken against the cult in a number of countries.

These cases indicate the close relationship between commercial crime, drug trafficking and money laundering. The integration of international criminal activities requires new responses and in particular the development of an effective intelligence capability orientated to loss prevention.

Apart from its more operational role, in regard to investigations and intelligence, CCCU has a mandate to assist in training law enforcement personnel, and to this end has organized two international symposia and a number of regional workshops which have been directed to the financial aspects of crime including the role of offshore bank centres and tax havens.

CCCU has also advised Commonwealth jurisdictions on the development and structure of their offices to deal with economic crime. It has encouraged developing countries to use the intelligence generated by their exchange control laws to detect and interdict the movements of illegally obtained money. This has enhanced the ability of such countries to trace money.

CCCU has also commissioned a number of studies into various subjects directly relevant to the question of forfeiture of illicit assets. In addition to a report entitled "The seizure and forfeiture of property associated with serious criminal activity", which was considered at the meeting of the Commonwealth Law Ministers in 1983, a number of studies, including one on police powers and the seizure of drug moneys and another on the use of offshore banks and crime, are currently being prepared. CCCU is particularly concerned about facilitating research into drug laundering techniques which do not leave an audit trail. The creation of underground banking systems in certain ethnic communities and the advent of a true cashless, if not paperless, society in the more developed States, will have immeasurable effects on the tracing, investigation and prosecution of organized drug-related crime.

Conclusion

The Commonwealth Secretariat considers that combating organized drug crimes requires a wide-ranged response, including improved laws, greater training and education and increased international co-operation. The Commonwealth initiatives are, however, only a small contribution to the international efforts directed at removing profits from drug traffickers. The Commonwealth Secretariat welcomes the developments that are taking place in other international agencies, such as the International Criminal Police Organization (Interpol) and the Division of Narcotic Drugs, and is ready to work closely with such agencies in order to remove the profits from drug crimes.

Law Officers, special consultants and observers from various jurisdiction within the Commonwealth met at the invitation of the Hon. Walter Lini, Prime Minister of Vanuatu, in Port Vila from 28 July to 2 August 1985 to discuss matters of common interest to small jurisdictions. The Hon. Silas Hakwa, Attorney-General of Vanuatu was elected Chairman.

The Law Officers recognised the serious danger that confronts many small jurisdictions arising from the activities of organised crime, illicit narcotics trafficking, and the perpetration of crimes and other abuses which tend to undermine the integrity of their economies and thus their political and social stability. Consequently, Law Officers firmly endorsed the work of the Commonwealth Secretariat's Commercial Crime Unit in protecting the economies of Commonwealth jurisdictions and called upon Commonwealth countries to co-operate with the Commonwealth Secretariat in further strengthening and developing this service.

The Law Officers recognised the important role played by the Commercial Crime Unit in loss prevention and noted the dependence of effective loss prevention mechanisms on the development and deployment of timely intelligence. The Law Officers repeated their request to the Commonwealth Secretariat, made at their first meeting, to develop an intelligence facility, within the Unit, to assist Commonwealth agencies in ensuring the prevention of abuse in the development of offshore and other financial centres within the Commonwealth. Law Officers considered that this was a matter of urgency, and if necessary the participation of other appropriate agencies in the creation of such a facility should be contemplated.